

FILED

SEP 23 2021

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

AFSCME, LOCAL 4041,

Complainant,

v.

STATE OF NEVADA, NEVADA SYSTEM
OF HIGHER EDUCATION, UNIVERSITY OF
NEVADA, LAS VEGAS, UNIVERSITY OF
NEVADA LAS VEGAS ATHLETIC
DEPARTMENT, THOMAS AND MACK
CENTER,

Respondents.

Case No. 2020-030

NOTICE OF ENTRY OF ORDER

PANEL A

ITEM NO. 874

TO: Complainant and its attorney of record, Fernando R. Colon, Associate General Counsel
AFSCME;

TO: Respondents and their attorneys of record, Debra L. Pieruschka, Esq., Assistant General
Counsel, Office of General Counsel.

PLEASE TAKE NOTICE that the **ORDER** was entered in the above-entitled matter on
September 23, 2021.

A copy of said order is attached hereto.

DATED this 23rd day of September 2021.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY


MARISU ROMUALDEZ ABELLAR
Executive Assistant

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2 **CERTIFICATE OF MAILING**

3 I hereby certify that I am an employee of the Government Employee-Management Relations
4 Board, and that on the 23rd day of September 2021, I served a copy of the foregoing **NOTICE OF**
5 **ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

6 Fernando R. Colon, Representative
7 AFSCME Local 4041
8 1107 17th Street, N.W., Suite 900
9 Washington, DC 20036

10 Debra L. Pieruschka, Esq.
11 Assistant General Counsel
12 Office of General Counsel
13 University of Nevada, Las Vegas
14 4505 S. Maryland Parkway - Box 451085
15 Las Vegas, Nevada 89154-1085

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MARISU ROMUALDEZ ABELLAR
Executive Assistant

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GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

AFSCME, LOCAL 4041,

Case No. 2020-030

Complainant,

ORDER

v.

PANEL A

STATE OF NEVADA, NEVADA SYSTEM
OF HIGHER EDUCATION, UNIVERSITY OF
NEVADA, LAS VEGAS, UNIVERSITY OF
NEVADA LAS VEGAS ATHLETIC
DEPARTMENT, THOMAS AND MACK
CENTER,

ITEM NO. 874

Respondents.

On September 9, 2021, this matter came before the State of Nevada, Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Government Employee-Management Relations Act (NRS Chapter 288, EMRA), NAC Chapter 288 and NRS Chapter 233B.

In this matter, Complainant argues that Respondents refused to bargain in good faith over mandatory subjects of bargaining in unilaterally determining all employees of UNLV's Thomas and Mack Center, Sam Boyd Stadium, and Cox Pavilion would have their hours of work and pay reduced from full time to part time, or 55% Full Time Equivalency and 22 hours per week.

Respondents, in part, contend that while there is no dispute that the EMRA explicitly provides that Respondents must bargain as required in the EMRA, NRS 288.150(5)(b) exempted Respondent in this case – specifically that the pandemic falls within a "natural disaster". Further, while Respondents could have chosen to permanently lay off in accordance with NRS 288.150(3)(b), they instead chose to exercise their absolute right to temporarily adjust staffing levels with approval of the Department of Administration to place nonexempt employees on a leave of absence without pay. Respondents argue that the emergency expectation is most compelling where there is a close cause-and effect relation

1 between unforeseen events and a resulting major effect that requires immediate and undivided employer
2 action.

3 Complainant counters that NRS 288.150(5)(b) does not apply under the factual circumstances of
4 this case. Specifically, the State's current financial shortfall caused by the pandemic is not included in
5 the definition of "situations of emergency" under NRS 288.150(5)(b). Complainant states that the
6 Board has analyzed this provision, supporting Complainant's contention, in *Int'l Ass'n of Fire Fighters,*
7 *Local #1607 v. City of N. Las Vegas*, Item No. 794, Case Nos. A1-046067, A1-046069 (2014).
8 Specifically, after in-depth analysis and hearing, the Board concluded that the term "situations of
9 emergency" in NRS 288.150(4) does not include a financial shortfall, even if labeled a "financial
10 emergency" by a local government employer.

11 In a prior order in this matter, we directed the parties to present argument and testimony as to
12 the applicability of NRS 288.150(5)(b) based on facts established at the hearing, including whether the
13 pandemic, as applicable, fell within the scope of a "natural disaster".

14 DISCUSSION

15 NRS 288.150(5)(b) plainly and unambiguously provides that Respondents were permitted to:

16 Take whatever actions may be necessary to carry out its responsibilities in situations of
17 emergency such as a riot, military action, natural disaster or civil disorder. Those actions
18 may include the suspension of any collective bargaining agreement for the duration of the
emergency.

19 That provision further explains that "[a]ny action taken under the provisions of this subsection must not
20 be construed as a failure to negotiate in good faith." We find that the facts of this case established that
21 Respondents' actions comported with this provision, and thus Respondents were excused from
22 bargaining in the context of this case.¹

24 ¹ Complainant indicated that when Respondents unilaterally notified employees of the potential
25 changes, Complainant was not invited to participate. We note that even though Respondents were
26 excused from bargaining in this case, to the extent feasible, employers should at least reach out to the
27 employees' chosen representative in order to foster and promote harmonious relationships. This is
28 especially true in this case where the State is new to collective bargaining and in which they and their
labor organizations need to establish a good working relationship with each other for presumably years
to come.

1 It is well established that the pandemic falls within the definition of a “natural disaster”.²
2 Complainant failed to provide any legislative history or other permissible aides of statutory
3 interpretation that would render a different result, and we find that the pandemic falls squarely within
4 the definition of a natural disaster. *Black’s Law Dictionary* (11th ed. 2019) (defining “natural” as
5 “[b]rought about by nature as opposed to artificial means”, and “disaster” as “[a] “calamity; a
6 catastrophic emergency.”).

7 The pandemic is not unique to Respondents, and Complainant’s citation to our prior decision in
8 *Int’l Ass’n of Fire Fighters, Local #1607 v. City of N. Las Vegas*, Item No. 794, Case Nos. A1-046067,
9 A1-046069 (2014) is easily distinguishable. In that case, the City solely claimed a financial emergency,
10 and we held that a financial emergency does not falls within the confines of NRS 288.150(5)(b).
11 Instead, NRS 288.150(5)(a) addresses situations of a financial emergency separately (as well as other
12 provisions relating to a “lack of money”) and independent of NRS 288.150(5)(b).

13 In contrast, here the pandemic can in no reasonable sense be described solely as a financial
14 emergency or resulting from a financial emergency. Moreover, NRS 288.150(5)(b) indicates an
15 emergency of limited duration (*i.e.*, “duration of the emergency.”). Respondents presented evidence
16 that in April 2021, employees were notified that with the “community’s COVID-19 infection rates
17 stabilizing, campus opening in the Fall, events expected to being returning to full-capacity and NCAA
18 restrictions being lifted this summer” that the leave without pay directive was revoked effective June
19 30, 2021 and return to full pay status effective July 1, 2021. Respondents temporarily tied their actions
20 directly to the results of the pandemic.

21 Complainant argues that “Respondents cannot refuse to bargain over mandatory subjects of
22 bargaining and act unilaterally because Gov. Sisolak declared a financial emergency on May 10, 2020,
23 that resulted from the COVID-19 pandemic.” However, Governor Sisolak did not solely declare a
24 financial emergency. Indeed, that Declaration specifically states that “COVID-19 remains a serious
25 threat to the health, safety, and welfare of all residents of Nevada”. In the Governor’s March 12th

26 ² See, e.g., <https://crsreports.congress.gov/product/pdf/TN/IN11264>;
27 <https://www.nixonpeahody.com/en/ideas/articles/2020/12/21/covid19-pandemic-is-a-natural-disaster>;
28 <https://www.fema.gov/disaster/coronavirus/disaster-declarations>;
<https://www.sciencespo.fr/en/news/news/covid-19-a-natural-disaster/4889>.

1 Declaration of Emergency, Governor Sisolak indicated “a proclamation declaring a state of emergency
2 when a natural emergency or disaster of major proportions has occurred within this state”.

3 As the above issue is dispositive, the remaining issues are not necessary to this Board’s
4 determination. *See also Ebarb v. Clark County*, Case No. 2018-006, Item No. 843-C (2020); *Allstate*
5 *Ins. Co. v. Fackett*, 125 Nev. 132, 136, 206 P.3d 572, 574 (2009); *State ex rel. State Bd. of Equalization*
6 *v. Barta*, 124 Nev. 612, 623, n. 30, 188 P.3d 1092, 1099 (2008); *Gaxiola v. State*, 121 Nev. 638, 651,
7 119 P.3d 1225, 1234 (2005); *Otak Nevada, LLC v. Eighth Judicial Dist. Court of State, ex rel. Cty. of*
8 *Clark*, 127 Nev. 593, 600, 260 P.3d 408, 412 (2011).

9 FINDINGS OF FACT

10 1. In April 2021, employees were notified that with the “community’s COVID-19 infection
11 rates stabilizing, campus opening in the Fall, events expected to being returning to full-capacity and
12 NCAA restrictions being lifted this summer” that the leave without pay directive was revoked effective
13 June 30, 2021 and return to full pay status effective July 1, 2021.

14 2. Respondents temporarily tied their actions directly to the results of the pandemic.

15 3. If any of the foregoing findings is more appropriately construed as a conclusion of law,
16 it may be so construed.

17 CONCLUSIONS OF LAW

18 1. The Board is authorized to hear and determine complaints arising under the Local
19 Government Employee-Management Relations Act.

20 2. The Board has exclusive jurisdiction over the parties and the subject matters of the
21 Complaint on file herein pursuant to the provisions of NRS Chapter 288.

22 3. NRS 288.150(5)(b) is plain and unambiguous.

23 4. The pandemic falls within the definition of a “natural disaster”.

24 5. The facts of this case established that Respondents’ actions comported with this
25 provision, and thus Respondents were excused from bargaining in the context of this case.

26 6. If any of the foregoing conclusions is more appropriately construed as a finding of fact,
27 it may be so construed.

28 ...

1 ORDER

2 Based on the foregoing, it is hereby ORDERED that we find in favor of Respondents.

3 DATED this 23rd day of September 2021.

4 GOVERNMENT EMPLOYEE-
5 MANAGEMENT RELATIONS BOARD

6 By: 
7 BRENT ECKERSLEY, ESQ., Chair

8 By: 
9 SANDRA MASTERS, Vice-Chair

10 By: 
11 BRETT HARRIS, ESQ., Board Member
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