

FILED

JUN 08 2022

STATE OF NEVADA
E.M.R.B.

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STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 1107,

Complainant,

v.

CLARK COUNTY,

Respondent.

Case No. 2021-018

NOTICE OF ENTRY OF ORDER

ITEM NO. 877

TO: Complainant and its attorneys of record, Evan L. James, Esq. and Dylan J. Lawter, Esq., and Christensen James & Martin;

TO: Respondent and its attorneys of record, Scott Davis, Esq. and Nicole Malich, Esq., Deputy District Attorneys, and Clark County District Attorney's Office.

PLEASE TAKE NOTICE that the **ORDER ON RESPONDENT'S MOTION TO DISMISS AMENDED COMPLAINT** was entered in the above-entitled matter on June 8, 2022.

A copy of said order is attached hereto.

DATED this 8th day of June 2022.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY



MARISU ROMUALDEZ ABELLAR
Executive Assistant

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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Government Employee-Management Relations Board, and that on the 8th day of June 2022, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

Evan L. James, Esq.
Dylan J. Lawter, Esq.
Christensen James & Martin
7440 W. Sahara Avenue
Las Vegas, NV 89117

Scott Davis, Esq.
Deputy District Attorney
Nicole Malich, Esq.
Deputy District Attorney
Civil Division
500 South Grand Central Parkway
Las Vegas, NV 89155



MARISU ROMUALDEZ ABELLAR
Executive Assistant

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STATE OF NEVADA

STATE OF NEVADA
E.M.R.B.

GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 1107,

Case No. 2021-018

Complainant,

**ORDER ON RESPONDENT’S MOTION
TO DISMISS AMENDED COMPLAINT**

v.

EN BANC

CLARK COUNTY,

ITEM NO. 877

Respondent.

On May 12, 2022, this matter came before the State of Nevada, Government Employee-Management Relations Board (the “Board”) for consideration and decision on Respondent’s Motion to Dismiss Amended Complaint (the “Motion”) pursuant to the provision of the Employee-Management Relations Act, NRS Chapter 233B, and NAC Chapter 288¹.

The Complainant asserts Respondent discriminated against members of the Service Employees International Union, Local 1107 (“Local 1107”), implemented unilateral changes to the terms and conditions of employment, and failed to bargain in good faith. Specifically, Complainant alleges Respondent’s conduct is discriminatory because the County Office of Diversity (“County OOD”), responsible for the investigation of claims, has the option of not reviewing evidence presented to it, and thus, Complainant believes Respondent has unilaterally changed the terms and conditions of employment constituting a failure to negotiate in good faith. Complainant identifies only two occurrences wherein Respondent allegedly committed the above-mentioned violations.

Respondent argues the Amended Prohibited Practices Complaint (“Complaint”) should be dismissed because: (1) the Board lacks jurisdiction in this matter because the Complaint was filed more

¹ Board Member Michael J. Smith was not present at the meeting on May 12, 2022, and, therefore, did not deliberate with the Board regarding this case.

1 than six months after the occurrences which are the subject of the Complaint; and (2) alternatively,
2 Respondent argues the Complaint lacks probable cause because the factual allegations in the Complaint
3 do not support the necessary elements for a prohibited labor practices claim.

4 The Board may not consider and must dismiss any complaint filed more than six months after
5 the occurrence which is the subject of the complaint. NRS 288.110(4). The six-month window in which
6 to file a complaint begins once a complaining party has unequivocal notice of the occurrence. *City of N.*
7 *Las Vegas v. EMRB*, 127 Nev. 631, 639, 261 P.3d 1071, 1076-77 (2011). The notice requirement is
8 satisfied by either actual or constructive notice of the facts giving rise to the complaint. *Id.* at 1077,
9 citing *Nevada State Bank v. Jamison Family Partnership*, 106 Nev. 792, 800, 801 P.2d 1377, 1382
10 (1990) (“stating that a ‘statute of limitation[s] will not commence to run until the aggrieved party knew,
11 or reasonably should have known, of the facts giving rise to the breach’”).

12 In cases of employee discipline, those operative facts are deemed to be known at the point in
13 time of discipline and when the employee learns of the adverse action. *Garcia v. SEIU, Local 1107*,
14 Item No. 873, EMRB Case No. 2021-006 (Aug. 19, 2021). Thus, the six-month limitations period
15 begins to run when a complainant knows or should have known of the employee’s disciplinary action.

16 The Complaint was filed on November 18, 2021. Six months prior thereto is May 18, 2021.
17 Complainant was notified of the subject occurrences when discipline was issued to the two identified
18 employees on November 3, 2020, and April 5, 2021, respectively. Specifically, Complainant’s claim
19 that Mikelle Cieri was the victim of discrimination is untimely because the admonishment referred to in
20 the Complaint was issued on November 3, 2020. Ms. Cieri signed the acknowledgement and Local
21 1107 was notified via carbon copy on that same day. Complainant received unequivocal notice of the
22 adverse action on November 3, 2020, approximately six months before May 18, 2021. Next,
23 Complainant’s allegation regarding Tara Donahue’s written reprimand was issued on April 5, 2021.
24 Ms. Donahue signed the acknowledgement, and Local 1107 was notified via carbon copy on that same
25 day. Complainant received unequivocal notice of the adverse action on April 5, 2021, approximately
26 one month before May 18, 2021.

27 Complainant, in its opposition, does not contest these facts; rather, Complainant asserts that it
28 became aware of the adverse actions at sometime within the six-month period. Complainant argues it

1 did not become aware that County OOD had not investigated the Cieri or Donahue claims until
2 sometime after May 18, 2021, because that is when Complainant learned that County OOD does not
3 investigate all evidence presented. The topic of County OOD investigations, including the option of not
4 reviewing evidence, was raised during contract negotiations, which Local 1107 thereafter agreed to
5 enter into new contracts containing the OOD investigation provisions, effective July 1, 2021.
6 Complainant does not address the notices received by carbon copy after each of the subject adverse
7 actions and relies on the two occurrences to support its unilateral change and bad faith claims.
8 Complainant fails to provide any evidentiary support for its contentions as required under NAC
9 288.200.

10 FINDINGS OF FACT

11 1. The County and Local 1107 are parties to two (2) collective bargaining agreements—
12 one for the Supervisory Unit and one of the General Unit—both of which are effective from July 1,
13 2021, through June 30, 2024.

14 2. Ms. Cieri was issued an admonishment on November 3, 2020.

15 3. Local 1107 was notified of the adverse action against Ms. Cieri on November 3, 2020,
16 by carbon copy.

17 4. Ms. Donahue was issued a written reprimand on April 5, 2021.

18 5. Local 1107 was notified of the adverse action against Ms. Donahue on April 5, 2021, by
19 carbon copy.

20 6. Local 1107 knew or reasonably should have known that adverse actions were taken
21 against Ms. Cieri on November 3, 2020, and against Ms. Donahue on April 5, 2020.

22 7. The Complaint was filed on November 18, 2021.

23 8. Six months prior thereto is May 18, 2021.

24 9. The Board finds Complainant received unequivocal notice of the subject adverse actions
25 prior to May 18, 2021.

26 10. The Board finds the Complaint is time-barred, as it was filed more than six months after
27 the occurrences which are the subject of the complaint.

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ORDER

Based on the foregoing, it is hereby ORDERED that Respondent's Motion to Dismiss Amended Complaint is hereby GRANTED in its entirety.

IT IS, THEREFORE, FURTHER ORDERED that the matter is DISMISSED WITHOUT PREJUDICE.

Dated this 8 day of June 2022.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: 
BRENT ECKERSLEY, ESQ., Chair

By: 
SANDRA MASTERS, Vice-Chair

By: 
GARY COTTINO, Board Member

By: 
BRETT HARRIS, ESQ., Board Member