STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

ROBERT ORTIZ,

Complainant,

v.

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1107,

Respondent.

Case No. 2020-021

NOTICE OF ENTRY OF ORDER

PANEL D

ITEM NO. 879

TO: Complainant Pro se, Robert Ortiz;

TO: Respondent SEIU, Local 1107, by and through its attorneys, Evan L. James, Esq. and Dylan J. Lawter, Esq. and Christensen James & Martin.

PLEASE TAKE NOTICE that the **ORDER ON RESPONDENT'S MOTION TO DISMISS** was entered on the 29 day of June 2022, a copy of which is attached hereto.

DATED this 29th day of June 2022.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: _____

MARISU ROMUALDEZ ABELLAR
Executive Assistant

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Government Employee-Management Relations Board, and that on the 29 day of June 2022, I served a copy of the foregoing NOTICE OF ENTRY OF ORDER by mailing a copy thereof, postage prepaid to:

Robert Ortiz
7505 Council Avenue
Las Vegas, NV 89128

Evan L. James, Esq.
Dylan J. Lawter, Esq.
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7440 W. Sahara Avenue
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MARISU ROMUALDEZ ABELLAR
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STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

ROBERT ORTIZ,

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SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1107,

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Case No. 2020-021

ORDER ON RESPONDENT'S MOTION TO DISMISS

PANEL D

ITEM NO. 879

On June 15, 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 Defer & Motion to Dismiss ("Motion") pursuant to the provisions of the Employee-Management Relations Act (EMRA, NRS Chapter 288) and NAC Chapter 288.

Complainant is a former member of Local 1107. Local 1107 and University Medical Center of Southern Nevada ("UMC") are parties to a Collective Bargaining Agreement ("CBA"). Complainant became Chief Steward at UMC in or around September 2019. Consistent with Article XII of Local 1107's Constitution and Bylaws, Local 1107 President brought Internal Charges against Complainant before Local 1007's Executive Board on or about February 5, 2020, based on Complainant's representation of a member despite bring a percipient witness giving rise to UMC's investigation of the member, providing evidence against that member and being specifically directed by the President not to represent that member. The Executive Board, after a hearing, found Complainant guilty of the Internal Charges and ordered Complainant be removed from the office of Chief Steward and barred Complainant from running for any Local 1107 office until after 2022.

Complainant appealed to the International Union on February 20, 2020, and thereafter on August 10, 2020, Complainant filed the instant Complaint asserting that Local 1107's President discrimination against Complainant in bringing the charges, and the Executive Board's decision and discipline was based on personal, political reasons, gender and ethnicity.

On March 5, 2021, this Board granted Respondent's Motion to Defer awaiting the International Executive Board's ("IEB") decision. On January 28, 2022, the IEB affirmed Local 1107's decision in part, ruling Complainant "engaged in conduct unbecoming [of] a member and violated democratically and lawfully established Local 1107 rule, policy or practice, in violation of Article XVII, Section 1(3) and Article XVII, Section 1(8) of the SEIU Constitution." Motion, Ex. 1 at 8. The IEB also reversed Local 1107's findings in part, holding Complainant did not violate Article XVII, Sections 1(2) and 1(6) of the SEIU Constitution and the penalty imposed by the Local 1107 Executive Board should be more proportional to Complainant's constitutional violations, resulting in Complainant only being barred from office for two years.

Following the IEB's decision and a Joint Status Report filed by the Parties, Respondent filed the instant Motion requesting the Board adopt the IEB's decision on Complainant's appeal and dismiss this matter pursuant to the limited deferral doctrine.

DISCUSSION

A. Complainant has failed to show the limited deferral doctrine does not apply.

The Board has exclusive jurisdiction over unfair labor practice issues, but the Board may defer to prior administrative proceedings if certain elements are met. *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 895, 59 P.3d 1212, 1217 (2002). Under the limited deferral doctrine set forth in *City of Reno*, the Board will defer to prior administrative proceedings if: (1) the administrative proceedings were fair and regular; (2) the parties agreed to be bound; (3) the decision was not clearly repugnant to the purposes and policies of the Employee Management Relations Act; (4) the contractual issue was factually parallel to the prohibited labor practice issue; and (5) the decision-maker was presented generally with the facts relevant to resolving the prohibited practice issue. *Id.* at 896, 59 P. 3d at 1217. "The limited deferral doctrine is a prudential doctrine that gives effect to the noted public policy of encouraging resolution of disputes under the bargained-for grievance procedures." *Munn v. Clark County Firefighters IAFF Local 1904, et al.*, Case No. A1-046045, Item No. 781 (2012).

In *City of Reno*, the Supreme Court stated the Board must give deference to administrative proceedings that have already transpired if the proceedings meet the criteria outlined above. The Board has previously used the limited deferral doctrine to stay matters in favor of allowing disputes to be

resolved through a democratically agreed-to process to play out first. The Board has repeatedly emphasized that the preferred method for resolving disputes is through the bargained-for processes, and the Board applies NAC 288.375(2) liberally to effectuate that purpose. *Id.*; *see also* NAC 288.040; *see also, e.g., Ed. Support Employees Ass'n v. Clark Cty. School Dist.*, Case No. A1-045509, Item No. 288 (1992); *Nevada Serv. Employees Union v. Clark Cty.*, Case No. A1-045759, Item No. 540 (2003); *Carpenter vs. Vassiliadis*, Case No. A1-045773, Item No. 562E (2005); *Las Vegas Police Protective Ass'n Metro, Inc. v. Las Vegas Metropolitan Police Dep't*, Case No. A1-045783, Item No. 578 (2004); *Saavedra v. City of Las Vegas*, Case No. A1-045911, Item No. 664 (2007); *Las Vegas City Employees' Ass'n v. City of Las Vegas*, Case No. A1-045940, Item No. 691 (2008); *Jessie Gray Jr. v. Clark County School Dist.*, Case No. A1-046015, Item No. 758 (2011); *Las Vegas Metropolitan Police Dep't v. Las Vegas Police Protective Ass'n, Inc.*, Case No. 2018-017 (2018).

The party desiring that the Board reject the prior administrative findings and proceed with the prohibited labor practice proceedings bears the burden of establishing that the limited deferral doctrine elements have not been met, and thus it should not apply. *City of Reno*, at 896, 59 P.3d at 1217. Complainant disputes all elements of the limited deferral doctrine and asserts none of the elements have been met. The Board, however, finds that Complainant has failed to meet his burden of demonstrating that these elements were not met.

1. *The proceedings were fair and regular.*

First, the Board finds the administrative proceeding before the IEB was fair and regular. Local 1107's Executive Director, a member of the IEB, recused herself from any decision involving Complainant to avoid the appearance of impropriety. Further, both parties had an opportunity to present their arguments to the IEB in writing and a fair and regular review was conducted. Complainant has not presented any argument that the appeal to the International Union was unfair, nor is there anything in the record to suggest that the proceedings were improper or arbitrary in any way.

2. *The parties agreed to bound by the IEB's decision.*

Secondly, Complainant agreed to be bound by the IEB's decision when he filed his appeal. Complainant agreed to be bound by the administrative processes the Union follows, which allows for appeals to the International Union, because he was a Union member when he filed the appeal.

Complainant does not dispute these facts.

3. *The IEB's decision was not clearly repugnant to the purposes and policies of the Employee-Management Relations Act.*

Next, the IEB's findings and conclusions were consistent with Nevada law and were issued pursuant to the bargained-for procedures. The National Labor Relations Board has explained that a decision is not "clearly repugnant" unless the decision is "palpably wrong, i.e. unless the [IEB's] decision is not susceptible to an interpretation consistent with the Act." *Verizon New England Inc. v. NLRB*, 423 U.S. App. D.C. 316, 322, 826 F.3d 480, 486 (2016).

Here, the IEB's decision was not clearly repugnant to the purposes and policies of the Employee Management Relations Act. The purpose of the EMRA is to protect employees, employers and employee organizations from prohibited labor practices. The IEB found no acts of discrimination, as Complainant alleged, and reduced the suspension penalty from three years to two, and granted Complainant the ability to run for union office again. Complainant received the same protections from the IEB that he sought from the Board, as such there is no additional remedy the Board can offer. Further, the IEB, based on its interpretation of the SEIU Constitution, found Complainant only violated two of the four constitutional provisions and reduced the overall penalty originally imposed by Local 1107. The record reflects that IEB's decision was not palpably wrong.

4. *The contractual and prohibited practice issues were factually parallel.*

The contractual issue before the IEB is factually parallel to the prohibited practice issues before this Board. The IEB and the Board were both presented with the exact same facts and circumstances giving rise to the IEB appeal and the Complaint before the Board.

In *Reichold Chemicals*, 275 NLRB 1414, 1415 (1985), the unfair labor practice asserted was unilaterally changing the bargaining unit's composition without bargaining in good faith with the union. The NLRB applied the deferral doctrine and noted that "[u]nless the award is 'palpably wrong,' i.e., unless the arbitrator's decision is not susceptible to an interpretation consistent with the Act, we will defer." *Id.* Following a remand, the administrative law judge stated that the grievance alleged the Respondent breached the contract, while the unfair labor practice charges alleged the Respondent's failure to bargain, and "[t]herefore, he concluded the unfair labor practice issue was not factually

parallel to the contract issue." *Id.* The NLRB overturned and found the arbitration award met the standards for deferral. *Id.* The Board explained:

> Initially, we differ with the judge's finding that the contractual and unfair labor practice issues are not factually parallel. The judge correctly found that the arbitration issue is one of contractual interpretation while the unfair labor practice issue is whether the Respondent failed to bargain in good faith about a mandatory subject of bargaining. These issues, however, both turn on whether the contract permitted the chief operators' promotions, and therefore they should be resolved by the same facts, i.e., the parties' collective-bargaining agreements, relevant bargaining history, and past practice. Thus, the issues are factually parallel. *See Badger Meter, Inc.*, 272 NLRB 824 (1984). The record, including the arbitrator's decision, shows that the parties presented such evidence to the arbitrator, and neither the judge nor the General Counsel cites any additional evidence needed to resolve the statutory issue. We also find, therefore, that the parties generally presented Arbitrator Glendon with the facts relevant to the statutory issue.

Reichold Chemicals, 275 NLRB 1414, 1415–16 (1985). The NLRB further concluded, in regards to repugnancy, that:

> The arbitrator found that the contract's management-rights clause gave the Respondent authority generally to direct its work force, and that neither the recognition clause nor any other provision restricted this right. Similar to the arbitrator, the Board, if presented with this case de novo, would have determined whether the contract authorized the Respondent unilaterally to promote the chief operators from the bargaining unit to shift supervisor positions. If the Board found that the contract permitted this action, the Board would then have found that the Respondent did not violate its statutory bargaining obligation. Whether or not the arbitrator's analysis fully comports with Board case law, we stated in *Olin* that 'we would not require an arbitrator's award to be totally consistent with Board precedent,' if the award is susceptible to an interpretation consistent with the Act.

Id; *see also Dennison Nat. Co.*, 296 NLRB 169, 170 (1989) ("Similar to the arbitrator, the Board, if presented with this case de novo, would have determined whether the contract authorized the Respondent unilaterally to eliminate the Receiver (Special Orders) job classification. If the Board found that the contract permitted this action, the Board would then have found that the Respondent did not violate its statutory bargaining obligation."); *see also Good Samaritan Hosp. & California Nurses Ass'n*, 31-CA-117462, 2015 WL 7223437 (Nov. 16, 2015).[1]

[1] The Board notes that while it does not have the jurisdiction to find a breach of contract violation, it is well-established that the Board may construe the parties' CBA and resolve ambiguities as necessary to determine whether or not a prohibited practice has been committed. *Boykin v. City of N. Las Vegas Police Dept.*, Item No. 674E, Case No. A1-045921 (2010), *citing NLRB v. Strong Roofing & Ins. Co.*, 393 U.S. 357 (1969), *NLRB v. C&C Plywood Corp.*, 385 U.S. 421 (1967), *Jim Walter Resources*, 289 NLRB 1441, 1449 (1988); *Kerns v. LVMPD*, Case No. 2017-010 (2018); *Yu v. LVMPD*, Case No.

The issues in the instant matter and those before the IEB both turn on whether Local 1107's penalty was proper given the violations, and therefore they should be resolved by the same facts. Complainant does not dispute that the factual issues or scenario were any different between his appeal and the Complaint.

5. *The International Union was presented with facts alleging discrimination.*

Lastly, the IEB decision made was generally presented with the facts relevant to resolving the unfair labor practice issues. The IEB was presented with facts from Complainant regarding the alleged discriminatory conduct by Local 1107 and sought additional information regarding the alleged discrimination from both parties. As such, the IEB was presented with Complainant's alleged version of facts relevant to resolving the prohibited practice issue.

Complainant seems to only conclusory argue that the IEB did not consider any of his discrimination claims yet fails to produce anything beyond bare assertions. The Board notes that nothing in the record shows that all five elements are not satisfied.

B. There is no other relief the Board can provide to remedy the prohibited practice.

Nevada Revised Statute 288.625(3) sets forth the remedies available to a complainant that succeeds after a hearing. If a complainant is successful, the Board may: (1) "order the [opposing] party to cease and desist from engaging in the prohibited practice;" and (2) "any other affirmative relief that is necessary to remedy the prohibited practice." NRS 288.625(3).

Complainant seeks (1) immediate restoration as an elected chief steward for the rest of his tenure; (2) immediate reinstatement as a shop steward; (3) immediate eligibility to run for any elected officer position as a member in good standing; and (4) payment for lost time and reasonable legal fees. The first two remedies Complainant seeks were denied by the IEB, which held that Complainant's removal as Chief Steward and Steward was appropriate given the violations and under the SEIU Constitution. Moreover, Complainant withdrew his Local 1107 membership on or about October 27, 2020, and thus Complainant cannot be reinstated to the offices of shop steward and chief steward.

The IEB did grant the third remedy Complainant requested. Complainant may run for any elected

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2017-025, Item No. 829 (2018); *Yu v. LVMPD*, Case No. 2017-025, Item No. 829 (2018); *Las Vegas Metropolitan Police Dep't v. Las Vegas Police Protective Ass'n, Inc.*, Case No. 2018-017 (2018).

officer position as a member in good standing should Complainant decide to rejoin the union. Lastly, the Board cannot grant Complainant's request for lost time because Complainant did not hold a paid position within Local 1107 as Chief Steward or Steward, and thus, he is not entitled to payment for lost time. Further, Complainant's request for legal fees is untenable because Complainant did not hire an attorney, and there are no filing fees or legal costs associated with pursuing a claim before the Board. Accordingly, the Board finds Complainant's requests are moot, as there is no other relief the Board can provide.

FINDINGS OF FACT

1. The administrative proceedings before the IEB were fair and regular.

2. The parties agreed to be bound.

3. The decision was not clearly repugnant to the purposes and polices of the Employee Management Relations Act.

4. The contractual issue was factually parallel to the unfair practice issue.

5. The decision-makers were presented generally with the facts relevant tot resolving the unfair labor practices alleged.

6. The same facts and circumstances were addressed in the parties' binding IEB appellate proceeding.

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

CONCLUSIONS OF LAW

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

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

3. The preferred method for resolving disputes is through the bargained-for processes, and the Board applies NAC 288.375(2) liberally to effectuate that purpose.

4. The EMRB defers to a prior arbitration if: (1) the arbitration proceedings were fair and regular; (2) the parties agreed to be bound; (3) the decision was not clearly repugnant to the purposes

and policies of the EMRA; (4) the contractual issue was factually parallel to the unfair labor practice issue(s); and (5) the arbitrator was presented generally with the facts relevant to resolving the unfair labor practice(s).

5. The party desiring the Board to reject a prior administrative proceeding has the burden of demonstrating that these principles are not met.

6. Complainant has failed to meet his burden.

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

ORDER

Based on the foregoing, it is hereby ordered that Respondent's Motion to Defer is GRANTED. The Complaint is hereby DISMISSED WITH PREJUDICE.

Dated this 29 day of June 2022.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: _____
BRENT ECKERSLEY, ESQ., Chair
and Presiding Officer

By: _____
GARY COTTINO, Board Member

By: _____
MICHAEL J. SMITH, Board Member