

FILED

SEP 02 2022

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 1107,

Case No. 2021-017

Complainant,

NOTICE OF ENTRY OF ORDER

v.

CLARK COUNTY,

PANEL D

Respondent.

ITEM NO. 880

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.

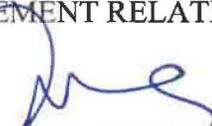
PLEASE TAKE NOTICE that the **ORDER** was entered in the above-entitled matter on September 2, 2022.

A copy of said order is attached hereto.

DATED this 2nd day of September 2022.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY


MARISU ROMUALDEZ ABELLAR
Executive Assistant

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Government Employee-Management Relations
3 Board, and that on the 2nd day of September 2022, I served a copy of the foregoing **NOTICE OF**
4 **ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

5 Evan L. James, Esq.
6 Dylan J. Lawter, Esq.
7 Christensen James & Martin
8 7440 W. Sahara Avenue
9 Las Vegas, NV 89117

10 Scott Davis, Esq.
11 Deputy District Attorney
12 Nicole Malich, Esq.
13 Deputy District Attorney
14 Civil Division
15 500 South Grand Central Parkway
16 Las Vegas, NV 89155



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MARISU ROMUALDEZ ABELLAR
Executive Assistant

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**STATE OF NEVADA
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**STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD**

SERVICE EMPLOYEES INTERNATIONAL
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ORDER

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CLARK COUNTY,

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ITEM NO. 880

On August 25, 2022, this matter came before Panel D of the State of Nevada, Government Employee-Management Relations Board (the “Board”) for consideration and decision pursuant to the provisions of the Government-Management Relations Act, NRS Chapter 288 (the “Act”) and NAC Chapter 288, for a hearing previously held on July 19 and 20, 2022.

Before the Board was Complainant Service Employees International Union, Local 1107 (“Local 1107”) Complaint for Failure to Bargain in Good Faith or, alternatively, Petition for Declaratory Order (the “Complaint”). Local 1107’s Complaint, filed on November 18, 2021, alleging Clark County (the “County”) committed a prohibited practice by circumventing its duty to bargain in good faith with Local 1107 when it unilaterally installed front-facing video cameras in County vehicles operated by County employees, and by seeking employees represented by Local 1107. The County submitted its Answer to the Complaint on December 13, 2021.

The issues presented in this case are whether the County violated NRS 288.150(2)(i) when it installed cameras in County vehicles operated by employees represented by Local 1107 without first bargaining with Local 1107; and (ii) whether the County violated NRS 288.270(1)(e) by seeking employees, represented by Local 1107 permission and consent for the installation of cameras in the County vehicles.

1 As further detailed below, the Board disagrees with Local 1107, and finds the County has not
2 committed a violation of the Act. Based on the facts of this case, the County's use of video camera data
3 as a disciplinary investigative tool was an isolated incident. Despite any merits of this case, the Board
4 would encourage the County to better communicate the program to both the employee organization, as
5 well as the employees who may operate a County vehicle with a camera, outlining the features of the
6 cameras, how they operate, and how they will be used in the future.

7 DISCUSSION

8 The Act imposes a reciprocal duty on employers and bargaining agents to negotiate in good
9 faith concerning the mandatory subjects of bargaining listed in NRS 288.150. *Juvenile Justice Supr.*
10 *Ass'n v. County of Clark*, Case No. 2017-20 (2018). It is a prohibited labor practice for a local
11 government employer to willfully refuse to bargain collectively in good faith with the exclusive
12 representative as required in NRS 288.150. NRS 288.270(1)(e); *O'Leary v. Las Vegas Metropolitan*
13 *Police Dep't*, Item No. 803, EMRB Case No. A1-046116 (2015); *see also Serv. Employees Int'l Union,*
14 *Local 1107 v. Clark County*, Item No. 713A, EMRB Case No. A1-045965 (2010).

15 Under the unilateral change theory, a local government employer commits a prohibited labor
16 practice when it changes the terms and conditions of employment without first bargaining in good faith
17 with the recognized bargaining agent. *Boykin v. City of N. Las Vegas Police Dep't*, Case No. A1-
18 045921, Item No. 674E (2010); *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 59 P.3d
19 1212 (2002); *Kerns v. LVMPD*, Case No. 2017-010 (2018). Further, "[u]nilateral changes by an
20 employer during the course of a collective bargaining relationship concerning matters which are
21 mandatory subjects of bargaining are regarded as 'per se' refusals to bargain." *Las Vegas Police*
22 *Protective Ass'n v. City of Las Vegas*, Item No. 248 (1990). *Boykin v. City of North Las Vegas*, Item
23 No. 674E (2010). A unilateral change also violates NRS 288.270(1)(a). *O'Leary v. Las Vegas*
24 *Metropolitan Police Dep't*, Item No. 803, EMRB Case No. A1-046116 (May 15, 2015). *Boykin v. City*
25 *of North Las Vegas*, Item No. 674E (2010).

26 To prevail on a unilateral change claim, a complainant must establish that: (1) the employer
27 breached or altered the CBA or established past practice; (2) the employer's action was taken without
28 bargaining with the exclusive representative over the change; (3) the change is not merely an isolated

1 breach of contract, but amounts to a change in policy, i.e., the change has a generalized effect or
2 continuing impact on the bargaining unit members' terms and conditions of employment; and (4) the
3 change in policy concerns a matter within the scope of representation. *O'Leary*, at 7; *California State*
4 *Employees' Ass'n v. Pub. Employment Relations Bd.*, 51 Cal. App. 4th 923, 935, 59 Cal. Rptr. 2d 488,
5 496 (1996).

6 FINDINGS OF FACT

7 After consideration of the evidence presented by the parties at the two-day hearing, and after
8 consideration of the documents on file herein, the Board finds by a preponderance of the evidence that
9 the following findings of fact are proven.

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

13 2. In or about September 2021, Respondent instituted a pilot testing program (the "Pilot
14 Program"), whereby the County installed a video camera system into the vehicle fleet that can record
15 live video while the vehicle is being operated with an emphasis on capturing data during specifically
16 defined events, including harsh braking, harsh acceleration, impact event, and a speed limit of over 80
17 miles per hour for over 30 seconds ("Triggering Events").

18 3. The County's objective in implanting the Pilot Program was to reduce the County's
19 liability with respect to vehicle accidents and test whether the use of video cameras in County vehicles
20 would be beneficial to that end.

21 4. The Pilot Program has a term of one (1) year from the date of the purchase order, and
22 may be terminated by the County at any time during the term without any penalties.

23 5. The County has approximately 2,729 vehicles in its fleet.

24 6. The County installed twenty (20) forward-facing cameras in select County Vehicles as
25 part of the Pilot Program.

26 7. County employees are aware if the County vehicle they operate is participating in the
27 Pilot Program.

1 8. The cameras are road-facing, and although they do have in-cabin recording and audio
2 recording capabilities, those functions are disabled by the third-party vendor before installation and
3 may only be enabled by the third-party vendor upon request from the County's Director of Automotive
4 and Central Services.

5 9. The County does not have the capabilities to reprogram the Pilot Program video cameras
6 to enable the in-cabin facing recording or the audio recording functions.

7 10. The video camera recording begins when the car is in motion and continues to record
8 until approximately ten minutes after the vehicles comes to a stop. As such any and all filming occurs
9 in public areas, i.e. public roads.

10 11. The video camera data is stored on a server with the third-party vendor.

11 12. Video recordings of non-triggering events may only be retrieved upon request to the
12 third-party vendor from an authorized County employee for up to thirty (30) days.

13 13. Video recordings of Triggering Events are automatically downloaded to the cloud,
14 stored there indefinitely, and only made accessible for viewing to the County's Director of Automotive
15 and Central Services.

16 14. On or about October 21, 2021, Local 1107 representatives and County representatives
17 met to discuss the Pilot Program.

18 15. On October 26, 2021, Local 1107, through counsel, requested that the County cease and
19 desist from operating the cameras installed in the County vehicles and bargain over the same.

20 16. On October 28, 2021, the County refused to cease use of cameras in County vehicles and
21 refused to bargain over the issue with Local 1107, explaining the implementation of the Pilot Program
22 did not change the terms and conditions of employment, it was not a mandatory subject of bargaining,
23 and the installation of cameras in selected County vehicles was a management prerogative.

24 17. On March 16, 2022, the County relied on video camera data to support a violation of an
25 Administrative Guideline and issue a Written Reprimand to Amber Petralia after her involvement in a
26 vehicle accident.

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1 7. While the case of employee Amber Petralia did raise a colorable claim of a breach of
2 contract, at the present, it only constitutes an “isolated breach of contract” and not a change in policy.

3 8. Additionally, the camera installation is part of the Pilot Program rather than a permanent
4 change in policy.

5 9. The Pilot Program, at this time, is not significantly related to discipline and discharge
6 procedures. Should the County, however, use the data obtained from the cameras in employee
7 disciplinary proceedings or if there is additional evidence of a change in policy regarding the use of
8 road-facing cameras in County vehicles in any manner, then the County shall bargain in good faith with
9 Local 1107.

10 10. At this time, there is insufficient evidence to establish that the County’s Pilot Program is
11 a “change in policy.”

12 11. Further, NRS 288.150(6) recognizes “the ultimate right and responsibility of the local
13 government employer to manage its operation in the most efficient manner consistent with the best
14 interests of all its citizens, its taxpayers and its employees.

15 12. NRS 288.150(3)(d) also reserves the “Safety of the public” to the local government
16 employer without negotiation.

17 13. The County is entitled to use the cameras to defend itself in civil matters pertaining to
18 County vehicle accidents.

19 14. In light of the totality of the facts, the Boards finds the County’s reasoning for its actions
20 was reasonable.

21 15. Because the Board finds that the Pilot Program is not a mandatory subject of bargaining,
22 that is dispositive of the declaratory order claim.

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

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1 **ORDER**

2 Based on the foregoing, the Board finds in favor of Respondent as set forth above. Nothing in
3 this Order shall be construed as barring the Union from refileing its case before EMRB in the event that
4 the County uses its camera footage in any employee disciplinary proceedings or if there is any
5 additional or further evidence of a change of policy in the use of the cameras in any such manner.

6 Dated this 2nd day of September 2022.

7 GOVERNMENT EMPLOYEE-
8 MANAGEMENT RELATIONS BOARD

9 By: 
10 BRENT ECKERSLEY, ESQ., Chair

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

13 By: 
14 MICHAEL J. SMITH, Board Member
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