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OCT 04 2022

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

SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 1107,

Case No. 2021-019

Complainant,

**NOTICE OF ENTRY OF ORDER**

v.

CLARK COUNTY,

**PANEL C**

Respondent.

**ITEM NO. 881**

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 October 4, 2022.

A copy of said order is attached hereto.

DATED this 4th day of October 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 4th day of October 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



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MARISA ROMUALDEZ ABELLAR  
Executive Assistant

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**GOVERNMENT EMPLOYEE-MANAGEMENT**

**RELATIONS BOARD**

SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 1107,

Case No. 2021-019

Complainant,

**ORDER**

v.

CLARK COUNTY,

**PANEL C**

Respondent.

**ITEM NO. 881**

On September 15, 2022, this matter came before Panel C 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 20 and 21, 2022.

Before the Board was Complainant Service Employees International Union, Local 1107 ("Local 1107") complaint alleging unilateral change to the terms and conditions of employment, failure to bargain in good faith, and alternatively, a Petition for Declaratory Order (the "Complaint").

Local 1107's Complaint, filed on November 22, 2021, alleged Clark County (the "County") committed a prohibited practice pursuant to NRS 288.270 and NRS 288.280 by circumventing its duty to bargain in good faith with Local 1107 when the County unilaterally decided to prepare and draft a revised Merit Personnel System Ordinance and the five directives, subject to the instant action, for presentation and approval by the County Board (the "Ordinance and Directives"). Specifically, Local 1107 argues the Ordinance and Directives included proposed changes to the terms and conditions of County employees, included matters that are subject to mandatory bargaining, and those policies

1 significantly related to the mandatory subjects outlined in NRS 288.150. The County submitted its  
2 Answer to the Complaint on December 15, 2021.

3 The issues presented in this case are (i) whether the County violated NRS 288.150(2), when it  
4 unilaterally revised and implemented the Ordinances and Directives prior to bargaining; and (ii)  
5 whether the County violated NRS 288.270(1)(e) when it failed to bargain over the Ordinances and  
6 Directives affecting employees represented by Local 1107 without first bargaining with Local 1107;  
7 and

8 As further detailed below, the Board disagrees with Local 1107, and finds the County has not  
9 committed a violation of the Act. Despite any merits of this case, the Board firmly believes the County  
10 should foster better communications with both the employee organization and its employees.

### 11 DISCUSSION

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

19 Under the unilateral change theory, a local government employer commits a prohibited labor  
20 practice when it changes the terms and conditions of employment without first bargaining in good faith  
21 with the recognized bargaining agent. *Boykin v. City of N. Las Vegas Police Dep't*, Case No. A1-  
22 045921, Item No. 674E (2010); *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 59 P.3d  
23 1212 (2002); *Kerns v. LVMPD*, Case No. 2017-010 (2018). Further, “[u]nilateral changes by an  
24 employer during the course of a collective bargaining relationship concerning matters which are  
25 mandatory subjects of bargaining are regarded as ‘per se’ refusals to bargain.” *Las Vegas Police*  
26 *Protective Ass'n v. City of Las Vegas*, Item No. 248 (1990). *Boykin v. City of North Las Vegas*, Item  
27 No. 674E (2010). A unilateral change also violates NRS 288.270(1)(a). *O'Leary v. Las Vegas*  
28

1 *Metropolitan Police Dep't*, Item No. 803, EMRB Case No. A1-046116 (May 15, 2015). *Boykin v. City*  
2 of North Las Vegas, Item No. 674E (2010).

3 To prevail on a unilateral change claim, a complainant must establish that: (1) the employer  
4 breached or altered the CBA or established past practice; (2) the employer's action was taken without  
5 bargaining with the exclusive representative over the change; (3) the change is not merely an isolated  
6 breach of contract, but amounts to a change in policy, i.e., the change has a generalized effect or  
7 continuing impact on the bargaining unit members' terms and conditions of employment; and (4) the  
8 change in policy concerns a matter within the scope of representation. *O'Leary*, at 7; *California State*  
9 *Employees' Ass'n v. Pub. Employment Relations Bd.*, 51 Cal. App. 4th 923, 935, 59 Cal. Rptr. 2d 488,  
10 496 (1996).

### 11 FINDINGS OF FACT

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

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

18 2. In 2021, the County prepared and drafted the Ordinance and Directives for presentation  
19 and approval by the County Board.

20 3. The Ordinance and Directives were implemented on January 3, 2022.

21 4. On November 2, 2021, Local 1107 sent the County a written request to bargain over the  
22 Ordinance and Directives.

23 5. The County refused to bargain over the Ordinance and Directives.

24 6. The parties met several times beginning in December 2020 through June 2021, and again  
25 after Local 1107's demand to bargain, to discuss and address Local 1107's concerns regarding the  
26 Ordinance and Directives.

27 7. The only impact identified from the County's implementation of the Ordinance and  
28 Directives was regarding the telecommuting program, which was revised before the merit personal

1 ordinance was in effect.

2 8. Local 1107 did not identify additional specific impacts from the implementation of the  
3 Ordinance and Directives, and only raised general concerns.

4 9. If any of the foregoing findings is more appropriately construed as a conclusion of law,  
5 it is so construed.

6 **CONCLUSIONS OF LAW**

7 Based on the evidence presented at the hearing and the foregoing Findings of Fact, the Board  
8 finds the following Conclusions of Law.

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

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

13 3. It is a prohibited labor practice for a local government employer to refuse to bargain in  
14 good faith with a recognized employee organization pursuant to NRS 288.270(1)(e).

15 4. To prevail on a unilateral change claim, a party must establish: (1) the employer  
16 breached or altered the collective bargaining agreement, or established past practice; (2) the employer's  
17 action was taken without bargaining with the recognized bargaining representative over the change; (3)  
18 the change is not merely an isolated breach of contract, but amount to a change of policy, i.e., change  
19 has a generalized effect or continuing impact on the bargaining unit members' terms and conditions of  
20 employment; and (4) the change in policy concerns a matter within the scope of the representation.

21 5. Local 1107 properly submitted a written request of its desire to bargain to the County  
22 pursuant to NRS 288.180(1).

23 6. The County's implementation of the Ordinance and Directives altered the parties' CBAs.

24 7. It is undisputed that the County's revision and implementation of the Ordinances and  
25 Directives was done without collective bargaining with Local 1107.

26 8. Presently, there is insufficient evidence to establish that the County's Ordinances and  
27 Directives was a "change in policy."

28 ///

1           9.       The subjects of the Ordinance and Directives are not subjects for mandatory bargaining  
2 explicitly outlined in NRS 288.150(2).

3           10.       NRS 288.150(6) recognizes “the ultimate right and responsibility of the local  
4 government employer to manage its operation in the most efficient manner consistent with the best  
5 interests of all its citizens, its taxpayers and its employees.

6           11.       Further, NRS 288.150(3) reserves to the local government employer the right to  
7 determine, without negotiation, “the right to hire, direct assign or transfer an employee[,]”  
8 “[a]ppropriate staffing levels and work performance standards[,]” the “content of the workday[,]” the  
9 “quality and quantity of services to be offered to the public[,]” the “means and methods of offering  
10 those services[,]” and the “[s]afety of the public.”

11          12.       The County’s decision to draft, prepare, and implementation of the Ordinance and  
12 Directives was a management decision.

13          13.       Under an impact bargaining theory, a party must establish: (1) the government employer  
14 lawfully exercised its managerial prerogative; (2) as a result of the managerial decision, there must be a  
15 demonstrable impact that is “significantly related” to a mandatory subject of bargaining and is  
16 severable from the managerial decision; (3) the employee organization must have demanded, in writing  
17 to negotiate the impact; and (4) the government employer must have refused the employee  
18 organization’s demand. *County of Washoe v. Washoe County Employees Association*, EMRB Case No.  
19 A1-045365 (March 8, 1984).

20          14.       While Ms. Maese did demonstrate an identifiable impact from the Ordinance and  
21 Directives, it does not, however, constitute a change in policy, nor does it even rise to the level of an  
22 “isolated breach of contract” given the County addressed Local 1107’s concerns before the policy was  
23 effectuated.

24          15.       Local 1107 has failed to demonstrate any identifiable impact from the Ordinance and  
25 Directives, as such, the “significantly related” analysis under the impact bargaining theory is  
26 unnecessary.

27          16.       In light of the totality of the facts, the Boards finds the County’s reasoning for its actions  
28 was reasonable.

