

FILED

NOV 18 2022

STATE OF NEVADA  
E.M.R.B.

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

LAS VEGAS PEACE OFFICERS  
ASSOCIATION,

Complainant,

v.

CITY OF LAS VEGAS,

Respondent.

Case No. 2022-013

**NOTICE OF ENTRY OF ORDER**

**ITEM NO. 882**

TO: Complainants, by and through their attorneys, Adam Levine, Esq. and Law Office of Daniel Marks; and

TO: Respondent, by and through their attorneys, Morgan Davis, Assistant City Attorney and Nechole Garcia, Deputy City Attorney and the City Attorney's Office of the City of Las Vegas.

PLEASE TAKE NOTICE that the **ORDER ON LAS VEGAS PEACE OFFICERS ASSOCIATION'S PETITION FOR DECLARATORY ORDER** was entered in the above-entitled matter on November 18, 2022.

A copy of said order is attached hereto.

DATED this 18th day of November 2022.

GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

BY



MARISU ROMUALDEZ ABELLAR  
Executive Assistant

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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 18th day of November 2022, I served a copy of the foregoing **NOTICE OF**  
4 **ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

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6 Law Office of Daniel Marks  
7 Daniel Marks, Esq.  
8 Adam Levine, Esq.  
9 610 South Ninth Street  
10 Las Vegas, NV 89101

11 Morgan Davis, Assistant City Attorney  
12 Nechole Garcia, Deputy City Attorney  
13 City of Las Vegas  
14 495 S. Main Street, Sixth Floor  
15 Las Vegas, NV 89101

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18 MARISU ROMUALDEZ ABELLAR  
19 Executive Assistant  
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GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

LAS VEGAS PEACE OFFICERS  
ASSOCIATION,

Complainant,

v.

CITY OF LAS VEGAS,

Respondent.

Case No. 2022-013

**ORDER ON LAS VEGAS PEACE  
OFFICERS ASSOCIATION'S  
PETITION FOR DECLARATORY  
ORDER**

**EN BANC**

**ITEM NO. 882**

On November 1, 2022, and continuing through November 3, 2022, this matter came before the State of Nevada, Government Employee-Management Relations Board (the "Board") for consideration and decision on Las Vegas Peace Officers Association's Petition for Declaratory Order, dated September 15, 2022, with Las Vegas Peace Officers Association (the "Complainant")<sup>1</sup>, by and through their counsel of record, Adam Levine, Esq., of the Law Office of Daniel Marks, and the City of Las Vegas (the "City," and, collectively with Complainant, the "Parties"), by and through its counsel of record, Bryan K. Scott, Esq., City Attorney; Morgan Davis, Esq., Assistant City Attorney; and Nechole Garcia, Esq., Deputy City Attorney.

**I. Procedural Background.**

On September 15, 2022, Complainant filed its Petition for Declaratory Order. On October 10, 2022, the City filed its Opposition to the same. On October 21, 2022, Complainant filed its Reply, in support of its Petition for Declaratory Order. On October 27, 2022, the City filed its Sur-reply in response to Complainant's Reply.

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<sup>1</sup> The Petition labeled the LVPOA as the "Complainant" and thus that term is used herein although the correct term should have been "Petitioner."

1           **II.       Consideration of the Petition for Declaratory Order.**

2           The City and the Complainant are parties to a Collective Bargaining Agreement (“CBA”).<sup>2</sup>  
3 Under the CBA, the Complainant is the exclusive bargaining unit representing Corrections Officers and  
4 Corrections Sergeants employed by the City (collectively, the “covered employees” or “employees”).  
5 The CBA governs the basic terms and conditions of employment of the covered employees, including  
6 insurance benefits.

7           Currently, the City’s covered employees receive their health insurance through a trust operated  
8 by Teamsters Local 14 Security Fund of Southern Nevada (the “Trust”). For each covered employee,  
9 the City contributes \$ 1,090.00 to the Trust for each month. Under the operative CBA, additional  
10 annual cost increases are allocated to the employees. *See* CBA, Article 16, Section 2(C). In light of the  
11 same, the Complainant and the Trust agreed upon a monthly employee contribution of \$ 25.00 for fiscal  
12 year 2023, \$ 40.00 for fiscal year 2024, and \$60.00 for fiscal year 2025 (each a “contribution,” and,  
13 collectively, “contributions”).

14           Under the CBA, such contributions are withheld from each employee’s paycheck by the City.  
15 *See* CBA, Article 16, Section 2(C). The CBA also provides that such contributions are to be classified  
16 on a “*pre-tax basis* per the provisions of Section 125 of the Internal Revenue Code [(“IRS”).” CBA,  
17 Article 16, Section 2(B) (emphasis added).

18           The City asked the Complainant to have its members, who elected to classify their contributions  
19 to the Fund as a “pre-tax contribution,” complete a form evidencing their specific election (the  
20 “Contribution Form” or the “Form”). This Form is an administrative document that the City utilizes for  
21 its Section 125 plans. In particular, the City uses this Form to ensure compliance with the IRS Code and  
22 regulations, relative to such Section 125 plans, which includes the employee’s monthly contribution to  
23 the Trust.

24           The Complainant objected to the City’s request and filed the instant Petition for Declaratory  
25 Order. *The only point of material disagreement between the Parties is how to properly effectuate the*  
26 *City’s deduction of the contribution from the employees on a “pre-tax basis.”* In particular, the  
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28 <sup>2</sup> Since 2001, the Parties have had a series of CBAs by and between them, with the CBA covering 2020-  
2022, being most directly relevant to the disputed issues between the Parties.

1 Complainant sought declaration from the Board that individual employees do not need to complete and  
2 return to the City the Contribution Form. Instead, Complainant asserted that it may authorize such  
3 withholdings on behalf of all of the covered employees, without each employee completing the Form.  
4 The City responded that it has no choice, as it must follow the requirements of IRS Code and  
5 regulations, relative to obtaining pre-tax treatment under Section 125 plans for the covered employees.

6 Under IRS Code and regulations, employees are required to complete an election form,  
7 specifically choosing to make a pre-tax contribution. *See, e.g.,* 26 U.S.C. § 125(j)(3)(D)(i) (defining  
8 “salary reduction contribution” as an “*amount which is contributed to the plan at the election of the*  
9 *employee and which is not includible in gross income by reason of this section*”) (emphasis added); *see*  
10 *also* 26 C.F.R. § 1.125-4 (referencing the employee, as making the requisite elections); *see generally* 26  
11 U.S.C. § 125 (providing the principal requirements for Section 125 Plans, i.e, employee benefit plans  
12 that allow for certain employee elections, such as the one that the City administers here).

13 Accordingly, the covered employees must make an individual election so that their contributions  
14 to the Trust, withheld from their paycheck by the City, receive the intended pre-tax treatment by the  
15 IRS.<sup>3</sup>

16 IT IS, THEREFORE, ORDERED that the Complainant’s Petition for Declaratory Order is  
17 denied.

18 Dated this 18 day of November 2022.

19 GOVERNMENT EMPLOYEE-  
20 MANAGEMENT RELATIONS BOARD

21 By:   
22 BRENT ECKERSLEY, ESQ., Chair

23 By:   
24 SANDRA MASTERS, Vice-Chair

25  
26 <sup>3</sup> To constitute direct dealing, the City’s actions must meet all three prongs of this Board’s test announced in *International*  
27 *Association of Firefighters v. City of Las Vegas*, A1-046074, Item No. 786 (2013), which does not appear to have been the  
28 case here. Additionally, one possibility, to further alleviate the Complainant’s concerns relative to any potential direct  
dealing, is to have the Complainant --as a conduit-- provide the Contribution Form to the covered employees and then  
collect and return back the signed Forms to the City.

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I respectfully dissent.

By:   
MICHAEL J. SMITH, Board Member