

FILED  
November 21, 2024  
State of Nevada  
E.M.R.B.

STATE OF NEVADA  
GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

NEVADA SERVICE EMPLOYEES UNION,

Petitioner,

v.

SOUTHERN NEVADA HEALTH DISTRICT,

Respondent.

Case No. 2024-009

**NOTICE OF ENTRY OF ORDER**

**PANEL C**

**ITEM NO. 903**

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

TO: Respondent and its attorneys, Theodore Parker, III, Esq., and Mahogany Turfley, Esq., and Parker Nelson & Associates, Chtd.

PLEASE TAKE NOTICE that the **DECISION REGARDING PETITION FOR DECLARATORY ORDER** was entered in the above-entitled matter on November 21, 2024.

A copy of said order is attached hereto.

DATED this 21st day of November 2024.

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 21st day of November 2024, 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, Chtd.  
8 7440 W. Sahara Avenue  
9 Las Vegas, NV 89117

10 Theodore Parker, III, Esq.  
11 Mahogany Turfley, Esq.  
12 Parker Nelson & Associates, Chtd.  
13 2460 Professional Court, Suite 200  
14 Las Vegas, NV 89128

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MARISU ROMUALDEZ ABELLAR  
Executive Assistant

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GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

NEVADA SERVICE EMPLOYEES UNION,

Case No. 2024-009

Petitioner,

**DECISION REGARDING PETITION  
FOR DECLARATORY ORDER**

v.

**PANEL C**

SOUTHERN NEVADA HEALTH DISTRICT,

**ITEM NO. 903**

Respondent.

**I. BACKGROUND**

On November 8, 2024, this matter came before the State of Nevada, Government Employee-Management Relations Board (“Board”) for consideration and decision pursuant to the provision of the Employee-Management Relations Act (the Act), NRS Chapter 233B, and NAC Chapter 288. At issue was the Board’s decision on a Petition for Declaratory Order filed by Petitioner.

On March 21, 2024, the Petitioner filed a Petition for Declaratory Order or, alternatively, a Practices Complaint (“Petition for Dec. Order”). The Petition for Dec. Order sought relief on two grounds: (1) whether Respondent has a duty to disclosure information relating to certain grievances pursuant to *Douglas County Professional Education Association, et al. v. Douglas County School District*, Case No. A1-046008, Item 755A (EMRB, May 31, 2012); and (2) and whether the failure to provide information under NRS 288.180 or NRS 288.270(1)(e) constitutes a unilateral change in the terms of conditions of employment or a breach of duty to bargain in good faith under 288.032, Chapter 288 generally and *Douglas County, supra*.

On April 11, 2024, the Respondent filed a Motion to Dismiss the Petition for Dec. Order. The Board denied Respondent’s Motion to Dismiss on June 7, 2024. In its Decision denying the Motion to

1 Dismiss, the Board stated that there was insufficient information regarding the basis for both the request  
2 for information as well as the denial of the informational requests.

## 3 4 **II. DISCUSSION**

### 5 **A. Duty to Provide the Materials Under the *Douglas County Balancing Test***

6 In *Douglas County Professional Education Assoc., et al. v. Douglas County School District*,  
7 Case No. A1-046008, Item No. 755A, (EMRB, May 31, 2012), the Board determined that there is an  
8 ongoing duty to provide certain information under NRS 288.270(1)(e) and 288.032. Specifically, the  
9 Board stated:

10 “The Board also finds that there is a general mutual obligation on local government  
11 employers and bargaining agents to provide information necessary to enforce the terms  
12 of collective bargaining agreement including information necessary to investigate and  
13 process grievances. This obligation and the actions that will satisfy the obligation to  
14 provide information depend upon the circumstances of a particular request. In order to  
15 resolve a dispute over whether certain information must be provided, the Board will  
16 balance the needs of the party requesting the information against the interests of the  
17 party declining to provide the information.”

18 *Id.* The requirement to provide information under NRS 288.270(1)(e) is subject to the following  
19 balancing test:

20 This general obligation to supply information under NRS 288.270(1)(e) turns on the  
21 circumstances of a particular case and the particular request for information that is made.  
22 Where a local government employer declines to provide the requested information, the  
23 bargaining agent’s interest in obtaining the information is balanced against any concerns  
24 raised against disclosure of the information. [citation omitted].

25 In this case, the Petitioner sought records related to a promotion and discipline.

#### 26 **1. Information Related to Promotions**

27 Petitioner argues that the request for information related to promotions was covered under  
28 Article 18 of the CBA because promotions are related to pay which is a mandatory subject of  
bargaining. This is not the case. In fact, the Board has consistently found that promotions are a  
management right under NRS 288.150(3) and not a mandatory subject of bargaining under NRS  
288.150(2). *International Association of Firefighters, Local 1908 v. Clark County Fire Department*,  
Case No. A1-046120, Item No. 811 (EMRB, Dec. 17, 2015); *Grunwald v. Las Vegas Metropolitan  
Police Department*, Case No. 2017-006, Item No. 826 (EMRB, 28 Dec. 2017). Furthermore, Article 3

1 of the CBA makes it clear that both parties are bound by the provisions of NRS Chapter 288 relative to  
2 management rights. Thus, unless requests for information regarding promotions is specifically covered  
3 under the Collective Bargaining Agreement (“CBA”), there is no requirement that an employer provide  
4 information on the topic.

5 Article 18, Section 9, of the CBA does in fact require Respondent to provide an explanation  
6 upon request to a current employee who is determined to not meet the qualifications for a given  
7 position. However, no evidence presented to the Board indicated that this scenario existed in this case.  
8 Furthermore, no other CBA Article requires disclosure of the type sought by Petitioner. Thus, neither  
9 the CBA nor Chapter 288, requires Respondent to provide the information sought by Petitioner  
10 regarding the promotional grievances.

## 11 **2. Information Related to Disciplinary Grievances**

12 As discussed above, information relating to disciplinary grievances will need to be examined  
13 under the *Douglas County* balancing test. At the outset, the Board notes that the Petition for  
14 Declaratory Order in *Douglas County* did not relate to a request for information related to a disciplinary  
15 investigation. Rather, the information request in *Douglas County* sought materials regarding teachers  
16 who had been denied a step advancement on the salary schedule due to working less than 120 days in a  
17 school year.

18 NRS Chapter 288 was modeled after the National Labor Relations Act, and it is proper to look  
19 to decisions interpreting the NLRA to inform our interpretation of Chapter 288. *Rosequist v.*  
20 *International Ass'n of Firefighters Local 1908*, 118 Nev. 444, 449, 49 P.3d 651, 654 (2002). The  
21 NLRB has stated that the ongoing right of parties to seek information during the execution of the  
22 collective bargaining agreement is not without limits. *See In re Northern Indiana Public Service Co.*,  
23 2002 WL 2029503, Case 25-CA-28040-1 at p. 10 (NLRB, August 30, 2002). Thus, under certain  
24 circumstances, an employer may be excused from providing information presumed or shown to be  
25 relevant, when the employer has a good faith claim of undue burden, legitimate need for confidentiality,  
26 or there is a justifiable fear of violence or harassment of employees. *Id.* In *Detroit Newspaper Agency*,  
27 317 NLRB 1071 at p. 1073 (1995), the NLRB stated that confidential information is limited to the  
28 following categories: (1) that which would reveal contrary to promises or reasonable expectations,

1 highly personal information, such as individual medical records, or psychological test results, (2)  
2 information that would reveal substantial proprietary information, such as trade secrets, (3) information  
3 that could reasonably be expected to lead to harassment or retaliation, such as the identity of witnesses;  
4 and (4) information which is traditionally privileged such as memoranda prepared for pending  
5 litigation.

6 In this case, Petitioner sought the following information in Grievance No. 23-005G:<sup>1</sup>

- 7 • Witness names and written statements.
- 8 • Investigative notes regarding the allegation.
- 9 • E-mails to and from Sean Beckham involving Tina Gilliam and/or the investigation  
10 of Tina Gilliam.
- 11 • Names of all other employees charged with the same offense over the last 5 years  
12 and a description of any penalty/discipline imposed.

13 The Board finds that Petitioner’s decision to not disclose the information under the *Douglas*  
14 *County* balancing test was justified. The basis for this finding is that there is a distinct danger that  
15 witnesses could be harassed or retaliated against in the event confidential information was provided –  
16 this includes the investigative notes which could be used to identify witnesses. Furthermore, employees  
17 who have been disciplined have a reasonable expectation of privacy regarding their employment  
18 records. Finally, the Board finds that an employer’s ability to conduct an investigation into an  
19 employee’s conduct could be hampered if witnesses believed that their statements were not  
20 confidential. In sum, the information sought by Petitioner regarding the disciplinary grievances is not  
21 required to be disclosed under the facts and circumstances presented to the Board.

22 **B. Unilateral Modification**

23 The Petitioner seeks to have this Board provide a determination regarding whether a failure to  
24 provide information under NRS 288.180 or NRS 288.270(1)(e) constitutes a unilateral change to the  
25 terms and conditions of employment or a breach of the duty to bargain in good faith required by NRS  
26 288. Under the unilateral change theory, an employer commits a prohibited labor practice when it  
27 changes the terms and conditions of employment without first bargaining in good faith with the

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<sup>1</sup> Grievance No. 23-008G was a “class action” grievance related to the denial of information in Grievance 23-005G.

1 recognized bargaining agent. *Boykin v. City of N. Las Vegas Police Dep't*, Case No. A1-045921, Item  
2 No. 674E (EMRB, Nov 12, 2010); *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 59 P.3d  
3 1212 (2002); *Kerns v. LVMPD*, Case No. 2017-010, Item No. 827 (EMRB, March 20, 2018).

4 **1. Applicability of NRS 288.180**

5 The Board has repeatedly found that NRS 288.180 applies only to negotiations relating to  
6 mandatory subjects of bargaining during the formation of a collective bargaining agreement. *See e.g.*,  
7 *Education Support Employees Assn v. Clark County School District*, Case No. A1-042580, Item No  
8 607A (EMRB, Feb. 1, 2006) (Finding of Fact #2). The Petition for Dec. Order related only to requests  
9 made during the term of an existing collective bargaining agreement and not to negotiations of an  
10 agreement. Thus, Respondent was under no duty to provide the materials sought by Petitioner under  
11 NRS 288.180(2).

12 **2. Applicability of NRS 288.270(1)(e)**

13 The applicability of this provision was discussed in Subsection A above and the findings of the  
14 Board would be entirely dependent upon the Board's utilization of the balancing test set out in *Douglas*  
15 *County, supra*. As discussed above, the Board determined that there was no duty to provide the  
16 documents for any of the circumstances presented to the Board under NRS Chapter 288 nor was there  
17 any such duty under the CBA. Since there was no duty to provide the requested documents given the  
18 facts and circumstances of this matter, no unilateral change took place.

19 **C. Alternative Prohibited Practices Complaint**

20 The Board has previously determined that a Petition for Declaratory Order may not include a  
21 Prohibited Practices Complaint in the alternative. *National Service Employees Union v. Clark County*,  
22 Case No. 2024-010, (EMRB, June 14, 2024). Thus, the Board declines to act on the alternative  
23 Prohibited Practices Complaint under NAC 288.375(1) and (5).

24  
25 **III. FINDINGS OF FACT**

- 26 1. The above discussion is incorporated herein to the extent it sets out findings of fact.
- 27 2. The Petition for Dec. Order included the following requests: (1) whether Respondent has  
28 a duty to disclose information relating to certain grievances pursuant to *Douglas County Professional*

1 *Education Association, et al. v. Douglas County School District*, Case No. A1-046008, Item 755A  
2 (EMRB, May 31, 2012); and (2) and whether the failure to provide information under NRS 288.180 or  
3 NRS 288.270(1)(e) constitutes a unilateral change in the terms of conditions of employment or a breach  
4 of duty to bargain in good faith under 288.032, Chapter 288 generally and *Douglas County, supra*.

5 3. The Board determined that there is no ongoing obligation for a party to provide  
6 information relating to promotions because the Board has previously held that promotions are a  
7 management right under NRS 288.150(3).

8 4. There is an ongoing duty to act in good faith that extends throughout the duration of the  
9 CBA. *See e.g.*, NRS 288.270(1)(e) and NRS 288.032 and *Douglas County, supra*.

10 5. Article 3 of the Collective Bargaining Agreement between the parties makes it clear that  
11 both parties are bound by the statutory provisions of NRS Chapter 288 concerning management rights.

12 6. The Board found that Petitioner's decision to not disclose the information under the  
13 *Douglas County* balancing test regarding disciplinary grievances was justified on the grounds that:

- 14 a. There is a distinct danger that witnesses could be harassed or retaliated against in  
15 the event confidential information was provided.
- 16 b. Investigative notes can be used to identify witnesses.
- 17 c. Employees who have been disciplined have a reasonable expectation of privacy  
18 regarding their employment records.
- 19 d. An employer's ability to conduct an investigation into an employee's conduct  
20 could be hampered if witnesses believed that their statements were not  
21 confidential.

22 7. NRS 288.180 only applies to negotiations related to the formation of a collective  
23 bargaining agreement and not to the execution phase of such an agreement.

24 8. Articles 16 and 18 of the Collective Bargaining Agreement did not apply to this case.

25 9. No unilateral change occurred given the facts and circumstances presented to the Board.

26 10. Any finding of fact above construed to constitute a conclusion of law is adopted as such  
27 to the same extent as if originally so denominated.

28



1 **IV. CONCLUSIONS OF LAW**

2 1. The above discussion is incorporated herein to the extent it sets out conclusions of law.

3 2. The Board is authorized to provide the requested declaratory order pursuant to NRS  
4 233B.120, NRS and NAC 288.380.

5 3. Under NRS 288.270(1) and NRS 288.270(2)(a), a local government employer and  
6 bargaining agent have a mutual obligation to bargain in good faith.

7 4. The Board has determined that the balancing test for informational requests set out  
8 *Douglas County Professional Education Association and Douglas County Support Staff Organization v.*  
9 *Douglas County School District*, Case No. A1-046008, Item No. 755A (EMRB, May 3, 2012) applies  
10 to this case.

11 5. The extent of a local government employer's duty to provide requested information during  
12 the execution phase of the collective bargaining agreement depends upon the facts and circumstances  
13 regarding a particular request.

14 6. A local government employer has the duty to provide requested information when the  
15 bargaining agent's interest in the requested information outweighs the local government employer's  
16 concerns about releasing the information and vice versa.

17 7. The Board found that the Petitioner's interest in the request did not outweigh the  
18 employer's legitimate concerns about releasing the information.

19 8. The "alternative" Prohibited Practices Complaint was improperly pled and will not be  
20 addressed. *See* decision regarding Respondent's Motion to Partially Dismiss in *National Service*  
21 *Employees Union v. Clark County*, Case No. 2024-010, (EMRB, June 14, 2024); *see also* NRS  
22 288.375(1) and (5).

23 9. Any conclusion of law above construed to constitute a finding of fact is adopted as such  
24 to the same extent as if originally so denominated.

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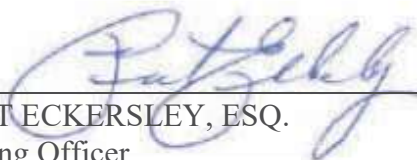
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Based on the foregoing, it is hereby **ORDERED** that all remedies sought by Petitioner in Case  
No. 2024-009 are hereby **DENIED**.

Dated this 21st day of November 2024.

GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

By:   
BRENT ECKERSLEY, ESQ.  
Presiding Officer

By:   
MICHAEL J. SMITH, Board Member

By:   
SANDRA MASTERS, Board Member