

FILED
September 20, 2024
State of Nevada
E.M.R.B
8:33 a.m.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

LAS VEGAS METRO POLICE MANAGERS AND
SUPERVISORS ASSOC.

Case No. 2024-013

Complainant,

v.

NOTICE OF HEARING

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT

Respondent.

TO: Complainant, by and through its attorneys, Daniel Marks, Esq., and Adam Levine, Esq.
of the Law Office of Daniel Marks; and

TO: Respondent, by and through its attorney, Nick D. Crosby, Esq., Marquis Aurbach.

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE pursuant to NRS 233B.121(2),
that the Government Employee-Management Relations Board (“Board”) will conduct a hearing in the
above-captioned matter:

Panel

This case has been assigned to Panel A. The Presiding Officer shall be Chair Brent C.
Eckersley, Esq. The other panel members are Board Member Sandra Masters and Board Member
Tammara Williams.

Dates and Times of Hearing

Wednesday, January 15, 2024 at 8:15 a.m.; and continuing on Thursday, January 16, if
necessary, at a time to be determined during the hearing.

1 **Location of Hearing**

2 The hearing will be held in the Carl Dodge Conference Room, which is located on the fourth
3 floor of the Nevada State Business Center, 3300 W. Sahara Avenue, Las Vegas, NV 89102. The
4 hearing will also be held virtually using WebEx. The attorneys of record, witnesses, court reporter, one
5 or more of the panel members and the Commissioner will be present in-person. The Deputy Attorney
6 General assigned to the agency and the remaining panel members will be present via WebEx.
7 Preliminary motions will be heard at the beginning of the hearing. The Panel may deliberate and take
8 possible action on this case after the hearing has concluded.

9
10 **Details Regarding Events Prior to the Hearing**

11 1. Pursuant to NAC 288.273, the EMRB Commissioner will hold a prehearing conference on
12 **Monday, December 16, 2024 at 10:00 a.m.** The prehearing conference will be held using WebEx.
13 The Board Secretary will send log-in instructions to the attorneys of record prior to the prehearing
14 conference. The prehearing conference will use the WebEx online software platform so that the
15 computer, software, camera, and microphone may be tested.

16 Also at the prehearing conference an attempt will be made to formulate or simplify the issues;
17 obtain admissions of fact which will avoid unnecessary proof; discuss proposed exhibits; limit the
18 number of witnesses; and establish any other procedure which may expedite the orderly conduct and
19 disposition of the proceedings.

20 2. The parties shall submit three (3) sets of tagged joint exhibits to be received by the
21 EMRB, 3300 W. Sahara Avenue, Suite 490, Las Vegas, Nevada 89102, no later than one week prior to
22 the start of the hearing, so as to enable the office staff to distribute the exhibits to the panel members in
23 time for the hearing. Please note that the number of sets of exhibits to be received by the EMRB is in
24 addition to any sets of exhibits that may be used by the attorneys of record. Each attorney shall also be
25 responsible to have a set of exhibits at the designated location for its witnesses.

26 3. The parties will also need to submit an electronic version of the exhibits, along with a
27 table of contents of the exhibits, no later than one week prior to the start of the hearing. Each electronic
28

1 exhibit shall be a .pdf file. Arrangements on the means of transmittal shall be made with the Board
2 Secretary.

3 4. Unless otherwise excused by the Chair for good cause, all subpoena requests must be
4 submitted to the EMRB no later than one week prior to the hearing.

5 6 **Details of Hearing**

7 1. The legal authority and jurisdiction for this hearing are based upon NRS 288.110, NRS
8 288.280 and the Nevada Administrative Code, Chapter 288.

9 2. The time allotted for the hearing shall be eight (8) hours for the Complainant and eight
10 (8) hours for the Respondent, including cross-examination.

11 3. The Complainant shall be responsible for retaining a certified court reporter to take
12 verbatim notes of the proceedings. Pursuant to NAC 288.370, the cost of reporting shall be shared
13 equally by the parties and the Board shall be furnished the original of the transcript so taken.
14 Complainant shall work with the court reporter to ensure that the court reporter will also be able to
15 attend online using the afore-mentioned software product.

16 17 **Statement of Issues Involved**

18 Based upon the prehearing statements filed in this matter, and pursuant to NRS 233B.121(2)(d),
19 the issues to be addressed at the hearing are identified as follows:

20 **Complainant's Statement of Issues**

- 21 1. Did the Las Vegas Metropolitan Police Department (hereafter occasionally "LVMPD", "Metro"
22 or "the Department") violate NRS 288.270 when it unilaterally changed practice to make a first
23 instance of an unintentional discharge of a firearm a disciplinary offense punishable by a
24 Written Reprimand, where by long-standing past practice, such a first offense was handled as a
25 "Contact Report," with said Contact Reports are not discipline?

26 **Respondent's Statement of Issues**

- 27 1. Whether the Disciplinary Decision Guide ("Guide") mandates a supervisory intervention for a
28 first offense under Line 1 for an accidental discharge.

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- 2. Whether the Department unilaterally changed the Guide with respect to violations which fall under Line 1.
- 3. Whether the Complainant proved a legitimate, valid and enforceable past practice with respect to application of the Guide.
- 4. If the Complainant sufficiently proves an enforceable past practice, whether the Department unilaterally violated the past practice.

This Notice of Hearing will further serve as notice to all parties herein that, upon conclusion of the Hearing or as otherwise necessary to deliberate toward a decision on the complaint, the Board may move to go into closed session pursuant to NRS 288.220(5).

DATED this 20th day of September 2024.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY 

BRUCE K. SNYDER, Commissioner

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 20th day of September 2024, I served a copy of the foregoing **NOTICE OF**
4 **HEARING** by mailing a copy thereof, postage prepaid to:

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

10 Nick D. Crosby, Esq.
11 Marquis Aurbach
12 10001 Park Run Drive
13 Las Vegas, NV 89145

14 
15 _____
16 MARISU ROMUALDEZ ABELLAR
17 Executive Assistant
18
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1 LAW OFFICE OF DANIEL MARKS
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6 *Attorneys for Las Vegas Police Managers
& Supervisors Association*

FILED
April 24, 2024
State of Nevada
E.M.R.B.
10:22 a.m.

8 STATE OF NEVADA
9 GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

10 LAS VEGAS METRO POLICE MANAGERS
AND SUPERVISORS ASSOCIATION,

Case No. **2024-013**

11 Complainant,

12 v.

PROHIBITED PRACTICES COMPLAINT

13 LAS VEGAS METROPOLITAN POLICE
14 DEPARTMENT,

15 Respondent.

16
17 Complainant, Las Vegas Metro Police Managers and Supervisors Association (“PMSA”) by and
18 through undersigned counsel Adam Levine, Esq. complains and alleges as follows:

19 1. PMSA is an employee organization within the meaning of NRS Chapter 288. PMSA is
20 the exclusive bargaining representative of Police & Corrections Sergeants, Lieutenants and Captains
21 employed by the Las Vegas Metropolitan Police Department.

22 2. Respondent, Las Vegas Metropolitan Police Department (“LVMPD”) is a law
23 enforcement agency and local government employer within the meaning of NRS Chapter 288.
24

1 3. Discharge and disciplinary procedure is a subject of mandatory collective bargaining
2 pursuant to NRS 288.150(2)(i).

3 4. Pursuant to NRS 288.150(2)(i) LVMPD and PMSA have negotiated the types of
4 discipline which will issue for different types of offenses based upon progressive discipline model.
5 These negotiations are memorialized in a “Disciplinary Decision Guide”, colloquially referred to as the
6 Matrix, that identifies the level of discipline that will issue for the delineated offenses based upon
7 whether it is a first, second and/or third offense for the particular category. LVMPD has negotiated
8 disciplinary Matrixes separately with PMSA from its other bargaining units such as the Las Vegas
9 Police Protective Association (“LVPPA”) and the Las Vegas Police Protective Association Civilian
10 Employees (“PPACE”).

11 5. By long standing past practice, a first offense for an accidental discharge of a firearm
12 which does not result in any harm to a person does not result in discipline, but is handled through a
13 Supervisory Intervention (i.e. coaching and counseling) memorialized in a “Contact Report”. Contact
14 Reports are not considered discipline, and this has been recognized by the Board. See *Shannon*
15 *D’Ambrosio v. Las Vegas Metropolitan Police Department*, Case No. A1-046119 & A1-046121, Item
16 No. 808 (10/15/15).

17 6. Patrol Supervisors often carry two (2) shotguns in their patrol vehicles – one shotgun for
18 loaded with lethal 00 buck shot shells, and another shotgun loaded with non-lethal shells. The lethal
19 shotguns are black; the non-lethal shotguns are orange.

20 7. On July 12, 2023 Lieutenant Jessica Wert at the beginning of her graveyard shift as a
21 Patrol Lieutenant inspected her lethal, and non-lethal shotguns. During the inspection of her lethal
22 shotgun, she ejected four (4) lethal 00 buck shells and placed them on the seat of her patrol vehicle. To
23 then initiate setting up a soft slide, she proceeded to point to the shotgun in a safe direction, disengaged
24 the safety, and pulled the trigger as trained by LVMPD firearm staff. Because there was one additional

1 lethal shell still in the shotgun, the weapon discharged firing one round into the air. Lieutenant Wert
2 promptly notified her chain of command pursuant to policy.

3 8. Following the incident Lieutenant Wert was offered an “expedited offer” for a written
4 reprimand to resolve the incident. This offer was declined by PMSA because by long standing past
5 practice first offense accidental discharges are not grounds for discipline, and are handled with a
6 Supervisory Intervention and Contact Report.

7 9. Following a formal investigation, on or about October 31, 2023 Lieutenant Wert was
8 issued Written Reprimand. During the grievance process PMSA was informed that LVMPD had issued
9 a written reprimand for a first offense accidental discharge in connection a LVPPA bargaining unit
10 covered employees who had an accidental discharge during training at Durango High School.

11 10. LVMPD informed PMSA that, as a result of the discipline issued to the LVPPA covered
12 employee, all first offense accident discharges, including incident in Wert’s case, would be handled
13 with formal discipline in the form of a Written Reprimand.

14 11. LVMPD did not negotiate, or seek to negotiate, a change to the PMSA Matrix before
15 informing PMSA that first offense accidental discharges would no longer be handled by Supervisory
16 Intervention/Contact Reports, but would be handled with formal discipline in the form of a Written
17 Reprimand for a first offense.

18 12. PMSA grieved the Written Reprimand on behalf of Lieutenant Wert. On January 22,
19 2024 the grievance was denied by a Deputy Chief. Under the PMSA collective bargaining agreement,
20 Written Reprimands may only be grieved to the Deputy Chief level, and may not be grieved further to
21 arbitration. Therefore, PMSA has exhausted all contractual and/or administrative remedies prior to
22 filing this Complaint with the Board.

23 13. The actions of LVMPD as set forth above constitutes a unilateral change to a subject of
24 mandatory collective bargaining in violation of NRS 288.270(1)(a) and (e).

1 WHEREFORE, PMSA requests the following relief from the Board:

- 2 1. Issue findings that one or more prohibited practices were committed by the LVMPD.
- 3 2. Issue an Order requiring the LVMPD to rescind and expunge the Written Reprimand
- 4 issued to Lieutenant Wert;
- 5 3. Issue an Order requiring LVMPD to post on the bulletin boards in all headquarters
- 6 buildings and all area commands the findings of the prohibited practice(s) and appropriate statements
- 7 that LVMPD will not interfere, restrain or coerce any employees in the exercise of any rights
- 8 guaranteed under Chapter 288 and will not make unilateral changes to subjects of mandatory
- 9 bargaining;
- 10 4. Issue an order for costs and ward attorney's fees in favor of PMSA;
- 11 5. And Order such other and further relief as the Board deems necessary under the broad
- 12 remedial powers conferred pursuant to NRS 288.110(2).

13 DATED the 24th day of April, 2024.

14 LAW OFFICE OF DANIEL MARKS

15 

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17 ADAM LEVINE, ESQ.
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21 *Attorneys for Las Vegas Police Managers
& Supervisors Association*

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1 **Marquis Aurbach**
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5 Attorneys for Respondent LVMPD

FILED
July 9, 2024
State of Nevada
E.M.R.B.
2:41 p.m.

6 STATE OF NEVADA
7 GOVERNMENT EMPLOYEE MANAGEMENT
8 RELATIONS BOARD

9 LAS VEGAS METRO POLICE MANAGERS
AND SUPERVISORS ASSOCIATION,

10 Complainant,

11 vs.

12 LAS VEGAS METROPOLITAN POLICE
13 DEPARTMENT,

14 Respondent.

Case No.: 2024-013

15 **RESPONDENT'S ANSWER TO PROHIBITED PRACTICES COMPLAINT**

16 Respondent Las Vegas Metropolitan Police Department (hereinafter "Respondent"), by
17 and through its attorneys of record, the law firm of Marquis Aurbach, hereby answers
18 Complainant's Prohibited Practices Complaint as follows:

- 19 1. In answering Paragraphs 1, 2, 3, 4, 7, 9 and 12 of Complainant's Complaint,
20 Respondent admits the allegations contained therein.
21 2. In answering Paragraphs 10 and 13 of Complainant's Complaint, Respondent
22 denies the allegations contained therein.
23 3. In answering Paragraph 5 of Complainant's Complaint, Respondent admits that
24 supervisory interventions are documented in a Contact Report, which is not considered discipline
25 and has been recognized as non-disciplinary actions by the Board, but denies the remaining
26 allegations contained therein.
27
28

1 3. For any further relief as the Court deems to be just and proper.

2 Dated this 9th day of July, 2024.

3
4 MARQUIS AURBACH

5 By s/ Nick D. Crosby, Esq.
6 Nick D. Crosby, Esq.
7 Nevada Bar No. 8996
8 10001 Park Run Drive
9 Las Vegas, Nevada 89145
10 Attorney(s) for Respondent LVMPD

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that the foregoing **RESPONDENT'S ANSWER TO PROHIBITED**
13 **PRACTICES COMPLAINT** was submitted electronically for service on the 9th day of July,
14 2024 in accordance with the following service list:

15 Daniel Marks, Esq.
16 Adam Levine, Esq.
17 office@danielmarks.net
18 alevine@danielmarks.net
19 Attorneys for Complainant

20 I further certify that I served a copy of this document by mailing a true and correct copy
21 thereof, postage prepaid, addressed to: n/a

22 s/Sherri Mong
23 an employee of Marquis Aurbach

1 LAW OFFICE OF DANIEL MARKS
DANIEL MARKS, ESQ.
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3 ADAM LEVINE, ESQ.
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5 Las Vegas, Nevada 89101
(702) 386-0536; FAX (702) 386-6812
6 *Attorneys for Complainant*

FILED
August 28, 2024
State of Nevada
E.MR.B.
3:19 p.m.

7
8 STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
9 RELATIONS BOARD

10 LAS VEGAS METRO POLICE MANAGERS
AND SUPERVISORS ASSOCIATION,

Case No.: 2024-013

11 Complainant,

12 v.

PRE-HEARING STATEMENT

13 LAS VEGAS METROPOLITAN POLICE
14 DEPARTMENT,

15 Respondent.

16
17 COMES NOW Complainant Las Vegas Metro Police Managers And Supervisors Association
18 (“LVPMSA”) by and through undersigned counsel Adam Levine, Esq. of the Law Office of Daniel
19 Marks and hereby submits pursuant to NAC 288.250 its Pre-Hearing Statement.

20 **I. STATEMENT OF THE ISSUES OF FACT AND LAWS TO BE DETERMINED BY**
21 **THE BOARD.**

22 The issues of law and fact be determined by the Board are did the Las Vegas Metropolitan
23 Police Department (hereafter occasionally “LVMPD”, “Metro” or “the Department”) committee
24 unilateral change in violation of NRS 288.270 when it changed policy to make a first instance

1 unintentional discharge of a firearm a disciplinary offense punishable by a Written Reprimand, where
2 by long-standing past practice, such a first offense was handled with a non-disciplinary "Supervisory
3 Intervention" otherwise known at the Department as a "Contact Report". Contact reports are not
4 considered disciplinary.

5 On July 12, 2023 Lieutenant Jessica Wert had an unintentional discharge of her LVMPD issued
6 shotgun while setting up a "soft slide" procedure. This was a first offense. Lieutenant Wert received a
7 Written Reprimand instead of a Contact Report.

8 **II. POINTS AND AUTHORITIES**

9 It is well-established that a unilateral change to a subject of mandatory bargaining is a
10 prohibited practice. *Boykin v. City of N. Las Vegas Police Dep't*, Case No. A1045921, Item No. 674E
11 (2010); *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 59 P.3d 1212 (2002); *Kerns v.*
12 *LVMPD*, Case No. 2017-010 (2018). Further, "[u]nilateral changes by an employer during the course of
13 a collective bargaining relationship concerning matters which are mandatory subjects of bargaining are
14 regarded as 'per se' refusals to bargain." *Las Vegas Police Protective Ass'n v. City of Las Vegas*, Item
15 No. 248 (1990). *Boykin v. City of North Las Vegas*, Item No. 674E (2010). A unilateral change also
16 violates NRS 288.270(1)(a). *O'Leary v. Las Vegas Metropolitan Police Dep't*, Item No. 803, EMRB
17 Case No. A1-046116 (May 15, 2015). *Boykin v. City of North Las Vegas*, Item No. 674E (2010).

18 Discharge and disciplinary procedure is a subject of mandatory collective bargaining. NRS
19 288.150(2)(c). The obligation to bargain further extends to subjects significantly related to mandatory
20 subjects. *Truckee Meadows Fire Protection District v. International Association of Firefighters, Local*
21 *2487*, 109367, 371, 849 P.2d 343, 346 (1993); *Jake Grunwald and Las Vegas Police Protective*
22 *Association v. Las Vegas Metropolitan Police Department*, Case No. 2017-006, Item No. 826
23 (December 28, 2017).

1 “An employer may create, by practice over a substantial period of time, a term of condition of
2 employment which it is obligated to continue, subject to negotiation.” *Jake Grunwald and Las Vegas*
3 *Police Protective Association*, supra citing *City of Reno v. Reno Police Protective Association*, supra.

4 **III. LIST OF WITNESSES**

- 5 1. Lieutenant Jessica Wert will be testifying regarding the circumstances surrounding her
6 unintentional discharge of a firearm;
- 7 2. PMSA Chairman Troyce Krumme will be testifying regarding the long-standing past
8 practice as to how first offense unintentional discharges of firearms were handled at
9 LVMPD;
- 10 3. Former LVMPD Lieutenant and current PMSA General Counsel Dan Coe, Esq. will be
11 testifying regarding the long-standing past practice as to how first offense unintentional
12 discharges of firearms were handled at LVMPD.

13 PMSA reserves the right to supplement this list of witnesses and/or any other portion of this
14 Pre-Hearing Statement.

15 **IV. STATEMENT PURSUANT TO NAC 288.250(1)(c)**

16 There are no anticipated administrative, judicial or other proceedings related to the subject of
17 the hearing. Under the collective bargaining agreement between the PMSA and LVMPD, Written
18 Reprimands cannot be grieved to arbitration. The grievance of Lieutenant Wirtz was grieved through
19 the highest level permitted by the bargaining agreement success.

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23 ///

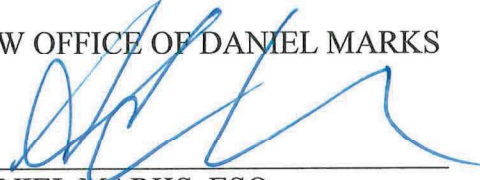
24

1 **IV. ESTIMATION OF TIME**

2 Complainant estimates that one half (1/2) full day (4 hours) will be needed to present PMSA's
3 case in chief.

4 DATED this 28th day of August 2024.

5 LAW OFFICE OF DANIEL MARKS



6
7 DANIEL MARKS, ESQ.

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8 ADAM LEVINE, ESQ.

Nevada State Bar No. 004673

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9 610 South Ninth Street

10 Las Vegas, Nevada 89101

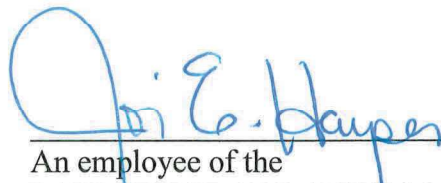
11 (702) 386-0536: FAX (702) 386-6812

12 *Attorneys for Complainant*

1 CERTIFICATE OF MAILING

2 I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS and that on
3 the 20th day of August 2024, I did deposit in the United States Post Office, at Las Vegas, Nevada, in a
4 sealed envelope with first class postage fully prepaid thereon, a true and correct copy of the above and
5 foregoing PRE-HEARING STATEMENT, to the address as follows:

6 MARQUIS AURBACH
7 Nicholas D. Crosby, Esq.
8 Nevada Bar No. 8996
9 1000 I Park Run Drive
10 Las Vegas, Nevada 89145
11 Telephone: (702) 382-0711
12 Facsimile: (702) 382-5816
13 ncrosby@maclaw.com
14 *Attorneys for Respondent LVMPD*

11 

12 An employee of the
13 LAW OFFICE OF DANIEL MARKS

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6 *Attorneys for the Las Vegas Metro
Police Managers and Supervisors Association*

FILED
September 17, 2024
State of Nevada
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4:33 p.m.

8 STATE OF NEVADA
9 GOVERNMENT EMPLOYEE-MANAGEMENT
10 RELATIONS BOARD

11 LAS VEGAS METRO POLICE MANAGERS
AND SUPERVISORS ASSOCIATION,

Case No.: 2024-013

12 Complainant,

13 v.

AMENDED
PRE-HEARING STATEMENT

14 LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

15 Respondent.

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17 Discharge and disciplinary procedures are a subject of mandatory collective bargaining. NRS
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20 *Firefighters, Local 2487*, 109367, 371, 849 P.2d 343, 346 (1993); *Jake Grunwald and Las Vegas*
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- 10 3. Former LVMPD Lieutenant and current PMSA General Counsel Dan Coe, Esq. will be
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17 the hearing. Under the collective bargaining agreement between the PMSA and LVMPD, Written
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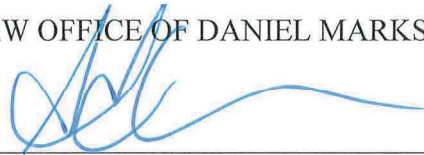
24

1 **IV. ESTIMATION OF TIME**

2 Complainant estimates that one half (1/2) full day (4 hours) will be needed to present PMSA's
3 case in chief.

4 DATED this 17th day of September 2024.

5 LAW OFFICE OF DANIEL MARKS

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16 *Attorneys for Las Vegas Metro*

17 *Police Managers and Supervisors Association*

18

19

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21

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1 CERTIFICATE OF MAILING

2 I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS and that on
3 the 17th day of September 2024, I did deposit in the United States Post Office, at Las Vegas, Nevada,
4 in a sealed envelope with first class postage fully prepaid thereon, a true and correct copy of the above
5 and foregoing AMENDED PRE-HEARING STATEMENT, to the address as follows:

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7 Nicholas D. Crosby, Esq.
8 Nevada Bar No. 8996
9 1000 I Park Run Drive
10 Las Vegas, Nevada 89145
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14 *Attorneys for Respondent LVMPD*

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July 30, 2024
State of Nevada
E.M.R.B.
8:47 p.m.

6 STATE OF NEVADA
7 GOVERNMENT EMPLOYEE MANAGEMENT
8 RELATIONS BOARD

9 LAS VEGAS METRO POLICE MANAGERS
10 AND SUPERVISORS ASSOCIATION,

11 Complainant,

12 vs.

13 LAS VEGAS METROPOLITAN POLICE
14 DEPARTMENT,

15 Respondent.

Case No.: 2024-013

16 **RESPONDENT'S PREHEARING STATEMENT**

17 Respondent Las Vegas Metropolitan Police Department (hereinafter "Respondent"), by
18 and through its attorneys of record, the law firm of Marquis Aurbach, hereby files its Prehearing
19 Statement in the above-captioned matter.

20 **I. STATEMENT OF ISSUES OF FACT AND LAW TO BE DECIDED BY THE BOARD.**

21 1. Whether the Disciplinary Decision Guide ("Guide") mandates a supervisory
22 intervention for a first offense under Line 1 for an accidental discharge.

23 2. Whether the Department unilaterally changed the Guide with respect to violations
24 which fall under Line 1.

25 3. Whether the Complainant proved a legitimate, valid and enforceable past practice
26 with respect to application of the Guide.

27 4. If the Complainant sufficiently proves an enforceable past practice, whether the
28 Department unilaterally violated the past practice.

1 **II. STATEMENT OF RELEVANT FACTS**

2 **A. THE PARTIES**

3 The Complainant, Las Vegas Police Managers & Supervisors Association, Inc.
4 (“Complainant”), is an employee organization as defined in Nevada Revised Statute 288.040.
5 The Respondent, the Las Vegas Metropolitan Police Department (“Department”), is a local
6 government employer, as defined in Nevada Revised Statute 288.060. The Complainant is the
7 bargaining agent for the bargaining unit comprised of police and corrections officers employed
8 by the Department.

9 **B. THE COMPLAINT**

10 In the Complaint, it is alleged the Department unilaterally changed the negotiated
11 Disciplinary Decision Guide (“Guide”) and/or an established past practice, with respect to the
12 level of discipline assessed for violations associated with an accidental discharge of a firearm by
13 an employee. Specifically, the Complaint alleges a past practice wherein officers who have been
14 found to have accidentally discharged their firearm were issued a supervisory intervention, as
15 opposed to discipline. (Compl., ¶¶ 5 and 8).

16 Specifically, the Complaint asserts Lt. Jessica Wert (“Wert”) received a written
17 reprimand for an accidental discharge of a shotgun. The incident occurred on July 12, 2023
18 when Lt. Wert failed to fully unload her lethal shotgun, which resulted in the discharge of a
19 shotgun shell. Wert was presented with an expediated offer of a written reprimand, but
20 Complainant rejected the offer. Subsequently, the investigation found Wert violated policy in
21 the accidental discharge incident and was issued a written reprimand.

22 Complainant alleges the issuance of a written reprimand violated the Guide and/or an
23 established past practice by not issuing a supervisory intervention (Contact Report). As such,
24 Complainant asserts the Department unilaterally changed a mandatory subject of bargaining in
25 violation of Nevada Revised Statute 288.270(1)(a) and (e).

26 **C. THE DISCIPLINARY DECISION GUIDE.**

27 As this Board is aware, the Department and the Complainant maintain a negotiated
28 Guide, which establishes agreed-upon ranges of discipline for various violations/misconduct.

1 First instances of accidental discharge fall under Line 1 of the Guide, which encompasses the
2 following misconduct:

3 Any conduct or performance issues not listed below, where the supervisor
4 believes a written record of discipline is necessary in the personnel file to correct
the behavior with or without prior counseling.

5 (Guide, Ln. 1, p. 1). The agreed upon, presumptive discipline for a first offense under Line 1 is a
6 written reprimand, which is the lowest form of discipline available under the Collective
7 Bargaining Agreement (“CBA”).

8 **III. LEGAL ARGUMENT**

9 **A. THE DEPARTMENT DID NOT UNILATERALLY CHANGE THE**
10 **GUIDE.**

11 Complainant’s claim of unilateral change fails because the Department did not change the
12 Guide. When a party refuses to bargain in good faith in violation of NRS 288.270(1)(e) the same
13 is regarded as a unilateral change and interferes with rights protected under NRS 288.270(1)(a).
14 *See Reno Police Protective Ass’n. v. City of Reno*, Item No. 175, EMRB Case No. A1-045390
15 (Jan. 30, 1985). “An employer’s departure from the bargained-for terms of an agreement does
16 not always amount to a unilateral change.” *D’Ambrosio v. LVMPD*, Item No. 808, EMRB Case
17 No. A1-046119 and A1-046121 (Oct. 15, 2015) (citing *Pershing Cnty. Law Enforcement Ass’n.*
18 *v. Pershing Cnty.*, Item No. 725A, Case No. A1-045974 (Nov. 15, 2010)).

19 The party asserting a unilateral change bears the burden of proving, by a preponderance
20 of the evidence, that the “actual terms of (sic) conditions of employment have been changed by
21 the employer such that after the occurrence which is the subject of the complaint, terms of
22 employment differ from what was bargained-for or otherwise established.” *O’Leary v. LVMPD*,
23 Item No. 803, EMRB Case No. A1-046116 (May 15, 2015) (*see SEIU, Local 1107 v. Clark*
24 *Cnty.*, Item No. 713A, EMRB Case No. A1-045965 (Oct. 5, 2010)). In order to meet this
25 burden, the complainant must prove:

26 (1) the employer breached or altered the collective bargaining agreement, or
27 established past practice; (2) the employer’s action was taken without bargaining
28 with the recognized bargaining agent over the change; (3) the change in policy
concerns a matter within the scope of representation; and (4) the change is not
merely an isolated breach of the contract, but amounts to a change of policy; i.e.,

1 the change has as generalized effect or continuing impact on bargaining unit
2 members' terms and conditions of employment.
3 *Id.* (citing *Cal. State Employees' Ass'n. v. Pub. Employment Relations Bd.*, 51 Cal. App. 4th
4 923, 935, 59 Cal. Rptr. 2d 488, 496 (1996)).

5 At the outset, the Department argues there has been no change to the Guide, as alleged in
6 the Complaint. The Department and the Association maintain a Guide for evaluating appropriate
7 levels of discipline. The misconduct outlined in the Complaint (accidental discharge) is
8 adjudicated under Line 1 of the Guide and the Guide specifically states that a written reprimand
9 is the agreed-upon discipline for a first offense. Thus, under the *negotiated* Guide, the
10 Complainant and the Department have agreed the discipline for an accidental discharge is a
11 written reprimand. Given the fact the Complaint alleges the Department (1) issued the
12 presumptive discipline prescribed under the Guide; and (2) cited no obligation under the Guide
13 to mitigate a violation, there is no evidence of a unilateral change.

14 **B. THE COMPLAINT FAILS BECAUSE IT ONLY REFERS TO ONE
15 EMPLOYEE.**

16 Notwithstanding the fact the Department did not change the Guide, the Complaint fails to
17 allege a unilateral change. As noted above, in order to prove a claim for unilateral change, the
18 Complainant must allege a generalized effect or impact on the bargaining unit. The Complaint
19 lists a single officer/single incident, rather than a generalized effect or impact on the bargaining
20 unit as a whole. For this reason, the Complaint fails.

21 Moreover, there is no valid past practice at issue in this matter. As this Board is aware,
22 "an employer may create, by practice over a substantial period of time, a term or condition of
23 employment which it is obligated to continue, subject to negotiation." *Ormsby Cnty. Educ. Ass'n*
24 *v. Carson City Sch. Dist.*, Case No. A1-045527, Item No. 311, *4 (April, 1993) (citing *Wahose*
25 *Nty. Sheriff's Deputies Ass'n, Inc. v. Cnty. of Washoe*, Case No. A1-045479, Item No. 271 (July,
26 1991)). "A past practice by the parties may evidence that a party waived a statutory or
27 contractual right, but such waiver must be clear and unmistakable." *Krumme v. Las Vegas*
28 *Metropolitan Police Dep't.*, Case No. 2016-010, Item No. 822, *5 (April 2017) (citing *Washoe*
Cnty. Teachers Ass'n v. Washoe Cnty. Sch. Dist., Case No. A1-045678, Item No. 470C, *4

1 (2001). Here, there is no proof of an established past practice *vis a vis* accidental discharge
2 discipline. Indeed, the Guide specifically calls for an agreed-upon discipline of a written
3 reprimand for a first offense under Line 1 – this is the agreed-upon starting point. In the CBA,
4 however, there are additional factors the Department is obligated to consider when issuing
5 discipline for a member in the bargaining unit. (PMSA CBA, Art. 5.7(A), p. 4). Implicit in the
6 negotiated Article in the CBA is the Department is able to deviate from the agreed-upon
7 discipline in the Guide, though not obligated, as the Article simply requires the Department to
8 consider the factors. As such, any past accidental discharge case dealing with a member of the
9 bargaining unit, in which the member received a discipline less than a written reprimand, can be
10 attributed to the agreed-upon process in which the Department is to consider mitigating factors.
11 There is no past practice the Complainant can prove, nor can it prove the Department waived its
12 contractual rights.

13 **IV. PENDING OR ANTICIPATED ADMINISTRATIVE, JUDICIAL OR OTHER**
14 **PROCEEDINGS**

15 None.

16 **V. LIST OF WITNESSES**

17 Jamie Frost, Labor Relations Counsel
18 Las Vegas Metropolitan Police Department
19 c/o Marquis Aurbach
10001 Park Run Drive
Las Vegas, Nevada 89145

20 This witness is expected to testify about the discipline process, the Guide, the Collective
21 Bargaining Agreement and the policies, procedures and practices of the Department in
22 investigative and adjudicating disciplinary cases.

23 Rule 30(b)(6) Witness – Las Vegas Metropolitan Police Department
24 c/o Marquis Aurbach
10001 Park Run Drive
25 Las Vegas, Nevada 89145

26 This witness(es) is/are expected to testify about the investigative process, procedures and
27 policies regarding internal investigations; incidents involving accidental discharges by
28 employees; and the accidental discharge incident identified in the Complaint.

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Undersheriff Andrew Walsh
Las Vegas Metropolitan Police Department
c/o Marquis Aurbach
10001 Park Run Drive
Las Vegas, Nevada 89145

This witness is expected to testify about the discipline process, the Guide, the Collective Bargaining Agreement and the policies, procedures and practices of the Department in investigative and adjudicating disciplinary cases.

Any witness identified by the Complainant as a witness in this matter.

VI. ESTIMATED TIME FOR HEARING

The Department anticipates a hearing on this matter will take one full day.

Dated this 30th day of July, 2024.

MARQUIS AURBACH

By s/ Nick D. Crosby
Nick D. Crosby, Esq.
Nevada Bar No. 8996
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney(s) for Respondent LVMPD

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENT'S PREHEARING STATEMENT** was submitted electronically for service on the 30th day of July, 2024 in accordance with the following service list:

Daniel Marks, Esq.
Adam Levine, Esq.
office@danielmarks.net
alevine@danielmarks.net
Attorneys for Complainant

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to: n/a

s/Sherri Mong
an employee of Marquis Aurbach