Item No. 94

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

In the matter of the North Las Vegas Police Officers Association, and Officer Jay Ehlers, Member thereof, Complainants vs. W. L. Tharp, Chief of Police, City of North Las Vegas, A Municipality Respondents	)	Case No. A1-045325

DECISION

On January 7 and January 11, 1980, the Local Government Employee-Management Relations Board held a hearing in the above matter; the hearing was properly noticed and posted pursuant to Nevada's Open Meeting Law. This written Decision is prepared in conformity with NRS 233. B.125 which requires that the final Decision contain Findings of Fact and Conclusions of Law separately stated.

By Complaint filed August 2, 1979, Jay Ehlers alleges that as a result of his activities while acting as president of the North Las Vegas Police Officers Association he suffered loss of work time and pay and that the actions of the Respondents constitute prohibited practices under NRS 288.270 (1).

In addition to denying the Complainant's allegations, the Respondents assert that Mr. Ehlers failed to exhaust his administrative and contractual remedies and is thereby precluded from appearing before the EMRB.

Prior to hearing testimony on the Complaint itself, the Board heard argument on the Respondent's oral motion to dismiss.

In a split decision the majority of the Board denied the motion and proceeded to hear testimony on the Complaint.[1]

In noting jurisdiction the majority relied upon NRS 288.110 (2)[2] and, in conjunction therewith, the 1974 EMRB case entitled North Las Vegas Police Officers Association, Inc., et. al, vs. City of North Las Vegas, Case No. A1-001673, November 4, 1974.

The majority of the Board acknowledges that pursuant to the contract between the City of North Las Vegas and the North Las Vegas Police Officers Association a police officer has thirty (30) days within which to file a written response to any adverse comment entered in his personnel file and that Officer Ehlers filed no such response. The majority of the Board similarly recognizes that Officer Ehlers failed to file a grievance as required by said contract. Nevertheless the majority of the Board holds that based upon the specific factual pattern presented in this particular complaint jurisdiction is proper.

The Complaint was filed after North Las Vegas Police Chief, W. L. Tharp, issued an inter-office memorandum which disciplined Officer Ehlers for releasing information in regard to an alleged abuse of the department's "Ride-Along" program.

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1. Board Vice-Chairman Vilardo favored the motion and her Dissent from the Board's majority ruling to deny the motion to dismiss appears at the conclusion of this Decision.

2. NRS 288.110 (2) provides as follows: "The Board may hear and determine any complaint arising out of the interpretation of, or performance under the provisions of this chapter by any local government employer, local government employee or employee organization".

On April 18, 1979, Mr. Ehlers, president of the North Las Vegas Police Officers Association, addressed the North Las Vegas City Council in regard to a possible misuse of the police "Ride-Along" program on April 17, 1979 by then Councilman Gary Davis, a candidate for Municipal Judge. A press release regarding the same incident was also disseminated by Mr. Ehlers at the direction of his association. Results of a polygraph examination administrered to the officer involved, Mr. Stiles, were also made public.

Chapter 288 of the Nevada Revised Statutes delineates in its prohibited practices provisions three principal types of conduct on the part of a local government employer or its representatives which constitute a violation of the individual employee's rights to join, refrain from joining, or participating in an employee organization.[3]

The thrust of all three provisions is that the conduct of the employer is improper if it is taken against the employee because of his activities relative to an employee organization as opposed to actions taken as an individual local government employee and unrelated to any such organization. The Board further notes that it is the right of every local government employee to join any employee organization of his choice and not be discriminated against in any way by the local government employer because of that membership. NRS 288.140.

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3. NRS 288.270 (1) provides in part:
1. It is a prohibited practice for a local government employer or its designated representative willfully to: (a) Interfere, restrain or coerce any employee in the exercise of any right guaranteed under this chapter.(b).....(c) Discriminate in regard to hiring, tenure or any term or condition of employment to encourage or discourage membership in any employee organization. (d) Discharge or otherwise discriminate against any employee... because he has formed, joined or chosen to be represented by any employee organization.

The record before the Board substantiates a finding that the disciplinary action was taken against Mr. Ehlers because of his conduct while acting in the capacity as president of his employee organization, not in his capacity as an individual employee of the department. The retaliatory measures taken by the Respondents against Officer Ehlers constitute a clear violation of NRS 288.140 (1) and NRS 288.270 (1).

FINDINGS OF FACT

1. That the Complainant, North Las Vegas Police Officers Association, is a local government employee organization.
2. That at the time of the incident at issue Complainant Jay Ehlers was the president of the North Las Vegas Police Officers Association and and employee of the Respondent.
3. That the Respondent, W. L. Tharp, is the Chief of Police of the City of North Las Vegas.
4. That the Respondent, City of North Las Vegas, Nevada, is a local government employer.
5. That Jay Ehlers, in his capacity as a representative of and a member of the North Las Vegas Police Officers Association, addressed the City Council of the City of North Las Vegas on April 18, 1979, in regard to an alleged abuse of the Police Department's "Ride-Along" program.
6. That, at the direction of his association, Officer Ehlers issued a press release concerning the "Ride-Along" allegation.

7. That on June 15, 1979, W. L. Tharp, Chief of the North Las Vegas Police Department, prepared an inter-office memorandum which involved disciplinary action and was placed in Officer Ehler's personnel file. Said memorandum related to Mr. Ehlers release of information regarding the alleged abuse of the "Ride-Along" program and his appearance before the North Las Vegas City Council.

8. That the disciplinary action was taken against Mr. Ehlers because of his conduct while acting in the capacity as president of his employee organization, not in his capacity as a Police Officer of the department.

CONCLUSIONS OF LAW

1. That pursuant to the provisions of Nevada Revised Statutes Chapter 288, the Local Government Employee-Management Relations Board possesses original jurisdiction over the parties and subject matter of this Complaint.

2. That the Complainant, North Las Vegas Police Officers Association is a local government employee organization within the term as defined in NRS 288.040.

3. That the Complainant, Officer Jay Ehlers, is a local government employee within the term as defined in NRS 288.050.

4. That the Respondent, City of North Las Vegas, Nevada is a local government employer within the term as defined in NRS 288.060.

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5. That the Respondent, W. L. Tharp, is an administrative employee within the term as defined in NRS 288.025.

6. That the actions of the individual Complainant were taken as a member of the complainant employee organization and were protected by the provisions of Chapter 288 of the Nevada Revised Statutes.

7. That the conduct of the Respondents, W. L. Tharp and the City of North Las Vegas, in issuing the inter-office memorandum, a disciplinary action, was in violation of the provisions of Chapter 288 of the Nevada Revised Statutes and in particular, NRS 288.140 (1) and NRS 288.170 (1).

The Respondents are ordered to rescind, in writing, and remove from the personnel file of Jay Ehlers the inter-office memorandum issued by W. L. Tharp to Officer Jay Ehlers subject: Disciplinary Action, dated June 15, 1979. The Respondents are further ordered to compensate Officer Ehlers for the time off (20 hours) which he was assessed. Officer Ehlers is not to lose any benefits he may otherwise be entitled to but for the Respondent's disciplinary action and the Respondents are to cease and desist from disciplining Jay Ehlers for engaging in any protected conduct under NRS Chapter 288.

Each party shall bear its own cost and attorney's fees.

Dated this 25th day of February, 1980.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

Dorothy Eisenberg, Chairman

Carole Vilardo, Vice-Chairman

Earl L. Collins, Board Member

DISSENT FROM DENIAL OF MOTION
TO DISMISS

Although I am in agreement with the Decision reached by the Board, I respectfully dissent from the majority ruling to deny Respondent's motion to dismiss because, in my opinion, the case is wrongfully before this Board.

In their decision to hear the case, the majority negates the fact that the negotiated grievance procedure, which by contract language is mandatory, must be the first course of action the aggrieved party must follow.

The majority ruling allows an aggrieved party to take any option available which best suits his or her needs regardless of mandated procedures.

To have granted Respondent's motion to dismiss would not have reversed this Board's decision in North Las Vegas Police Officers Association, Inc., et. al, vs. City of North Las Vegas, Case No. A-001673 decided November 4, 1974, as Complainant's counsel suggests.

In dicta within that Decision the Board commented:

> It is not within the jurisdiction of this Board to construe Municipal ordinances or departmental rules and regulations nor to determine whether or not a matter might properly be brought before the Civil Service Commission of a municipality. We simply note that no action was taken before any other forum and that a complaint which we deem to be within our jurisdiction was filed before us. We have handled the case accordingly.

Nothing in that Decision suggests that Respondent's counsel made a motion to dismiss, based upon failure to comply with a mandatory contractual grievance procedure, as was done in the instant matter.

Nor does the Decision in that case even allude to a grievance procedure as being part of the contract in question. The two cases are clearly distinguishable and reversal of the former was unnecessary. The motion to dismiss should have been granted for to hear the case was tantamount to ignoring the contract.

It is uncontroverted that Complainant Jay Ehlers was president of the North Las Vegas Police Officers Association when the present contract, which contains a mandatory grievance procedure, was negotiated and signed. In fact Mr. Ehlers signed the contract as president of the association.

While nothing in NRS 288 specifically spells out the requirement to exhaust grievance procedures or contractual remedies prior to appearing before the EMRB, I believe that it would be a dangerous precedent to permit aggrieved parties to come directly before the Board without first following the procedures enunciated in the collective bargaining agreement, where such contractual procedures exist. If <u>this</u> Complainant is allowed to circumvent the steps established in <u>this</u> contract dealing with grievance procedures, future complainants would similarly disregard bargained for grievance procedures in their own collective bargaining contracts. This would destroy the very necessity of reaching mutually agreeable provisions in collective bargaining agreements.

NRS 288.033 defines collective bargaining and subsection 4 thereof provides for the execution of a written contract incorporating any agreement reached. Good practice would dictate that the parties, having agreed upon a grievance procedure, follow the procedures they established for themselves with respect to resolving grievances.

Further, I would reference NRS 288.140 (2) which provides for rights of employees who are not members of an association or organization. What is interesting to note is that any action taken with respect to a grievance shall be consistent with the terms of any applicable negotiated agreement. Logic would dictate that employees who are members of an association would be bound by the same requirement.

I would find that the matter has improperly come before the Board because the first remedy of following the mandatory grievance procedure as set forth in the contract, was deliberately circumvented. I would grant the Respondent's motion to dismiss.

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