STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

GINGER L. GEORGE, Complainant, vs. LAS VEGAS POLICE PROTECTIVE ASSOCIATION METRO, INC., Respondent.	**ITEM NO. 485B** **CASE NO. A1-045693** **AMENDED DECISION AND ORDER**

For Complainant: Victor M. Perri, Esq.

For Respondent: Kathryn A. Werner, Esq.
John Dean Harper, Esq.

STATEMENT OF THE CASE

On January 12, 2001, Ginger L. George (hereinafter "George") filed a complaint with the Local Government Employee-Management Relations Board (hereinafter "Board") against Respondent, Las Vegas Police Protective Association Metro, Inc. (hereinafter "LVPPA"), for a breach of duty of fair representation.

LVPPA filed a Motion to Dismiss on February 5, 2001 which was denied by the Board's Order of March 6, 2001. LVPPA subsequently filed its Answer to the complaint on March 26, 2001.

LVPPA submitted its pre-hearing statement on April 16, 2001 and George submitted her pre-hearing statement on April 20, 2001.

The parties stipulated to certain facts of the case (see "Stipulated Facts," filed June 8, 2001 and following section) and the Board held a hearing on June 14, 2001, noticed in accordance with Nevada's Open Meeting Law. Complainant George was represented by Victor M. Perri, Esq., and Respondent LVPPA was represented by Kathryn A. Werner, Esq. and John D. Harper, Esq.

The Board heard oral argument from counsel, testimony from four (4) witnesses, received and reviewed twelve (12) hearing exhibits, and received and reviewed closing briefs submitted by both parties. The Board's findings are set forth as follows:

STIPULATED FACTS

Complainant George was employed by local government employer City of Las Vegas as a Corrections Officer in its Department of Detention and Enforcement. Respondent LVPPA is an employee organization and is recognized as the exclusive bargaining agent for Corrections Officers for the City of Las Vegas. As a Corrections Officer, George was a local government employee as defined by NRS 288.050, and a member in good standing of LVPPA.

The City of Las Vegas and the LVPPA entered into a collective bargaining agreement ("CBA") on June 29, 1997, which was in effect in June and July 2000. The CBA set forth the benefits for employees covered by that Agreement, including Corrections Officers employed by the City of Las Vegas Department of Detention and Enforcement. As an employee covered by the CBA, George was entitled to the benefits accorded the CBA and entitled to fair representation in LVPPA's administration of the CBA.

In July 1999, George suffered a work-related injury and underwent months of therapy and rehabilitation, during which time she was placed in a light-duty status position by the City of Las Vegas. At some point in time, Dr. Robert Patti ultimately determined that certain of George's physical restrictions were permanent. The City of Las Vegas issued a letter dated June 12, 2000 informing her that her light duty assignment would end as of July 12, 2000, at which time the City of Las Vegas would terminate her from her Corrections Officer position.

Sometime after George received the June 12, 2000 letter, George spoke with LVPPA's attorney, John Harper.

On June 27, 2000, George issued a letter to LVPPA requesting the assistance of LVPPA, and requested that LVPPA respond to her by July 5, 2000. George received no response from LVPPA pursuant to her request in her letter of June 27, 2000, aside from any verbal communications she had with attorney John Harper.

George was relieved of her Corrections Officer position on July 12, 2000 due to permanent physical restrictions resulting from a work related injury.

A July 20, 2000 letter from the City of Las Vegas advised George that the City of Las Vegas had a position available as a Court Intake Officer in the Security and Enforcement Division of Municipal Court which could accommodate her permanent physical restrictions. The Court Intake Officer position is a CEA Group 32 position as opposed to a PPA Group 6 position, with a salary of $47,823.36 (excluding longevity pay), a schedule of Wednesday through Saturday from 5:00 p.m. to 4:00 a.m., and would entitle George to insurance coverage with the City's health insurance plan.

On July 20, 2000, George accepted the position of Court Intake Officer under the conditions outlined in the City of Las Vegas' letter.

DISCUSSION

George testified at the hearing that her immediate supervisor was Jan Randolph, and the Director of the Department was Michael Sheldon. (Transcript of hearing, hereafter "Tr." p. 9.) Sheldon told her that she would be in a light-duty position in the business office until September 2000 because the person she replaced would be on maternity leave until then. (Tr. p. 12.) George testified that her salary as a Corrections Officer was $55,799. (Tr. p. 72.)

George understood a training position, a training liaison position, and a court counselor position to be available. (Tr. p. 19 – 20.) "Marty Ward was filling a training position, Pam Boss was filling a safety inspection position. There were correction counselor positions that were being filled by officers on a temporary assignment." (Tr. p. 16.) She further testified that she spoke to Sheldon about positions currently available and "he said it was bad timing, and they were being filled as voids only and those officers could be called back to the yard at any time." (Tr. p. 15 – 16.)

George testified that Ward could have gone back to the yard and filled that position and "that is what Sheldon's excuse to me was. It was a void being filled. He could be called back to the yard at any time." (Tr. p. 21.) That position has since been made permanent. (Tr. p. 20.) She later clarified:

> A: What he meant by being called back to the yard, he could terminate that position from them at any time. Not that he would call them back for a situation. He could terminate that position if they made him mad. They can terminate it at any time.

> Q: So it would be more of a management-type decision. You know, I'm familiar with positions say in a unit where your normal job might be let's say to calibrate instruments, but, also, part of that job classification's duties may be to fill in for an operator that has to climb stairs. This is not that situation when he said call back to the yard?
>
> A: Right. And since they have gotten me out of Detention Enforcement, he has since made that a permanent position where that officer will not go back to the yard. He will strictly do just the training.

(Tr. p. 90.)

It was George's understanding that if she took one of those positions it would allow a corrections officer to go back to their regular duties. (Tr. p. 22.) Human Resources informed her of the Corrections Intake Counselor position. (Tr. p. 22 – 23.)

Testimony was also taken from Jane Lucas, a workers' compensation analyst for the City of Las Vegas. Lucas testified that it was left up to the department to check for vacancies within the department. (Tr. 148.)

Lucas forwarded George's medical evaluation to the department:

> That evaluation went to the department to question whether they would accommodate the restrictions or whether they had vacant positions, and they responded that they could not accommodate her. And the only position that they had available was a marshal, a deputy city marshal, and those requirements are the same, if not more strenuous, than a corrections officer.

(Tr. p. 132.)

Lucas was not aware of a Special Inmate Management Officer position posted to the Department of Detention. (Tr. p. 153.) If she had been informed of this position, she would have investigated this position for George and others. (Tr. p. 158.) She also testified that it could have been a subject of dispute as to whether or not George could be reasonably accommodated by being placed in the accreditations coordinator position. (Tr. p. 161.)

George testified that she spoke with John Gierczic because he was the union representative. Gierczic testified that George has talked about positions she was interested in. (Tr. p. 103.) Gierczic further testified that in his experience as a representative member of the LVPPA board, the custom or practice is to notify employees whether they will or will not represent them on an issue. (Tr. p. 110.)

Gierczic referred George to Mr. Harper, LVPPA's attorney. (Tr. p. 18) She testified that her conversation with Harper went as follows:

> Q: Tell me what was said during that conversation. What did you say and what did he say?
> A: I called him and told him who I was and what was happening to me, and he said there was nothing he could do to help me, and I told him you have not heard the whole story yet, and he told me there was nothing I could say that he wanted to hear.
> Q: What do you mean when you said I told him what [has] happened?
> A: I explained I was injured on the job; that they were trying to terminate my employment for retaliation because I filed an equal rights claim against the department.

(Tr. p. 23 – 24.)

After her conversation with Attorney Harper, George took further steps to formally seek representation by the LVPPA with a letter addressed to Andy Anderson, president of LVPPA, dated June 27, 2000. (Tr. p. 27; Exhibit 2.) In her letter she mentioned that she believed that she had been retaliated against for an EEOC complaint. She believes she would have probably placed her without hesitation if not for the EEOC suit. (Tr. p. 30.) George never received a response to her letter. (Tr. p. 31.)

Harper testified that he received a phone call from George and that he told her that "this is more of a political situation, and I instructed her to see Gierczic or Mr. O'Sullivan . . ." (Tr. p. 202.) He felt nothing could be done legally and suggested "she try the political aspect" to receive assistance. (Tr. p. 203.)

Board member Dicks questioned how the LVPPA determines who qualifies for representation for a political solution and who does not. (Tr. p. 250.) Harper's answer in pertinent part was "So how do you decide? It is one of those which way is the wind blowing." (Tr. p. 250.) Harper further testified that Mr. Anderson handed him George's June 27, 2000, letter request for representation and asked that he take a look at it. Harper informed Anderson that it was just basically the same information he had received before and that it was not something the LVPPA would provide legal services for. (Tr. p. 208.) The letter contained a bit more information about the retaliation claim; however, Harper testified that the letter contained no information that would make his decision any different. (Tr. p.

208.) He did not conduct an investigation into the matter (Tr. p. 214), nor did he request names of witnesses, a list of jobs she may be qualified for, or any other documents. (Tr. p. 216.) Harper further testified that he did not think the LVPPA had an obligation to notify George in writing as to whether or not she would be represented in any capacity. (Tr. p. 217.)

Board member Dicks read LVPPA Bylaw Section L, page 6, section 10.01 into the record as follows:

> The Board shall determine its sole discretion on the basis of the facts presented along with the request for representation whether and to what extent representation will be provided at the expense or burden of association resources, and whether outside counsel will be employed, as well as designation of any outside counsel to be employed. Generally, the Board will refer legal matters for representation to its general counsel unless the Board in its discretion determines that circumstances dictate otherwise. The Association is not an insurer.

(Tr. p. 252 – 253.)

Member Dicks asked Harper if this paragraph was complied with in George's case. The reply was that the Board relies on the legal department to screen and bring things up. Members are entitled to go to the Board and seek representation. Harper did not inform George of his decision that she was not entitled to representation or that she could take it to the Board. (Tr. p. 253 – 254.)

George's Closing Brief cites to the following excerpt from Tenorio v. NLRB, 680 F.2d 598 (9th Cir. 1982), as being applicable to the present situation:

> A union breaches its duty of fair representation if it processes a member's grievance in an arbitrary or perfunctory manner. (Cite omitted.) To comply with its duty, a union must conduct some minimal investigation of grievances brought to its attention. (Cites omitted.) The thoroughness with which unions must investigate grievances in order to satisfy their duty varies with the circumstances of each case. Although we afford unions a reasonable range of discretion in deciding how best to handle grievances, union conduct that shows an egregious disregard for the rights of union members constitutes a breach of the duty of fair representation. (Cites omitted.)

FINDINGS OF FACT

1. George was a local government employee as defined by NRS 288.050.

2. Prior to July 12, 2000, George was employed by local government employer City of Las Vegas as a Corrections Officer in its Department of Detention and Enforcement, and her salary as a Corrections Officer was $55,799.

3. The LVPPA is an employee organization as defined by NRS 288.040.

4. The LVPPA was the recognized employee organization and exclusive bargaining agent for Corrections Officers employed by the City of Las Vegas, Department of Detention and Enforcement.

5. At all times relevant, George was a member in good standing with LVPPA.

6. A CBA was entered into between the City of Las Vegas and the LVPPA on June 29, 1997 which was in effect in June and July 2000; this CBA set forth the benefits for employees covered by that Agreement, including Corrections Officers employed by the City of Las Vegas, Department of Detention and Enforcement.

7. As an employee covered by the CBA, George was entitled to the benefits accorded the CBA.

8. George was entitled to fair representation pursuant to NRS Chapter 288 in the LVPPA's administration of the CBA.

9. In July of 1999, George suffered a work-related injury and underwent months of therapy and rehabilitation, during which time she was placed in a light-duty status position by the City of Las Vegas.

10. At some point in time, Dr. Robert Patti ultimately determined that certain of George's physical restrictions were permanent; the City of Las Vegas received his medical evaluation form on May 30, 2000.

11. The City of Las Vegas issued a letter dated June 12, 2000 informing her that her light duty assignment would end as of July 12, 2000, at which time the City of Las Vegas would terminate her from her Corrections Officer position.

12. Sometime after George received the June 12, 2000 letter, George spoke with LVPPA's attorney, John Harper.

13. On June 27, 2000, George issued a letter to LVPPA requesting the assistance of LVPPA.

14. George's June 27, 2000 letter to LVPPA requested that LVPPA respond to her by July 5, 2000.

15. George received no response from LVPPA pursuant to her request in her letter of June 27, 2000, aside from a curt telephonic communication she had with attorney John Harper.

16. On July 12, 2000, George was relieved of her Corrections Officer position.

17. Subsequent to July 12, 2000 George started a new position with the City of Las Vegas, Security and Enforcement Unit of Municipal Court.

18. A July 20, 2000 letter from the City of Las Vegas advised George that the City of Las Vegas had a position available as a Court Intake Officer in the Security and Enforcement Division of the Municipal Court which position could accommodate her permanent physical restrictions.

19. The July 20, 2000 letter from the City of Las Vegas advised George that the Court Intake Officer position is a CEA Group 32 position as opposed to her previous PPA Group 6 position.

20. The July 20, 2000 letter from the City of Las Vegas advised George that the Court Intake Officer position would entitle George to an annual salary of $47,823.36, excluding longevity pay.

21. The July 20, 2000 letter from the City of Las Vegas advised George that the Court Intake Officer position would be on a work schedule of Wednesday through Saturday from 5:00 p.m. to 4:00 a.m.

22. The July 20, 2000 letter from the City of Las Vegas advised George that the Court Intake Officer position would entitle George to insurance coverage with the City's health insurance plan.

23. On July 20, 2000, George accepted the position of Court Intake Officer under the conditions outlined in the City of Las Vegas' July 20, 2000, letter.

24. The LVPPA provided no representation to Ginger George during the above referenced time frame.

CONCLUSIONS OF LAW

1. The Local Government Employee-Management Relations Board has jurisdiction over the parties and the subject matter of Ginger George's Complaint pursuant to the provisions of NRS Chapter 288.

2. The City of Las Vegas is a local government employer as defined by NRS 288.060.

3. The LVPPA is an employee organization as defined by NRS 288.040.

4. There were issues in dispute as to whether there were positions available in the Department of Detention, which could have reasonably accommodated Ginger George.

5. There were issues in dispute as to whether George was being retaliated against for filing a previous EEOC complaint against her employer.

6. George's June 27, 2000 letter to the LVPPA constituted a formal request for representation in maintaining employment with the City of Las Vegas.

7. There was no investigation by the LVPPA into George's allegations of retaliation for a previous EEOC complaint.

8. There was no investigation by the LVPPA into George's allegations of positions available for accommodating her restrictions.

9. LVPPA disregarded George's June 27, 2000 request for representation in violation of its responsibilities to its bargaining unit employees and pursuant to NRS Chapter 288.

10. The LVPPA's disregard of George's request for representation was arbitrary and/or capricious.

11. To comply with its duty of fair representation of its members, a union must conduct some minimal investigation of grievances brought to its attention, which LVPPA failed to do in this case.

12. In the present action, the LVPPA breached its duty of fair representation to George as discussed in the below section.

DECISION AND ORDER

IT IS, THEREFORE, THE DECISION OF THIS BOARD that the LVPPA breached it's duty of fair representation to Ginger George by arbitrarily:

1. Failing to inform and/or explain to member George of the reasons why the LVPPA could not/would not represent her,
2. Failing to provide even a minimal investigation into George's complaint in a disregard of the member's rights and its responsibilities to her, and
3. Failing to inform the member of her right to file a formal grievance.

IT IS ORDERED that Ginger George is awarded one of the following options from the LVPPA:

Option I: Back pay in an amount representing the salary differential in what she was making in her prior position as a Correctional Officer as of May 30, 2000 and what she is currently making in her current position, through and including the date of this order, and

Reasonable attorneys' fees and costs, and documentation of such fees and costs shall be filed with the Board within 20 days from the date of this order, with the Respondent having 10 days thereafter to oppose such fees and costs;

OR, AS THE ALTERNATIVE, AT THE OPTION OF MS. GEORGE,

Option II: That the parties immediately upon receipt of this Order meet and discuss George's complaint, with the LVPPA to investigate and determine whether the complaint is well-grounded; and if so, pursue the claim to obtain an appropriate remedy for her from her employer, City of Las Vegas, previously misstated as Las Vegas Metropolitan Police Department.

IT IS FURTHER ORDERED Ms. George notify this Board in writing as to her election of options within 20 days from the date of this Order, as well as serve a copy of such notice on Respondent.

DATED this 30th day of August, 2001.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By _____
JOHN E. DICKS, ESQ., Chairman

By _____
JAMES E. WILKERSON, SR., Vice-Chairman

By _____
KAREN L. McKAY, Member