

1 STATE OF NEVADA  
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
3 RELATIONS BOARD  
4

5 STEVEN B. KILGORE,  
6 Complainant,

7 vs.

8 CITY OF HENDERSON and HENDERSON  
9 POLICE DEPARTMENT,  
10 Respondents.

ITEM NO. 5501

CASE NO. A1-045763

ORDER

11 For Complainant:

Richard I. Dreitzer, Esq.  
Law Offices of Richard I. Dreitzer, Esq.

12 For Respondents:

William E. Cooper, Esq.

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14 On May 5, 2003, Complainant Steven B. Kilgore ("Kilgore") filed with the LOCAL  
15 GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD ("Board") a  
16 Complaint against Respondents HENDERSON POLICE DEPARTMENT and CITY OF  
17 HENDERSON (Respondents are collectively referred to hereafter as "the City"). Kilgore filed  
18 an Amended Complaint on August 7, 2003.<sup>1</sup> On September 8, 2003, while Kilgore's Amended  
19 Complaint was pending before this Board, the City terminated his employment. On September  
20 24, 2003, we granted a preliminary injunction and ordered the City to maintain the status quo  
21 ante as of September 7, 2003.<sup>2</sup> On September 25, 2003, the City filed its Answer.

22 This Board's subsequent hearing of Kilgore's claims commenced on March 30, 2004, and  
23 continued on various dates through September 22, 2004. On March 30, 2005, the Board entered  
24 its final Decision giving judgment in favor of the City and lifting and dissolving the Board's  
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27 <sup>1</sup> Kilgore also brought claims against the Henderson Police Officers' Association. However,  
Kilgore later stipulated to the Association's dismissal from this action.

28 <sup>2</sup> This Board's authority to order this injunctive relief is currently being challenged by the City's  
writ petition to the Nevada Supreme Court.

1 September 24, 2003 injunction. Kilgore v. City of Henderson and Henderson Police  
2 Department, Item No. 550H, EMRB Case No. A1-045763, at 31 (March 30, 2005).

3 On April 11, 2005, the Board received Kilgore's Motion for Stay of Order Dissolving  
4 Injunction and Expedited Setting. In this Motion, Kilgore challenges on various grounds, and  
5 requests that the Board stay, the portion of the March 30, 2005 Final Decision wherein we  
6 ordered "that, the injunction this Board issued on September 24, 2003, is hereby lifted and  
7 dissolved." On April 22, 2005, the City filed its Opposition to Kilgore's Motion. On May 4,  
8 2005, Kilgore submitted his Reply to the City's Opposition, and on May 5, 2005, the City  
9 submitted its Supplement Opposition and Addendum to Supplemental Opposition.<sup>3</sup>

10 On May 10, 2005, this Board conducted deliberations on Kilgore's Motion for Stay of  
11 Order Dissolving Injunction and Expedited Setting, noticed in accordance with Nevada's Open  
12 Meeting Laws. Having so deliberated, we conclude that oral argument on the Motion is not  
13 warranted. See NAC 288.306 (recognizing the Board has discretion whether to entertain oral  
14 argument). We further conclude that Kilgore is not entitled to any relief on his motion.

15 This Board's Rules do not comprehend or provide for an independent "motion for stay"  
16 which may be filed after entry of a final decision. Cf. NRS 233B.140 (requiring a party to apply  
17 to the district court when seeking to stay the final decision of a state agency in a contested case).  
18 Here, Kilgore challenges the rightness of a portion of this Board's final Decision. However,  
19 under the Board's Rules, petitions for rehearing are the only recognized means by which a party  
20 may request that this Board revisit and "abrogate, change or modify" its final decisions on the  
21 grounds that they are "in any respect unjust, unwarranted, unlawful or in need of change." NAC  
22 288.364(3); see also NAC 288.360 ("1. Either party may, within 10 days after any decision by  
23 the Board, file a petition for a rehearing stating the reasons therefor. . . . 3. The failure of either  
24 party to submit a petition for rehearing within 10 days constitutes an agreement that the Board's  
25 decision is a final decision for purposes of [judicial review under] NRS 233B.130.").

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28 <sup>3</sup> We hereby deny the City's request for leave to file the Supplemental Opposition and do not  
consider documents filed subsequent to Kilgore's May 4, 2005 Reply. See NAC 288.240 (4).

1 To the extent that Kilgore's Motion may be construed as a petition for rehearing, we find  
2 and conclude that Kilgore has failed to show that our final Decision is unjust, unwarranted,  
3 unlawful or in need of change. Thus, no valid basis exists to abrogate, change or modify the  
4 portion of our Decision lifting and dissolving the injunction ordered by the Board in September  
5 2003. By the same reasoning, even assuming that it had been properly brought as an  
6 independent motion, Kilgore's Motion warrants no relief. This Board has given Kilgore every  
7 benefit due to him with respect to his claims before the Board. Having determined in our final  
8 Decision that none of the claims over which this Board has jurisdiction pursuant to NRS Chapter  
9 288 have merit, the Board is now without jurisdiction to order the relief granted in the September  
10 24, 2003 injunction and properly resolved to lift and dissolve that injunction. Accordingly, we  
11 hereby

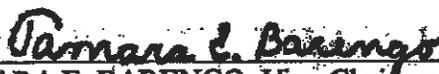
12 ORDER that Kilgore's Motion for Stay of Order Dissolving Injunction and Expedited  
13 Setting is DENIED.

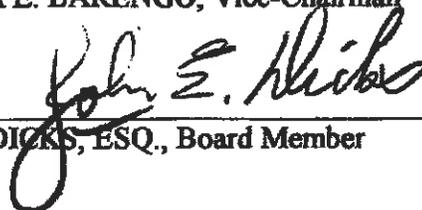
14 IT IS FURTHER ORDERED that each party shall bear its own attorney's fees and costs  
15 in this matter.

16 DATED this 10<sup>th</sup> day of May, 2005.

17 LOCAL GOVERNMENT EMPLOYEE-  
18 MANAGEMENT RELATIONS BOARD

19 BY:   
20 JANET FROST, ESQ., Chairman

21 BY:   
22 TAMARA E. BARENGO, Vice-Chairman

23 BY:   
24 JOHN E. DICKS, ESQ., Board Member  
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