

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

5 LEON GREENBERG,  
6 Complainant,  
7 vs.  
8 CLARK COUNTY,  
9 Respondent.

ITEM NO. 577C  
CASE NO. A1-045795  
(consolidated with A1-045808)  
**ORDER**

10 For Complainant: Leon Greenberg, Esq.  
11 For Respondent: Yolanda T. Givens, Esq.  
12

13 **STATEMENT OF THE CASE**

14 On April 6, 2004, Complainant LEON GREENBERG ("Complainant") filed a Complaint  
15 with the LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD  
16 ("Board"). A second Complaint (A1-045808) was filed on July 23, 2004, which complaint was  
17 consolidated with the first complaint by the Board's order dated November 4, 2004. An  
18 Amended Complaint was filed on March 16, 2005. A copy of the first complaint was attached  
19 with each of the second complaint and the amended complaint, ostensibly with the purpose of  
20 incorporating the first complaint in the latter documents by reference.<sup>1</sup> The two complaints and  
21 the subsequent amended complaint shall hereinafter be referred to collectively as "the  
22 Complaints."

23 **DECISION**

24 For the reasons discussed below, the Board hereby determines that dismissal of this  
25 matter is warranted, pursuant to NAC 288.375, which states in pertinent part as follows:  
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27  
28 <sup>1</sup>That this was Complainant's intention is further reinforced by the fact that the second complaint  
and the amended complaint each refer to a "Statement of Facts." Of the three documents, only  
the first complaint contains a section so entitled.

1 "The Board may dismiss a matter for any of the following reasons:

2 If the Board determines that no probable cause exists for the complaint..."

3 **DISCUSSION**

4 In the Complaints, Complainant alleges that Respondent CLARK COUNTY  
5 ("Respondent"), through its Public Defender's Office and Human Resources Department,  
6 violated NRS Chapter 288 by refusing, on impermissible grounds, to hire him for an Attorney I  
7 position with the Clark County Public Defender's Office, for which he applied on three or four  
8 occasions.

9 The stated grounds on which Respondent declined to hire Complainant is that "the  
10 decision was made to offer the position to someone whose background more closely meets the  
11 needs of the position." See e.g., October 7, 2003 letter from Ralph E. Baker, Assistant Public  
12 Defender, attached to Amended Complaint.

13 Complaint disputes the stated grounds, rather alleging, on information and belief, the  
14 following impermissible grounds:

15 "(a) The Complainant possesses a Bachelor of Science degree in Labor  
16 Studies, a field of study typically undertaken by persons pursuing careers as union  
17 organizers or as employees of persons pursuing careers as union organizers or as  
18 employees of labor unions and/or is a degree obtained by persons who are union  
19 activists or union sympathizers. Respondent did not want to hire anyone who  
20 might be inclined to join an employee organization or might be inclined to cause  
21 labor unrest and/or be involved in the collective bargaining process between the  
22 respondent and its employee bargaining unit representatives.

23 b) The complainant has spend (sic) the ten years prior to his  
24 application acting as counsel for employees who have sued their employers.  
25 Respondent did not want to hire anyone who had a history of being involved in  
26 litigation against employers out of fear that such a person might be inclined to get  
27 involved in litigation against the respondent.

28 c) The complainant's application indicated that he has a deep  
sympathy for the working poor and expressed feelings that such persons are  
unfairly treated and disadvantaged and frequently denied justice. The  
complainant's application further indicated that he had devoted his professional  
work to assisting the working poor and expressed a commitment to helping such  
persons. Respondent did not want to hire anyone, like the complainant, who  
questioned the conventional structures and economic relations of society.

d) The respondent did not want to hire the complainant because the  
complainant stated during his interview that he believed the correctional system  
was unjust and the complainant did not believe in putting lawbreakers in jail and  
the complainant also believed the war on drugs was wrong.

1 e) The respondent also rejected the complainant's application for  
2 employment for other impermissible reasons because of his personal and political  
3 affiliations, including, but not limited to, the respondent's lack of long term  
4 residency in, or contacts with, Clark County, Nevada, and the fact that the  
5 respondent had been in private practice as an attorney and a sole practitioner for  
6 the last ten years and had not during that time period worked as an employee for  
7 any organization."

8 Paragraphs ¶¶ 18 and 26 of the first complaint.

9 Complainant states that the failure to hire him on the foregoing grounds constitute  
10 violations of Nevada Revised Statute (NRS) section 288.270(1)(c), which prohibits willful  
11 discrimination "in regard to hiring, tenure or any term or condition of employment to encourage  
12 or discourage membership in any employee organization," NRS section 288.270(1)(f), which  
13 prohibits willful discrimination "because of race, color, religion, sex, age, physical or visual  
14 handicap, national origin or because of political or personal reasons or affiliations."

15 Complainant further states, in the Amended Complaint, that the refusal to hire him after  
16 his initial complaint is a violation of NRS section 288.270(1)(d), which prohibits willful  
17 discharge or other discrimination "against any employee because he has signed or filed an  
18 affidavit, petition or complaint or given any information or testimony under this chapter...."

19 Complainant seems to call upon the following as support for the inference that the  
20 impermissible grounds, not the stated grounds, correctly explain why he was not hired for the  
21 Attorney I position at the Public Defender's Office:

22 His outstanding qualifications (¶¶ 12-14 of the first complaint), in terms of background  
23 and test scores.

24 The delay in grading Complainant's initial application (approximately nine months from  
25 submission). (¶16 of the first complaint).

26 Cancellation of the open or continuous recruitment for the Attorney I position and  
27 replacement with a limited-period recruitment, done with the hope to "completely remove the  
28 complainant from any further consideration for the Attorney I position. (¶30-31 of the first  
complaint).

Human Resources' assigning Complainant's second application a lower score than it  
assigned to his first, identical, application (¶32 of the first complaint).

1 Failure of the Public Defender's Office to respond to Complainant's inquiries about  
2 internships with it. (§38 of the first complaint, ¶24-27 of the amended complaint).

3 Opening up new application periods for Attorney I positions when the time period of  
4 eligibility under previous recruitments had not ended (§12 of the amended complaint).

5 On April 26, 2004, Respondent made a motion to dismiss the matter on the basis that  
6 Complainant is not an employee of Clark County. The Board found that NRS 288.270(1)(c),  
7 which prohibits willful discrimination "in regard to hiring, tenure or any term or condition of  
8 employment to encourage or discourage membership in any employee organization" may be  
9 applicable. Order # 577.

#### 10 FINDINGS OF FACT

11 For the purposes of the subject decision, the Board makes the following findings:

12 1. Complainant has met the minimum qualifications for the position of Attorney I in  
13 the position classification plan for the County of Clark.

14 2. Complainant is not and has never been an employee of the County of Clark.

15 3. Complainant applied for an Attorney I position under continuous recruitment for  
16 the Public Defender's Office.

17 4. The position for which Complainant applied was not part of a bargaining unit and  
18 there is no allegation in the Complaints that such a unit was being organized at the times relevant  
19 herein.

20 5. After approximately nine months of delay, Complainant's application was graded  
21 by the Clark County Office of Human Resources, and he received passing scores.

22 6. Complainant's name was placed on an eligible list for the Attorney I position with  
23 the Public Defender's Office.

24 7. Complainant was interviewed for said position but was not extended an offer.  
25 The stated grounds were that the Office of the Public Defender had made the decision to offer  
26 the position to someone whose background more closely meets the needs of the position.

27 8. In October 2003, at or around the time that Complainant was advised that he  
28 would not be offered the position, Complainant alleges that Respondent closed the continuous

1 recruitment and advertised a limited period recruitment for the Attorney I position. For purposes  
2 of this decision, the Board finds the foregoing to be true.

3 9. Complainant applied for the newly advertised position. Complainant alleges that  
4 he submitted the same application previously submitted for the continuous recruitment position,  
5 but was scored lower, given an 81 rather than a 90. He appealed the score, but the appeal was  
6 denied. For purposes of this decision, the Board finds the foregoing to be true.

7 10. October 22, 2004, Respondent again advertised a limited term recruitment for an  
8 Attorney I position with the Office of the Public Defender. Complainant alleges that he applied  
9 for the position, obtained a score of 88, was interviewed in December, but was not offered a  
10 position. Amended Complaint, ¶¶ 12-19. For purposes of this decision, the Board finds the  
11 foregoing to be true.

12 11. The Board finds for purposes of this decision that Complainant requested  
13 information from the Office of the Public Defender about internships, but the Office of Public  
14 Defender did not respond.

15 12. The Complaints do not allege the existence of any employee organization.

16 13. The Complaints do not allege any personal affiliation that was the basis for which  
17 Complainant was not hired.

18 14. The Complaints do not allege any personal reason that was the basis for which the  
19 Complainant was not hired.

20 15. The Complaints do not allege any political affiliation that was the basis for which  
21 Complainant was not hired.

22 16. The Complaints do not allege any political reason that was the basis for which  
23 Complainant was not hired.

24 17. That the Complaints offer at least four different factual theories for Respondent's  
25 refusal to hire Complainant.

#### 26 CONCLUSIONS OF LAW

27 1. That Clark County is a local government employer as defined in NRS 288.060.  
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1           2.     Under NAC 288.375, the Board may dismiss the complaint for lack of probable  
2 cause, including where the Complaint on its face discloses the lack of probable cause or fails to  
3 allege elements necessary to the Complainant's prima facie case.

4           3.     A complaint may not rest on mere suspicion. Water Employees Association v.  
5 Las Vegas Valley Water District, Case No. A1-045538, Item No. 326 (1994).

6           4.     A complainant must make a prima facie showing sufficient to support the  
7 inference that protected conduct was a motivating factor in the employer's decision. Reno Police  
8 Protective Association v. City of Reno, 102 Nev. 98, 101, 715 P. 2d 1321, 1323 (1986).

9           5.     Under NRS 288.270(1)(c), a local government employer may not "(d)iscriminate  
10 in regard to hiring, tenure or any term or condition of employment to encourage or discourage  
11 membership in any employee organization."

12           6.     Under NRS 288.270(1)(f), a local government employer may not "(d)iscriminate  
13 because of race, color, religion, sex, age, physical or visual handicap, national origin or because  
14 of political or personal reasons or affiliations."

15           7.     An Employee Organization is "an organization of any kind having as one of its  
16 purposes improvement of the terms and conditions of employment of local government  
17 employees." NRS 288.040.

18           8.     Complainant fails to allege any activity protected under NRS 288.270(1)(c) in that  
19 he fails to allege the development or existence of an employee organization as defined above.

20           9.     Based on Complainant's failure to allege anything more than a bare suspicion that  
21 his not getting hired was based on his listing in his application that he studied labor studies over  
22 ten years ago in college was a basis for him not getting hired, the Board may find that said  
23 allegation does not support a finding of probable cause.

24           10.    Based on Complainant's failure to allege anything more than a bare suspicion that  
25 his not getting hired was based on his listing in his application that he had spent more than ten  
26 years acting as counsel for employees who have sued their employers, the Board may and does  
27 find that said allegation does not support a finding of probable cause for a violation under  
28 Chapter 288.

1           11.    Based on Complainant's failure to allege anything more than a bare suspicion that  
2 his not getting hired was based on his stating in his application that he has a deep sympathy for  
3 the working poor, has feelings that such persons are unfairly treated and disadvantaged and  
4 frequently denied justice, that he has devoted his professional work to assisting and expressed his  
5 commitment to helping such persons, the Board may and does find that said allegation does not  
6 support a finding of probable cause for a violation under Chapter 288.

7           12.    Based on Complainant's failure to allege anything more than a bare suspicion that  
8 his not getting hired was based on his lack of long term residency or contacts with Clark County,  
9 Nevada or the fact that he had not worked for an organization for more than ten years, the Board  
10 may and does find that said allegation does not support a finding of probable cause for a  
11 violation under Chapter 288.

12           13.    The fact that Complainant himself offers numerous hypotheses of what actually  
13 motivated the decision not to hire him without a factual basis for suggesting one over the other is  
14 a definite indication that his case for a violation of Chapter 288 lacks probable cause for  
15 contending that Respondent's failure to hire him was based on impermissible grounds.

16           14.    Should any conclusion of law be more properly set forth as a finding of fact, it  
17 may be so deemed.

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**ORDER**

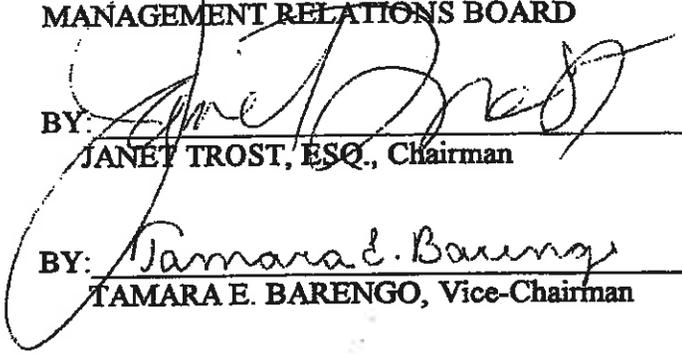
For the reasons set forth herein and based on the above findings of fact and conclusions of law,

IT IS HEREBY ORDERED that this matter be DISMISSED WITH PREJUDICE.

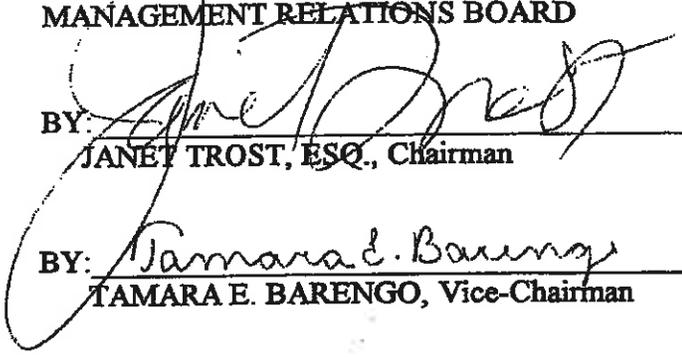
IT IS FURTHER ORDERED that each party shall bear its own attorneys' fees and costs in this matter.

DATED this 21<sup>st</sup> day of July 2005.

LOCAL GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

BY: 

JANET TROST, ESQ., Chairman

BY: 

TAMARA E. BARENGO, Vice-Chairman

1 **DISSENTING OPINION**

2 "Probable cause is defined as reasonable cause; a reasonable ground for belief in  
3 the existence of facts warranting the proceedings complained of,..." Black's Law  
4 Dictionary.

5 My understanding of the concept is that it does not require a belief beyond a reasonable  
6 doubt; a preponderance of the evidence; nor a more likely than not judgment. Given the  
7 documents on file thus far in the case, I conclude some probable cause exists for Mr. Greenberg's  
8 complaint. It should not be tossed out at this juncture.

9 Mr. Greenberg appears to have above average intelligence, educational credentials and  
10 experience; he writes well; he can file appropriate legal documents; he would seem, absent an  
11 affirmative showing otherwise, to be qualified for an entry level position with this public  
12 employer. Certainly, his 10 years of legal experience would appear to place him above current  
13 law school graduates who are applicants for the job.

14 The employer has not offered any cause for refusing, on separate occasions, to hire Mr.  
15 Greenberg. The stated grounds for not hiring, "...the decision was made to offer the position to  
16 someone whose background more closely meets the needs of the position,..." begs the revelation  
17 of who was selected and what were their qualifications that exceeded Mr. Greenberg's. Certainly  
18 the statement lacks specificity and leaves much unsaid, including, perhaps the real reason.

19 Given Mr. Greenberg's experience in labor law, his history of representing employees  
20 against employers, and his stated sympathy toward the working poor, I have to wonder if the  
21 story we have thus far is all of the story.

22 The employees of the Clark County Public Defenders Office are currently unrepresented.  
23 Under NRS 288, it is the employees decision whether they wish to be represented or not. And,  
24 of course, if the respondent failed to hire the Complainant because it believes he may try to  
25 organize an employees association, then it is a lawbreaker for the reason that the statute prohibits  
26 discrimination based upon protected activities.

27 I do not know whether Complainant can prove his case or not. The majority's decision  
28 today prevents us from ever knowing that outcome for it untimely rips the complaint from the  
process and brings to an end any further discovery. I think that is unjust, for I do not believe "no

1 probable cause exists for this complaint." I would allow Mr. Greenberg to at least pursue his  
2 complaint to the next step of the process.

3 DATED this 21<sup>st</sup> day of July, 2005.

4 LOCAL GOVERNMENT EMPLOYEE-  
5 MANAGEMENT RELATIONS BOARD

6 BY:   
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8 JOHN E. DICKS, ESQ., Board Member

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