

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

5 LAS VEGAS POLICE PROTECTIVE  
6 ASSOCIATION CIVILIAN EMPLOYEES,  
7 and the LAS VEGAS METROPOLITAN  
8 POLICE DEPARTMENT'S LAW  
9 ENFORCEMENT SUPPORT  
10 TECHNICIANS,

11 Complainants,

12 vs.

13 LAS VEGAS METROPOLITAN POLICE  
14 DEPARTMENT,

15 Respondent.

ITEM NO. 620

CASE NO. A1-045867

**ORDER**

16 For Complainant: Kathryn A. Werner, Esq.

17 For Respondent: James T. Winkler, Esq.  
18 Littler Mendelson

19 **BACKGROUND/STATEMENT OF THE CASE**

20 On August 31, 2005, Complainants Las Vegas Police Protective Association Civilian  
21 Employee ("LVPPACE"), a local government employee organization, and Las Vegas  
22 Metropolitan Police Department's Law Enforcement Support Technicians ("LEST"), local  
23 government employees, filed a Complaint with the Local Government Employee-Management  
24 Relations Board ("the Board") contending that Respondent The Las Vegas Metropolitan Police  
25 Department ("Respondent") violated NRS 288.270(1)(f) by implementing a rule in 2002 that  
26 restricted LEST employees ability to transfer to a greater degree than other civilian employees.

27 On October 4, 2005, Respondent filed a Motion to Dismiss Complaint, based on three  
28 grounds: (1) the Complaint is barred by NRS 288.110(4), in that the events complained of  
29 occurred more than six months before filing the Complaint, i.e., the rule was implemented in  
30 2002; (2) the Complaint does not allege a violation of NRS 288.270(1)(f) in that the alleged  
31 discrimination was not based on any of the prohibited bases enumerated therein or on political or

1 personal reasons; and (3) the Complaint fails to allege exhaustion of contractual remedies as  
2 enumerated in NAC 288.375(2).

3 Complainant filed an Opposition to Respondent's Motion to Dismiss on November 18,  
4 2005, contending (1) that Complainant had reserved its rights at the time the rule was  
5 implemented and that the rule was modified within six months before the complaint was filed;  
6 (2) that members of LEST are being singled out because of said membership; and (3) that the  
7 current complaint does not fall within the collective bargaining agreement or, alternatively, that  
8 exhaustion should be excused because Complainant's failure to proceed with its objection to the  
9 two-year rule before the Civil Service Board was at the urging of the Civil Service Board.

10 Respondent filed a Reply on December 1, 2005, countering as follows: that allegations of  
11 different treatment of LEST employees does constitute allegation of discrimination on the basis  
12 of the prohibited practice in NRS 288.270(1)(f); the additional changes to the rule are not alleged  
13 in the complaint as bases for the complaint.

14 The Board held hearings on January 9, 2006 and February 1, 2006 on the Motion and  
15 Countermotions, noticed in accordance with Nevada's Open Meeting Law. Based thereon, it  
16 renders the following Findings of Fact and Conclusions of Law:

17 **FINDINGS OF FACT**

18 1. For purposes of this Motion, the Board accepts the following allegations of Fact  
19 in the Complaint as true:

- 20 • Complaint ¶ 22: "That in 2002, Bill Young was elected as the Sheriff of the Las Vegas  
21 Metropolitan Police Department."  
22 • Complaint ¶ 23: "That, upon entering office, Sheriff Young reinstated the 'two-year rule'  
23 because he thought it was necessary to address staffing issues."  
24 • Complaint ¶ 24: "That, despite reservations about the 'two-year rule', LVPPACE  
25 President Terri Yada chose to allow implementation of the rule in deference to the new  
26 Sheriff and agreed to only raise the issue with it if it created problems in the future."  
27  
28

- 1 • Complaint ¶ 30: "That, at all times herein, the LVMPD, in an effort to address staffing  
2 concerns, chose to create a rule that treated the LEST classification series different from  
3 all other civilian employees in the LVPPACE bargaining unit."

4 2. Under the facts alleged above, the basis for the Complaint is that Respondent  
5 began treating LEST personnel differently than other personnel in 2002.

6 **CONCLUSIONS OF LAW**

7 1. Pursuant to NRS 288.110(4), any claim arising more than six months before the  
8 filing of the Complaint herein, i.e., before February 28, 2005, is barred. The Complaint,  
9 alleging that LEST employees became the subject of a discriminatory rule in 2002, i.e., three  
10 years before the filing of the Complaint herein, is therefore barred. The limitations period of  
11 NRS 288.110(4) cannot simply be tolled by an assertion of a reservation of rights.

12 2. A challenge to a practice, in this case the reimposition of the two-year rule, is not  
13 saved from the bar of NRS 288.110(4) by subsequent changes therein, even were such alleged in  
14 the Complaint.

15 3. NRS 288.270(1)(f) prohibits discrimination "because of race, color, religion, sex,  
16 age, physical or visual handicap, national origin or because of political or personal reasons or  
17 affiliations." Disparate treatment based on the role or function of an employee does not in itself  
18 raise any inference of discrimination because of race, color, religion, sex, physical or visual  
19 handicap, national origin or because of political or personal reasons or affiliations. Without a  
20 reasonable basis in the Complaint for inferring discrimination based on the enumerated  
21 categories, the Complaint fails to state a prohibited practice under NRS 288.270(1)(f).

22 4. A complaint may be dismissed "(i)f the board determines that no probable cause  
23 exists for the complaint... ." NAC 288.375(1).

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**DECISION AND ORDER**

The Board determines that, under the facts as alleged in the Complaint, the Complaint is barred by the statute of limitations and fails to allege a claim under NRS 288.270(1)(f). The Board therefore declines to address the issue of exhaustion of contractual remedies.

IT IS HEREBY ADJUDGED, DECREED AND ORDERED that this matter is dismissed with prejudice, each side to bear its own costs and attorney fees.

DATED this 1<sup>st</sup> day of February, 2006.

LOCAL GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

BY: Tamara E. Barengo

TAMARA E. BARENGO, Chairman

BY: John E. Hicks

JOHN E. HICKS, ESQ., Vice-Chairman

BY: Janet Trost

JANET TROST, ESQ., Board Member