

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

5 MICHAEL J. KNIGHT,
6 Complainant,

7 vs.

8 POLICE OFFICER'S ASSOCIATION OF
9 THE CLARK COUNTY SCHOOL
DISTRICT,

10 Respondent.

ITEM NO. 621

CASE NO. A1-045873

ORDER

11 For Complainant: Gus W. Flangas, Esq.
12 Ann E. Kolber, Esq.
Flangas McMillan Law Group

13 For Respondent: John Dean Harper, Esq.

14
15 **BACKGROUND/STATEMENT OF THE CASE**

16 On October 26, 2005, Complainant Michael J. Knight, a former local government employee,
17 filed a Complaint with the Local Government Employee-Management Relations Board ("the
18 Board") contending that Respondent Police Officer's Association of the Clark County School
19 District ("Respondent") (1) breached, in bad faith, its duties under the Negotiated Agreement
20 Respondent had with the Clark County School District ("CCSD"), of which Complainant was a
21 Third Party Beneficiary; (2) breached the implied covenant of good faith and fair dealing of the
22 Negotiated Agreement; (3) should be declared to have failed to act in good faith under the
23 Negotiated Agreement; and (4) should be enjoined to submit Complainant's grievance to
24 arbitration.

25 On November 23, 2005, Respondent filed a Motion to Dismiss Complaint on the grounds
26 that the Complaint is barred by NRS 288.110(4), in that the events complained of occurred more
27 than six months before filing the Complaint, contending that the response date of July 28, 2004,
28 stated in Respondents letter dated July 19, 2004, was the last possible event triggering the six-

1 month limitations period and that the October 26, 2005 was therefore untimely. Complainant
2 filed an opposition to the Motion to Dismiss Complaint on December 5, 2005, contending that
3 April 29, 2005, the deadline set for Respondent's response in Complainant's subsequent
4 correspondence, is the appropriate date. Respondent's Reply to Complainant's Opposition to
5 Motion to Dismiss Complaint was filed on December 19, 2005, stating that the "Respondent
6 denied further representation because of Complainant's non-response on July 28, 2004, it took
7 no action after that date; therefore, that date was the 'occurrence which is the subject of the
8 complaint.'"

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

12 FINDINGS OF FACT

13 1. For purposes of this Motion, the Board accepts the following (paraphrased)
14 allegations of fact in the Complaint as true:

- 15 • Complaint ¶ 18: On or about, February 20, 2004, CCSD required that Complainant be
16 subjected to a random drug test. Upon information and belief, on or about February 20,
17 2004, Complainant provided a urine sample to a designated medical laboratory "as
18 requested by CCSD.
- 19 • Complaint ¶ 34: At the evidentiary hearing on March 30, 2004, Complainant argued that
20 the drug test was invalid on its face and that both the testing and reporting procedures
21 were not in conformity with CCSSD Regulation 4231.
- 22 • Complaint ¶ 37: On appeal to the Assistant Superintendent of Schools of CCSD, the
23 Assistant Superintendent upheld the termination.
- 24 • Complaint ¶ 38: The Negotiated Agreement provided that Respondent may submit the
25 matter to arbitration.
- 26 • Complaint ¶ 39: The Negotiated Agreement provided as follows:
27 "The expenses of arbitration, including the arbitrator's fee, costs, expenses, and
28 the cost of the arbitrator's transcript, shall be borne equally by the School District
and the Association. However, all other expenses incurred by either party in the
preparation or presentation of its case are to be borne solely by the party incurring

1 such expenses. It is understood and agreed only the Association has the right to
2 request Arbitration."

3 • Complaint ¶ 40: Complainant, through his counsel, submitted a written request to
4 Respondent on June 16, 2004 that Respondent submit Complainant's grievance to
5 arbitration.

6 • Complaint ¶ 41: On July 19, 2004, Respondent sent a letter directly to Complainant,
7 which provided, in pertinent part:

8 "...in the event that you wish to pursue this matter, the Association will 'sponsor'
9 your arbitration. The Association is responsible for one half of the arbitration
10 fees and costs. In the event that you wish to accept, you will be required to pay
11 the Association all costs and expenses of the arbitration. The average costs and
12 expenses of an arbitrator is \$3,600.00. Therefore, in order to move forward the
13 Association must be paid \$1800.00 by you and obtain a copy of this letter
14 executed by you.

15 It is our understanding that the District has waived all time lines. However,
16 please contact me on or before noon, July 28, 2004, otherwise the Association
17 will consider this matter closed."

18 • The letter referred to in the foregoing paragraph and attached as exhibit 8 to the
19 Complaint, opens by stating that the "purpose of this letter is to officially inform you that
20 the Executive Board has determined that your grievance is not meritorious and pursuant
21 to the Association's Constitution and Bylaws (Article XVII) and the Duty of Fair
22 Representation that it will not provide you legal representation and/or arbitration fees and
23 costs to pursue arbitration."

24 • Complaint ¶ 42: On July 27, 2004, Complainant's counsel once again requested
25 submission of the grievance to arbitration.

26 • Complaint ¶ 43: Respondent failed to respond to the July 27, 2004 letter.

27 • Complaint ¶ 44: On April 21, 2005, Complainant's counsel once again requested
28 submission of the grievance to arbitration, demanding a response by April 29, 2005.

• Complaint ¶ 45: Respondent failed to provide a written response.

CONCLUSIONS OF LAW

1. Pursuant to NRS 288.110(4), any claim arising more than six months before the
filing of the Complaint herein, i.e., before April 26, 2005, is barred. The Complaint, alleging

1 that Respondent denied Complainant's request to take his matter to arbitration unless
2 Complainant paid one half the costs, alleges that the occurrence giving rise to the Complaint
3 occurred on July 19, 2004, one year and four months prior to the filing of the Complaint. The
4 subsequent correspondence by Complainant's counsel, did not change the time period for filing.
5

6 **DECISION AND ORDER**

7 The Board determines that, under the facts as alleged in the Complaint, the Complaint is
8 barred by the statute of limitations under NRS 288.110(4).

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

11 DATED this 1st day of February, 2006.
12

13 LOCAL GOVERNMENT EMPLOYEE-
14 MANAGEMENT RELATIONS BOARD

15 BY: Tamara E. Barenigo
16 TAMARA E. BARENGO, Chairman

17 BY: John E. Dick
18 JOHN E. DICK, ESQ., Vice-Chairman

19 BY: Janet Frost
20 JANET FROST, ESQ., Board Member
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