

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

5 ERIC SPANNBAUER,  
6 Complainant,

7 vs.

8 CITY OF NORTH LAS VEGAS; NORTH  
9 LAS VEGAS POLICE DEPARTMENT, and  
10 NORTH LAS VEGAS POLICE OFFICERS  
11 ASSOCIATION,

Respondents.

) ITEM NO. 636F

) CASE NO. A1-045885

) **ORDER**

12 For Complainant: John J. Tofano, Esq.

13 For Respondents: Carie A. Torrence, Esq.  
14 North Las Vegas City Attorney's Office

15 Michael A. Urban, Esq.  
16 Douglas V. Ritchie, Esq.  
Laquer, Urban, Clifford & Hodge LLP

17 **FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER**

18 On June 1, 2006, Eric Spannbauer (hereinafter "Spannbauer") filed a Complaint with the  
19 Local Government Employee-Management Relations Board (hereinafter "Board") alleging that  
20 the City of North Las Vegas ("City"), its police department, and/or the North Las Vegas Police  
21 Officers Association ("Association") had committed prohibited practices under NRS 288.270,  
22 i.e., that the police department and/or Association interfered with, restrained or coerced him in  
23 the exercise of any rights guaranteed under NRS chapter 288; that they dominated, interfered or  
24 assisted in the formation or administration of any employee organization; and that they  
25 discriminated against him.

26 This matter was heard by the Board on October 22 and 23, 2007; January 16 and 17,  
27 2008; and February 11 and 12, 2008. A decision was rendered by the Board on or about June 25,  
28 2008. More specifically, the Board ordered as follows:

1           1. That the Board found in favor of Spannbauer, and against the Association, the City of  
2 North Las Vegas, and its police department.

3           2. That because of the Association's breach of its duty to fairly represent its members,  
4 and in this case, Spannbauer, and the City's and police department's prohibited labor practices,  
5 the said Association, City, and police department shall cease and refrain from such acts. NRS  
6 288.110(2).

7           3. That the City, police department, and Association shall jointly and severally reimburse  
8 Spannbauer for all fees and costs incurred in bringing this action before the Board and all other  
9 fees and costs incurred by Spannbauer by reason of the Association's breach of duty of  
10 representation and the City's and police department's prohibited labor practices. Spannbauer  
11 filed the appropriate request for fees and costs, with oppositions filed thereto; and on the 30th  
12 day of July, 2008, the Board entered an order awarding Spannbauer the sum of \$66,825.00 as  
13 attorney fees and the sum of \$8,769.12 as costs.

14           4. That the Association, City, and police department post notice of their prohibited labor  
15 practices as identified in this action on all bulletin boards for communications with all Police  
16 Department personnel and Association members.

17           On July 3, 2008, Spannbauer filed a motion to modify or amend the decision, or in the  
18 alternative, for rehearing or reconsideration. Oppositions were filed thereto and Spannbauer  
19 filed reply points and authorities. On July 24, 2008, the Board entered an order that the motion  
20 to reconsider was granted, ordering the parties to brief the specific issues raised in the motion  
21 and the case of NSEU v. Orr, 121 Nev. 675, 119 P.3d 1259 (2005). All parties complied with  
22 the order, filing their respective briefs.

23           The City and police department filed a "Request for Clarification." No oppositions were  
24 filed thereto.

25           By this reference, IT IS HEREBY ORDERED that the Board hereby adopts the prior  
26 orders entered herein, more specifically, that order with findings and conclusions issued on the  
27 25th day of June, 2008, and the order awarding attorneys' fees and costs to Spannbauer issued on  
28 the 30th day of July, 2008. The Board hereby incorporates all prior rulings, findings,

1 conclusions, and orders contained in the two prior orders mentioned herein as if they were more  
2 specifically contained herein.

3 The motion filed by Spannbauer more specifically requested that (a) he be reinstated  
4 retroactive to November 7, 2005; (b) award him back pay and benefits retroactive to November  
5 7, 2005; (c) allow Spannbauer to waive his pre-termination hearing and proceed directly to  
6 arbitration; and (d) for the Association to pay Spannbauer's attorney fees through arbitration and  
7 costs. This matter was noticed for deliberations and decision on October 2, 2008; and was  
8 noticed pursuant to NRS and NAC chapter 288, NRS chapter 233B, Nevada Open Meeting laws.  
9 The Board further rules as follows:

10 (a) Reinstatement

11 At the time that Spannbauer resigned, November 7, 2005, he was on administrative leave  
12 with pay and benefits. The Board previously found that it was not unreasonable for Spannbauer  
13 to rely on the representations of the officers of the Police Department and representatives of the  
14 Association. Resignation was "thrust" upon Spannbauer (Findings of Fact #14 (b)) and the  
15 Respondents were found to treat a similarly situated officer differently. The Board also found  
16 that the Association did not adequately determine, before advising Spannbauer, if case law  
17 existed that an officer can be treated as a probationary employee even though the probation  
18 period had terminated (Findings of Fact #14 (g)) and that contradictory evidence existed as to  
19 whether the Association discussed this claim with its legal counsel.

20 NRS 288.110(2) provides the Board with authority to "order any person to refrain from  
21 the action complained of or to restore the party aggrieved any benefit of which he has been  
22 deprived."

23 The Board ordered the Respondents to refrain from its actions which the Board  
24 determined were prohibited practices but did not restore any benefit to Spannbauer that he had  
25 been deprived. The Board again finds and concludes that Respondents, and each of them,  
26 interfered with, restrained, and/or coerced Spannbauer from exercising his rights as a confirmed  
27 officer. He was a confirmed officer in light of him starting his employment on February 9, 2004  
28 and his probation ended August 9, 2005. The City did not extend Spannbauer's probation nor

1 was Spannbauer non-confirmed. The prohibited labor practices of restraint, interference, and  
2 coercion occurred before November 7, 2005 and culminated with Spannbauer's resignation  
3 on November 7, 2005. Thus, to restore Spannbauer to the position he was in prior to the  
4 prohibited practices, he would have to be placed on administrative leave with pay and benefits.

5 THEREFORE, IT IS ORDERED that the benefit deprived is hereby restored to  
6 Spannbauer, i.e., he is to be placed on administrative leave with pay and benefits awaiting a  
7 proper notice and conclusion of a pre-termination hearing. Back pay and benefits are to be  
8 restored to Spannbauer from November 7, 2005 to the time a pre-termination hearing is held.  
9 The parties are to reschedule the pre-termination hearing previously vacated due to Spannbauer's  
10 improperly induced resignation.

11 (b) Pre-termination Hearing

12 Because of the improper inducement to resign with the improper restraint, interferences,  
13 and/or coercion regarding his rights as a "confirmed officer," Spannbauer was deprived of a pre-  
14 termination hearing. Without that hearing, his due process rights to defend himself against the  
15 Napolitano incident, and other allegations, have been violated. Furthermore, it would exceed  
16 this Board's authority to order the parties to forego that hearing and proceed directly to  
17 arbitration under the Supreme Court's ruling in Orr.

18 (c) Union Representation

19 The Board acknowledges that employee organizations can refuse to proceed with  
20 grievances if the employee organization determines the grievances lack merit. See Association's  
21 Response p. 10-12. In this case, however, the Association had already determined that  
22 Spannbauer's grievance had merit as it appointed Chris Cannon to represent Spannbauer.  
23 Additionally, the Board determined that the City did not truly believe Spannbauer was a  
24 probationary employee as it did not automatically terminate him as they could have as a  
25 probationary employee, nor did they extend his probationary period based upon Napolitano's  
26 allegations (Findings of Fact #14 (h) and Findings of Fact #15 (d)), nor did they non-confirm  
27 him.

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1           Therefore, it is HEREBY ORDERED that the Association continue to represent  
2 Spannbauer through the pre-termination hearing and beyond, if required by the parties' CBA, as  
3 Spannbauer was a confirmed police officer.

4           The Board notes that even probationary employees have rights under NRS chapter 288,  
5 i.e., a local government employer and employee organization cannot commit a prohibited labor  
6 practice against a probationary employee.

7           The City indicated that there "was case law on point" and cites a case from the 6th  
8 Circuit Court and two cases from Appellate Court. Photocopies of the cases were not attached to  
9 the response, therefore, it is unclear whether these cases involve local government employers and  
10 whether the statutes at issue in Ohio are identical to NRS chapter 288. Thus, it does not appear  
11 that these cases are binding on this Board.

12           The City also argues constructive discharge in its response; however, the Board finds and  
13 concludes that substantial evidence exists in the record that the Respondents restrained,  
14 interfered, and/or coerced Spannbauer depriving him of rights guaranteed him pursuant to NRS  
15 chapter 288 as a local government employee.

16           (d) Fees

17           It would be beyond this Board's authority to order fees and costs to Spannbauer for the  
18 pursuit of his grievance thru arbitration. Thus, such a request is HEREBY DENIED.

19           (e) Request for Clarification

20           The City and police department committed the prohibited labor practices of interference  
21 with, restraint, and coercion regarding the rights of a government employee as guaranteed under  
22 NRS chapter 288. The notice which this Board ordered to be posted regarding such prohibited  
23 labor practices specifically identified such prohibited labor practices. The Board's order  
24 requiring the posting of such notice was not ambiguous nor was the finding and conclusion that  
25 the City and police department had interfered with, restrained, and coerced Spannbauer in his  
26 rights guaranteed under NRS chapter 288.

27           Concerning the "rights guaranteed to [Spannbauer] as a confirmed police officer," the  
28 Board found that Spannbauer was confirmed based upon the City and police department's failure

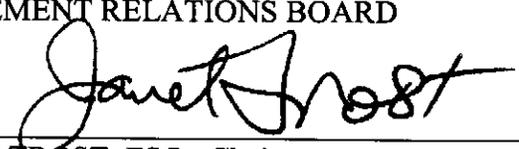
1 to non-confirm Spannbauer or extend his probationary period and the fact that his probationary  
2 period had expired by the time the City and police department acted on the events occurring  
3 while Spannbauer was on probation. The rights guaranteed to Spannbauer included the right to  
4 have a pre-termination hearing and Spannbauer was deprived of that right based upon the City  
5 and police department's interference with, restraint, and coercion.

6 (f) Administrative Notice

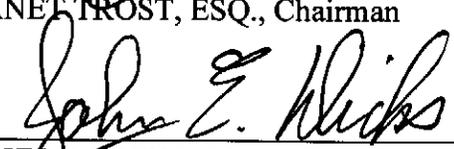
7 The Board takes administrative notice that a Stipulation to Dismiss signed by Spannbauer  
8 and the Association was filed with the Board on October 2, 2008. Based upon Nevada's open  
9 meeting laws, this stipulation cannot be addressed at this time. As is typical and appropriate, the  
10 Board's staff will place the stipulation on the Board's next agenda for action, if any.

11 DATED this 2nd day of October, 2008.

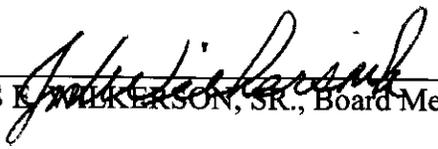
12 LOCAL GOVERNMENT EMPLOYEE-  
13 MANAGEMENT RELATIONS BOARD

14 BY:   
15 \_\_\_\_\_

JANET TROST, ESQ., Chairman

16 BY:   
17 \_\_\_\_\_

JOHN E. DICKS, ESQ., Vice-Chairman

18 BY:   
19 \_\_\_\_\_

JAMES E. WILKERSON, SR., Board Member

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**NOTICE OF ENTRY OF ORDER**

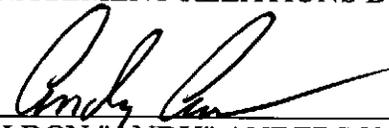
12 To: John J. Tofano, Esq.  
13 To: Carie A. Torrence, Esq.  
14 North Las Vegas City Attorney's Office  
15 To: Michael A. Urban, Esq.  
16 Douglas V. Ritchie, Esq.  
Laquer, Urban, Clifford & Hodge LLP

17 PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on  
18 October 2, 2008.

19 A copy of said order is attached hereto.

20 DATED this 3rd day of October, 2008.

21 LOCAL GOVERNMENT EMPLOYEE-  
22 MANAGEMENT RELATIONS BOARD

23 BY   
24 \_\_\_\_\_

25 ELDON "ANDY" ANDERSON, Commissioner  
26  
27  
28

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Local Government Employee-Management  
3 Relations Board, and that on the 3rd day of October, 2008, I served a copy of the foregoing  
4 ORDER by mailing a copy thereof, postage prepaid to:

5 John J. Tofano, Esq.  
6 710 S Ninth Street  
7 Las Vegas, NV 89101

8 Carie A. Torrence, Esq.  
9 North Las Vegas City Attorney's Office  
2225 Civic Center Drive, #228  
North Las Vegas, NV 89030

10 Michael A. Urban, Esq.  
11 Douglas V. Ritchie, Esq.  
12 Laquer, Urban, Clifford & Hodge LLP  
4270 South Decatur Blvd, Suite A-9  
Las Vegas, NV 89103

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18 JOYCE HOLIZ, Board Secretary  
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