

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

5 MARK ANTHONY BOYKIN,

6 Complainant,

7 vs.

8 CITY OF NORTH LAS VEGAS POLICE
9 DEPARTMENT,

10 Respondent.

) ITEM NO. 674D

) CASE NO. A1-045921

) **ORDER**

11 For Complainant: Adam Levine, Esq., Law Offices of Daniel Marks

12 For Respondents: L. Steven Demaree, Esq.
13 City of North Las Vegas

14 On the 28th day of October, 2009, this matter came on before the State of Nevada, Local
15 Government Employee-Management Relations Board ("Board"), for consideration and decision
16 pursuant to the provisions of NRS and NAC chapters 288, NRS chapter 233B, and was properly
17 noticed pursuant to Nevada's open meeting laws.

18 Respondent City of North Las Vegas Police Department ("NLVPD") filed its Motion to
19 Dismiss on September 29, 2009. An Opposition to the Motion was filed on October 16, 2009 by
20 Complainant Boykin. A Reply was filed by NLVPD on October 26, 2009.

21 Respondent NLVPD has argued that the Complaint should be dismissed as a hearing has
22 not been scheduled within the 90-day time frame specified in NRS 288.110(2). Respondent
23 argues that NRS 288.110(2) is clear and unambiguous. Respondent further argues that
24 jurisdiction over the Complaint was lost when the Board did not hold a hearing in this matter
25 within the 90-day time frame, relying upon a passage from the Nevada Supreme Court decision
26 in Rosequist v. Int'l Assoc. of Firefighters Local 1908, 118 Nev. 444, 451 (2002) to support the
27 loss of jurisdiction argument. Respondent also refers to Carrigan v. Board of Fire and Police
28 Commissioners of the Village of Glendale Heights, 459 N.E.2d 659 (Ill.App. 1984).

1 Complainant Mark Boykin, in opposition, argues that Respondent's proposed
2 interpretation of NRS 288.110(2) would lead to unreasonable or absurd results and advocates
3 that the Board retain jurisdiction over this matter. Complainant points out that the Board
4 experienced a loss of legislative funding. Complainant also asserts that the 90-day time frame in
5 NRS 288.110(2) has not yet started to run as it is not clear whether the Board has decided to hear
6 this matter.

7 The motion requires the Board to consider and interpret the 90-day time frame of NRS
8 288.110(2) and any consequences that follow when the 90-day time frame is not met. It does
9 appear that on February 9, 2009 the Board ordered that this matter be set for a hearing, and the
10 hearing has not yet occurred. The Board, however, rejects the arguments made by NLVPD that a
11 failure to hold a hearing within 90 days under NRS 288.110(2) will operate to divest the Board
12 of jurisdiction over the matter.

13 NRS 288.110 does not address the issue of jurisdiction or require a dismissal. The
14 authority cited by NLVPD for this contention, *Rosequist v. Int'l Assoc. of Firefighters Local*
15 *1908*, 118 Nev. 444 (2002), does not hold that the Board loses jurisdiction over a matter when
16 the 90-day time frame of NRS 288.110(2) is not met. The other authority cited by NLVPD,
17 *Carrigan v. Board of Fire and Police Commissioners of the Village of Glendale Heights*, 459
18 *N.E.2d 659* (Ill.App. 1984), is from a foreign jurisdiction and is not binding on this Board.
19 Therefore NLVPD's argument that the Board lacks jurisdiction in this matter does not appear to
20 be supported by legal authority which would require the Board to dismiss this matter.

21 In light of the Nevada Supreme Court's decision in *Village League to Save Incline*
22 *Assets, Inc. v. State ex rel Board of Equalization*, 194 P.3d 1254 (Nev. 2008), a dismissal or loss
23 of jurisdiction is not a proper result when a statute is merely directory and not mandatory.
24 Because we construe the 90-day time frame of NRS 288.110(2) to be directory, and not
25 mandatory, the dismissal sought by NLVPD is not proper and the motion is accordingly denied.

26 Consistent with the directory nature of NRS 288.110(2), the Board endeavors to conduct
27 hearings within the 90-day time frame, however in this circumstance the Board was unable to do

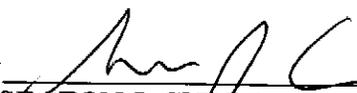
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1 so due to the lack of legislative funding identified by Complainant. A Complainant should not
2 be prejudiced by the financial inability of this Board to convene and hold a hearing.

3 Based upon the foregoing and good cause appearing therefore, IT IS HEREBY
4 ORDERED that Respondent's Motion to Dismiss is Denied.

5 DATED this 18th day of November, 2009.

6 LOCAL GOVERNMENT EMPLOYEE-
7 MANAGEMENT RELATIONS BOARD

8
9 BY: 
10 SEATON J. CURRAN, ESQ., Chairman

11 BY: 
12 JAMES E. WILKERSON, SR., Vice-Chairman

13 BY: 
14 SANDRA MASTERS, Board Member

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 19th day of November, 2009, I served a copy of the foregoing
4 ORDER by mailing a copy thereof, postage prepaid to:

5 Adam Levine, Esq.
6 Law Offices of Daniel Marks
7 530 S. Las Vegas Blvd., #300
8 Las Vegas, NV 89101

9 L. Steven Demaree, Esq.
10 Noel Eidsmore, Esq.
11 City of North Las Vegas
12 2225 Civic Center Drive, #228
13 North Las Vegas, NV 89030

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15 JOYCE HOLTZ, Board Secretary

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