

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

JESSICA LARRAMAENDY,
Complainant,
vs.
CITY OF LAS VEGAS,
Respondents.

Item # 741A
CASE NO. A1-045998

ORDER

For Complainant: Jessica Larramaendy and her attorney Amy M. Rose, Esq,
For Respondents: City of Las Vegas and their attorney Jack Eslinger, Esq.

On the 10th day of August, 2011, this matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board"), for consideration and decision pursuant to the provisions of the Local Government Employee-Management Relations Act ("the Act"), NAC chapter 288, NRS chapter 233B, and was properly noticed pursuant to Nevada's open meeting laws. The Board held a hearing in this matter on August 9, 2011 in Las Vegas, Nevada.

Jessica Larramendy is a local government employee, employed by the City of Las Vegas. In this case, Ms. Larramendy alleges that the City has violated the Act by discriminating against her due to personal reasons in violation of NRS 288.270(1)(f), and also discriminating against her in violation of NRS 288.270(1)(c) due to the fact that she is not a member of the Las Vegas City Employees Association (LVCEA). The LVCEA is the recognized bargaining agent for Ms. Larramendy's bargaining unit. Ms. Larramendy has identified two occurrences that form the basis of her complaint: a miscalculation of her seniority with the City and a refusal to accept a grievance that she filed with the City regarding the seniority miscalculation. Each occurrence will be addressed separately.

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1 Seniority Miscalculation

2 Ms. Larramendy has asserted that the City discriminated against her by miscalculating
3 her seniority date and denying her two years and six months of seniority to which she is entitled
4 under the provisions of the operative collective bargaining agreement. This allegation dates back
5 to 2005.

6 Previously the City had brought a motion before this Board to dismiss the complaint
7 based upon the six-month statute of limitations found in NRS 288.110(4). The Board denied the
8 motion based upon the pleadings and exhibits that were before the Board at that time. At the
9 hearing, the City re-asserted the statute of limitations defense.

10 The evidence presented to the Board at the hearing establishes that Ms. Larramendy's
11 claims which are based upon a miscalculation of her seniority date were not timely filed with this
12 Board.

13 Specifically, the Board heard testimony and was presented with documentary evidence
14 which established that prior to 2005 Ms. Larramendy's position with the City had been an
15 Administrative Assistant. In 2005, Ms. Larramendy's job classification was changed from an
16 Administrative Assistant to a Business Specialist I. Subsequent seniority lists dated Ms.
17 Larramendy's seniority to the date that her classification had changed from an Administrative
18 Assistant to a Business Specialist I and did not account for the 3 years that Ms. Larramendy had
19 spent as an Administrative Assistant. Under the collective bargaining agreement, which was
20 introduced into evidence before the Board, an employee's seniority status determines which
21 employees may be subject to a reduction in force, therefore it is vital that the City correctly
22 calculate an employee's seniority status.

23 At the hearing, Ms. Larramendy testified that at some point in 2008, she had reviewed the
24 City's calculation of her seniority status and had signed off on her status as being correct.
25 Subsequently, Ms. Larramendy reviewed the collective bargaining agreement and then
26 discovered that the City's seniority calculation may have been incorrect to deprive her of the 3
27 years that she had spent as an Administrative Assistant.

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1 This Board is bound by a six-month statute of limitations. NRS 288.110(4). This section
2 prevents the Board from hearing matters that are filed more than six months after the time that an
3 employee knows or should have known that a prohibited labor practice may have occurred. See
4 Cone v. Nevada Service Employees Union, 116 Nev. 473, 477, 998 P.2d 1178, 1181 n. 2 (2000).

5 Based upon Ms. Larramendy's testimony, the Board finds that Ms. Larramendy knew or
6 should have known of the alleged prohibited labor practice no later than 2008 when she reviewed
7 and accepted the City's seniority calculations. Ms. Larramendy filed her complaint with this
8 Board on November 10, 2010. Under these facts, which were established at the hearing, Ms.
9 Larramendy's complaint alleging discrimination based upon an incorrect seniority calculation
10 cannot be timely.

11 As the allegation of discrimination regarding the seniority calculation falls outside of the
12 statute of limitations, the Board is precluded from reaching the merits of this claim. We therefore
13 make no finding as to whether or not the City correctly calculated Ms. Larramendy's seniority.

14 Refusal to Process Ms. Larramendy's Grievance

15 On May 16, 2010, Ms. Larramendy filed a grievance with the City requesting that her full
16 seniority be restored. Ms. Larramendy testified that the only contact from the City regarding the
17 grievance, at least before it was denied, was a telephone call to inquire why the grievance did not
18 have a log number on the grievance form. On August 31, 2010, Ms. Larramendy was informed via
19 e-mail that she had filed her grievance outside of the timeframe in which seniority protests could
20 be filed, and that she would have to wait until the posting of the next annual seniority list. The e-
21 mail also informed Ms. Larramendy that the City could only deal with the LVCEA on this issue.

22 Undaunted, Ms. Larramendy filed a Step II grievance on September 9, 2010. On
23 September 29, 2010, a meeting occurred to address Ms. Larramendy's grievance. This meeting
24 was attended by Ms. Larramendy, representatives of the LVCEA including LVCEA's legal
25 counsel, and the City's Human Resources Director. On October 1, 2010, Ms. Larramendy
26 inquired about the outcome of the September 29 meeting. She was then informed that her
27 grievance was denied.

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1 On October 7, 2010, Ms. Larramendy attempted to move her grievance to Step III. The
2 response that she received to her Step III request from Dan Tartwater, the City's Human
3 Resources Director, stated "...I do not believe that you have the right to file a grievance on this
4 issue. I have discussed this issue with the union and while they have a right to file a grievance
5 they have not." (Exhibit 1.14.) Ms. Larramendy asserts that the City's conduct in handling her
6 grievance amounted to discrimination.

7 As each of these occurrences took place within six months of the time that Ms.
8 Larramendy filed her complaint with this Board, the allegation that Ms. Larramendy was the
9 victim of discrimination when the City refused to process her grievance is timely and the Board
10 will address the merits of these allegations.

11 NRS 288.270(1)(f) provides that it is a prohibited labor practice for a local government
12 employer to discriminate against an employee for personal reasons. Discrimination based on
13 personal reasons occurs where an employer takes adverse action against an employee for "non-
14 merit-or-fitness factors such the dislike of or bias against a person which is based upon an
15 individual's characteristics, beliefs, affiliations, or activities that do not affect the individuals
16 merit or fitness for a particular job." Kilgore v. City of Henderson, Item No. 550H, EMRB Case
17 No. A1-045763 (2005). A complainant bears the initial burden to present sufficient evidence to
18 support an inference that personal reasons were a motivating factor for an employer's adverse
19 action. Wilson v. City of North Las Vegas, Item No. 677E, EMRB Case No. A1-045925 (2010).

20 In this case, Ms. Larramendy did not present sufficient evidence to support an inference
21 of discrimination based on personal reasons. The evidence at the hearing established that Ms.
22 Larramendy raised a concern over her seniority status to the City, which was addressed in some
23 fashion in a meeting with City, Human Resources and Association officials. In this there is no
24 evidence of discrimination for personal reasons on the part of the City. Although Ms.
25 Larramendy testified that she felt that the LVCEA president would "not give her the time of
26 day," this does not reflect on the City.

27 As there is no evidence of discrimination on personal reasons, the Board finds that the
28 City did not discriminate against Ms. Larramendy for personal reasons.

1 Neither does the Board find evidence of discrimination to encourage union membership.
2 NRS 288.270(1)(c) states that it is a prohibited labor practice for an employer to “[d]iscriminate
3 in regard to hiring, tenure or any term or condition of employment to encourage or discourage
4 membership in any employee organization.” In the absence of direct evidence of discrimination,
5 a complainant may show a violation of NRS 288.270(1)(c) if encouragement or discouragement
6 of union membership is a reasonably foreseeable consequence of an employer’s action. Ormsby
7 County Teachers Ass’n v. Carson City School District, Item No. 197, EMRB Case No. A1-
8 045405 (1987) (citing to NLRB v. Erie Resistor Corp., 373 U.S. 221 (1963)).

9 The Board does not see sufficient evidence in this case to support an inference that the
10 City’s actions would have the reasonably foreseeable consequence to either encourage or
11 discourage membership in the Association. Rather, the City received a complaint from one of its
12 employees who was a non-member of the Association and convened a meeting to discuss the
13 issues that Ms. Larramendy raised. These actions do not support a conclusion that an employee
14 would be naturally driven towards membership in the Association. Therefore the Board sees no
15 evidence of discrimination against Ms. Larramendy to encourage her to join the Association.

16 Based upon the forgoing, the Board makes the following findings of fact and conclusions
17 of law.

18 **FINDINGS OF FACT**

- 19 1. Jessica Larramendy is a local government employee, employed by the City of Las
20 Vegas
- 21 2. In 2005, Jessica Larramendy’s job classification with the City was changed from
22 an Administrative Assistant to a Business Specialist I.
- 23 3. After the change in classification to a Business Specialist I, the City did not
24 include Ms. Larramendy’s time spent as an Administrative Assistant when calculating Ms.
25 Larramendy’s seniority status.
- 26 4. At some time in 2008, Ms. Larramendy reviewed and approved a document
27 indicating that the City’s seniority calculation did not include time that Ms. Larramendy spent as
28 an Administrative Assistant.

1 2. The Board has exclusive jurisdiction over the parties and the subject matters of
2 the Complaint on file herein pursuant to the provisions of NRS Chapter 288.

3 3. The Board is precluded, by operation of NRS 288.110(4), from considering Ms.
4 Larramendy's claims which are based upon a miscalculation of her seniority date.

5 4. Ms. Larramendy's claims which are based upon the City's action in 2010 to
6 refuse the grievance which she had filed are timely under NRS 288.110(4).

7 5. The evidence presented to the Board does not support an inference that
8 discrimination for personal reasons was a motivating factor in the City's refusal of Ms.
9 Larramendy's grievances.

10 6. The City did not violate NRS 288.270(1)(f) by discriminating against Ms.
11 Larramendy on the basis of personal reasons when it refused her grievance.

12 7. The Board was not presented direct evidence of discrimination to encourage or
13 discourage membership in an employee organization.

14 8. The evidence presented to the Board does not support an inference that
15 encouragement or discouragement in an employee organization was a reasonably foreseeable
16 consequence of the City's actions.

17 9. The City did not violate NRS 288.270(1)(c) by discriminating against Ms.
18 Larramendy so as to encourage or discourage membership in the Association when the City
19 refused her grievance.

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1 STATE OF NEVADA
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD
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5 JESSICA LARRAMAENDY,

6 Complainant,

7 vs.

8 CITY OF LAS VEGAS,

9 Respondents.

CASE NO. A1-045998

NOTICE OF ENTRY OF ORDER

10 TO: Jessica Larramaendy and her attorney Amy M. Rose, Esq.

11 TO: City of Las Vegas and their attorney Jack Eslinger, Esq.

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13 PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on
14 August 18, 2011.

15 A copy of said order is attached hereto.

16 DATED this 18th day of August, 2011.

17 LOCAL GOVERNMENT EMPLOYEE-
18 MANAGEMENT RELATIONS BOARD

19
20 BY


JOYCE HOLTZ, Executive Assistant

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 18th day of August, 2011, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

Amy M. Rose, Esq.
Estaban-Trinidad Law, PC
4315 North Rancho Drive, Suite 110
Las Vegas, NV 89130

Jack Eslinger, Esq.,
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400 East Stewart Avenue, 9th Floor
Las Vegas, NV 89101


JOYCE HOLTZ, Executive Assistant

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