

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

5 WASHOE COUNTY PUBLIC ATTORNEYS)
6 ASSOCIATION,)

7 Complainant,)

8 vs.)

9 WASHOE COUNTY,)

10 Respondents,)
11

ITEM NO. 750

CASE NO. A1-046001

ORDER

12 For Complainant: Francis C. Flaherty, Esq.

13 For Respondent: David Watts-Vial, Esq.

14 On the 14th day of April, 2011, 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 On January 12, 2011, Respondent Washoe County filed a motion to dismiss with the
19 Board. Complainant Washoe County Public Attorneys Association filed an opposition the
20 motion and countermotion for summary judgment on February 4, 2011. The County filed its
21 reply points and authorities on February 22, 2011, and the Association files its reply points and
22 authorities in support of its countermotion on March 9, 2011. The Board has considered the
23 pleadings and exhibits presented by the parties. Each motion will be addressed separately.

24 Motion to Dismiss

25 The County asserts in its motion that it has no obligation to negotiate with the
26 Association over discipline and discharge procedures based upon a declaratory order entered by
27 the Second Judicial District Court in 1992 which contains a conclusion stating:

28 ///

1 Legal professional employees of Washoe County are at-will employees
2 serving at the pleasure of their appointing authorities and as such, Washoe
3 County is not obligated by the provisions of NRS 288.150 to bargain with
4 the Association over discharge and disciplinary procedures.

5 Respondent's Exhibit A.

6 The District Court's decision was apparently appealed to the Nevada Supreme Court, but
7 was dismissed by means of an Order Dismissing Appeal, entered on November 3, 1993.

8 Respondent's Exhibit B.

9 Given these orders from the District Court and the Nevada Supreme Court, the County
10 asserts that question of its duty to bargain with the Association is *res judicata* and asks that the
11 Board dismiss the complaint entirely.

12 *Res judicata* is an affirmative defense. Schwartz v. Schwartz, 95 Nev. 202, 204, 591 P.2d
13 1137, 1139 (1979). The County, as the Respondent in this matter, bears the burden to establish
14 that each element of the *res judicata* defense is satisfied. Laborers Int'l Union of North America,
15 Local 169 v. Washoe Medical Center, EMRB Case No. 1, Item No. 1 (1970).

16 Although the County uses the broad term *res judicata*, it is really asserting that the
17 question in this case is controlled by the doctrine of issue preclusion. Five Star Capital Corp. v.
18 Ruby, 124 Nev. Adv. Op. 88, 194 P.3d 709, 714 (2008).

19 In order to establish that issue preclusion applies, the County must prove: (1) the issue
20 decided in the previous litigation must be identical to the issue presented in the current action;
21 (2) the initial ruling must have been on the merits and become final; (3) the party against whom
22 the judgment is asserted must have been a party or in privity with a party to the prior litigation;
23 and (4) the issue was actually and necessarily litigated. Id. at 194 P.3d 713.

24 The County's motion and supporting evidence are insufficient to establish the defense of
25 issue preclusion. Specifically, the Board is unable to discern from the pleadings submitted by the
26 parties whether or not the first and fourth elements of the issue preclusion defense are
27 established. Therefore, the County's motion will be denied, without prejudice.

28 ///

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

WASHOE COUNTY PUBLIC ATTORNEYS)
ASSOCIATION,)

Complainant,)

vs.)

WASHOE COUNTY,)

Respondents,)

CASE NO. A1-046001

NOTICE OF ENTRY OF ORDER

To: Francis C. Flaherty, Esq.

To: David Watts-Vial, Esq

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on
April 22, 2011.

A copy of said order is attached hereto.

DATED this 22nd day of April, 2011.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY


JOYCE A. HOLTZ, Executive Assistant

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 22nd day of April, 2011, I served a copy of the foregoing
4 ORDER by mailing a copy thereof, postage prepaid to:

5 Francis C. Flaherty, Esq.
6 Dyer, Lawrence, Penrose, Flaherty, Donaldson, & Prunty
7 2805 Mountain Street
8 Carson City, NV 89703

9 David Watts-Vial, Esq.
10 Deputy District Attorney
11 Washoe County District Attorney
12 One South Sierra Street
13 P.O. Box 30083
14 Reno, NV 89520

15
16
17
18
19
20
21
22
23
24
25
26
27
28

JOYCE HOLTZ, Executive Assistant