STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

NORMAN W. JAHN, Complainant, vs. LAS VEGAS METROPOLITAN POLICE MANAGERS & SUPERVISORS ASSOCIATION, Respondents,	ITEM: 782 CASE NO. A1-046059 **ORDER**

For Complainant: Norman W. Jahn, in Proper Person

For Respondents: Las Vegas Metropolitan Police Managers & Supervisors Association and their attorney Casey J. Nelson, Esq.

This matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board") on September 12, 2012 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.

On July 31, 2012, the Board entered an order granting Respondent Las Vegas Police Managers and Supervisor's Association's (LVMPMSA) motion to dismiss. The motion had been discussed and decided upon at the Board's July 11, 2012 meeting. At that time, the Board had not received any opposition to the motion. The Board granted the motion on the basis that Complainant Norman Jahn had not filed an opposition to the motion per NAC 288.240(6), and because the affidavits attached to the motion demonstrated a lack of probable cause under NAC 288.375(1). Jahn's Opposition to the motion to dismiss was received by the Board on July 31, 2012.

Shortly thereafter Jahn filed a petition for rehearing on August 6, 2012. On August 14, 2012, the Board granted rehearing on two issues: 1) Whether the Board should consider Jahn's

untimely opposition to the County's motion to dismiss based upon the circumstances and arguments raised in the petition for rehearing; and 2) If the Board did consider the opposition, whether Respondent's motion to dismiss still demonstrates that dismissal of the complaint is appropriate.

Pursuant to NAC 288.362 LVMPMSA filed a response to the petition on August 31, 2012.

Whether the Board Should Consider Jahn's Opposition

Having considered the petition and LVMPMSA's response, the Board determines that consideration of Jahn's opposition to the motion is appropriate. NAC 288.235 allows the Board to overlook defects in the pleadings where the substantial rights of the parties are not affected. LVMPMSA's substantial rights are not adversely affected by consideration of Jahn's opposition, and considering the late-filed opposition is consistent with the general policy that matters should be decided on the merits whenever possible. Hotel Last Frontier Corp. v. Frontier Properties, Inc., 79 Nev. 150, 380 P.2d 293 (1963). Accordingly, the Board will consider Jahn's opposition to the motion to dismiss.

Whether Dismissal is Appropriate In Light of the Opposition

Having determined to give consideration to Jahn's opposition, the Board now turns to consider LVMPMSA's motion in light of Jahn's opposition. Jahn's complaint alleges that LVMPMSA breached the duty of fair representation. A bargaining agent breaches the duty of fair representation when its actions are arbitrary, discriminatory or in bad faith. Weiner v. Beatty 121 Nev. 243, 116 P.3d 829 (2005). The duty of fair representation is typically construed narrowly in order to allow a bargaining agent the discretion to act in what it perceives to be the best interests of those whom it represents. Galindo v. Stoody Co., 793 F.2d 1502, 1514 (9th Cir.1986).

A bargaining agent's actions are arbitrary only if conduct can be fairly characterized as so far outside a "wide range of reasonableness that it is wholly 'irrational' or 'arbitrary.'" Marquez v. Screen Actors Guild, Inc., 525 U.S. 33, 45 (1998). In order to prove discriminatory action, a complainant must "adduce substantial evidence of discrimination that is intentional, severe, and

unrelated to legitimate union objectives." Amalgamated Ass'n of St., Elec. Ry. and Motor Coach Emp. of America v. Lockridge, 403 U.S. 274, 301 (1971). In order to show "bad faith," a complainant must present "substantial evidence of fraud, deceitful action or dishonest conduct." Id at 299.

As the Board has previously noted, the affidavits that LVMPMSA attached to its motion to dismiss detail the actions that LVMPMSA took regarding the investigation and handling of Jahn's grievance. These affidavits indicate that LVMPMSA made a good faith review of Jahn's discipline and consideration of his grievance. As we have previously noted, these affidavits demonstrate a lack of probable cause that LVMPMSA breached its duty of fair representation.

In his opposition, Jahn does not offer any countervailing relevant evidence that tends to show LVMPMSA's actions rose to the level of being arbitrary, discriminatory or taken in bad faith.

Having considered the above, and pursuant to NAC 288.368, the Board finds that our prior order, dated July 31, 2012 warrants modification as follows:

FINDINGS OF FACT

1. Petitioner Norman Jahn filed an opposition to the motion to dismiss on July 31, 2012, which the Board will consider.

2. If any of the foregoing findings is more appropriately construed a conclusion of law, it may be so construed.

CONCLUSIONS OF LAW

1. Pursuant to NAC 288.235(2) the Board will consider the opposition to the motion to dismiss filed by Complainant Norman Jahn on July 31, 2012.

2. The substantial rights of LVMPSA are not prejudiced by consideration of the opposition.

3. The Board may dismiss any matter if the Board determines that no probable cause exists for the complaint. NAC 288.375(1).

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4. The complaint in this matter lacks probable cause because the affidavits attached to LVMPSA's motion to dismiss demonstrate the LVMPMSA's actions were not irrational and were related to legitimate association objectives.

5. Jahn's opposition does not present evidence which would tend to indicate LVMPSA's actions were irrational or were unrelated to legitimate association objectives.

6. There is a lack of probable cause that LVMPMSA's actions were arbitrary or discriminatory towards Jahn.

7. Jahn's opposition does not indicate that LVMPMSA's actions were fraudulent deceitful or dishonest.

8. There is a lack of probable cause that LVMPMSA's actions were taken in bad faith.

9. If any of the foregoing conclusions is more appropriately construed a finding of fact, it may be so construed.

ORDER

Based upon the foregoing, and good cause appearing therefore:

IT IS HEREBY ORDERED that the Board's prior order of July 31, 2012 is modified as set forth herein;

DATED this 24th day of September, 2012.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: _____
SEATON J. CURRAN, ESQ., Chairman

BY: _____
PHILIP E. LARSON, Vice-Chairman

BY: _____
SANDRA MASTERS, Board Member

STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

NORMAN W. JAHN, Complainant, vs. LAS VEGAS METROPOLITAN POLICE MANAGERS & SUPERVISORS ASSOCIATION, Respondents,	CASE NO. A1-046059 **NOTICE OF ENTRY OF ORDER**

To: Norman W. Jahn, in Proper Person

To: Las Vegas Metropolitan Police Managers & Supervisors Association and their attorney Casey J. Nelson, Esq.

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on September 24th, 2012.

A copy of said order is attached hereto.

DATED this 24th day of September, 2012.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY
JOYCE A. 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 24th day of September, 2012, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

Norman W. Jahn
1925 Riverside Drive
Sault Ste. Marie, MI 49783

Casey J. Nelson, Esq.
Aldrich Law Firm LTD.
1601 S. Rainbow Blvd. #160
Las Vegas, NV 89146

JOYCE HOLTZ, Executive Assistant