STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

CELY TABLIZO, Complainant, vs. CITY OF LAS VEGAS, Respondents.	ITEM: 783 CASE NO. A1-045986 **ORDER**

For Complainant: Cely Tablizo and her attorney M. Lani Estaban-Trinidad, Esq.,

For Respondents: City of Las Vegas and their attorney Jack Eslinger, Esq.

This matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board"), on January 10, 2013 for consideration and decision pursuant to the provisions of the Local Government Employee-Management Relations Act ("the Act"); NAC Chapter 288 and NRS chapter 233B. A hearing was held January 9, 2013 in Las Vegas, Nevada.

Complainant Cely Tablizo alleges that Respondent City of Las Vegas ("City) is in violation of NRS 288.270(1)(f) by discriminating against her on the basis of her national origin and discriminating against her based upon personal reasons.

Ms. Tablizo has been a City employee since July of 2000 and since June 19, 2005 has been employed as an Accounting Technician I in the City's Department of Financial Services.

In 2009, following a round of layoffs, the City performed a financial services review in order to ascertain ways in which the City could conserve funds. One idea that emerged from the Financial Services Review was to consolidate Financial Services where Ms. Tablizo was employed, with the Parking Division. Both divisions processed payments from the public to the City and both were supervised by Vanetta Appleyard, the City's manager of Financial Services. This consolidation took place in January of 2010.

In April of 2009 Ms. Tablizo, while still employed with Financial Services, volunteered for training with the City's Parking Department in order to learn Parking's procedures for administering the lockbox. This was in anticipation of the upcoming consolidation. The training was intended to last for one week. At the time, Parking was located at different facility than Financial Services.

It was during this week-long training that Ms. Tablizo first encountered a Parking collection supervisor named Sherry Bonnett. Ms. Tablizo quickly began to experience difficulties in working with Ms. Bonnett. Ms. Tablizo testified at the hearing that Ms. Bonnett adopted a demeaning manor when speaking with her, and that Ms. Bonnett was micromanaging her, even though Ms. Bonnett was not Ms. Tablizo's direct supervisor at the time. Ms. Tablizo also testified that this had made her feel uncomfortable and experience stress, and she used a day of sick leave during this training because of this stress.

Ms. Tablizo' week-long training was extended into two weeks, and according to Ms. Tablizo's testimony, Ms. Bonnett forced Ms. Tablizo to also work as a parking cashier, which Ms. Tablizo believed to be beyond the scope of her voluntary training with the Parking Division.

Ms. Tablizo testified that during this training and due to the additional duties that she was forced to perform, she was not able to complete all of her regularly assigned tasks. Ms. Tablizo also testified that Ms. Bonnett would constantly email her to check and what she was doing and demanding explanations from Tablizo why tasks were not completed. These emails were introduced into evidence at the hearing. Ms. Tablizo also testified that Bonnett would constantly call her co-workers and ask them to report on Tablizo, where she was and what she was doing. Ms. Tablizo testified that this led to teasing by her co-workers.

Ms. Tablizo testified about one email in particular in which Ms. Bonnett asked of Ms. Tablizo: "Question:

1. How or who are you verifying the registrations that don't show a beginning date on them?"

In a subsequent email, Ms. Tablizo asked for clarification and Ms. Bonnett responded by writing "When you reduce a Registration/Not Displayed from $75.00 to $25.00, how are you

verifying that the registration they sent is incorrect if there is not a date showing the day it was registered?"

Ms. Tablizo testified that she construed this email in a negative way and understood it to mean an insult equivalent to asking Ms. Tablizo "who do you think you are?" Ms. Tablizo asserts that this demonstrates personal dislike on the part of Ms. Bonnett. Ms. Tablizo also asserted that Ms. Bonnett insisted on training her on basic tasks and tasks that Ms. Tablizo already knew how to perform, such as using a credit card machine to process payments. Ms. Tablizo kept a diary to document the perceived slights from Ms. Bonnett, which was introduced into evidence at the hearing. Ms. Tablizo testified that she could not recall Ms. Bonnett micromanaging anyone else in this way.

Ms. Tablizo complained to Vanettea Appleyard. Ms. Appleyard encouraged Tablizo and Bonnett to work on improving their working relationship, and met with Ms. Tablizo to address the conflict between them. At that time Ms. Tablizo said, "When the two division merge, I will work with Sherry, not work for Sherry."

Ms. Tablizo's training with the Parking Division concluded after two weeks and Ms. Tablizo returned to Financial Services for a short time. In January of 2010 however, the consolidation of Financial Services with Parking occurred. When this consolidation took place, Ms. Bonnett became Ms. Tablizo's direct supervisor.

When Ms. Bonnett became Ms. Tablizo's supervisor in January 2010 the conflict continued. In February Ms. Bonnett assigned Ms. Tablizo to work as a cashier, which Ms. Tablizo was not inclined to do. Ms. Tablizo also had made remarks about the name of the newly-merged divisions, which prompted a response from Ms. Bonnett in the form of an email expressing disappointment over the remarks that her staff was making. Ms. Tablizo took this email as an insult directed at her.

In March, Ms. Bonnett gave some of Tablizo's behind-the-desk job duties and hours to a temporary employee, which resulted in Ms. Tablizo spending more time as a cashier instead of performing the back-office accounting duties she had previously performed. Ms. Tablizo

///

testified that during this time, Ms. Bonnett would constantly berate her and accuse her of being behind on her duties.

Ms. Tablizo complained about Ms. Bonnett to higher-level management, first to Vanetta Appleyard, and then to Deputy Director Candace Falder. This led to a meeting on March 10, 2012 with Tablizo, Appleyard, Bonnett, Falder, Director Mark Vincent, and Val Sharp, who was the vice-president for the Las Vegas City Employees Association (LVCEA). During this meeting Ms. Tablizo read a prepared statement that claimed Bonnett was creating a hostile work environment and asserting that her English language abilities were the source of the contention between her and Bonnett. A second meeting occurred on March 12, 2010 in which Ms. Tablizo read a second statement that accused Ms. Bonnett of discrimination based upon Ms. Tablizo's Filipino ethnic background. At the time of these meetings the City was preparing to discipline Ms. Tablizo for a failure to post EMS payments on March 3, 2010, ignoring work-related instructions, and abandoning the front cashier's counter. Vanetta Appelyard testified however, that at the request of Ms. Bonnett the City refrained from disciplining Tablizo in the hopes that the relationship between Bonnett and Tablizo would begin to improve. Ms. Bonnett's email corroborating this was also introduced into evidence.

The relationship between Ms. Tablizo and Ms. Bonnett did not improve. Ms. Tablizo testified that after these meetings the difficulties with Ms. Bonnett only increased and that Ms. Bonnett harassed her nearly every day thereafter. Ms. Tablizo testified to instances where Bonnett had denied a request for sick leave and asked Ms. Tablizo to reschedule a doctor's appointment, had called Ms. Tablizo at home on a day off asking what time Tablizo would be in to work, and an instance where Ms. Bonnett had yelled at Ms. Tablizo to empty a trash bin and be a team player. During this time Ms. Tablizo took an unspecified amount of sick leave due to the stress she was feeling at work. Tablizo testified that she took "a lot of sick leave."

Ms. Tablizo filed a grievance through the LVCEA against Ms. Bonnett for being forced to work out of her classification as a cashier. The grievance was processed and ultimately denied. Ms. Tablizo testified that after she filed this grievance she was permanently moved to a cashier window desk.

On May 26, 2010 Ms. Tablizo was formally disciplined by the City for the instances that pre-dated the March 12, 2010 meeting and additional instances of misconduct that occurred after the March 12 meeting. The instances included failing to follow directions to post payments, not attending to the front counter when assigned, leaving the front counter unattended, complaints by customers, and repeated instances of walking away from the front counter while customers were waiting in line. Ms. Tablizo was given a one day suspension as her discipline.

Ms. Tablizo filed her complaint with this Board on June 29, 2010.

Discrimination Claims

NRS 288.270(1)(f) prohibits a local government employer from discriminating against an employee based upon personal reasons. "Discrimination based on personal reasons occurs where an employer takes adverse action against an employee for non-merit-or-fitness factors such the dislike of or bias against a person which is based upon an individual's characteristics, beliefs, affiliations, or activities that do not affect the individuals merit or fitness for a particular job." Kilgore v. City of Henderson. Item No. 550H, EMRB Case No. A1-045763 (2005).

NRS 288.270(1)(f) also prohibits discrimination based upon national origin. None of the evidence presented by Tablizo mentions or even insinuates a dislike based upon national origin or an identifiable personal reason. Thus, Ms. Tablizo did not present any direct evidence of discrimination.

This Board follows the McDonnell-Douglas burden shifting approach for discrimination claims based upon indirect evidence which places the burden on the complainant to initially establish (1) she is qualified for the job, (2) she is satisfying the job requirements, (3) she suffered an adverse employment action, and (4) the employer assigned others to do the same work or treated similarly situated employees differently. See Apeceche v. White Pine County, 96 Nev. 723, 726, 615 P.2d 975, 977 (1980). If this initial burden is met, the employer must then articulate a legitimate non-discriminatory reason for its actions. Id.

In this case, Ms. Tablizo has not met her burden to establish an inference of discrimination based upon personal reasons, or based upon national origin. While Ms. Tablizo did present sufficient evidence to show that she was qualified for the job (Vanetta Appleyard

testified that Ms. Tablizo was technically sound), and that she had suffered an adverse employment action when she was suspended, the Board was not presented with evidence to establish that Ms. Tablizo was satisfying the job requirements, or that she was treated differently than any other employee.

Evidence at the hearing, including Ms. Tablizo's prior performance evaluations included the role of working as a cashier within her job requirements. The evidence at the hearing also confirmed that Ms. Tablizo was not performing her job requirements. Ms. Tablizo acknowledged as much when she testified that she was not able to fulfill all of her responsibilities at the front desk as well as her back-counter duties. Emails from Tablizo also claim that Tablizo was not able to complete all of her assignments. The suspension that was given to Ms. Tablizo identifies numerous instances where Ms. Tablizo simply walked away from the cashier's desk. Ms. Tablizo did not dispute that these events occurred, and instead adopted the approach that she should not have been doing front counter cashier work at all. This is insufficient to show that she was satisfying her job requirements.

Nor was there any evidence that Ms. Tablizo was treated differently than any similarly situated employee. The evidence does indicate that at the time of these events the City was undergoing an active and tumultuous period that had been preceded by layoffs and in which two separate departments were being merged together. Ms. Bonnett did not testify at the hearing, however our review of her email correspondence with Ms. Tablizo does not indicate that she was singling out Ms. Tablizo in any way. Instead, it appears that Ms. Bonnett was attempting to lead her employees through this active period by promoting an environment where her employees would pitch in and help, be it covering the front cashier desk, being more accommodating with schedules (i.e. the scheduling of personal time off, doctor appointments, etc.) to ensure adequate coverage, and helping out by emptying the trash bins for other employees. This was the same environment for all of the employees that were caught up in the Financial Services-Parking merger. While Ms. Tablizo did testify of instances where Ms. Bonnett did reprimand her and even yelled at her, this does not satisfy the requirement that Ms. Tablizo show that similarly situated employees were treated differently. Ms. Tablizo did not identify any such similarly

situated employee, let alone identify any disparate treatment that could serve as a comparison. Ms. Tablizo therefore does not show a *prima facie* case of discrimination based upon personal reasons or based upon national origin.

Ms. Tablizo also asserted that, apart from the suspension, the City had created a hostile work environment. In order to show that unlawful discrimination created a hostile work environment, Tablizo must show 1) that she was subjected to verbal or physical conduct because of personal reasons or her national origin; (2) that the conduct was unwelcome; and (3) that the conduct was sufficiently severe or pervasive to alter the conditions of the plaintiff's employment and create an abusive work environment. See Kang v. U. Lim America, Inc. 296 F.3d 810, 817 (9th Cir. 2002). In addition, an objectionable work environment must be both objectively and subjectively offensive. Faragher v. City of Boca Raton, 524 U.S. 775, 787 (1998).

Although it is clear that there was a personality conflict between Ms. Tablizo and Ms. Bonnett, we received no evidence to indicate that any of Ms. Bonnett's actions were due to personal reasons or due to Ms. Tablizo's national origin. Ms. Tablizo only testified that her background and English language skills were the only reason she could think of for Ms. Bonnett's treatment. This speculation is not sufficient to establish a link between any of Ms. Bonnett's actions and Ms. Tablizo's Filipino heritage or any identifiable personal reason. To the contrary, Ms. Bonnett's attempts to repair the working relationship between her and Tablizo by holding back the discipline in order to allow an opportunity for their working relationship to improve indicate that there was no personal dislike at issue.

Nor was there any evidence that would support a conclusion that the work environment was objectively offensive. The communications that were in evidence between Ms. Bonnett and Ms. Tablizo indicate that Ms. Bonnett was explaining job duties to Ms. Tablizo and to her department as a whole, and do not contain any statement or comment that can objectively be considered as offensive. Ms. Tablizo pointed to a particular communication from May 21, 2009 that she interpreted as Bonnett effectively asking Tablizo "who do you think you are?" However, a subsequent email from that same day clarified that Ms. Bonnett was merely asking how Tablizo was verifying that that a customer's registration was correct. This does not indicate an

objectively hostile environment. The emails all have a similar theme in that Ms. Bonnett's communications to Ms. Tablizo are all concerning work related matters, and do not indicate any hostility towards Ms. Tablizo. Ms. Tablizo testified that she took offense to the way that Ms. Bonnett verbally interacted with her, but this does not indicate that these communications were objectively unreasonable or offensive. Further, Ms. Tablizo's testimony about difficulties with Kathy Simpson that occurred earlier in her career with the City are directed to her subjective belief about a hostile work environment, but do not speak to whether the work environment in this case was objectively offensive. Therefore Ms. Tablizo has not shown that the City created a hostile work environment.

The City's actions in this case had nothing to do with discrimination based upon either personal reasons or national origin.

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

FINDINGS OF FACT

1. Complainant Cely Tablizo was an employee of the City of Las Vegas.

2. In April of 2009 Cely Tablizo was employed as an Accounting Technician I by the City's Financial Services Division.

3. In April of 2009 Cely Tablizo volunteered to be trained on the Parking Department's lockbox procedure.

4. Tablizo's lockbox training with Parking included training as a cashier, and was extended to two weeks due to Tablizo's absence from work.

5. During the lockbox training period, Ms. Tablizo worked with Sherry Bonnett, and had difficulty in getting along with Ms. Bonnett.

6. In January of 2010 the City consolidated Financial Services and the Parking Departments as part of a cost-saving move following a financial services review.

7. When Financial Services and Parking were combined, Sherry Bonnett became Cely Tablizo's immediate supervisor.

///

8. The time period in which this consolidation occurred was an active and tumultuous time for all employees involved.

9. In supervising the newly consolidated department, Sherry Bonnett attempted to clarify employees' responsibilities and create an environment where employees would mutually assist with tasks and responsibilities.

10. Cely Tablizo complained about Sherry Bonnett to higher level supervisors with the City and to the Las Vegas City Employees Association.

11. Tablizo met with City Supervisors and with the LVCEA on March 10 and 12, 2010 to attempt to resolve her concerns about Sherry Bonnett.

12. After these March 10 and 12 meetings, Sherry Bonnett withheld discipline against Tablizo in an attempt to repair their working relationship.

13. The working relationship between Bonnett and Tablizo further deteriorated after the March 10 and 12 meetings.

14. Cely Tablizo was disciplined on May 6, 2010 for deficiencies in her job performance.

15. Cely Tablizo was subjectively offended by the actions of Sherry Bonnett.

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

CONCLUSIONS OF LAW

1. The Board is authorized to hear and determine complaints arising under the Local Government Employee-Management Relations Act.

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

3. NRS 288.270(1)(f) prohibits discrimination based upon national origin and based upon personal reasons.

4. Ms. Tablizo did not present direct evidence of discrimination based upon either national origin or an identifiable personal reason.

5. Both national origin and personal reasons discrimination claims are analyzed under the burden-shifting framework stated in Apeceche v. White Pine County, 96 Nev. 723, 615 P.2d 975

(1980) and City of North Las Vegas v. State Local Government Employee-Management Relations Bd., 127 Nev. Adv. Op. 57, 261 P.3d 1071, 1078 -1079 (2011).

6. Ms. Tablizo did not present sufficient evidence to show that she was satisfying her job requirements.

7. Ms. Tablizo did not present sufficient evidence to show that similarly situated employees were treated any differently based upon either national origin or personal reasons.

8. Ms. Tablizo has not established an inference of discrimination based upon either national origin or an identifiable personal reason.

9. In order to show a hostile work environment, a complainant must show that they were subjected to physical or verbal abuse based upon one of the protected traits identified in NRS 288.270(1)(f), and that the work environment was objectively offensive.

10. Ms. Tablizo did not present any evidence that indicates Ms. Bonnett's actions were due to either Ms. Tablizo's national origin or any identifiable personal reason.

11. Ms. Tablizo did not present any evidence that indicates her work environment was objectively offensive.

12. A reasonable person in Ms. Tablizo's situation would not feel discriminated against.

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

///

///

///

///

///

///

///

///

///

///

ORDER

IT IS HEREBY ORDERED that the Board finds in favor of Respondent City of Las Vegas as stated herein;

IT IS FURTHER ORDERED that each party shall bear its own fees and costs incurred in this matter.

DATED this 14th day of February, 2013.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: _____
PHILIP E. LARSON, Vice-Chairman

BY: _____
SANDRA MASTERS, Board Member

STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

CELY TABLIZO, Complainant, vs. CITY OF LAS VEGAS, Respondents.	)	CASE NO. A1-045986 **NOTICE OF ENTRY OF ORDER**

TO: Cely Tablizo and her attorney M. Lani Estaban-Trinidad, Esq.,

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

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on February 14, 2013.

A copy of said order is attached hereto.

DATED this 14th day of February, 2013.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY Joyce A. Holtz

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 14th day of February, 2013, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

M. Lani Estaban-Trinidad, Esq.
4315 North Rancho Drive, Suite 110
Las Vegas, NV 89130

Jack Eslinger, Esq
Deputy City Attorney
City of Las Vegas
495 South Main Street, 6th Floor
Las Vegas, NV 89101

Cely Tablizo
4708 Painted Hills Street
No. Las Vegas, NV 89031

JOYCE HOLTZ, Executive Assistant