STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

MICHAEL J. CAMPOS, Complainant, vs. TOWN OF PAHRUMP, and PAHRUMP VALLEY FIREFIGHTERS INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 4068 Respondents,	ITEM: 785 CASE NO. A1-046081 **ORDER**

For Complainant: Michael J. Campos and his attorney Andrew L. Rempfer, Esq.

For Respondent: Town of Pahrump and their attorney Rebecca Bruch, Esq.

For Respondent: Pahrump Valley Firefighters International Association of Firefighters, Local 4068 and their attorney Mark J. McGannon, Esq.

This matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board"),[1] on February 14, 2013 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.

NRS 288.110(4) prevents this Board from considering any complaint which is filed more than six months after the occurrence which is the subject of the complaint. Respondent Town of Pahrump and Respondent Pahrump Valley Firefighters International Association of Firefighters, Local 4068 ("Union") each moved to dismiss the complaint as being untimely under NRS 288.110(4).

Each of these motions assert that the allegations in the complaint show the complaint to be untimely, and therefore beyond the reach of this Board to consider or decide. Specifically, that

[1] Chairman Curran recused himself from this matter and took no part in this deliberation or decision.

the complaint alleges that Complainant Michael Campos was disciplined with a termination on October 8, 2010, that the Union negotiated a last chance agreement that led to Mr. Campos' return to work on or about April 20, 2011, and that Mr. Campos' was terminated under the last chance agreement on August 10, 2011. The complaint was filed with this Board on November 2, 2012. As both the Union and the Town of Pahrump argue, this exceeds six months from the occurrences about which Mr. Campos is complaining and is therefore barred by NRS 288.110(4).

Mr. Campos opposed the motions. Mr. Campos does not dispute the dates stated in the Complaint and argued by Respondents in their motions. Campos argues that the statute of limitations should be equitably tolled in order to allow this matter to proceed forward.

In City of North Las Vegas v State Local Government Employee-Management Relations Board, 127 Nev. ___, 261 P.3d 1071 (2011) the Nevada Supreme Court confirmed that the statute of limitations stated in NRS 288.110(4) is subject to the doctrine of equitable tolling. Equitable tolling is to be used sparingly, and does not extend to garden variety claims of excusable neglect. Irwin v. Department of Veterans Affairs, 498 U.S. 89 (1990). Equitable tolling is an exception to the general rule of limitations and turns upon an analysis of 1) the claimant's diligence, 2) knowledge of the relevant facts, 3) reliance on misleading authoritative agency statements and/or misleading employer conduct, and 4) any prejudice to the employer. City of North Las Vegas at 1077 (citing Copeland v. Desert Inn Hotel, 99 Nev. 823, 826, 673 P.2d 490, 492 (1983)). Therefore in order to conclude whether equitable tolling applies in this case, we consider the application of these factors.

First, we do not find that Mr. Campos's diligence weighs in favor of applying equitable tolling. After being terminated in August of 2011, it appears from Mr. Campos's statement that he did file a complaint with the Nevada Equal Rights Commission and the United States Equal Employment Opportunity Commission, but he did not file anything with the EMRB to pursue his claims under the Act. On this point, Mr. Campos contends that he was unaware of the existence of this Board until after he had consulted with legal counsel. However, this Board has long been established with authority over local government employers and local government employees

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including the authority to hear and decide complaints arising under NRS Chapter 288. NRS 288.110(2).

Second, and unlike the complainant in City of North Las Vegas, Mr. Campos knew all of the relevant facts surrounding his termination at the time of his termination. This is apparent from his actions to promptly file complaints over his termination with NERC and EEOC. In opposing the motions to dismiss, Campos does not point to any relevant fact concerning his termination of which he was not aware at the time of the termination. This factor also weighs against an application of equitable tolling.

Third, and also unlike the complainant in City of North Las Vegas, there is no evidence of misleading statements that would justify equitable tolling. Mr. Campos asserts only that the Union never informed him that this Board exists, however this does not constitute a misleading statement that would induce or trick Mr. Campos to allow the filing deadline before this Board to pass. See State Dept. of Taxation v. Masco Builder Cabinet Group, 127 Nev. ___, 265 P.3d 666, 672 (2011) (finding equitable tolling was appropriate under this factor were the Department of Taxation "actively participated in and contributed" in taxpayers late filing of a refund claim).

Fourth, there is no indication of actual prejudice to the employer or to the Union. However, this factor alone is not sufficient to allow an otherwise untimely complaint to proceed forward.

Accordingly, the Board will grant both motions to dismiss due to the complaint being untimely. This means that the Board will not be able to reach the merits of the complaint; however this result is compelled by NRS 288.110(4).

Having considered the above, the Board finds as follows:

FINDINGS OF FACT

1. Complainant Michael Campos was a local government employer employed by the Town of Pahrump.

2. Complainant Michael Campos's employment was terminated by the Town of Pahrump effective October 8, 2010.

3. On or about April 6, 2011 Respondent Pahrump Valley Firefighters International Association of Firefighters, Local 4068 and Respondent Town of Pahrump negotiated a last chance agreement that allowed Campos to return to work.

4. On September 2, 2011 Campos's employment was terminated under the last chance agreement.

5. Campos filed his complaint with this Board on November 2. 2012

6. The foregoing facts are established by the verified complaint filed by Campos

7. Campos did not file his complaint with this Board until 14 months after he had been terminated.

8. Campos did not act diligently to bring his complaint before this Board.

9. There is no indication that Campos discovered new facts concerning his termination any later than September 2, 2011.

10. Neither the Town of Pahrump nor the Union took any action to mislead or to contribute to or induce Mr. Campos to allow the six-month statute of limitations to lapse.

11. 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 NRS 288.110(2) and NRS 288.280, the Board has jurisdiction over violations of NRS Chapter 288.

2. Pursuant to NRS 288.110(4) the Board may not hear or consider complaints filed more than six months after the occurrence which is the subject of the complaint.

2. The Complaint filed in this matter was filed more than six months after the occurrence which is the subject of the complaint.

3. Complainant bears the burden to demonstrate why the statute of limitations should be equitably tolled.

4. Equitable tolling does not apply in this case, as stated herein.

5. The complaint is this matter is barred by NRS 288.110(4).

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6. As the complaint is barred due to the statute of limitations, the Board makes no findings on the merits of the complaint.

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

Based upon the foregoing, and good cause appearing therefore:

IT IS HEREBY ORDERED that this matter is dismissed.

DATED this 26th 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

MICHAEL J. CAMPOS, Complainant, vs. TOWN OF PAHRUMP, and PAHRUMP VALLEY FIREFIGHTERS INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 4068 Respondents,	CASE NO. A1-046081 **NOTICE OF ENTRY OF ORDER**

To: Michael J. Campos and his attorney Andrew L. Rempfer, Esq.

To: Town of Pahrump and their attorney Rebecca Bruch, Esq.

To: Pahrump Valley Firefighters International Association of Firefighters, Local 4068 and their attorney Mark J. McGannon, Esq.

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on February 26, 2013.

A copy of said order is attached hereto.

DATED this 26th day of February, 2013.

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 26th day of February, 2013, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

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JOYCE HOLTZ, Executive Assistant