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STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

KEITH CHARLES DANSER II,

Complainant,

v.

THE CITY OF NORTH LAS VEGAS and NORTH
LAS VEGAS POLICE OFFICERS ASSOCIATION,

Respondents.

Case No. 2017-035

ORDER

Item No. 830

On May 10, 2018, this matter came before Panel C of the State of Nevada, Local Government Employee-Management Relations Board (“Board”) for consideration and decision pursuant to the provisions of the Local Government-Management Relations Act (the “Act”), NAC Chapter 288 and NRS Chapter 233B.

On February 12, 2018, Respondents, NORTH LAS VEGAS POLICE OFFICERS ASSOCIATION’s (the “Association”) and THE CITY OF NORTH LAS VEGAS (the “City”) Motions to Dismiss the Complaint came before the Board. It appeared an evidentiary hearing was required in order to determine the issues presented including the proper submission and presentation of evidence as well as credibility determinations in accordance with NRS and NAC 288. The Board determined that a bifurcated hearing was clearly necessary (with the hearing on the applicability of equitable tolling occurring first) to lessen costs, expedite the matter, avoid prejudice, and in the furtherance of convenience. Neither party filed an objection to said bifurcation. The Board ordered that if it found that equitable tolling did not apply, then the matter would be dismissed pursuant to NRS 288.110(4). The Board having held said hearing finds that equitable tolling does not apply, and as such the matter is dismissed.

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1 DISCUSSION

2 Respondents argue that the matter is barred by the statute of limitations contained in NRS
3 288.110(4). We agree.

4 Time limitations are not triggered until the victim receives unequivocal notice of a final
5 decision. *City of N. Las Vegas v. EMRB*, 127 Nev. 631, 639, 261 P.3d 1071, 1076-77 (2011). Indeed,
6 “equitable tolling ‘focuses on ‘whether there was excusable delay by the plaintiff: If a reasonable
7 plaintiff would not have known of the existence of a possible claim within the limitations period, then
8 equitable tolling will serve to extend the statute of limitations for filing suit until the plaintiff can gather
9 what information he needs.’” *Id.* at 640; *see generally Nevada State Bank v. Jamison Family*
10 *Partnership*, 106 Nev. 792, 800, 801 P.2d 1377, 1382 (1990) (stating that a “statute of limitation[s] will
11 not commence to run until the aggrieved party knew, or reasonably should have known, of the facts
12 giving rise to the breach”). “[T]he following factors, among any other relevant considerations, should
13 be analyzed when determining whether equitable tolling will apply: the claimant's diligence, knowledge
14 of the relevant facts, reliance on misleading authoritative agency statements and/or misleading employer
15 conduct, and any prejudice to the employer.” *See also Charles v. City of Henderson*, No. 67125, 2016
16 WL 2757394, at *1 (Nev. May 10, 2016) (noting that “[t]he law does not permit equitable tolling when
17 a party simply did not realize the ‘extent’ of his claim.”)

18 The Board finds all factors cut against applying the doctrine of equitable tolling in this matter.
19 Danser invoked the doctrine of equitable tolling to attempt to overcome the fact that his Complaint was
20 filed over six years late. Danser received unequivocal notice of the final adverse decision (his
21 termination) no later than March 9, 2011; yet, Danser waited until November 17, 2017 to file his
22 Complaint with this Board – approximately 80 months thereafter.

23 The claimant's diligence: Over six years has passed and the Board heard credible evidence that
24 Danser was advised to retain private legal counsel to review his employment law matter shortly after his
25 injury claim and simply chose not to because of costs and/or a perceived disbelief in a successful claim.
26 Danser testified that he did not believe it would be fruitful to do so but that he was at least so advised.
27 Moreover, Danser testified he did not do any personal research and only relied on advice from his union
28 (which was to hire legal counsel as they were not pursuing his claim (of note Danser appealed POA’s

1 determination to the general membership which also denied pursuing Danser's claim by a vote of 100-
2 0)). Indeed, testimony elicited indicated that Danser did nothing but attempt to rely on the comments
3 of POA General Counsel. Danser also testified that he didn't reach out to legal aid until the summer of
4 2016 when he was having a personal family law issue.

5 Knowledge of the relevant facts: The Board heard evidence that there was no new factual
6 information pertaining to Danser's claims between the relevant time periods. Danser was non-
7 confirmed as a result of documented performance concerns. Danser promptly filed a grievance and the
8 NLVPOA assisted him with the same. Danser made the same allegations in his grievance that he seeks
9 to advance now before this Board over six years later (specifically that his non-confirmation was the
10 result of a personality conflict between him and his supervisor and that his work related injuries
11 adversely impacted his ability to perform his job). Danser did not provide any new factual information
12 pertaining to his claims. The only aspect Danser alleges that has changed was his knowledge of this
13 Board (over a July 4th weekend in 2017, Danser's former mentor Brooks informed him of the Board's
14 existence). This is not new factual information related to his claims. *See City of N. Las Vegas v. State*,
15 *EMRB*, 127 Nev. 631, 640, 261 P.3d 1071, 1077 (2011) (holding that equitable tolling will extend a
16 statute of limitations if a reasonable plaintiff would not have known of the existence of their claim
17 within the limitations period); *Charles v. City of Henderson*, No. 67125, 2016 WL 2757394, at *1 (Nev.
18 May 10, 2016) (noting that "[t]he law does not permit equitable tolling when a party simply did not
19 realize the 'extent' of his claim."); *Campos v. Town of Parumph*, Case No. A1-046081, Item No. 785
20 (2013) (holding that a belated understanding of the existence of this Board is not a basis for equitable
21 tolling). Danser testified that all of the facts giving rise to his claim surfaced in 2011.

22 Reliance on misleading authoritative agency statements and/or misleading employer conduct:
23 Danser testified that the union's general counsel informed him that his only option was to hire a private
24 attorney. Based on the testimony presented, we do not find this credible. Moreover, even if this was
25 actually indicated to Danser, the Board has already held that a union's failure to advise an employee of
26 the employee's right to petition this Board is not an affirmative misrepresentation that would give rise
27 to equitable tolling. *Campos, supra*, at 3. Indeed, the Board does not find that POA's President or
28 General Counsel made any misleading statements. Danser was told the union would not be pursuing his

1 claim per their right to do so, which Danser appealed (which was also rejected entirely by the general
2 membership), and he could pursue his claims on his own and hire an attorney to so advise him. Danser
3 chose not to.

4 Prejudice to the employer: The time span in this case is great and testimony elicited at the
5 hearing showed that the witnesses did not have a sufficient memory of the events that occurred due to
6 the substantial length of time that has passed in this case. Danser even testified that his memory would
7 have been better had the claim been filed within the requisite statutory period.

8 Finally, based on the facts in this case and the issues presented, the Board declines to award
9 costs and fees in this matter.

10 FINDINGS OF FACT

11 1. Danser received unequivocal notice of the final adverse decision no later than March 9,
12 2011; yet, Danser waited until November 17, 2017 to file his Complaint with this Board –
13 approximately 80 months thereafter.

14 2. Danser was advised to retain private legal counsel to review his employment law matter
15 shortly after his injury claim and simply chose not to because of costs and/or a perceived disbelief in a
16 successful claim.

17 3. Danser did not do any personal research and only relied on advice from his union.

18 4. Danser appealed POA's determination to the general membership which also denied
19 pursuing Danser's claim by a vote of 100-0.

20 5. Danser was non-confirmed as a result of documented performance concerns.

21 6. Danser promptly filed a grievance and the NLVPOA assisted him with the same.

22 7. Danser made the same allegations in his grievance that he seeks to advance now before
23 this Board over six years later.

24 8. Danser did not provide any new factual information pertaining to his claims.

25 9. All of the facts giving rise to his claim surfaced in 2011.

26 10. POA's President or General Counsel did not make any misleading statements to Danser.

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1 11. The time span in this case is great and testimony elicited at the hearing showed that the
2 witnesses did not have a sufficient memory of the events that occurred due to the substantial length of
3 time that has passed in this case.

4 12. If any of the foregoing findings is more appropriately construed as a conclusion of law, it
5 may be so construed.

6 **CONCLUSIONS OF LAW**

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

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

11 3. Time limitations are not triggered until the victim receives unequivocal notice of a final
12 decision.

13 4. "Equitable tolling 'focuses on 'whether there was excusable delay by the plaintiff: If a
14 reasonable plaintiff would not have known of the existence of a possible claim within the limitations
15 period, then equitable tolling will serve to extend the statute of limitations for filing suit until the
16 plaintiff can gather what information he needs.'"

17 5. Statute of limitations will not commence to run until the aggrieved party knew, or
18 reasonably should have known, of the facts giving rise to the breach.

19 6. "[T]he following factors, among any other relevant considerations, should be analyzed
20 when determining whether equitable tolling will apply: the claimant's diligence, knowledge of the
21 relevant facts, reliance on misleading authoritative agency statements and/or misleading employer
22 conduct, and any prejudice to the employer."

23 7. Equitable tolling will extend a statute of limitations if a reasonable plaintiff would not
24 have known of the existence of their claim within the limitations period.

25 8. "The law does not permit equitable tolling when a party simply did not realize the
26 'extent' of his claim."

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

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ORDER

Based on the foregoing, it is hereby ordered that the matter is DIMISSED and equitable tolling does not apply in this case.

DATED this 5th day of June, 2018.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD



By: _____
PHILIP LARSON, Board Member



By: _____
CAM WALKER, Board Member



By: _____
GARY COTTINO, Board Member