

FILED

SEP 14 2018

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

ELIZABETH JANE BANTZ

Complainant,

v.

WASHOE COUNTY SCHOOL DISTRICT;
BOARD OR TRUSTEES OF WASHOE COUNTY
SCHOOL DISTRICT,

Respondents.

Case No. 2017-028
BEFORE PANEL C

ORDER

ITEM No. 832

On August 14, 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 April 10, 2018, Respondent Washoe County School District's (the "District") Motion 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). Having had said hearing, the Board finds that equitable tolling does not apply and as such the matter is dismissed.

DISCUSSION

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

1 Time limitations are not triggered until the victim receives unequivocal notice of a final
2 decision. *City of N. Las Vegas v. EMRB*, 127 Nev. 631, 639, 261 P.3d 1071, 1076-77 (2011). Indeed,
3 “equitable tolling ‘focuses on ‘whether there was excusable delay by the plaintiff: If a **reasonable**
4 plaintiff would not have known of the existence of a possible claim within the limitations period, then
5 equitable tolling will serve to extend the statute of limitations for filing suit until the plaintiff can gather
6 what information he needs.” *Id.* at 640 (**emphasis added**); *see generally Nevada State Bank v. Jamison*
7 *Family Partnership*, 106 Nev. 792, 800, 801 P.2d 1377, 1382 (1990) (stating that a “statute of
8 limitation[s] will not commence to run until the aggrieved party knew, or reasonably should have
9 known, of the facts giving rise to the breach”). “[T]he following factors, among any other relevant
10 considerations, should be analyzed when determining whether equitable tolling will apply: [1] the
11 claimant's diligence, [2] knowledge of the relevant facts, [3] reliance on misleading authoritative agency
12 statements, [4] and/or misleading employer conduct, and any prejudice to the employer.” *See City of N.*
13 *Las Vegas v. State, EMRB*, 127 Nev. 631, 640, 261 P.3d 1071, 1077 (2011) (holding that equitable
14 tolling will extend a statute of limitations if a reasonable plaintiff would not have known of the
15 existence of their claim within the limitations period); *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 the factors cut against applying the doctrine of equitable tolling in this matter.

19 Bantz’ claims for relief center around her application for ESIP which was denied on November
20 25, 2015. Bantz was informed on December 15, 2015, that there was not an appeal process for denial of
21 ESIP. However, the District essentially agreed to take another look at her application, and the District
22 informed Bantz on April 5, 2016, that it was denied for the same reasons it was initially denied back in
23 November of 2015. As such, Bantz received unequivocal notice of the final decision on that date, April
24 5, 2016. However, Bantz waited until September 26, 2017, to file her initial complaint before the Board
25 (almost 1 year and 6 months after (and roughly a year too late)). NRS 288.110(4) is clear and
26 unambiguous that a complaint may not be filed more than 6 months after the occurrence which is the
27 subject of the complaint. Bantz alleges that the District “improperly informed Bantz that no appeal
28 process was available to her [and] relied on [the District’s] representation” in this regard.

1 The claimant's diligence: Over a year passed and the evidence showed that Bantz was not
2 diligent in filing her claim in this respect. Indeed, Bantz testified that she was actually familiar with this
3 Board through her union related work. The claimant appeared to have been otherwise diligent in
4 relation to her breach of contract claim. *See infra* n. 1.

5 Knowledge of the relevant facts: Bantz did not provide any new factual information pertaining
6 to her claims. Bantz admitted that there were no new relevant facts pertaining to her claims. *See City*
7 *of N. Las Vegas v. State, EMRB*, 127 Nev. 631, 640, 261 P.3d 1071, 1077 (2011) (holding that equitable
8 tolling will extend a statute of limitations if a **reasonable** plaintiff would not have known of the
9 existence of their claim within the limitations period). As further detailed below, Bantz even testified
10 that she was not misled by the email indicating there was no appeals process. However, when pressed
11 by her attorney, she agreed that the email did not affirmatively state that she could go before the Board.
12 This is not new factual information. *Charles v. City of Henderson*, No. 67125, 2016 WL 2757394, at
13 *1 (Nev. May 10, 2016) (noting that “[t]he law does not permit equitable tolling when a party simply
14 did not realize the ‘extent’ of his claim.”); *Campos v. Town of Pahrump*, Case No. A1-046081, Item
15 No. 785 (2013) (holding that a belated understanding of the existence of this Board is not a basis for
16 equitable tolling); *Danser v. The City of N. Las Vegas*, Case No. 2017-035, Item No. 830 (2018)
17 (finding that equitable tolling does not apply simply because complainant did not know to file a
18 complaint with this Board, which was not new factual information pertaining to complainant’s claims).
19 Moreover, the evidence showed that the District never informed Bantz that she could not seek relief
20 from the EMRB. Bantz testified that all of the facts giving rise to her claim surfaced by the subsequent
21 April 2016 denial.

22 Reliance on misleading authoritative agency statements and/or misleading employer conduct:
23 Bantz contends that the District’s Human Resources staff informed Bantz that there is no ESIP appeal
24 process. Even if true, the District did take another look at her application per her request (essentially
25 providing her an appeal process), and there was no evidence that the District made any misleading
26 statements to her. Ms. Interiano provided credible testimony that she was simply relaying information
27 to Bantz that the administrative regulations which oversee ESIP, along with the CBA, do not provide
28 for an appeal process (which appeared to be accurate based on the evidence presented). Moreover,

1 Bantz responded that she was still going to appeal on the basis of language of the application, perhaps
2 considering a class action, so there was no actual reliance. Furthermore, Bantz continually asserted that
3 she believed the District simply breached the parties' contract, and the Board does not have jurisdiction
4 over breach of contract claims, which is well-established.¹ See also Order on Motion to Dismiss
5 Amended Complaint. When pressed, Bantz asserted that what misled her was "[j]ust the constant
6 meetings and emails when they kept stringing it along." Yet, this occurred prior to the subsequent April
7 2016 denial. Finally, Bantz actually testified (upon further examination) that she did not feel misled by
8 Interiano's email informing her that there was no appeal process. As mentioned, while Bantz stated that
9 the District did not tell her she could go before the Board, Bantz also testified that no one from the
10 District ever told her she couldn't bring her claims to the Board. Further, Bantz testified that no one at
11 the District told her she could not file a grievance or complaint pursuant to the parties' CBA.

12 Prejudice to the employer: The time span in this case is significant and testimony elicited at the
13 hearing showed that the witnesses may not have a sufficient memory of the events that occurred due to
14 the length of time that has passed in this case.

15 Finally, based on the facts in this case and the issues presented, the Board declines to award cost
16 and fees in this matter.

17 FINDINGS OF FACT

18 1. Bantz' claims for relief center around her application for ESIP which was denied on
19 November 25, 2015.

20 2. Bantz was informed on December 15, 2015, that there was not an appeal process for
21 denial of ESIP.

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25 ¹ See NRS 288.110(2); *City of Reno v. Reno Police Protective Ass'n*, 98 Nev. 472, 474–75, 653 P.2d
26 156, 158 (1982); *UMC Physicians Bargaining Unit v. Nevada Serv. Employees Union*, 124 Nev. 84, 89-
27 90, 178 P.3d 709, 713 (2008); *City of Henderson v. Kilgore*, 122 Nev. 331, 333, 131 P.3d 11, 12
28 (2006); *Int'l Ass'n of Fire Fighters, Local 1908 v. County of Clark*, Case No. A1-046120, Item No. 811
(2015); *Simo v. City of Henderson*, Case No. A1-04611, Item No. 796 (2014); see e.g., *Flores v. Clark
City*, Case No. A1-045990, Item No. 737 (2010); *Bonner v. City of N. Las Vegas*, Case No. 2015-027
(2017).

1 3. The District essentially agreed to take another look at her application, and the District
2 informed Bantz on April 5, 2016, that it was denied for the same reasons it was initially denied back in
3 November of 2015.

4 4. Bantz received unequivocal notice of the final decision on that date, April 5, 2016.

5 5. Bantz waited until September 26, 2017, to file her initial complaint before the Board.

6 6. Bantz was not diligent in filing here claim.

7 7. Bantz was familiar with this Board through her union related work.

8 8. Bantz did not provide any new factual information pertaining to her claims.

9 9. Bantz admitted that there were no new relevant facts pertaining to her claims.

10 10. Bantz was not misled by the email indicating there was no appeals process.

11 11. The District never informed Bantz that she could not seek relief from the EMRB.

12 12. All of the facts giving rise to her claim surfaced by the subsequent April 2016 denial.

13 13. District took another look at her application per her request (essentially providing her an
14 appeal process), and there was no evidence that the District made any misleading statements to her.

15 14. Ms. Interiano provided credible testimony that she was simply relaying information to
16 Bantz that the administrative regulations which oversee ESIP, along with the CBA, do not provide for
17 an appeal process (which appeared to be accurate based on the evidence presented).

18 15. Bantz responded that she was still going to appeal on the basis of language of the
19 application, perhaps considering a class action, so there was no actual reliance.

20 16. Bantz asserted that what misled her was “[j]ust the constant meetings and emails when
21 they kept stringing it along.”

22 17. This occurred prior to the subsequent April 2016 denial.

23 18. Bantz did not feel misled by Interiano’s email informing her that there was no appeal
24 process.

25 19. Witnesses may not have a sufficient memory of the events that occurred due to the length
26 of time that has passed in this case.

27 20. If any of the foregoing findings is more appropriately construed as a conclusion of law, it
28 may be so construed.

CONCLUSIONS OF LAW

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

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

6 3. NRS 288.110(4) is clear and unambiguous that a complaint may not be filed more than 6
7 months after the occurrence, which is the subject of the complaint.

8 4. Time limitations are not triggered until the victim receives unequivocal notice of a final
9 decision.

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

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

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

20 8. The law does not permit equitable tolling when a party simply did not realize the extent
21 of his claim.

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

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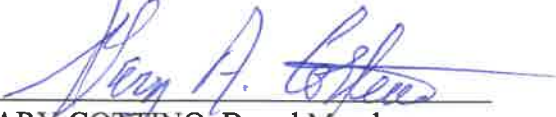
ORDER

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

DATED this 13 day of September, 2018.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: 
PHILIP LARSON, Presiding Officer

By: 
GARY COTTINO, Board Member

By: 
CAM WALKER, Board Member