

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CLARK COUNTY PUBLIC EMPLOYEES)	
ASSOCIATION, SEIU LOCAL 1107,)	ITEM NO. 281
ENGINEERS, AFL-CIO,)	
)	CASE NO. A1-045496
Complainant,)	
)	<u>ORDER OF DISMISSAL</u>
-vs-)	
)	
CLARK COUNTY,)	
)	
Respondent.)	

For Complainant: Hope J. Singer, Esq.
TAYLOR, ROTH, BUSH & GEFNER

For Respondent: Paul D. Johnson, Esq.
CLARK COUNTY DISTRICT ATTORNEY'S OFFICE

For the EMRB: Howard Ecker, Chairman
Salvatore Gugino, Vice Chairman
Tamara Barengo, Member

After careful review of the written record, the Board has determined that the Complaint fails to state a cause of action under NRS Chapter 288 and as required by NAC 288.200(c), and that no probable cause exists for the instant Complaint.

The premise for the Complaint is that whenever an employer demotes an employee as a form of discipline and there are no positions or vacancies which may be occupied by the demoted employee at the location of the position from which he was demoted, requiring the employee to change his work location, the employer's action is tantamount to transferring the employee as a form of discipline. Complainant further alleges that NRS 288.270 prohibits transferring an employee as

1 a form of discipline.

2 There is nothing in the written record to indicate that
3 a position or vacancy was available for occupancy by the
4 subject demoted employee at the location of the position from
5 which said employee was demoted, and the Association has not
6 alleged that such a position or vacancy was available at that
7 location. Accordingly, the Board finds that while the change
8 in work location which resulted in this employee's particular
9 demotion had the same effect as a transfer, it (the change in
10 work location) was coincidental to the purpose and intent of
11 the discipline assessed said employee. There is simply no
12 evidence in the written record that the County's purpose or
13 intention was to transfer the employee as a form of discipline
14 and Complainant makes no allegation to that effect. The
15 Complainant's pleadings, therefore, are factually insufficient
16 to determine the employee was "transferred as a form of
17 discipline", which is the premise for the Complaint.
18 Accordingly, no probable cause exists for the instant
19 Complaint and it must be dismissed pursuant to NAC 288.210(1).

20 The Decision of the Board obviates any need to address
21 such issues as whether or not transferring an employee as a
22 form of discipline is in and/or of itself a prohibited
23 practice under NRS Chapter 288; Complainant's Motion to Amend
24 Complaint, Respondent's Opposition to Motion to Amend
25 Complaint, and Respondent's position to the effect that the
26 Board has no jurisdiction to go forward with the case because
27 of the pendency of a grievance filed under the labor
28

1 agreement.

2 IT IS HEREBY ORDERED, pursuant to NAC 288.210, that the
3 above-captioned action be, and hereby is, dismissed with
4 prejudice, with each side to bear its own attorney's fees and
5 costs.

6 DATED this 21st day of November, 1991.

7 LOCAL GOVERNMENT EMPLOYEE-
8 MANAGEMENT RELATIONS BOARD

9 By Howard Ecker
10 HOWARD ECKER, Chairman

11 By Salvatore C. Gucino
12 SALVATORE C. GUCINO, Vice Chairman

13
14 By Tamara Barengo
15 TAMARA BARENGO, Member

16

17

18

19

20

21

22

23

24

25

26

27

28