

1 STATE OF NEVADA
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD
4

5 THOMAS E FRALEY, JR.,

6 Complainant,

7 vs.

8 CITY OF HENDERSON; HENDERSON
9 POLICE OFFICER'S ASSOCIATION,

10 Respondents.

ITEM NO. 547

CASE NO. A1-045756

DECISION

11 For Complainant: Richard I. Dreitzer, Esq.

12 For Respondents: David A. Hintzman, Esq.
13 Henderson City Attorney's Office

14 Thomas D. Beatty, Esq.

15 STATEMENT OF THE CASE

16 On January 24, 2003, a complaint was filed in this matter against the City of Henderson
17 ("City"); and on February 10, 2003, Complainant Thomas Fraley ("Fraley") filed an Amended
18 Complaint against the City and the Henderson Police Officers' Association ("Association"). In
19 his Amended Complaint, Fraley alleged that the Henderson Police Department ("Department")
20 had discriminated against him due to political or personal reasons or affiliations (NRS 288.270)
21 and had promulgated a "Code of Conduct" without bargaining with the Association. Answers to
22 the Amended Complaint were filed by the Respondents. The City filed a Motion to Dismiss
23 Fraley's claim that the Department failed to bargain in good faith over the "Code of Conduct"
24 and such motion was granted. Thereafter, this matter was noticed for hearing pursuant to
25 Nevada's Open Meeting Laws; and during that hearing, the Board heard oral arguments from
26 counsel, received evidence, and heard testimony from 26 witnesses. This case required
27 approximately 10 days of hearings, beginning in June 2003 and concluding on January 7, 2004.

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1 Prior to the commencement of the hearing, several verbal motions were made, including
2 but not limited to a Motion to Defer the matter pending arbitration. Apparently, Fraley began
3 with the Department in approximately 1990, was placed on administrative leave on July 2,
4 2002, with a pre-termination hearing held on February 3, 2003 (after the filing of Fraley's initial
5 complaint), and was finally terminated in March 2003. The Board found special circumstances in
6 this case, with extreme prejudice in light of the inaction of the Association, economic losses, as
7 well as the potential to lose witnesses and evidence, and denied the deferment request. At the
8 conclusion of the hearing, the Board ordered post-hearing briefs from the parties due to the
9 voluminous record, numerous witnesses, and complexity of issues.

10 The Board's findings are set forth in the Discussion, Findings of Fact and Conclusions of
11 Law, which follow:

12 **DISCUSSION OF THE TESTIMONY PRESENTED**

13 There are ten volumes of hearing transcripts in this action. The following, however, is a
14 brief discussion of the testimony offered by each witness with the Board's assessment of
15 credibility.

16 Lieutenant Steve Kilgore has been with the Department since May 28, 1985. He was the
17 first DARE officer, and started a peer support program. He was also a field training officer and
18 was promoted to Sergeant in 1991. In 1996, he was the treasurer for the Association and has
19 held other positions, including president.

20 He states he was placed on administrative leave, with pay, commencing on February 12,
21 2003, due to allegations of leaving early/coming in late, but he believes it was due to his
22 involvement with Fraley. He was not allowed to use the Department's computer when placed
23 on leave, and not allowed to talk with other officers, so he had no option but to resign as the
24 Association's president. He stated if you moved in the right circle within the Department, with
25 the right people, as an officer, you would advance and get good assignments.

26 He stated Fraley was not a "favored" individual in the Department, and that hurt his
27 chances of advancement, e.g., Fraley being passed over for Sergeant although he was first on the
28 promotion list. He had even heard comments that Fraley was a loose cannon. His evaluations of

1 Fraley (e.g., Exhibit JJ), however, noted that Fraley was "head and shoulders" above the other
2 officers, as well as other favorable comments. He also stated Fraley demanded that his officers
3 be good at their job and aggressively fight crime.

4 He also testified that Sgt. Rob Hart warned him that (Captain) Vadasy wanted Fraley's
5 "head on a platter" and that Kilgore would be next. Kilgore believed Hart as he was a close
6 friend to the administration and took Hart's comments as a threat. Kilgore stated he knew of
7 instances wherein police officers were drunk while driving, and never terminated, as well as
8 officers fighting with other officers. He provided a number of other instances similar to the
9 allegations against Fraley wherein the officers were not terminated. Kilgore felt the Association
10 did not help Fraley and it considered Fraley a troublemaker. Concerning members of the
11 Department disliking Fraley, Kilgore listed the following as having a negative influence on
12 Fraley's career: Richard Perkins, Richard White, Chief Mike Mayberry, Monty Sparks, and
13 Robert Vadasy. As to the Association, outgoing President Burns remarked to Kilgore that he
14 should memorize Fraley's phone number, which Kilgore took as being mean spirited.

15 Officer Luke Vincent has been a police officer since 1996, and is currently in the
16 narcotics division. He stated he did not "fear" testifying in the Fraley matter. He was on the
17 bike team with Fraley. He felt Fraley was a good cop, and had no problems or lack of
18 understanding of constitutional issues. Although he does not associate with Fraley after work, he
19 does not believe that Fraley is a drinker. He stated he had heard that "they" were out for Fraley,
20 and that Fraley was eventually promoted but under duress. He also stated he believed Fraley was
21 a "targeted employee" and not a friend of the administration. Concerning the Association, he
22 believes all officers are represented equally, but not at 100% of the Association's capabilities.
23 He then testified that some officers may get better treatment or more aggressiveness on their
24 behalf by the Association. The Association's closeness to the administration may be one reason
25 for the disparate treatment of the officers by the Association.

26 On cross-examination, Vincent did admit that he does not know if Fraley contributed to
27 his own problems. He also stated that different facts and circumstances can cause variations in
28 the Association's representation of officers.

1 Upon questioning by the Board, Vincent stated that Fraley was not liked by the
2 administration due to non-job related issues and/or personality conflicts. He also replied to the
3 Board that he knew of Fraley's lack of promotions prior to even meeting Fraley.

4 Investigator Lance Gibson has been with the Department since 1989. He stated he was
5 investigated by fellow police officers, not Internal Affairs Bureau ("IAB"). He stated that
6 ramifications may occur from testifying on behalf of Fraley, but he was not afraid. He stated
7 Fraley does not think through his actions and their consequences; he does not think that Fraley
8 was discriminated against. Upon further questioning, he did admit that it may be discrimination
9 if Fraley was told to act a certain way for a period of time in order to be promoted, as other
10 officers were not told likewise. He did offer that a conflict between Sparks and Fraley was clear
11 and that Sparks verbally noted his disappointment with Fraley and said he should be demoted.
12 He also stated he was not aware of another officer who was passed over three times for
13 promotions as was Fraley.

14 Gibson did admit that he associated with Sparks after work, i.e., went hunting and
15 fishing. He also admitted that it is possible that Sparks stated Fraley should be fired. Eddie
16 Newman of IAB also stated to him that Fraley did not have a future ("wasn't long") with the
17 Department; and Newman was directly under Spark's command. Gibson also acknowledged that
18 he told Fraley if he sued, he may win the battle, but not the war.

19 Sergeant Robert Hart has been with the Department since 1990, and was promoted to
20 sergeant in 2000. Hart was on the bike team with Fraley, and has no "problems" with him. He
21 actually has a high opinion of Fraley. He does not think Fraley is a drinker or hangs out in bars.
22 He also considers himself to be friends with Sparks and Vadasy. As a matter of fact, Hart owned
23 a "Post Net" store with Vadasy, which sold office supplies to the Department. Hart did tell
24 Fraley to watch himself after Vadasy was moved to Fraley's substation and that Vadasy felt that
25 the substation needed "cleaning up" and that included dealing with Fraley.

26 Hart gave several examples of incidents for which he was not disciplined, but also
27 provided incidents for which he was disciplined, but never terminated, demoted, or suspended.
28 Hart also admitted that both Sparks and Vadasy made disparaging remarks about Fraley.

1 Lieutenant Jeff Stillson started with the Department in 1991. He has worked with Fraley
2 and believes Fraley is a good police officer. He stated Fraley was removed from the bike team
3 because he had taken on too many assignments and needed to "get back to the basics." He
4 wanted Fraley to concentrate on his patrol tasks. He stated Vadasy wanted Fraley off the bike
5 team as well. Stillson was also assigned to IAB and did investigate Fraley. He was not aware of
6 any revenge by the administration towards Fraley and was never told to "sustain" an
7 investigation against Fraley.

8 Sergeant Norman Shane Richardson has been with the Department since 1991, and was
9 made a sergeant in 2000. Interestingly, Richardson believes that an IAB investigation was
10 initiated against him because of his testimony at this hearing; he was "scared" and thought the
11 investigation against him was a personal attack. He thought his testimony at this hearing could
12 be detrimental to his career. A couple of days after receipt of his subpoena to appear, he was
13 called by the Chief and was asked, "whose side are you on." This was rare. He is Fraley's
14 brother-in-law as well as a friend. Richardson felt both Sparks and Vadasy had something
15 against Fraley, as did Hart. He bases this belief on things Fraley discussed with him.

16 Concerning the conflicting testimony of Richardson and Gibson the Board commented,
17 citing Gibson's testimony:

18 And his response was, No [he did not feel testifying at the Board's
19 hearing would be detrimental to his career], . . . and then he
20 hesitated. And I noticed his hesitation. I didn't keep track of how
21 long it was but then he went on and said, I think that any time you
22 testify, people benefit and other people lose. And the ramifications
23 of that might affect you somewhere in your life, and you really
24 never know And then he hesitated [again] and he went on to
25 say . . . So you always wonder if I stand up here am I going to take
26 hits for it later. That was his response (7-16-03 Tr., p. 144-
27 45.)

28 Richardson stated, in his opinion, that meant he did not want to be up here "in front of the
chief," in "front of the union," and in "front of you guys [the Board]." (7-16-03 Tr., p. 145.)

 Richardson stated he contacted Lance Gibson and Gibson stated that their careers may be
over (7-16-03 Tr., p. 115) and that people make mistakes but the administration is now counting
them, turning them into IAB investigations (7-16-03 Tr., p. 116). Richardson felt the IAB

1 investigations were what Gibson had "predicted," with officers not liked by the administration
2 (7-16-03 Tr., p.121).

3 Fraley does not drink and does not hang out in bars. Fraley is the only officer to his
4 knowledge that placed in the top 5 for promotions and was not promoted to Sergeant. He
5 believes the Association is dominated by the Department's administration and that the
6 Association represents the employees differently.

7 Richardson was questioned by the Board concerning whether a conflict existed when the
8 Association hired an attorney for a police officer; e.g., would the attorney's client be the
9 Association or the officer. Richardson stated that is why he joined the "FOP" (Fraternal Order of
10 Police).

11 Officer Tom Spath testified he has been with the Department since 1998. He not only
12 worked with Fraley but believes Fraley provided more training to the officers than others did
13 4th Amendment issues. He felt Fraley kept current with cases and was a good investigator. He
14 also claims Fraley does not hang out in bars or drinks.

15 He had heard Vadasy talk about "Team Kilgore" and "Team Mayberry." Supposedly,
16 "Team Kilgore" meant individuals who complain or challenged the administration. Spath
17 replied that he was on his "own" team. He is not aware of anyone mentioning a "Team Fraley."
18 He also remembered someone questioning officers whether they were still friends with Fraley or
19 still talked with him. He believes Ryan Duncan asked that, as did others, including Vadasy. The
20 officers were told not to talk with Fraley concerning the IAB investigations. He is aware of the
21 rumors that Sparks and Vadasy simply did not like Fraley; and it is possible that other officers
22 did not like Fraley as well. He is not aware of any complaints made to the Association
23 concerning any possible animosity towards Fraley. Spath stated he does not think his testimony
24 at this hearing will affect his career.

25 He is aware that Officer Foster questioned why he had to express loyalty to any team
26 (Team Kilgore versus Team Mayberry). This angered Vadasy. Spath was told to talk with
27 Foster, which he did and during which he told Foster not to make waves.

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1 Lieutenant Ronald Averett testified he was made a sergeant in 1989 and a lieutenant in
2 1995. He is concerned "to a degree" about testifying at this hearing. He is aware that others are
3 concerned about possible retaliation. As a matter of fact, Averett testified that Hart told him that
4 he, Hart, is afraid of being transferred from SWAT if he (Hart) told the Board what he really
5 knew.

6 Averett is familiar with the term "Fraley factor." That term was used by certain officers
7 to mean that something is askewed in some way or fashion because of something Fraley did
8 incorrectly. He has also heard comments that Fraley is an embarrassment to the Department,
9 although he does not feel that way. He has also heard of the comment "Fra Leave" because of
10 Fraley allegedly excessively utilizing his "comp" time, and is aware that other officers simply do
11 not like Fraley. It has been alleged that Fraley and Kilgore are "anti-administration" and that
12 Fraley is being painted with the same brush as Kilgore, i.e., being looked on unfavorably by the
13 administration. He also stated that when you mentioned Fraley's name, eyes would roll,
14 indicating that Fraley's name was associated with negativism.

15 He stated that Officer McCorkle called in sick but really attended a Super Bowl party
16 with Vadasy. If Fraley had done that, in Averett's opinion, Fraley would have been disciplined.
17 In his opinion, he is not aware of anything Fraley did which was so horrendous that it required
18 his termination.

19 On cross-examination, Averett stated that he does not believe Chief Mayberry is "fair" all
20 the time but does not think that Mayberry will retaliate against him for testifying. He is aware of
21 two officers fearing retaliation/transfers for testifying at this hearing. Averett stated he himself
22 has been passed over 6 times for promotion to captain.

23 Sergeant Thomas Fraley was initially with the Las Vegas Metropolitan Police
24 Department ("LVMPD") for approximately 9 months. He started with the Department in 1990.
25 He stated he was certified as a gang expert for juvenile and district court cases.

26 In 1992, his problems with Sparks, Perkins, and White began, stemming from his
27 roommate having an alleged affair with Sparks' live-in-girlfriend. Things were never "patched
28 up" between these individuals.

1 Fraley was placed in the Detective Bureau, and in 1995, Sparks was moved to that
2 Bureau. Fraley, at that time, was told to watch himself; and within two weeks of Sparks' transfer
3 to that Bureau, Fraley was removed from that Bureau, resulting in a loss of pay. Fraley went to
4 the Association on this matter, but the Association refused to do anything.

5 On his first test for promotion to Sergeant, he placed as #1. That time, the second, third,
6 fourth, and fifth placed individuals were promoted, but not Fraley. Fraley again went to the
7 Association, which informed him that they could do nothing. Several members on the
8 Association's grievance committee wanted to pursue this matter, but James White refused to
9 allow the Association to pursue the grievance. Thereafter, those members were removed from
10 the committee mid-term. Responding to the Board's question, Fraley stated that the
11 Association's president selected members for the grievance committee.

12 In 1997, Fraley tested again for Sergeant, and was #3 on the list. That year, according to
13 Fraley, number one, two, four, five, and six were promoted. He again went to the Association
14 and again the Association did nothing. At approximately this time, Fraley met with Jim White
15 and Sparks, and they entered into a contract that if Fraley behaved a certain way for 2 years, he
16 would finally be considered for promotion. (Exhibit K.) Fraley again was #1 on the test in 1998,
17 and was again passed over; Fraley then informed Sparks that he was fed up and would hire an
18 attorney concerning his lack of promotion. He was finally promoted in July 1999.

19 Fraley then gave several examples where investigations against him were sustained, but
20 not as to other officers (e.g., Exhibits MM and NN; the charge against him was sustained
21 concerning failure to follow policy and procedure when there were no such policy and
22 procedure). Fraley joined the Honor Guard in 1995, and became its commander in 2000.

23 Concerning the incident at Discount Tire, someone told Fraley not to grieve the matter
24 because it may provide the opportunity for Sparks to demote him. Concerning the Vadasy
25 transfer to Fraley's substation, Fraley testified that he was immediately removed from the bike
26 team by Vadasy after such transfer even though Vadasy was not yet his supervisor. One week
27 after the removal from the bike team, Stillson gave Fraley an excellent evaluation. However,
28 Vadasy returned the evaluation and instructed Stillson to revise it based on certain IAB

1 investigations. Fraley again sought assistance from the Association; and the Association
2 informed him to file an appeal of the evaluation and argue the same before the City's Human
3 Resources department. The appeal was denied; however, Vadasy returned Fraley to the bike
4 team for a period of time.

5 Fraley testified that the Association did nothing on his behalf concerning the
6 Department's instructions to officers not to talk with Fraley. Fraley further testified that the
7 Association agreed to file the initial complaint in this administrative matter on behalf of Fraley,
8 but then decided to withdraw the complaint. At that time, Fraley hired his present attorney and
9 filed the Amended Complaint with this Board. On cross-examination, however, Fraley admitted
10 that someone from the Association had previously been with him during interviews, that the
11 Association had an attorney and a representative for Fraley at the pre-termination hearing, as
12 well as had representatives for Fraley at two pre-disciplinary proceedings. On cross-
13 examination, Fraley also admitted that the Association does not have to proceed with a grievance
14 if it does not feel that it is meritorious.

15 Fraley testified that in 1996, Mayberry told him (Fraley) to make things right with Jim
16 White if he wanted to be promoted. It was Mayberry who was ultimately involved in a sting
17 operation of Fraley concerning the alleged exchange of sexual favors for "fixing" traffic tickets.

18 On cross-examination, the City offered Exhibits 1, 2, 3, and 4 (which is also Exhibit U),
19 to illustrate the problems with Fraley and that there was no animosity involved. However,
20 certain of those exhibits/evaluations also contain good evaluations for Fraley. Based on the
21 City's belief that Fraley was stretched too thin, he/Fraley stepped down from the Honor Guard
22 assignment.

23 It appears that the six IAB investigations leading to Fraley's termination concerned: (1)
24 the domestic battery incident, wherein a female (Pastor) was released although she appeared to
25 be the aggressor and the allegation made that Fraley personally knew her; (2) Miranda warning
26 case, in which an arrestee on a drug charge offered information on a drive-by shooting without
27 his rights being read again; (3) 4th Amendment issues and the alleged offer of improper advice to
28 officers on the same; (4) Toys-R-Us and the warrantless search of a vehicle; (5) 1817 Cutlass

1 matter and a warrantless search of residence close to a vehicle; and (6) truthfulness about
2 drinking and going to bars at Sunset Station.

3 In response to the Board's questioning, Fraley stated that a "group of friends" were
4 running the Department and that the Association was "one with the administration." In further
5 response to the Board's questions, Fraley identified the following, in his opinion, as having
6 personal animosity towards him: Sparks, Mayberry, White, Vadasy, Perkins, Brooks, and
7 Tommy Burns (Mayberry's brother-in-law).

8 Sergeant Howard Scow has been with the Department since 1990. Prior to that, he was
9 with the LVMPD for a short time. A Sergeant can be assigned to IAB after two years with the
10 Department as a sergeant; although he did not meet this requirement, Scow was assigned to IAB.
11 Prior to being assigned to IAB, Scow was in patrol and in the Detective Bureau, where he did
12 "hundreds" of investigations.

13 Scow testified that it was the Assistant City Attorney Mark Calhoun who decided Fraley
14 should be terminated. It was Scow's recommendation that Fraley be disciplined, although he did
15 not specify what discipline. Scow did state that there should be "discretionary reactions" to the
16 six IAB investigations mentioned above. He stated that no one ordered him to make any certain
17 findings from his investigations. Scow was involved in 11 investigations of Fraley, but only
18 investigated 10 incidents. He believes the lack of truthfulness allegation was the reason for
19 Fraley's termination. The Board, however, questioned Scow in great length about his
20 investigations. (Transcript of 9-24-03 hearing.)

21 Scow stated he is not a friend of Sparks, White, Perkins, or Mayberry; does not drive a
22 motorcycle; and does not fear retaliation for testifying at this hearing. He stated he did not solicit
23 cases against Fraley, and that he knows of no reason for anyone to "target" Fraley.

24 Scow admitted, upon cross-examination by the Association, that representatives from the
25 Association were present during the Fraley interviews and that David Burns even raised his voice
26 in objection. Scow believes David Burns is "serious" about his position with the Association and
27 its representation of officers. Scow even admitted the "representation" of Fraley was "vigorous"
28 at the interviews.

1 Upon further questioning by the Board, Scow stated that other forms of discipline (verbal
2 warnings, suspensions) did not work with Fraley and, in his opinion, termination was proper. In
3 his personal opinion, Scow believes Fraley is "over zealous" and may not want to follow the
4 proper path of police work.

5 Bill Berrett, Chief Deputy District Attorney for Clark County, testified regarding the 4th
6 and 5th Amendments issues. He passed the Nevada bar exam in 1981, and has also taught at the
7 Las Vegas Police Academy, POST Academy, and for the Parole & Probation Department.

8 Concerning the Miranda warning case (Exhibit C), since the drug arrestee (Washington)
9 was the victim in the drive-by shooting incident, the discussion was permissible without the
10 Miranda warning. Concerning the search of a vehicle without a warrant (Exhibit B), Berrett
11 stated he would, in all likelihood, take the case for prosecution. Concerning the residence search
12 of 1817 Cutlass, he stated he needed additional information. After reviewing the same, he stated
13 that he did not believe the search would have been upheld, although "reasonable minds can
14 differ" regarding the female's consent to the search. He did state that the actions taken by Fraley
15 in two of the incidents was "good policing."

16 Tim Hamilton is with the SafeNest Counseling Center as its Co-clinical director. He has
17 a Master's degree in social work. Concerning the domestic battery incident with the release of
18 the female, he stated the female may have had defensive wounds evidencing that the male,
19 instead, was the aggressor; but admitted based on her remarks, she should have been arrested
20 along with the male. Hamilton identified several factors for consideration when contemplating a
21 domestic battery arrest.

22 Deputy Chief James White was the president of the Association from 1992 to 1996. He
23 resigned from that position because he was not happy with the support of the members, and has
24 held no other Association positions since 1996. He did state that the Association president
25 cannot remove someone from the grievance committee.

26 He started with the Department in 1988. He stated Fraley was not "thrown" out of the
27 Detective Bureau but was "transferred" because he/Fraley had made certain enemies within that
28 Bureau. As a matter of fact, White claims to have recommended Fraley for the Detective

1 Bureau. As to why this transfer was not grieved, he stated the "committee" makes such a
2 decision and he cannot remember the specifics on this incident. He also could not remember
3 why Fraley was not promoted but believes the administration had reasons for not promoting him.
4 He then offered that it would be unfair to never promote Fraley and that is why he set up a
5 meeting with him. He stated Sparks promoted Fraley even though it was not a "favorable" thing
6 to do. He has held similar meetings with other officers concerning their need for improvement.
7 He believes Tommy Burns did not have much "confidence" in Fraley, resulting in Fraley being
8 passed over for promotions.

9 His problems with Fraley included the dishonesty with Lieutenant Chambers over his
10 misplaced weapon, bringing his children to court with him who interrupted the proceedings, and
11 the car chase to North Las Vegas while off-duty, with a non-police officer in his car, with no
12 weapon, and no means of communication.

13 Officer David C. Burns stated he is with IAB and is currently the Association's vice
14 president. He recalls Fraley telling him that Sparks did not like him/Fraley, and that Molinaro
15 stated if he grieved the Discount Tire matter, his "ass would be had" by Sparks. Burns checked
16 with Molinaro to see if he had said that, and Molinaro denied the same. He also remembers
17 Fraley telling him that the deck is stacked against him; and that he (Burns) referred Fraley to the
18 City's Human Resources Department if he felt there was discrimination. He further offered,
19 however, that Fraley had 27 investigations in approximately 3 years, and that was a lot for police
20 officers; and in his opinion, counseling and/or further training would not help Fraley but that
21 Fraley did not deserve to be terminated. He also stated that the Association participated in
22 matters each time Fraley requested assistance.

23 Burns stated that he has been dealing with the City for some time to get Fraley's files for
24 him. He also stated that he believes Fraley to be an honest man and that Fraley honestly believes
25 he is being discriminated against; and that he has had numerous conversations with Fraley. He
26 stated he had heard that Vadasy questioned officers about "Team Kilgore" versus "Team
27 Mayberry" but no one filed a grievance concerning it. Burns did discuss this with the Chief who
28 stated it was taken out of context but it was being dealt with. He did state that he/Burns felt

1 Mayberry was a fair man, would even reduce discipline, and would hear both sides of the story.
2 Burns also stated he did not personally see any animosity between Mayberry and Fraley.

3 Burns stated that he will not run again for an Association position and is not aware of
4 anyone else wishing to run for presidency or vice-presidency.

5 Sergeant Nick Robles has been with the Department since 1983, and has had over 200
6 domestic violence cases. He was involved in the domestic battery incident, wherein Fraley
7 released the female. Robles determined that the female was the aggressor based on his
8 conversations with both the male and female involved and an eyewitness to the incident. He
9 believed there was probable cause for the female's arrest; that it was a "solid arrest." He was
10 "upset" that Fraley released her and that the release was improper.

11 He does not fear retaliation for testifying at this hearing, and believes that Mayberry is
12 fair with him and other officers. He has not seen any animosity between Mayberry and Fraley,
13 does not have a motorcycle, and does not feel that he is in the "in crowd."

14 Maxine Mendelsolm is the Senior Administrative Analyst for the City's Human
15 Resources department, and conducts investigations. She saw Fraley in March 2002 but does not
16 think there are Title 7 discrimination problems. Fraley was to provide her with additional
17 information, but did not do so. Her office maintains all original evaluations for police officer.
18 She stated she is not familiar with NRS Chapter 288. Although her notes are supposedly
19 confidential, they were typed and provided to the Department.

20 The Board questioned her concerning the fact that her meeting with Fraley and resulting
21 handwritten notes are dated March 25, 2002, but yet they were typed in October 2002. She
22 stated that although they are confidential notes, there was some special meeting pertaining to
23 Fraley, and she provided the typed notes to at least Mr. Guerre. (Transcript 10-9-03, p. 97-100.)
24 The Department actually received a copy of the typed notes on approximately October 24, 2002.

25 The typed version of notes contained additional facts (Transcript 10-9-03, p. 102).

26 The Board also questioned her about a harassment scenario and appeared skeptical about
27 her remarks (Transcript 10-9-03, p. 107-8), and even noted that they were "struggling" with her

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1 responses. The Board also questioned her about an upper level supervisor (Sparks) requiring a
2 lower level supervisor (Stillson) to change an evaluation. (Transcript 10-9-03, p. 115-18.)

3 Lieutenant Eric Dennison has been with the Department for 13 years and is currently
4 assigned to the SWAT team. Fraley contacted him concerning the domestic battery incident. He
5 believes Fraley, at first, was looking for his opinion, but that later, Fraley was really looking for
6 Dennison's approval of his actions. Dennison believes there was probable cause to arrest the
7 female (Pastor); and that certain remarks by Fraley were inaccurate. However, Exhibit SS
8 describes the facts about the incident and that they were not misrepresented to Dennison.
9 Dennison also stated that he has recently investigated Officer Richardson (Fraley's brother-in-
10 law) for false overtime claims.

11 Dennison was president of the Association but stepped down upon his promotion to
12 Lieutenant, which in his opinion is closer to management than officers. He stated he tried to
13 keep the Association and the administration separate, but the two have to have a good working
14 relationship. He is not personally aware of any animosity towards Fraley by the Association,
15 Mayberry, White, Perkins, Sparks, or Vadasy, and he has no animosity towards Fraley. He also
16 does not drive a motorcycle. He was not afraid to testify at the hearing and believes Mayberry to
17 be a fair man.

18 Captain Jutta Chambers has been with the Department for 20 years. She claims Fraley
19 left his weapon unattended twice, in violation of Department policy, and she recovered the
20 weapon without notifying Fraley of the same. Another officer (Halliday) allegedly was asked by
21 Fraley to cover for him regarding the misplacement of his weapon. Chambers also testified that
22 Fraley kept changing his story about the misplaced weapon, but he feels that he was only
23 misunderstood. Although Fraley was disciplined over the misplaced weapon incidence,
24 Chambers was not disciplined for concealing the fact that she lied to Fraley that she had Fraley's
25 weapon. She also claims that she was not "setting up" Fraley for discipline.

26 She was the Department's expert on domestic battery cases, and believes there was
27 probable cause to arrest the female/Pastor, and probably the male too. She does not think the
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1 female should have been released. Chambers does agree that officers may disagree as to who
2 should be arrested in the Pastor/domestic battery case.

3 She was not afraid to testify at the hearing and is not aware of any personal animosity
4 towards Fraley. She stated she wanted to see Fraley "succeed" as he is a good officer, with a
5 "remarkable" memory for details.

6 Officer Norman Halliday testified he has been with the Department for over 13 years, and
7 was the firing range master who found Fraley's weapon. He gave it to Chambers. Later, Fraley
8 allegedly asked him to tell Chambers that he (Fraley) came back looking for the weapon.
9 Halliday believes it is important for an officer to maintain his integrity, and does not know if
10 Chambers lied about possession of the weapon. The Board questioned him about the sequence
11 of events; and Halliday believes Fraley saw Chambers prior to him/Fraley asking Halliday for
12 assistance. However, Halliday worked on the swing shift, and Chambers worked on the
13 later/graveyard shift.

14 He was not afraid to offer this testimony, and believes Mayberry to be a fair man. He is
15 not aware of any animosity towards Fraley by the Association or by anyone.

16 He was on the grievance committee, which agreed to grieve Fraley's termination;
17 however, he would not agree to grieve the termination based upon the six IAB investigations.

18 Officer Monique Panet-Swanson has been with the Department for 10 years, and has over
19 300 hours of domestic violence training. It is not unusual for officers to ask her opinion on
20 cases. She believes that Fraley did not provide her with all of the pertinent facts; e.g., that the
21 male was leaving, how long it took for the parties to be contacted, and the female's statement
22 that she was not afraid of the male. She believes there was probable cause to arrest the female
23 (Pastor).

24 She was not afraid to testify at this hearing and believes Mayberry to be a fair man. She
25 is also not aware of any animosity towards Fraley by Mayberry, White, Sparks, Perkins, Vadasy,
26 or the Association. Her husband, however, may dislike Fraley. She claims she is not in the "in
27 crowd" but has still received good assignments. She has also been an Association trustee. While

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1 with the Association, her philosophy was to take the person out of the situation and look at the
2 issues.

3 Captain Robert Vadasy is in the Tech Support Services for the Department. He started
4 with the Department in 1988. He claims to have told Tommy Burns to hire Fraley, who finished
5 3rd in his class. He believes he trained Fraley as a Sergeant in 1995/1996, and that he liked
6 Fraley then and still likes him today.

7 Vadasy has gone fishing with Sparks 2-3 times and does ride a motorcycle. He claims
8 that Sparks could not have transferred him to a substation to get rid of Fraley. Perkins was
9 Deputy Chief at that time, in charge of patrol. He claims Fraley was transferred from the bike
10 patrol to allow him/Fraley to focus on the rest of the patrol unit. Vadasy claims Stillson returned
11 Fraley to the bike team, and he did not rescind that order to save face for Stillson. He further
12 denies being told to put Fraley's head on a platter for Monty Sparks, but does claim that Fraley is
13 not "constant" in his performance as a police officer. Vadasy claims that Sparks was
14 disappointed with Fraley as Sparks had "gone to bat" for Fraley. Vadasy does not think that
15 Sparks assisted his rise to Captain.

16 As to the term "Team Mayberry," he merely meant individuals who comply with the law
17 and the constitution, and follows Department's policies, rather than individuals who push it to
18 the limits. He does not, however, remember saying "Team Kilgore." He claims he did not
19 "initiate" the IAB investigations of Fraley, and that Fraley should take responsibility for his
20 actions.

21 Deputy Chief Richard Perkins has served in the patrol unit and the Detective Bureau. He
22 was also President of the Association from 1987 to 1994. He was also elected to the State
23 Assembly in 1992.

24 He testified he thought he had a good relationship with Fraley, and is not aware of any
25 animosity towards Fraley. As a matter of fact, he has written a good report for Fraley (Exhibits
26 GG and FF), and even recommended a lesser suspension for Fraley as a result of the Discount
27 Tire incident because he appeared "remorseful." He also intervened on behalf of Fraley when
28 problems arose between Fraley and White. (City Exhibit 3.) Perkins further stated that he

1 agreed with Fraley's transfer from the Detective Bureau because of Fraley's lack of maturity, not
2 because of personal animosity. He also described Fraley's approach to police work as
3 "footloose," bending rules/laws to suit his need, moving too quickly, and not using good
4 investigation methods. He also stated he was involved in transferring Vadasy to the substation
5 where Fraley was assigned because Vadasy was a "strong performer" and Captain Moser was
6 retiring. He further offered that Sparks was not involved in the transfer of Fraley from the bike
7 team; and that he does not ride a motorcycle.

8 Monty Sparks is retired from the Department and lives in Texas. He was hired by the
9 Department in 1976 and retired in 2003 as the Department's Deputy Chief. He was the Vice
10 President of the Association in the late 1970s/early 1980s. He rides a motorcycle, but does not
11 believe that helped his police career since Tommy Burns and Mike Mayberry do not ride
12 motorcycles.

13 He claims he is not mad, nor was he mad, that Fraley's roommate dated his ex-girlfriend.
14 He has even written positive evaluations of Fraley (e.g., Exhibit FF). He believes it was a joint
15 decision between him, Perkins, and Gary Smith to remove Fraley from the Detective Bureau. As
16 to the improvement plan discussed with Fraley (Exhibit K), he claims he merely wanted to
17 forth a path for Fraley to follow so he could be promoted; and in 1999, he did recommend that
18 Fraley be promoted, although Tommy Burns was still hesitant to do so.

19 He does not deny being friends with Vadasy and Hart, and that Hart does ride a
20 motorcycle. As a matter of fact, he once recommended 20 hours of suspension for Hart. He
21 claims not to have been involved with Vadasy's transfer to Fraley's substation and he did not tell
22 Vadasy to harm Fraley. He stated he, Vadasy, and Fraley meet in 2002 for about 1 ½ hours to
23 show that there was no animosity between them, and he left the meeting on a high note.

24 He denied asserting any influence on the IAB investigations, but he was the reviewing
25 authority on some of the Fraley investigations. He recalls that Fraley had 23 IAB investigations
26 in 3 years. Because Fraley made the accusation that Sparks was biased, he was no longer the
27 reviewing authority. He never said that Fraley was "garbage" and he denies disliking Fraley. He
28 said it "tore him up" to recommend Fraley's termination. He said Fraley was terminated due to

1 the "totality of all" the IAB investigations, and that one investigation simply led to another. He
2 also believes that certain of the charges could have been a cause of termination standing alone.
3 He does not know if Fraley was counseled. He stated he did coin the phrase "Team Mayberry"
4 but it has since been taken out of context.

5 He believes the Association argued aggressively on behalf of the members, and
6 proceeded to discuss a number of incidents involving police officers and whether they were
7 disciplined.

8 Mr. Mark Cathey has been a corrections officer for 21 ½ years and has been with the
9 Association for 17 to 18 years. He is also of the Association philosophy that you should take the
10 person out of the situation and look solely at the situation. He knows Fraley and recalls talking
11 to him about his situation. Cathey stated some Association members appear to be displeased that
12 Fraley sued the Association, while others felt that the Association did not do enough for Fraley.
13 He also believes that the Association is split as to whether Fraley should have been terminated.
14 In response to a question by the Board, he stated termination was too harsh in his opinion and
15 that Fraley had a viable grievance. In response to another question by the Board, he stated he
16 did not believe the Department's actions were to discourage membership in the Association, or that
17 there was a grand conspiracy against Fraley, although Fraley may believe that. He also offered
18 that Fraley is sometimes his own worse enemy, and that the City does not terminate m
19 employees. He does not ride a motorcycle, but has gone hunting/fishing with Mayberry.

20 Sergeant Tim O'Neill has been with the Department for the last 13 ½ years. He has been
21 a trustee and vice president of the Association, and is currently the President. It is a volunteer
22 organization, with no salaries being provided to the officers. He has no personal animosity
23 towards Fraley and is not aware of any animosity by anyone. He acknowledged that Fraley was
24 not progressively disciplined and that the Association still supports Fraley's arbitration. He does
25 not believe Fraley was discriminated against. He also stated the Association members had
26 discussed removing Fraley from the Association because of the amended complaint filed with
27 this Board. Such removal can be accomplished by vote of the membership. He stated that if the

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1 Association obtained an attorney for a member, the Association is the client, not the police
2 officer.

3 He stated he is on the negotiation team and the new CBA for the parties will require the
4 City to produce more of the IAB files to the Association and to not skip around on the
5 promotion's list, but to take the first officer and then proceed orderly to the second, third, fourth,
6 and fifth. He stated the Association will also be involved in the testing procedures.

7 Although he never worked with Fraley, he understands he is a good police officer. He
8 stated he himself has been passed over for promotions four times, however, two times he did not
9 pass the test.

10 Lastly, Chief Michael Mayberry testified. In 1999, he became Acting Chief and was
11 formally appointed Chief in May 2000. He started with the Department in 1976 as a reserve
12 officer, and became full time in patrol in 1978. He became a Lieutenant in 1991 and a Captaintin
13 1995. He was president of the Association in approximately 1983/84 until 1987. At that time,
14 the Department had approximately 30-40 officers. When he became Lieutenant, he started
15 another bargaining unit for police supervisors. He does not believe the Department tells the
16 Association what to do and believes the Association vigorously defended Fraley. Mayberry
17 believes David Burns is a "ball of fire" and is a very good advocate for the Association members.
18 Supposedly, Burns tried to get Mayberry to reinstate Fraley during discussions at the
19 administrative hearing. Mayberry testified that the Association is not management dominated as
20 is evident by the officers' pay scale. The Henderson police officers make more money than the
21 Nevada Highway Patrol, LVMPD, and the City of North Las Vegas police officers.

22 He believes the IAB Division came into existence in 1996 because the supervisors were
23 not following through with discipline of their officers. He stated in 2001, he had a heart attack,
24 and had to have an angioplasty and two open heart surgeries with a triple bypass. During his
25 recovery, Monty Sparks was in charge of the Department. He may have handled disciplinary
26 problems differently than Sparks did during this recovery time. Mayberry believes that Sparks
27 would recommend more discipline than he would; however, once he/Mayberry even reduced
28 Fraley's recommended discipline. For instance, Fraley received a 10-hour suspension for the

1 Discount Tire incident, when a 40-60 hour suspension was recommended. He claims he is
2 friendlier with Sparks than he is with Vadasy, White, or Perkins. He went hunting with Sparks
3 but does not really "hang out" with these individuals. Out of the 41-42 supervisors, he believes
4 only 5 ride motorcycles.

5 He recommended Fraley be terminated based on the totality of the IAB cases and offered
6 testimony concerning the investigations. The termination was not due to personal animosity, and
7 he believes progressive discipline was utilized with Fraley. Mayberry stated he knows Fraley's
8 wife and children, and it is hard to terminate someone but Fraley acts without first thinking of the
9 ramifications or consequences. He also did not tell Vadasy to target Fraley; Vadasy requires
10 strict compliance with the rules and regulations. He did reprimand Vadasy for the "Team
11 Mayberry" remark and he is not aware of anyone having personal animosity towards Fraley.

12 As for his brother-in-law, former Chief Tommy Burns, he thinks Burns liked Fraley and
13 that Burns did not promote Fraley due to Fraley's job performance. He himself has passed over
14 Officers other than Fraley for promotions who were #1 on the list. He stated he wanted to see
15 Jutta Chambers stay with the Honor Guard as a considerable amount of time was spent on her for
16 that position. As for Fraley being on the bike team, Mayberry said he had a problem with the
17 Sergeant being the most productive member of that team when he should be supervising officers.
18 When Fraley was removed from the bike team, he was given other assignments, such as the
19 City's 50th birthday-anniversary party.

20 Scow was placed in IAB because no one else wanted the position. IAB investigations are
21 not only to investigate officers for disciplinary reasons, but also to determine whether policies
22 and procedures should be revised. Fraley apparently told Mayberry that he had never been in
23 Sunset Station, which Mayberry did not believe because of the numerous restaurants, movie
24 theatre, hotel rooms, and arcade; and instructed Scow to investigate Fraley's insinuation. In fact,
25 Fraley had gone to Sunset Station for personal and business reasons. Mayberry stated that lying
26 is a ground for termination pursuant to Department policy.

27 Mayberry further offered that Fraley did not offer to resign rather than be terminated. He
28 stated he has in the past allowed officers to resign. Upon questioning by the Board, Mayberry

1 said he would have allowed Fraley to resign. The Board believed Chief Mayberry was forthright
2 in his testimony.

3 FINDINGS OF FACT

4 1. That Fraley was a member of the Association.

5 2. That Fraley was employed by the Department since approximately 1990.

6 3. That Fraley testified he was certified as an expert on the subject of juvenile gangs.

7 4. That Fraley tested for promotion to Sergeant a number of times. On one test,
8 Fraley placed number one but the Department promoted those officers who placed in the second,
9 third, fourth and fifth places over him. On another test, Fraley placed third and the officers who
10 placed first, second, fourth, fifth and sixth were promoted. On yet another test, he was again
11 passed over although he placed first.

12 5. The City and the Department usually promote from the top five on the list but not
13 in any particular order.

14 6. That Fraley did go to the Association requesting the failure to promote be grieved
15 but the Association refused to grieve the same.

16 7. That Fraley did receive good evaluations.

17 8. That on one occasion Lieutenant Stillson was instructed by Vadasy to change his
18 good evaluation on Fraley.

19 9. That Fraley, White, and Sparks did enter into an agreement that should Fraley act
20 a certain way for a certain period of time, he would be promoted.

21 10. That testimony was presented that such an agreement is unusual. However,
22 Fraley complied with its terms and was subsequently promoted.

23 11. That the City's population has greatly increased recently as did the number of
24 officers with the Department.

25 12. This Board recognizes that the management teams of the City and the Department
26 had to change because of the City's growth.

27 13. That credible testimony was presented by a number of witnesses that certain
28 individuals were more successful within the Department based on their association with certain

1 individuals in administration and incurring the disdain of certain individuals would hamper
2 careers.

3 14. That certain witnesses testified that they believed appearing before the Board
4 could affect their careers.

5 15. That testimony was offered that the Association treated members differently
6 based on who the officer was.

7 16. That Lieutenant Gibson testified that he was not afraid to testify before the Board
8 yet conflicting testimony was presented by Richardson that Gibson believed certain careers
9 would be over because of testifying before the Board.

10 17. That testimony was presented that Fraley was not a favored officer; and examples
11 are "Fra Leave," "Fraley Factor" rolling of eyes upon the mention of Fraley, and that Kilgore
12 should memorize Fraley's phone number.

13 18. That remarks were made at a briefing concerning "Team Mayberry" and "Team
14 Kilgore."

15 19. Examples of misconduct were discussed by witnesses for which no discipline or
16 minimal discipline was ordered. (See Kilgore's testimony, Hart's testimony and the testimony
17 concerning the officer who called in sick but attended a Super Bowl party and an officer being
18 repeatedly stopped while driving while intoxicated with no formal charges being filed.) (See
19 also Scow's testimony that he would not have recommended Fraley's termination but would
20 have recommended some form of discipline and the testimony concerning Chambers denying she
21 had Fraley's weapon.)

22 20. No progressive discipline procedures were utilized with Fraley by the
23 Department.

24 21. That witness Berrett testified concerning certain "good policing" work by Fraley.

25 22. That although the Human Resource records are confidential, witness Mendelsohn
26 typed her notes and provided them to others and they were ultimately provided to the
27 Department.

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1 23. That testimony was presented that the officers with the Department earn more
2 than other peace officers.

3 24. That Chief Mayberry called Richardson after Richardson had been subpoenaed
4 for this hearing, and asked him whose side he (Richardson) was on.

5 25. That Fraley had a large number of IAB investigations within the last three years;
6 however, testimony was offered that the main six IAB complaints are (1) the domestic violence
7 case involving Pastor, (2) the Miranda warning case, (3) the Fourth Amendment matter, (4) the
8 "Toys R Us" warrantless search of a vehicle, (5) the 1817 Cutlass matter, and (6) Fraley's
9 truthfulness about drinking and going to bars at Sunset Station.

10 26. That the Association took no action concerning the continuing number of IAB
11 charges filed against Fraley prior to 2002.

12 27. That testimony was presented that any one of the six investigations could result in
13 termination.

14 28. That the Board initially ruled that testimony would be limited to events occurring
15 within six months of the filing of the initial complaint; however, counsel for the City and
16 Department, during Fraley's cross-examination, asked questions about ancient evidence causing
17 the Chairman to call the matter to counsel's attention. Counsel then decided to waive the
18 objection and proceed with his questioning. This caused the Board to order the City and the
19 Department to produce all Fraley documents.

20 29. That the Board simply allowed in testimony concerning events prior to six months
21 in support of Fraley's argument of continuing pattern of animosity; not that such ancient events
22 are reviewed for purposes of establishing a prohibited labor practice. News Printing Co., 116
23 NLRB 210, 1956 WL 13970 (1956) (evidence of past conduct may be utilized as background
24 evidence to evaluate a respondent's subsequent conduct); NLRB vs. MacMillan Ring-Tree Oil
25 Co., 394 F.2d 26 (9th Cir. 1968) (past events may be used to shed light upon events taking place
26 within the six month period.)

27 30. The evidence and testimony concerning past events confirm and/or shed light on
28 the Respondents' dealings with Fraley; e.g., no counseling, no progressive discipline.

8. Our Supreme Court has ruled that the failure of a union to fairly represent an employee interferes with that employee's rights guaranteed by NRS Chapter 288 and is a breach of the duty to fairly represent employees. Rosequist vs. International Association of Firefighters, 118 Nev. Adv. Rep. 47, 49 P.3d 651 (2002).

9. That the Association acted arbitrarily, without a reasonable, rational basis; and in an unfair or inconsistent manner towards the various members.

10. The Board concludes that the Association has breached its duty of fair representation in this case as evidenced by its continued refusal to grieve Fraley's complaint and the findings set forth above.

11. Should any conclusion be more properly construed as a finding of fact, may it be so deemed.

DECISION AND ORDER

Based upon the above, the Board hereby orders as follows:

1) IT IS HEREBY ORDERED that the City and the Department cease and desist its practice of discrimination based on personal animosity and immediately reinstate Fraley to the position of Sergeant.

2) IT IS HEREBY ORDERED that the City and the Department reimburse Fraley one-half of the salary he should have received from the date of his termination to the date Fraley's reinstatement; the reason for ½ salary is due to the fact that the Board felt that Fraley was without clean hands in this matter and therefore contributed to the situation.

3) IT IS HEREBY ORDERED that Fraley is hereby awarded attorney's fees and costs; such expense to be the shared liability of the three Respondents.

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1 4) IT IS HEREBY ORDERED that Fraley submit an accounting of fees and costs
2 within twenty (20) days of date of this order. Should Respondents wish to oppose the same, such
3 opposition must be filed and served within ten (10) days after service of the accounting.

4 DATED this 2nd day of April, 2004.

5 LOCAL GOVERNMENT EMPLOYEE-
6 MANAGEMENT RELATIONS BOARD

7 BY: 

8 JANE FROST, ESQ., Chairman

9 BY: 

10 TAMARA E. BARENGO, Vice-Chairman

11 BY: 

12 JOHN E. DICKS, ESQ., Chairman
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