

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. 547C

CASE NO. A1-045756

ORDER

11 For Complainant: Richard I. Dreitzer, Esq.

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

14 Thomas D. Beatty, Esq.

15 **ORDER AMENDING DECISION**

16 On limited remand from the Eighth Judicial District Court, Case No. A484926, the
17 Honorable Kenneth C. Cory presiding, the Local Government Employee-Management Relations
18 Board submits the following as Amendments to its Decision (Item No. 547):

19 **SUPPLEMENTAL FINDINGS OF FACT**

20 1. That it finds substantial evidence that Complainant Sergeant Thomas Fraley was
21 discriminated against by Respondent City of Henderson in that his termination was due to ill-will
22 demonstrated towards him by his superiors within the Department.

23 2. That the dismissal of Complainant Sergeant Thomas Fraley (hereinafter
24 Complainant) was an act of discrimination against him based on personal reasons evidenced by
25 the following:

26 a. Complainant's prior history of being passed over for promotion despite
27 being ranked first on the promotion list on three occasions and in the top five on two
28 other occasions.

1 b. Statements by a supervisor (Sparks) that Complainant should be demoted,
2 which statements were made prior to the events giving rise to Complainant's termination
3 and outside of any appropriate context.

4 c. Statements by a supervisor (Perkins) that Complainant would never be
5 promoted to the rank of sergeant as long as Perkins was a supervisor in the Department.

6 d. That termination was sought and invoked without sufficient prior
7 disciplinary steps (lack of progressivity) and under recommendation from individual(s)
8 who had personal dislike for Complainant.

9 e. That Complainant was subjected to discipline under circumstances that
10 were similar to where others were not, with no justification for the disparate treatment
11 being articulated.

12 f. The fact that Complainant was told by an Internal Affairs Bureau (IAB)
13 Sergeant in Respondent Henderson Police Department that he would face adverse
14 employment action by Deputy Chief Sparks if he pursued a grievance concerning a ten
15 hour suspension imposed upon him as a result of the Discount Tire incident (wherein he
16 was charged for conduct unbecoming).

17 g. Negative matters were inserted in Complainant's evaluations at the
18 insistence of Complainant's supervisor's superior (Vadasy) even after they were not
19 sustained by the Internal Affairs Bureau or after union grievance.

20 h. Disparaging comments made about Complainant by Vadasy and Sparks.

21 3. That the City failed to rebut the showing that the City's actions were motivated by
22 prohibited discriminatory animus by showing a legitimate nondiscriminatory reason, in that the
23 reasons given were lacking in support in the form of substantial evidence or were pretextual:

24 a. Complainant's purported dishonesty on a matter of visits to Sunset Station
25 and bars therein; the Board finds this basis as pretextual.

26 b. The search of a vehicle (the Toys-R-Us incident) without a warrant was
27 not justified based on exigent circumstances, a matter on which even the lawyers were in
28 dispute;

1 c. Whether Complainant should have determined one party to be the
2 aggressor in a domestic dispute.

3 d. Whether Complainant briefed officers improperly on searches incident to
4 arrest; the Board finds that the manner in which the investigation was carried out had as a
5 goal of reaching a particular conclusion adverse to Fraley. Specifically, an investigator
6 re-interviewed a witness whose recollection of events was favorable to Complainant with
7 an apparent intent to discredit that recollection.

8 **SUPPLEMENTAL CONCLUSIONS OF LAW**

9 1. NRS 288.270(1)(f) prohibits willful discrimination by local government
10 employers "because of race, color, religion, sex, age, physical or visual handicap, national origin
11 or because of political or personal reasons or affiliations."

12 2. NRS 288.270(2)(c) prohibits like actions by employees and employee
13 organizations.

14 3. "Personal reasons" as used in the foregoing provisions include "non-merit-or-
15 fitness factors,' and would include the dislike of or bias against a person which is based on an
16 individual's characteristics, beliefs, affiliations, or activities that do not affect the individual's
17 merit or fitness for any particular job." Kilgore v. City of Henderson, et al, Item No. 550H,
18 EMRB Case No. A1-045763 at 9 (2005).

19 4. Discrimination based on personal reasons may consist of excessive or disparate
20 discipline, based on personal animus. The Board has authority to review whether the level of
21 discipline was animated by ill-will.

22 5. As the Board has previously held, although NRS 288.110(4) limits the Board's
23 consideration of complaints to a six month period (subject to a discovery rule), events prior to
24 the six month period may be relevant for proving the elements of the complaint, such as that
25 discrimination is personal or willful.

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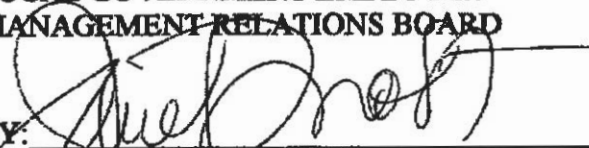
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ORDER

IT IS HEREBY ORDERED that the DECISION entered by the Board on April 2, 2004 is amended to include the foregoing Supplemental Findings of Fact and Conclusions of Law and that this Amendment of Decision be transmitted to the Eighth Judicial District Court, for further consideration in the context of the judicial review pending in Case No. A484926.

DATED this 21st day of July 2005.

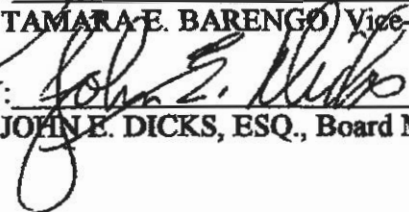
LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: 

JANET TROST, ESQ., Chairman

BY: 

TAMARA E. BARENGO, Vice-Chairman

BY: 

JOHN E. DICKS, ESQ., Board Member