

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

5 JUDITH CARPENTER,

6 Complainant,

7 vs.

8 ROSEMARY VASSILIADIS, DEPUTY
9 DIRECTOR OF AVIATION; DORIS DIAZ,
10 TERMINAL 2 MANAGER; BILL KLEIN,
11 ASSISTANT DIRECTOR/AIRSIDE OPS;
12 CHRISTINE SANTIAGO, MANAGER,
13 AIRPORT EMPLOYEE SERVICES;
KATHLEEN KIRWAN, MANAGEMENT
ANALYST, HR,

Respondents.

ITEM NO. 562G

CASE NO. A1-045773

ORDER

14 For Complainant: Judith Carpenter

15 For Respondent: Mark J. Ricciardi, Esq.
16 David B. Dornak, Esq.
17 Fisher & Phillips LLP

18 On June 2, 2004, the LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
19 RELATIONS BOARD (hereafter "Board") entered an Order (Item # 562E) remanding
20 the above-referenced case to the grievance procedures outlined in the parties' collective bargaining
21 agreement.

22 On July 19, 2004, Complainant JUDITH CARPENTER ("Complainant") filed a
23 document entitled "Star Chamber Procedures Deny Equal Protection." On September 22, 2004,
24 the Board, treating it as a motion to reconsider, denied on the grounds that (1) Complainant
25 failed to demonstrate merit for reconsideration and (2) the motion was untimely. The Board also
26 ordered Complainant and Respondents to provide a written status report within six (6) months
27 and a further written report within thirty (30) days of the completion of the grievance arbitration
28 process. Item # 562F.

1 On March 4, 2005, Complainant filed a Realleged "Second Amended Complaint of
2 Discrimination," Ancillary Complaint of Discrimination, Retaliation and Other Unfair Labor
3 Practices and her Mandatory Six Months Report. The six months report fails to include any
4 information about efforts to exhaust contractual remedies or explain why those contractual
5 remedies haven't been pursued, if such is the case.

6 On March 22, 2005, Respondent Rosemary Vassiliadis ("Vassiliadis") submitted a status
7 report noting that the only grievance procedure known by her to have been followed by
8 Complainant concerned the Documented Oral Warning. It was not known to Respondent
9 whether Complainant has proceeded with any grievance related to age discrimination, which,
10 under the Collective Bargaining Agreement, must be pursued through the County's Office of
11 Diversity Division.

12 Since that time, the parties have filed the following motions:

- 13 (1) Vassiliadis filed a Motion to Dismiss or Alternatively Defer the Realleged Second
14 Amended Complaint and Ancillary Complaint of Discrimination, Retaliation and
15 Other Unfair Labor Practices on March 25, 2005;
- 16 (2) Complainant filed a Request for Declaratory Order to Cease Retaliation, Hostile
17 Harassment, Age Discrimination for Protected Activities on March 29, 2005;
- 18 (3) Complainant filed a Motion for 1st and 14th Amendment Rights of Petition,
19 Procedural and Substantive Due Process of Law, on April 12, 2005;
- 20 (4) Complainant filed a Second Request for Declaratory Order for Continuing Unfair
21 Labor Practices on June 30, 2005.

22 None of the foregoing motions or responses thereto shed any light on whether
23 Complainant has pursued her grievance for age discrimination or should be excused therefrom.

24 The limited referral doctrine was first articulated by the Board in *I.A.F.F. #731 v. City of*
25 *Reno*, EMRB Item No. 257, Case No. A1-045466 (February 15, 1991). In that matter, the
26 Complainant brought the matter before this Board after being denied Level 1 relief before the
27 City of Reno but before seeking Level 2 relief, arbitration, as provided for under the collective
28 bargaining agreement applicable to the parties. The Board in that case was acting within its

1 authority to interpret and apply Chapter 288 of the Nevada Revised Statutes. *Local Government*
2 *Employee-Management Relations Board v. Teamsters* 98 Nev. 94, 98 (1982) ("great deference
3 should be given to the agency's interpretation when it is within the language of the statute.)
4 (citations omitted). The Board further has authority to dismiss a matter "(u)nless there is a clear
5 showing of special circumstances or extreme prejudice, if the parties have not exhausted their
6 contractual remedies, including all rights to arbitration." NAC 288.275(2). The limited deferral
7 doctrine accords relief short of dismissal "to encourage parties...to exhaust their remedies under
8 the contractual dispute resolution systems before seeking relief for the LGEMRB...." *I.A.F.F.*
9 *#731 v. City of Reno, supra*, at p. 6.

10 The Board may, but is not required to and does not always, follow policies of the
11 National Labor Relations Board ("NLRB"). *Rosequist v. Int'l Ass'n of Firefighters*, 118 Nev.
12 444, 450 (2002). Simply put, the NLRB interpretations of the National Labor Relations Act are
13 a source of guidance for the Board. *City of Reno v. Reno Police Protective Association*, 118
14 Nev. 889, 896 (2002).

15 Among the important distinctions between the National Labor-Relations Act Unfair
16 Labor Practices provision, 29 USC 158, and the Employee-Management Relations Act Unfair
17 Labor Practices provision, NRS 288.270, is that the former does not bring age discrimination (or
18 race, gender discrimination) within the NLRB's jurisdiction, whereas this Board has such
19 jurisdiction. NRS 288.270 creates a specific statutory right, separate and apart from other rights,
20 such as Federal Constitutional rights or rights available under NRS Chapter 613, which may be
21 enforceable in other fora.

22 To the extent that Complainant is seeking to invoke her state-created statutory rights
23 under NRS 288.270, she must do so through proceedings before the Board but subject to the
24 Board's limited deferral doctrine, which requires her to exhaust contractual remedies unless she
25 can show cause why she should be excused from doing so. See, e.g., *Fraley v. City of*
26 *Henderson*, Case No. A1-045756, April 2, 2004, Item # 547, p. 2.

27 !!!

1 The Board held deliberations on this matter on July 21, 2005, noticed in accordance
2 Nevada's Open Meeting Law. Based upon the Board's deliberations,

3 IT IS HEREBY ORDERED that the instant matter shall remain deferred pending a
4 showing by Complainant that she has exhausted her contractual remedies or a clear showing of
5 special circumstances or extreme prejudice that would excuse her from exhausting such
6 remedies. Complainant shall provide said showing in writing within thirty (30) days of the date
7 of this Order. Whether or not said showing has been made, the Board shall take this matter up
8 for further consideration.

9 IT IS FURTHER ORDERED that all pending motions are denied without prejudice.

10 DATED this 8th day of September, 2005.

11 LOCAL GOVERNMENT EMPLOYEE-
12 MANAGEMENT RELATIONS BOARD

13 BY: Tamara Barengo
14 TAMARA BARENGO, Chairman

15 BY: John E. Dicks
16 JOHN E. DICKS, ESQ., Vice-Chairman

17 BY: Janet Trost
18 JANET TROST, ESQ., Board Member
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