

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

5 RON T. WILLIAMS,

6 Complainant,

7 vs.

ITEM NO. 619

CASE NO. A1-045866

8 **ORDER**  
9  
10

11 For Complainant: Harold P. Gewerter, Esq.  
Harold P. Gewerter, Esq., Ltd.

12 For Respondent: Albert G. Marquis, Esq.  
13 Deverie J. Christensen, Esq.  
14 Marquis & Aurbach

15 **BACKGROUND/STATEMENT OF THE CASE**

16 Complainant Lieutenant Ron T. Williams ("Complainant") brought the subject prohibited  
17 practices complaint alleging discrimination in violation of the Americans With Disabilities Act  
18 (ADA) and NRS Chapter 288, contending in substance that he has a disability in the form of  
19 alcoholism, as a result of which he received excessive punishment (a 120-hour suspension) for  
20 driving a department vehicle after consuming alcohol, a punitive transfer from the events squad,  
21 and was disqualified from competition for an open captain position as a result of the excessive  
22 punishment.

23 Respondent filed a Motion to Dismiss accepting the allegations of the Complaint and  
24 contending that under the ADA, specifically 42 U.S.C. §12114, which concerns limitations on  
25 protections under that Act for employees who have engaged in the illegal use of drugs or are  
26 alcoholics.

27 Complainant filed an Opposition on November 21, 2005 disputing the applicability of the  
28 limitations of §12114. He contended that, separate from the ADA, the actions complained of

1 were also discrimination based on personal or political reasons in violation of NRS 288.270.  
2 Complainant then referred to incidents, not referred to in the Complaint, in which other  
3 allegedly with greater alcohol-related charges were treated substantially less harsh than  
4 Complainant.

5 In its Reply filed December 2, 2005, Respondent further asserted unavailability of ADA  
6 protections for someone in Complainant's situation and contended that the Complaint did not  
7 contain allegations sufficient to support discrimination based on personal or political reasons.  
8 Respondent also contended that Complainant needed to show he was in a protected class, "as it  
9 relates to personal or political discrimination."

10 The Board held hearings on January 9, 2006 and February 1, 2006 on the Motion and  
11 Countermotions, noticed in accordance with Nevada's Open Meeting Law. Based thereon, it  
12 renders the following Findings of Fact and Conclusions of Law:

13 **FINDINGS OF FACT**

14 1. For purposes of this Motion, the Board accepts the allegations of Fact in the  
15 Complaint as true (omitting Complainant's opinions and inferences contained therein):

- 16 • Complaint, ¶7: "In 1992, WILLIAMS was hired by METRO as a patrol officer,  
17 following which he held positions as a member of the Problem Solving Unit, Honor  
18 Guard, Field Training Officer, Defensive Tactics Instructor, Narcotics Detective, Patrol  
19 Sergeant, Field Training Sergeant, and as a Detective Sergeant in Sexual Assault/Abuse.  
20 He was twice decorated for meritorious service."
- 21 • Complaint, ¶8: "On or about October 22, 2002, WILLIAMS voluntarily admitted  
22 himself to a 30-day patient rehabilitation program at Monte Vista Hospital in Las Vegas,  
23 Nevada for treatment of alcoholism. No one at his work knew of his struggles with  
24 alcohol. ..."
- 25 • Complaint ¶9: "On or about October 23, 2002, WILLIAMS notified a representative of  
26 METRO's Employee Assistance Program (EAP) of his history of alcohol addiction and  
27 his treatment needs. During one such conversation with the EAP representative, the  
28 representative told WILLIAMS that he would advise former Captain (now Deputy Chief)

1 Greg McCurdy. ... WILLIAMS called Captain McCurdy himself from Monte Vista to  
2 explain his disease and his need for treatment.

- 3 • Complaint ¶10: "During the aforementioned conversation, Captain McCurdy stated that  
4 he did not know of WILLIAMS' problems and that it never interfered with WILLIAMS'  
5 work. WILLIAMS stated that he would be taking FMLA time to deal with his disease  
6 and he asked that Captain McCurdy keep this issue confidential."
- 7 • Complaint, ¶11: "On or about November 22, 2002, WILLIAMS was discharged from  
8 rehabilitation at Monte Vista. WILLIAMS returned to his duties as a police Lieutenant.  
9 However, unbeknownst to WILLIAMS, Captain McCurdy had informed staff members  
10 of WILLIAMS' confidential medical information."
- 11 • Complaint ¶ 12: "Between December, 2002 and January, 2004, WILLIAMS experienced  
12 a more hostile and caustic attitude from Captain McCurdy. Suddenly, Captain McCurdy  
13 started becoming angry with WILLIAMS when WILLIAMS failed to work on his  
14 off—days that WILLIAMS desperately needed to spend with his family, lower his stress  
15 and permit him to maintain his rehabilitation from his alcohol disease. All of this was  
16 explained to Captain McCurdy, who dismissed WILLIAMS' needs as secondary to his  
17 job duties."
- 18 • Complaint ¶13: "In or about January, 2004, a position became available for a Lieutenant  
19 in the Special Events section of the police department. Captain Vincent Cannito was  
20 responsible for filling the position. WILLIAMS applied for the position. During the  
21 selection process, Captain Cannito informed WILLIAMS that he had reservations about  
22 selecting WILLIAMS for the position. Captain Cannito stated that he had spoken with  
23 two Deputy Chiefs (McCurdy and Carl Fruge) at which time he learned that WILLIAMS  
24 had a 'drinking problem.'"
- 25 • Complaint ¶14: "On or about October 10, 2004, WILLIAMS was having a relapse of his  
26 problems with alcohol. After work that day, he went to a local bar and drank alcohol  
27 with a METRO Sergeant."

- 1 • Complaint ¶15: "On or about October 11, 2004, while off duty, WILLIAMS met e  
2 same Sergeant at the same bar, where the two officers consumed alcohol."
- 3 • Complaint ¶16: "Without the knowledge of WILLIAMS, the Sergeant with who (sic) e  
4 had been drinking on October 11, 2004, drove home by himself and was allege Y  
5 involved in a one-car non-injury accident."
- 6 • Complaint ¶17: "During the investigation of the accident by members of the METR( s  
7 Internal Affairs office, WILLIAMS provided his recorded statement and otherw e  
8 cooperated in the investigation. Nevertheless, WILLIAMS was charged by Inter al  
9 Affairs with operating a department-owned vehicle after consuming alcohol, with drivng  
10 while intoxicated, and of not being forthright during his investigation..n."
- 11 • Complaint ¶18: "Although WILLIAMS admitted to having operated the department  
12 owned vehicle after consuming alcohol, WILLIAMS denied driving while intoxicated  
13 and there was never any form of blood-alcohol testing procedure performed i a  
14 WILLIAMS. The only basis for the charge of driving while intoxicated was a bloo-  
15 alcohol "profile" that was allegedly performed by someone at the department based u on  
16 an analysis of WILLIAMS' weight, the number of drinks the department thought he i J  
17 have consumed at the bar, the time of his consumption, etc..n. (H)e was never crimin ly  
18 charged with that offense."
- 19 • Complaint ¶19: "On or about November 5, 2004, WILLIAMS received a message fi m  
20 Captain Cannito's secretary, stating that Captain Cannito wanted to meet v th  
21 WILLIAMS. WILLIAMS learned that his transfer from the Special Events section i s  
22 the topic of conversation between Captain Cannito and others. WILLIAMS was  
23 thereafter transferred from his position in the Special Events section..."
- 24 • Complaint ¶21: "During a conversation between Captain Montandon and WILLIAMS ,  
25 Captain Montandon received a telephone call from Captain Cannito. A few minute s  
26 later, WILLIAMS was asked whether he (WILLIAMS) had a "drinking problem."  
27 Captain Montandon admitted that Captain Cannito told him over the telephone tha t  
28 WILLIAMS had a drinking problem. During the course of Captain Montandon's sudde n

1 inquiry, his voice became louder and more demanding. In response, WILLIAMS  
2 assured Captain Montandon that he would be fine."

- 3 • Complaint ¶22: "On or about November 19, 2004, WILLIAMS checked himself into the  
4 Las Vegas Recovery Center. Once again, WILLIAMS informed his EAP representative  
5 of the recurrence of his disease."

- 6 • Complaint ¶23: "On or about December 6, 2004, WILLIAMS reported back to work  
7 after his inpatient rehabilitation at Las Vegas Recovery Center. Sensing that he had to  
8 entrust Captain Montandon with the details of his disease, WILLIAMS confided in  
9 Captain Montandon upon his return to duty.

- 10 • Complaint ¶24: "On or about December 14, 2004, the position was announced for police  
11 Captain ...n"

- 12 • Complaint ¶25: "On or about January 28, 2005, WILLIAMS attended an  
13 orientation/informational meeting for the position of police Captain. WILLIAMS was  
14 provided with a Career Review Questionnaire, which was designed to be completed by  
15 each applicant for the position as an outline of the applicant's qualifications for the  
16 position. The questionnaire did not include any indication that if an applicant had  
17 received an adjudication of misconduct, he/she would be disqualified from the position."

- 18 • Complaint ¶26: "On or about February 23, 2005, WILLIAMS learned from his Captain  
19 that he would be receiving 120 hours of suspension time for his alleged misconduct in  
20 operating the department vehicle after consuming alcohol, for driving while under the  
21 influence of alcohol and for not being 'forthright' during the investigation."

- 22 • Complaint ¶27: "On or about March 11, 2005, WILLIAMS met with Captain Candy  
23 Byrd, who informed WILLIAMS that she was being pressured by METRO'S Labor  
24 Relations Department to obtain WILLIAMS' signature on the final adjudication of his  
25 Internal Affairs investigation. ...

- 26 • Complaint ¶28: "On or about March 14, 2005, WILLIAMS took the written portion of  
27 the Captain's test and scored 76% on the test, placing him among the top five (5)  
28 candidates.."

- 1 • Complaint ¶29: "On or about March 16, 2005, WILLIAMS received his final  
2 adjudication of the Internal Affairs complaint from Captain Byrd Captain Byrd expl ed  
3 to WILLIAMS that the Labor Relations Department pressured her into issuing such L...h  
4 suspension to WILLIAMS (120 hours), contrary to her own recommendations.
- 5 • Complaint ¶31: "Prior to March 23, 2005, without warning or subjecting it to bargaining  
6 with WILLIAMS' police union ... , METRO changed its policy regarding listng  
7 adjudications on the Career Review Questionnaire for the Captain's position. Or  
8 about March 23, 2005, WILLIAMS sent an e-mail to his entire chain of comm  
9 inquiring as to whether he would have to list his adjudication on his Career Rev ew  
10 Questionnaire for the Captain's position. WILLIAMS was subsequently informed tha...e  
11 had to list the adjudication.
- 12 • Complaint ¶32: "On or about April 4, 2005, WILLIAMS was informed that as a result of  
13 the adjudication of a major suspension (defined as more than 40 hours) from internal  
14 Affairs, and despite the fact that he had not had an opportunity to appeal his adjudica n,  
15 he would be immediately disqualified from competing for the position of police Captai
- 16 • Complaint ¶32 (sic): "On or about April 12, 2005, WILLIAMS met with Deputy ( ef  
17 Clifton Davis, to discuss his adjudication. During this discussion, WILLIAMS attemptd  
18 to discuss his alcoholism and its effects. Deputy Chief David (sic) refused to liste o  
19 WILLIAMS regarding this issue. WILLIAMS advised Deputy Chief Davis that he as  
20 being selectively persecuted by METRO due to his disability (alcoholism). Once ag an,  
21 Deputy Chief Davis refused to listen to WILLIAMS' comments or the evidence  
22 wished to present during that meeting."
- 23 • Complaint ¶33: "on or about April 19, 2005, a second meeting was conducted betw n  
24 WILLIAMS and Deputy Chief Davis. Deputy Chief Davis admitted that the blo  
25 alcohol 'profile' used to support the charge of driving while intoxicated was not reli e  
26 evidence, and that such charge would be removed from WILLIAMS' adjudicati  
27 Nevertheless, despite the fact that the original 120 hour suspension was expressly ba d  
28 upon (1) driving a department vehicle after consuming alcohol, (2) driving w.... e

1 intoxicated, and (3) not being 'forthright' during the investigation, and despite the fact  
2 that driving while intoxicated was dropped and WILLIAMS was never charged with any  
3 truthfulness violations, Deputy Chief Davis refused to reduce the 120 hour suspension to  
4 remain in line with the department's disciplinary matrix (i.e., written reprimand)."

- 5 • Complaint ¶34: "During that second meeting, Deputy Chief Davis announced that  
6 WILLIAMS' adjudication would be re-written to reflect his decision. Despite the fact  
7 that Deputy Chief Davis made his decision in April, 2005, no such re-written  
8 adjudication has been submitted for WILLIAMS' review."
- 9 • Complaint ¶35: "In or about May, 2005, the department's Labor/Management Board  
10 refused to consider such information and upheld the excessive 120 hour suspension."
- 11 • Complaint ¶36: "WILLIAMS and his legal representative have spoken to one of the  
12 Labor/Management Board members who presided over the above-referenced hearing, and  
13 who indicated that there was an apparent bias and prejudice that existed among most  
14 members of the Labor/Management Board, and which acted to suppress the evidence that  
15 was presented in WILLIAMS (sic) favor and deny WILLIAMS his rights."

### 16 CONCLUSIONS OF LAW

17 1. The Board has authority only to hear matters arising under NRS Chapter 288. Cf.  
18 NAC 288.200 (only justiciable controversies under Chapter 288); see, also, *Kilgore v. City of*  
19 *Henderson* Case No. A1-045763 at 30, Item No. 550H (2005). It therefore has no authority to  
20 hear complaints insofar as they are grounded under other laws, such as complaints grounded  
21 under violations of the Americans with Disabilities Act or the Family Medical Leave Act.

22 2. NRS 288.270(1)(f) prohibits discrimination "because of race, color, religion, sex,  
23 age, physical or visual handicap, national origin or because of political or personal reasons or  
24 affiliations." The enumerated list of prohibited categories of discrimination "race, color,  
25 religion, sex, age, physical or visual handicap, national origin" does not include alcoholism.

26 3. Disparate treatment based on a person's condition of being an alcoholic may be  
27 discrimination "because of . . . personal reasons" under NRS 288.270(1)(f) if there is no merit o  
28

1 fitness basis for such disparate treatment. *Kilgore v. City of Henderson* Case No. A1-045763 at  
2 9, Item No. 550H (2005).

3 4. There is a fitness basis for considering a person's alcoholism when that person  
4 has returned to the consumption of alcohol and has admittedly operated a department vehicle  
5 after consuming alcohol or it otherwise has a reasonable prospect of adversely affecting his  
6 ability to carry out his work.

7 5. A complaint may be dismissed "(i)f the board determines that no probable cause  
8 exists for the complaint..." NAC 288.375(1).

9 **DECISION AND ORDER**

10 The Board determines that, under the facts as alleged by Complainant, consideration of  
11 Complainant's condition of alcoholism, after his renewed consumption of alcohol after treatment  
12 for alcoholism, was based on his fitness and therefore not discrimination based on personal  
13 reasons. The Board therefore finds that his matter lacks probable cause and dismisses it for lack  
14 of probable cause.

15 IT IS HEREBY ADJUDGED, DECREED AND ORDERED that this matter is dismissed  
16 with prejudice, each side to bear its own costs and attorney fees.

17 DATED this 1<sup>st</sup> day of February, 2006.

18 LOCAL GOVERNMENT EMPLOYEE-  
19 MANAGEMENT RELATIONS BOARD

20 BY:



21 TAMARAE. BARENGO, Chairman

22 BY:



23 JANET TROST, ESQ., Board Member

24 I dissent.

25 Alcoholism is a insidious affliction pervasive in our society. It is a problem which must  
26 be dealt with aggressively and with firmness in the workplace. The aim of all local government  
27 management actions in dealing with an employee having an alcohol problem must be to insure  
28 the safety of the public and fellow employees, but then to rehabilitate the employee. Personal



1 animosity toward or retaliation against the employee for errant conduct has no place in the  
2 process. Disciplinary actions must be meted out by management fairly, justly, compassionately  
3 and evenly, with discrimination only on the basis of the severity or repetition of the  
4 transgression. Although episodes of relapse are to be expected, eventually the employee must  
5 remain symptomless or face termination. Ironically, the employer is in the best position to  
6 effectuate success; it has the most valuable motivator for most employees at its disposal: a job.

7 We do not know what the evidence at a hearing would prove to us in the case. At this  
8 juncture, Complainant has alleged he was treated more severely than fellow employees for  
9 similar transgressions; that he tried to be open about his problem with his supervisors and they  
10 used that information against him, even broadcast it in the workplace to his detriment; that he  
11 was denied a promotion for a reason not based on merit or fitness; and his attempts at  
12 rehabilitation were not encouraged. To me, this gets him a hearing before this Board.

13 Complainant's complaint does not lack probable cause and I would deny the motion.

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17 BY: \_\_\_\_\_

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19 JOHN E. DICKS, ESQ., Vice-Chairman  
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