

STATE OF NEVADA  
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

ERIC SPANNBAUER,

Complainant,

vs.

CITY OF NORTH LAS VEGAS; NORTH  
LAS VEGAS POLICE DEPARTMENT, and  
NORTH LAS VEGAS POLICE OFFICERS  
ASSOCIATION,

Respondents.

ITEM NO. 636C

CASE NO. A1-045885

**ORDER**

For Complainant: John J. Tofano, Esq.

For Respondents: Carie A. Torrence, Esq.  
North Las Vegas City Attorney's Office

Michael A. Urban, Esq.  
Douglas V. Ritchie, Esq.  
Laquer, Urban, Clifford & Hodge LLP

**FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER**

On June 1, 2006, Eric Spannbauer (hereinafter "Spannbauer") filed a Complaint with the Local Government Employee-Management Relations Board (hereinafter "Board") alleging that the City of North Las Vegas ("City"), its police department, and/or the North Las Vegas Police Officers Association ("Association") had committed prohibited practices under NRS 288.270 - i.e., that the police department and/or Association interfered, restrained or coerced him in the exercise of any rights guaranteed under NRS chapter 288; that they dominated, interfered or assisted in the formation or administration of any employee organization; and that they discriminated against him.

This matter was heard by the Board on October 22 and 23, 2007; January 16 and 17, 2008; and February 11 and 12, 2008. The following is a discussion of the testimony offered by the numerous witnesses:

Discussion of Testimony/Evidence

Joyce Lira was the first witness. She is the Human Resources Director for the City of North Las Vegas ("City"). Transcript of Hearing ("Tr."), p. 47. A discussion was concerning documents allegedly kept in various files maintained by the City and separately maintained by its agencies.

Melissa James was the next witness. She testified she is a patrol officer for the City. She explained that she had lunch with Spannbauer and Officer Loren McAlister at Kavanaugh's on the date in question, stating:

Officer Spannbauer had explained that he had made a traffic stop earlier in the evening, and during that traffic stop he had failed to give back the driver's license, he believed, to the female that he had stopped. And he walked us through a little bit of what had happened on the traffic stop as far as -- as far as her possibly being DUI and then conducting some field sobriety tests there and then going back to the house. But during that, he didn't -- couldn't remember if he gave back her driver's license.

So I told him when -- in a few hours why doesn't he try to go back by the house, when everybody gets up and moving around getting ready for work, and see if she had her driver's license or not.  
Tr. p. 116-7.

Ms. James further stated that some of her interview with Internal Affairs ("IA") was recorded; yet, IA Investigator Terry McAllister turned the tape recorder off before the conversations were concluded. Tr. P. 119-20. McAllister continued to question her with the recorder off and indicated to her that he believed Spannbauer was lying. Tr. p. 120-21. She did not report that incident to anyone. She also indicated that Officer Yarter approached her and indicated that the police department had already consulted with an attorney and that it would "nonconfirm" Spannbauer as a police officer even though the probationary period had expired. Tr. p. 123. James also indicated that Officer Scott Hafen indicated to her that Chris Cannon had been removed as the union representative for Spannbauer and that no one else had been appointed. Tr. p. 127.

She testified that at the conclusion of the probationary period, an officer would receive an evaluation, but no further communications would be directed to the officer by the police.

1 department. Tr. p. 128-29. She did indicate that the officer would receive his permanent off  
2 badge and number. Tr. p. 149-151.

3 James did admit that the police "radio traffic" indicated she had lunch at Timbers whe  
4 fact she did not. Tr. p. 136. She also admitted that an officer will be "in trouble" if he  
5 someone driver's license and that the police department policy is to make every attempt to ret  
6 a driver's license. Tr. p. 138.

7 She further indicated that Spannbauer's end of probation date was August 9, 2005,  
8 that she did not receive an email notifying the police officers that he had failed to complete  
9 probation. Tr. p. 155-56.

10 Officer Loren McAlister was the next witness. He indicated that his probationary per  
11 with the police department was 18 months; and at the conclusion thereof, he received an  
12 evaluation and a badge. Tr. p. 160. He recalls Spannbauer telling him during a lunch that  
13 believed he lost a person's driver's license and that he attempted to contact the person to see if  
14 had actually returned it to her. Tr. p. 164. He also indicated that IA interviewed him, duri  
15 which the tape recorder was turned off. Tr. p. 169. IA allegedly informed McAlister tha  
16 would not be in his best interest to lie for Spannbauer and that IA thought Spannbauer was lyin  
17 Id. He did not report to anyone that the tape recorder had been turned off during the interv  
18 He admits it could have been intimidation. Tr. p. 186.

19 Officer Michael Yarder was the next witness. He indicated he was also the Vi  
20 President of the Association. Tr. p. 189. He stated he had not heard of an officer bei  
21 admonished to be truthful after an IA interview had been conducted. Tr. p. 193. He recalled  
22 conversation with the Association Board members about Spannbauer and that the incide  
23 occurred while he was on probation but discipline did not occur until the probationary period h  
24 expired. Tr. p. 199. He stated he did not talk with Spannbauer personally about his probatio  
25 status. Tr. p. 204. Spannbauer's personnel file was not reviewed to determine his employe  
26 status. He indicated that the Association has no "power" over whether the police department  
27 going to treat an individual as a probationary employee or a confirmed employee. Tr. p. 216. f  
28

1 also indicated that he was never pulled from a case while serving as a union representative for an  
2 accused officer. Tr. p. 224.

3 In response to the Board, he stated he did not tell James that the City or police department  
4 was trying to get "rid" of Spannbauer by claiming he was a probationary employee. Tr. p. 2  
5 He claims he only talked with Spannbauer once. Tr. p. 226. He acknowledged that Cannon was  
6 assigned to be Spannbauer's representative and that Cannon was removed. Tr. p. 227.

7 Chris Cannon was the next witness. Cannon is a licensed Nevada attorney as well as an  
8 officer. Tr. p. 228-29. He indicated that patrol officers would serve as representatives for accused  
9 patrol officers; officers representing officers in similar employment positions. Tr. p. 232.

10 He stated that Spannbauer came into the Association's offices to file a representative  
11 request form after IA notified him of their investigation. Tr. p. 239. He stated the form is given  
12 to the Association's Board of Directors and given to the grievance chairman who then assigns a  
13 representative. Tr. p. 241. The request form indicated that Spannbauer had lunch at Bilbo's.  
14 p. 245. Ray Czak was the grievance chairman and Cannon acknowledged that he was assigned  
15 by Czak to represent Spannbauer. Tr. p. 255. He stated he usually contacts the officer and  
16 schedules a pre-IA interview meeting with the officer as well as the IA interview. Tr. p. 255-  
17 If the charges are sustained, a mitigation or predisciplinary hearing is scheduled. Tr. p. 257. He  
18 stated in the 75 to 90 cases on which he was the representative, the IA tape recorder was never  
19 turned off, nor was the tape recorder turned off when he was personally interviewed. Tr. p. 259  
20 60. The notice to Spannbauer did not contain that specific finding of "sustained." Tr. p. 267.

21 Cannon stated he talked with Sgt. Dave Smith, President of the Association, about  
22 Spannbauer's probationary status. Tr. p. 273. Cannon was eventually pulled from representing  
23 Spannbauer and informed that Smith would be the new representative, and that they would seek  
24 legal advice on the probationary issue. Tr. p. 276, 279-80. This is the only case on which  
25 Cannon has ever been removed as the representative. Tr. p. 277. Cannon indicated that there  
26 were inconsistencies in Spannbauer's recollection of the incident. More specifically, Spannbauer  
27 stated he had not discussed this incident with anyone other than his supervisor, when in fact he  
28 had also discussed this incident with James and McAlister, with dispatch, and had used the

1 police department computer to send a message to someone about the incident. Tr. p. 297-98. He  
2 also believes there were inconsistencies with the date and time of his lunch with Officers James  
3 and McAlister. Tr. p. 416. Because of Spannbauer's inconsistencies, Cannon believed that a  
4 truthfulness charge could be brought. Tr. p. 301. He also indicated that he had not seen  
5 Spannbauer's end of probation evaluation nor the IA file during the time he represented  
6 Spannbauer. Tr. p. 336-37.

7 Cannon did not see the citizen complaint against Spannbauer. Tr. p. 340. He believed  
8 Mr. Napolitano called in a complaint to the dispatcher on behalf of his wife, and the call was  
9 referred to the watch commander or the officer's sergeant. Tr. p. 342-43. He did not contact  
10 Napolitano, nor does he believe such investigation is allowed by the representative. Tr. p. 427.  
11 The Board then discussed with Cannon various discrepancies in Mrs. Napolitano's version of  
12 events, e.g., at one time the light was red and then later she stated the light was green; she stated  
13 neither she nor her husband had friends at the police department whereas there are two  
14 dispatchers who are their friends; and her husband may ride in the same motorcycle club as  
15 Officer Waller. Tr. p. 431-38. Since the representative cannot confront and/or interview the  
16 complaining citizen, Cannon was questioned by the Board about the impossibility of refuting the  
17 citizen's complaints. Tr. p. 460-61. For example, Spannbauer claims Napolitano was concerned  
18 that her husband would be mad at her because she was late; and such would be a motive to lie to  
19 IA. Tr. p. 479. The Board also noted by Napolitano filing the complaint against Spannbauer  
20 she has effectively prevented him, and probably other police officers, from ever stopping her  
21 again. Tr. p. 473-74.

22 A general Association Board meeting was held and Spannbauer was discussed. Tr. p.  
23 292. Spannbauer eventually resigned from the police department. Tr. p. 293. Cannon testified  
24 that he told Spannbauer to seek legal advice prior to resigning, which he believes Spannbauer  
25 did. Tr. p. 303. Cannon indicated that, based upon Spannbauer's resignation and that the matter  
26 never proceeded to a mitigation hearing, the only file would be the confidential file maintained  
27 by IA, and nothing would be contained within Spannbauer's personnel file about this incident.

1 Tr. p. 404-08. Cannon also stated he did bring the issue of the tape recording being turned off  
2 Sgt. Smith and Officer Hafen, but a formal grievance was never filed. Tr. p. 326-27.

3 Eric Spannbauer was the next witness. He was hired by the police department on  
4 February 9, 2004; and prior to that, he was employed with the Nevada Highway Patrol. Tr. p.  
5 354. Spannbauer described in detail the traffic stop involving Mrs. Napolitano. Tr. p. 384-403  
6 He also described events prior to and after the traffic stop. Spannbauer later admitted that he did  
7 not radio in the Napolitano traffic stop; he did not notify dispatch that he was following her  
8 home or returning to her house; and he told dispatch that he had lunch at McDonald's. Tr. p. 59  
9 He was also cross-examined on why he did not call for back up if he was stopping Napolitano's  
10 SUV because of the dark window tint, possible gang involvement, and running a traffic signal; on  
11 which Spannbauer replied that there are only five police cars in the northeast area at night and  
12 the time, two were at lunch, the other two were investigating an accident, and he was the sole  
13 remaining officer. Tr. p. 601-02. At the time of the traffic stop, dispatch still had Spannbauer as  
14 being at the Smith's parking lot. Tr. p. 603.

15 He stated that IA investigations are allegedly confidential; yet, on August 18, 2005  
16 Dispatcher Michelle Coutre walked up to him and Officer Farage and indicated she was a friend  
17 of Jackie Napolitano. Tr. p. 377-79. He and Officer Farage reported this incident, but nothing  
18 came of it. Tr. p. 379-81. Allegedly both Mr. and Mrs. Napolitano indicated they had no friends  
19 in the police department. Tr. p. 381. He stated that prior to the mitigation hearing, he was not  
20 allowed to review the entire IA file. Tr. p. 494. He also offered that the written complaint did  
21 not even come from Mrs. Napolitano but was filed by the husband. Tr. p. 494. His end of  
22 probation evaluation indicated that Spannbauer had "just recently started being proactive in his  
23 patrol duties, targeting the . . . biker gang in North Las Vegas." Tr. p. 497.

24 Spannbauer stated that, although he was notified of the IA investigation on July 9, he  
25 was not placed on leave, with pay, until October 29, 2005. Tr. p. 498. Originally, during the IA  
26 interview, Cannon was his representative. Sgt. Nowakowski was the representative at the time  
27 Spannbauer was notified of the administrative leave. Tr. p. 516, p. 653. Along with the leave  
28 documents, Spannbauer received the notice of mitigation hearing. Tr. p. 517-18.

1 According to Spannbauer, the next contact with a union representative came when IA  
2 Sgt. McAllister told him to call Dave Smith and provided Smith's phone number from  
3 McAllister's own cell phone. Tr. p. 520-21e It was also on October 29th that Spannbauer claim  
4 he first learned that he would be treated as a probationary employee (Tr. p. 521) even though h  
5 had his end of probation evaluation and was given a badge containing a "P" number (Tr. p. 523)  
6 The fact that he would be treated as a probationary employee was confirmed by Dave Smith and  
7 Scott Hafen on November 3, 2005. Tr. p. 526-27. Both allegedly informed Spannbauer tha  
8 there is case law that he could be treated as a probationary employee, and he believed them  
9 similar to soldiers believing and relying on their fellow soldiers in the trenches. Tr. p. 528-29. f  
10 was Sgt. Dave Smith who recommended to Spannbauer that he resign. Tr. p. 529. Smith  
11 allegedly indicated that the Association would not represent Spannbauer, as a probation<sup>ary</sup>  
12 employee, at any subsequent IA meetings or hearings. Tr. p. 531. Smith allegedly indicated tha  
13 the Association would not file any grievances on Spannbauer's behalf. Tr. p. 658. Spannbau<sup>er</sup>  
14 claims that Cannon did not advise him to seek legal counsel until April 2006. Tr. p. 659.

15 On November 7, 2005, Smith allegedly informed Spannbauer that he had discussed th<sup>e</sup>  
16 matter with Chief Paresi and the Chief agreed that Spannbauer should resign. Tr. p. 532  
17 Allegedly, on that date, Spannbauer went to the Association's offices where the resignatio<sup>n</sup>  
18 document was already prepared. Tr. p. 535. The document (hearing exhibit 34) released th<sup>e</sup>  
19 City from any liability. Spannbauer stated that Sgt. Smith told him that Chief Paresi would no<sup>t</sup>  
20 let him resign unless he signed this agreement. Tr. p. 536. Sgt. Smith also supposedly informe<sup>d</sup>  
21 Spannbauer that he (Smith) had talked to an attorney and the attorney advised that the agreemen<sup>t</sup>  
22 could not take away Spannbauer's rights to litigate the issue. Tr. p. 536-37. Spannbauer furthe<sup>r</sup>  
23 indicated that Smith told him that no one would hire him for a law enforcement position if h<sup>e</sup>  
24 was non-confirmed. Tr. p. 676. Spannbauer admitted that Smith told him if the IA investigatio<sup>n</sup>  
25 was closed without any action being taken, other than Spannbauer resigning, the IA records  
26 would remain confidential and secured with IA. Tr. p. 676.

27 Spannbauer then testified about Officer Katherine Buehler associating with an ex-felon a<sup>s</sup>  
28 her boyfriend, drinking and driving resulting in an accident, and marijuana and a pipe bein<sup>g</sup>

1 found in her car. Tr. p. 561. Although the incident occurred while she was on probation, the  
2 Association represented her and she only received a two-week suspension. Tr. p. 561-63. He  
3 does not know the scope of the representation (Tr. p. 698), but he now believes he was  
4 discriminated against based on his gender (Tr. p. 694). Spannbauer filed complaints against the  
5 police department and the Association with the Nevada Equal Rights Commission; and the  
6 subsequently closed its files based on insufficient evidence. Tr. p. 702. Spannbauer stated he  
7 heard that the City needed female officers and that could lead to disparate treatment. Tr. p. 761.  
8 After his resignation from the police department, Spannbauer claims he was denied jobs at the  
9 Nevada Highway Patrol, MGM Mirage, and Las Vegas Metropolitan Police Department. Tr. p.  
10 564-65. He was, however, hired at the Venetian Hotel/Casino.

11 The Board questioned Spannbauer concerning the definition of probationary employee  
12 and referred to the hearing exhibits which indicated that "~~d~~uring the probationary period  
13 probationary employees may be separated at will for any reason not violative to state or federal  
14 law and shall not have any entitlement to continued employment." (Emphasis added.) Tr. p. 715.  
15 The Board then noted that the CBA states that the "City and the Union agree that the applicable  
16 Department rules and regulations do not change or delete the articles of this" CBA. Tr. p. 715.  
17 16. Spannbauer repeated that he should not have been treated as a probationary employee as his  
18 probationary period had expired; he was informed by the Association that they would not  
19 represent him and he could not file a grievance because of the probation issue. Tr. p. 716. He  
20 also informed the Board that the Association prepared the resignation letter, which included a  
21 remark about resigning for personal reasons, which Spannbauer indicates is not accurate. Tr. p.  
22 720. In addition to the above, Spannbauer explained his complaints against the parties as  
23 follows:

24 The tape recorders being turned off violating my Police  
25 Officers' Bill of rights, not receiving copies of the investigation so I  
26 could defend myself in a mitigation hearing . . . . Withholding that  
27 information. I believe removing my union rep. who has never been  
28 removed from a case before and this is the first one he's been pulled  
from, who he goes and tells the union president, Hey, this person  
turned off tape recorders . . . . Then meeting with - - with the  
union president who's telling me case law that exists that doesn't  
exist. Tr. p. 721.



1 He also stated that no one from the Association told him to seek legal advice, other than  
2 Cannon at a later date, and that he was not privy to any conversation the Association had with  
3 counsel concerning the police department treating him as a probationary employee. Tr. p. 764.

4 Spannbauer admits he erred in not calling in the traffic stop or returning to the Napolitan  
5 home without another officer. Tr. p. 725-26. He indicated he did not give her a ticket for the  
6 proof of insurance or registration because she had them and they would be "dismissed anyway."  
7 Tr. p. 726. He also believed she wanted him to follow her home to look at the insurance and  
8 registration because of the comment that her husband would be upset with her. Tr. p. 732. He  
9 explained to the Board that he followed the SUV rather than the Cadillac because the individual  
10 in the Cadillac did not appear to be intimidated by the police car, pulled into a well-lit parking  
11 lot, was going the speed limit, and was using its turn signals, whereas the SUV disappeared and  
12 then reappeared which caused Spannbauer to become suspicious. Tr. p. 738-39.

13 Spannbauer acknowledged that the CBA allowed all taped interviews relevant to an  
14 officer's investigation be made available to that officer. Tr. p. 783. He stated he was not  
15 provided those taped interviews and he does not believe the Association asked for the same. ~~Id.~~  
16 He also did not receive the transcripts of the interviews as permitted by the CBA, nor does he  
17 believe the Association asked for them. Tr. p. 784. He was not advised that he personally could  
18 tape his own interview as allowed by the CBA. Id. He has not heard the tape recording of the  
19 radio call either. Tr. p. 786.

20 Scott Hafen was called as the next witness. He is a police officer and has been an officer  
21 in the Association. Tr. p. 831. He claims he presented Spannbauer with options and it was  
22 Spannbauer who made the ultimate decision. Tr. p. 833. He claims neither he nor Dave Smit  
23 told him to resign. Id. He testified that Spannbauer was provided several days to "think over"  
24 what he wanted to do. Tr. p. 837. He believes the IA investigations become part of an officer's  
25 personnel file. Tr. p. 839. He indicated he has no animosity towards Spannbauer. Tr. p. 842.  
26 He denied that the Association would not represent Spannbauer. Tr. p. 844. He claims the  
27 Association was playing "phone tag" with an attorney for Spannbauer should he proceed to the  
28 mitigation hearing. Tr. p. 844. He could not, however, identify the attorney. Tr. p. 870-75. He

1 does not recall Spannbauer requesting the Association to file a grievance regarding the tap  
2 recorder incidents. Tr. p. 847. He stated that probationary employees may have some rights  
3 under the parties' CBA. Tr. p. 863-64.

4 Hafen stated he does not know why Chris Cannon was pulled from the case. Tr. p. 865  
5 He also stated that he believes there is a civil service rule which would have allowed the police  
6 department to extend Spannbauer's probationary period. Tr. p. 891. He also offered, on cross  
7 examination, that he knew Spannbauer was confirmed and no longer on probation. Tr. p. 906  
8 Thereafter, a lengthy discussion ensued regarding Hafen's recollection of the conversation  
9 between him, Spannbauer, and Smith.

10 Kathryn Bernice Buehler was the next witness. She too is a police officer for the City  
11 and has been since August 2004. Tr. p. 972. She does not recall an end of probation evaluation  
12 but the probation period ended February 2006. Tr. p. 974. She indicated that there is "no  
13 ceremony or memo or anything" indicating you are off probation. Tr. p. 975-76. She does recall  
14 receiving emails about individuals who were not confirmed. Tr. p. 976. She indicated  
15 transition from probationary to a confirmed officer is automatic; and she recalls receiving a new  
16 badge but that was due to the police department changing the badges, new patches, and new  
17 decals on the patrol cars. Tr. p. 1034.

18 She stated she was accused of violations of the police department's rules and regulations  
19 during her probationary period. Tr. p. 978. The Association represented her on the charges. Tr.  
20 p. 979. McAllister was the IA investigator, and prior to the IA interview, representative Ryan  
21 did meet with her. Tr. p. 981. She also met with David Smith and Scott Hafen. Tr. p. 982. The  
22 event for which she was investigated occurred on December 30, 2005. Tr. p. 982. She does not  
23 recall a discussion that she would be treated as a probationary officer. Tr. p. 983.

24 One of the charges against her was untruthfulness. Tr. p. 985. She did attend a mitigation  
25 hearing but was never placed on administrative leave during the IA investigation. Tr. p. 989-90.  
26 She was never given the option of resigning rather than face a mitigation hearing as a confirmed  
27 officer. Tr. p. 1013. She said she was disciplined for unprofessional conduct and being in the  
28 possession of a fire arm while under the influence of alcohol. Tr. p. 1025. She was suspended

1 for two weeks without pay. Tr. p. 1025. She does not feel she received preferential treatment  
2 due to her gender. Tr. p. 1030.

3 Terrence McAllister was the next witness. He indicated he was a sergeant in IA and  
4 investigated Spannbauer. Tr. p. 1154-55. He claims the Spannbauer investigation was not a  
5 different from other investigations, and he did not "ignore any leads." Tr. p. 1156. He stated  
6 Mr. and Mrs. Napolitano had not filed complaints previously against any police officer. Tr. p.  
7 1157. Sgt. Mike Waller assisted him in the Spannbauer investigation. Tr. p. 1158. He stated  
8 upon completion of his investigation, he came to the conclusion that "Spannbauer was far less  
9 than truthful." Tr. p. 1158. McAllister indicated that not only did Spannbauer run the vehicle's  
10 license plate, but he also ran the Social Security number for Mrs. Napolitano. Tr. p. 1160. This  
11 additional check would reveal that Napolitano was "a dancer, an entertainer at the various strip  
12 clubs throughout the valley." Tr. p. 1161. She did not have any outstanding warrants against  
13 her, whereas Spannbauer allegedly was watching the white Cadillac due to the possibility that  
14 the occupants were gang members.

15 He indicated that it is not only policy but it is the practice of officers to call into dispatch  
16 when they make a traffic stop. Tr. p. 1162. He indicated that the Napolitano vehicle plates were  
17 obvious whereas the white Cadillac had an unreadable paper plate taped on the window. Tr. p.  
18 1163-64. He also indicated that Spannbauer called into dispatch indicating he was conducting a  
19 property search (a "489") and that there is a call number for "sitting on and watching a stakeout  
20 on a vehicle" which was more appropriate for Spannbauer to have used. Tr. p. 1165. He stated  
21 he would have stopped the Napolitano vehicle sooner than what Spannbauer did. Tr. p. 1166-67.

22 McAllister indicated that he was a patrol officer and that in the hundreds of stops he had  
23 made, no driver asked him to follow them home. Tr. p. 1168-69. He indicated Spannbauer  
24 violated probably not only every policy or procedure that surrounds a traffic stop, but also, and  
25 even things that are . . . just more of a what not to do for your safety." Tr. p. 1170. He did not  
26 advise dispatch of following the vehicle into a residential area so they would not know his  
27 location if problems arose: normally you call for backup when you do a field sobriety test and  
28 Spannbauer did not: he at no time indicated to dispatch of the stop at the Napolitano residence.

1 he finally called into dispatch indicating he is going to lunch and rather than use the restroom  
2 there, he urinates in the desert; and he, James, and McAlister indicated they lunched at different  
3 places (Bilbo's, Kavanaugh's, Timbers, and MacDonald's). He further indicated that James'  
4 version of that night differed from Spannbauer's. Tr. p. 1177. He claims that McAlister's  
5 version of that night also slightly differed from Spannbauer's version. Tr. p. 1181.

6 He stated that IA records are confidential. Tr. p. 1188. He reviewed the IA file prior to  
7 testifying before the Board on the second day. Tr. p. 1212. McAllister testified that, in his  
8 opinion, the Spannbauer investigation was complete, fair, and impartial. Tr. p. 1217-18.  
9 indicated that he did not talk to Sgt. Semper, Spannbauer's supervisor, to confirm that  
10 Spannbauer discussed the Napolitano issue with him. Tr. p. 1243-44. He also indicated that the  
11 recorder was not turned off until his interview with James had concluded. Tr. p. 1249.

12 Napolitano informed McAllister that Spannbauer stopped her because she was alleged to be  
13 speeding and swerving, but Spannbauer testified that she "rolled" through a red light. Tr.  
14 p.1268-69. McAllister claims that Napolitano told him that Spannbauer consistently followed  
15 her and did not pull into a parking lot. He also claims that Mr. and Mrs. Napolitano's stories  
16 were consistent. McAllister did not check phone records to verify if Mrs. Napolitano called her  
17 husband, nor did he check with Mr. Napolitano's employer to verify that he arrived at work  
18 the day of the events. Tr. p. 1281, p. 1283. He did not talk with the gentlemen who accompanied  
19 Napolitano back home. Tr. p. 1284. He also did not attempt to identify if an off-duty police  
20 officer was in the area. Tr. p. 1308.

21 Mike Waller testified next. Waller is currently a Sergeant with SWAT. He has also been  
22 an IA Sergeant. He recalls arriving at work on July 11, 2005, and dispatch forwarding Mr.  
23 Napolitano's call to him. Tr. p. 1330. Mr. Napolitano claimed that a police officer was  
24 harassing his wife. Tr. p. 1330. Mr. Napolitano indicated that his wife was in possession of a  
25 large amount of money and the police officer started questioning her concerning same and  
26 commenting about her appearance. Tr. p. 1331. Napolitano described the events to Waller, and  
27 immediately thereafter. Waller claims he checked with dispatch about Spannbauer's "radio  
28 tickets" to see if a traffic stop had been made. Tr. p. 1334-35. According to his conversation

1 with dispatch, Spannbauer told dispatch that he did the traffic stop but "cut" it short because  
2 got a "hot call." Tr. p. 1336. The radio tickets do not indicate there was a "hot call."—Id.

3 Waller claims McAllister was the lead investigator and that Spannbauer's investigat  
4 did not differ from other investigations. Tr. p. 1337-38. He also stated as a patrol officer, he  
5 never followed anyone home for proof of insurance and vehicle registration. Tr. p. 1339.  
6 further indicated that additional charges may be brought against an officer, if the charges  
7 discovered during the investigation. In the Spannbauer matter, he believes truthfulness v  
8 becoming an issue. Tr. p. 1343. He further responded that Spannbauer could have reviewed  
9 entire IA file prior to the mitigation, or disciplinary, hearing. Tr. p. 1382. By authorization  
10 the accused officer, the Association representative could also review the file. Tr. p. 1383.

11 Walter Cannon, Esq., was the next witness. He believes he spoke with Spannbauer tw  
12 over the telephone. Tr. p. 1388. He thereafter indicated that the specifics of the conversat  
13 would be protected by the attorney-client privilege. Tr. p. 1388. He believed the dates of t  
14 conversations were before November 7, 2005 and shortly after November 7, 2005. Tr. p. 139  
15 93. Spannbauer was recalled as a witness and produced a check dated May 10, 2006, ma  
16 payable to another attorney. He testified that he saw this attorney because Walt Cann  
17 informed him in April, 2006, that there was a conflict of interest and he could not represe  
18 Spannbauer. Tr. p. 1418-20.

19 Dave Smith, a police department sergeant, was the next witness. Smith testified  
20 became the Association's president, but was not re-elected "July of last year" as president. Tr.  
21 1443-44. He offered his accounting of what "it's like to be [an Association] rep." Tr. p. 144  
22 48. He testified that an officer can choose his own representative, and he is not aware of a  
23 animus towards Spannbauer. Tr. p. 1451. p. 1453. Smith also claims that the Association nev  
24 told Spannbauer that it would not represent him or would not file a grievance on his behalf. T  
25 p. 1479-80. Smith was then questioned about the Answer filed by the Association, signed b  
26 him, which acknowledged that the Association "recommended that Spannbauer resign due to h  
27 status as a probationary employee." Tr. p. 1482. He agreed that the Answer indicated  
28 meeting occurred between Smith and Spannbauer, yet the testimony indicated a meeting d

1 occur. Tr. p. 1494. He also stated that on November 3, he knew that Spannbauer had been  
2 "confirmed." Tr. p. 1500.

3 Smith indicated that Cannon stated that "Spannbauer's story was all over the board" and  
4 that truthfulness may be an issue. Tr. p. 1456. He himself recommended that Attorney Michael  
5 Urban become involved in the Spannbauer matter; and he did have a conversation with Attorney  
6 Urban. Tr. p. 1457, p. 1472. Urban did not confirm that case law existed as to treating a  
7 confirmed employee as a probationary employee in a situation similar to Spannbauer's. Tr.  
8 1511, p. 1520. He claims that Chief Paresi did not use "command influence" on the Association  
9 concerning Spannbauer's treatment as a probationary employee. Tr. p. 1519. He does not know  
10 if an Association officer spoke to Ms. Buehler about the "possibility that she could be treated" as  
11 a probationary employee as they treated Spannbauer. Tr. p. 1525.

12 Smith was questioned about what the Association did to protect member Spannbauer. Tr.  
13 p. 1501-02. He acknowledged that he did not tell Spannbauer to seek legal advice. Tr. p. 1550  
14 51. During questioning by the Board, Smith indicated that when Chris Cannon was removed  
15 from the Spannbauer case, Spannbauer could have talked to attorney Urban (Tr. p. 1551  
16 however, he immediately contradicted himself by saying that Cannon was never removed from  
17 the case. Tr. p. 1552. Thus, the insinuation is that Spannbauer did not have representation by an  
18 attorney. Tr. p. 1552. It was also brought to Smith's attention that another witness testified that  
19 Cannon was removed and Spannbauer was informed of that removal. Tr. p. 1553.

20 Smith indicated that he spoke with McAllister about the recorders being turned off, which  
21 McAllister denied. Tr. p. 1460. He later informed the Board that James may have felt  
22 "intimidated" and would not report the turning off of the recorder for fear that she would be  
23 subjected to the treatment being received by Spannbauer. Tr. p. 1555. He admitted that turning  
24 off the recorder "could have" violated a police officer's rights. Tr. p. 1556. As a further  
25 contradiction, Smith indicated that the mitigation hearing and the disciplinary hearing are two  
26 separate things (Tr. p. 1564); however, other witnesses used the phrases interchangeably as did  
27 the City's rules and regulations. Tr. p. 1572-74.

1 Smith confirmed that IA records are confidential pursuant to City policy. Tr. p. 1477-78.  
2 He does not believe the City would have allowed Spannbauer to resign without signing the  
3 release. Tr. p. 1485. Smith indicated that he himself is facing possible termination (Tr. p. 1499)  
4 but that is not affecting his testimony to the Board. Tr. p. 1499.

5 **FINDINGS OF FACT**

6 1. Spannbauer is a government employee as defined in NRS 288.050.

7 2. Pursuant to NRS 288.027, the Association was the recognized bargaining agent for  
8 police officers employed by the City in the specific bargaining unit at issue herein.

9 3. The City and its police department are local governmental employers as defined in  
10 NRS 288.060.

11 4. A CBA exists between the parties and was presented as Spannbauer Exhibit 2.

12 *Re: Statute of Limitations Issue.*

13 5. According to the witnesses, it is undisputed that Spannbauer's probationary period  
14 was 18 months; that he was hired with the City on February 9, 2004; and his probationary period  
15 ended August 9, 2005. The Napolitano incident occurred on July 11, 2005.

16 6. It is undisputed that Spannbauer was notified of the IA investigation on July 19, 2005  
17 and that he was placed on administrative leave on October 29, 2005.

18 7. The Association was notified by Chief Paresi that Spannbauer would be treated as a  
19 probationary officer based upon "case law" and, although such case law was not confirmed, the  
20 Association members met with Spannbauer on November 3, 2005, to inform Spannbauer of the  
21 same and that he should resign. If he resigned, allegedly, the IA information would not be  
22 placed in his personnel file. thus, allowing Spannbauer to seek other law enforcement  
23 employment.

24 8. Although it is undisputed that the Association was created to protect the officers'  
25 rights, the Association did not advise Spannbauer to seek legal advice. As a matter of fact  
26 testimony was presented that the Association had only been playing "phone tag" with its attorney  
27 whereas other testimony was presented that the Association officer talked with the attorney.  
28

1           9. On November 7, 2005, Spannbauer resigned pursuant to his conference with the  
2 Association about his treatment as a probationary employee and executed a release not to sue the  
3 City and police department. Spannbauer's reliance on the Association's advice is appropriate  
4 and credible.

5           10. It was not until April 6, 2006, that Spannbauer learned of the different treatment  
6 received by Officer Buehler for conduct which occurred while she was a probationary employee  
7 and that the Respondents had violated his rights.

8           11. Spannbauer's complaint was filed with this Board on June 1, 2006, i.e., within six  
9 months of learning of the Respondents' violations of NRS chapter 288. See NRS 288.110(4).  
10 Thus, the complaint in this matter was timely filed as he did not know, and could not have  
11 known, of potential violations until April 6, 2006. No credible evidence was presented by the  
12 Respondents to contradict this date of knowledge of the violations of NRS chapter 288. "The  
13 statute of limitation will not commence to run until the aggrieved party knew, or reasonably  
14 should have known, of the facts giving rise to the breach." Nevada State Bank v. Jamison  
15 Partnership, 106 Nev. 792, 800, 801 P.2d 1377, 1382 (1990). See also Shupe v. Ham, 98 Nev.  
16 61, 639 P.2d 540 (1982); and Milspaugh v. Milspaugh, 96 Nev. 446, 611 P.2d 201 (1980).

17                               *Re: Prohibited Practices.*

18           12. NRS 288.270(1) identifies prohibited labor practices by a governmental employer  
19 including but not limited to "interfere, restrain or coerce any employee in the exercise of an  
20 right guaranteed by this chapter," dominate or interfere in the administration of an employee  
21 organization, and discriminate because of personal reasons. NRS 288.270(2) identifies  
22 prohibited labor practices by an employee association, which includes a breach of its duty of the  
23 fair representation of its members.

24           13. Pursuant to NRS 288.110(2), this Board has the authority to hear any complaint  
25 arising out of the interpretation of, or performance under, the provisions of NRS chapter 288.  
26 Thus, the Board had the authority to hear the instant complaint.



1 14. The Complainant's burden of proof is substantial evidence. The Board find  
2 substantial evidence of the Association's breach of its duty of fair representation of Spannbaue  
3 based upon the following case law and incidents testified to at the hearing in this matter:

4 a. The duty of fair representation requires that when the union represents a union  
5 member, it must conduct itself in a manner that is not "arbitrary, discriminatory, or in bad faith."  
6 Weiner v. Beatty, 121 Nev. 243, \_\_\_, 116 P.3d 829, 833 (2005). ~~See also Rosquist v~~  
7 International Ass'n of Firefighters, 118 Nev. 444, 449, 49 P.3d 651, 653 (2002), and ~~Dutrisac v~~  
8 Caterpillar Tractor Co., 749 F.2d 1270, 1273 (9th Cir. 1983) ("We conclude that the union  
9 should be responsible for a total failure to act that is unexplained and unexcused.")

10 b. Testimony was presented that the Association, City, and police department  
11 treated two officers differently, although both instances occurred during the probationary period  
12 of each employee, and the subsequent discipline did not occur until the officers were confirmed.  
13 The Association represented Buehler but did not represent Spannbaue in an equivalent manner.  
14 Allegedly, the issue of truthfulness arose in Spannbaue's case as well as in Buehler's case; and  
15 Buehler claims she was never offered the option of resigning by the Association, City, or police  
16 department rather than facing a mitigation hearing. Resignation was thrust upon Spannbaue by  
17 the Association, City, and police department. The act of treating the officers differently without  
18 a rational reason is arbitrary and/or discriminatory.

19 c. The Association did not pursue the complaints that the tape recorders were  
20 turned off, yet testimony indicated that conversations between the investigator and the  
21 interviewees continued after the recorders were turned off contrary to police department policy  
22 for internal investigations. As acknowledged by one witness, this would infringe upon the  
23 officers' rights guaranteed under the parties' CBA and that officers may be intimidated to report  
24 such violations to the Association, City, or police department.

25 d. Although the IA investigations are confidential, it was apparent that  
26 information about the investigation was known throughout the police department, with  
27 individuals approaching Spannbaue concerning same. It is the City's and police department's  
28 responsibility to insure this confidentiality in the first instance.

1 e. The Association did not attempt to review the IA file against Spannbauer  
2 order to properly represent him, nor did they advise Spannbauer to review the file/information  
3 and in particular review IA's tape recordings of witnesses' interviews.

4 f. Evidence was presented that Chris Cannon was pulled from the Spannbauer  
5 case, giving the appearance that Spannbauer was unrepresented for a time period. The  
6 Association presented no justification to this Board for the removal of Cannon as Spannbauer's  
7 representative. Furthermore, no evidence was presented that Spannbauer was ever told to  
8 contact Michael Urban, counsel for the Association, or any other counsel hired by the  
9 Association for the matter. Cannon testified that this was the only instance in which he was  
10 pulled from the case as the officer's representative.

11 g. The Association did not verify that case law did exist that would support the  
12 City and police department treating Spannbauer as a probationary employee since his  
13 probationary period had undisputedly terminated nor did the Association representative, Cannon  
14 review the citizen complaint against Spannbauer.

15 h. No evidence was presented whatsoever that Spannbauer's probationary period  
16 was extended; and all agree that the 18-month probationary period had ended prior to any action  
17 being taken against Spannbauer. The parties' CBA specifically state that "during the  
18 probationary period," the employee can be terminated; however, all acts taken against  
19 Spannbauer was "after the probationary period" when he was deemed a confirmed police officer.  
20 The CBA between the parties is silent on this issue.

21 15. The Board finds substantial evidence to support a finding of prohibited labor  
22 practices against the City and its police department as noted above and in the following  
23 instances:

24 a. Testimony was presented that the City and the police department treated two  
25 officers differently. although both instances occurred during the probationary period and the  
26 subsequent discipline did not occur until the officers were confirmed. Allegedly, the issue of  
27 truthfulness arose in Spannbauer's case as well as Buehler's case; and Buehler claims she was  
28 never given the option of resigning rather than face a mitigation hearing. Resignation was thus

1 upon Spannbauer. Chief Paresi did not testify at the administrative hearing before this Board  
2 although he was the manager making the ultimate decision that Spannbauer should be treated  
3 a probationary employee and terminated for this incident.

4 b. The testimony of several witnesses indicated the IA investigator turned off the  
5 recorder yet continued conversations with the interviewees and such is contrary to the police  
6 department policy and impermissible in that it violates the police officers' rights, and in this  
7 case, the rights of Spannbauer. A Testimony was also presented that such tactics could intimidate  
8 the witnesses who are inferior officers and possibly fearful of reprisal.

9 c. From the testimony and evidence provided to the Board, it appears that the  
10 City and police department did not fully investigate the Spannbauer matter. The IA investigator  
11 did not investigate or interview the two gentlemen with Mr. Napolitano on the day in question  
12 nor did he confirm that Mr. Napolitano arrived at work but then immediately left; nor did the  
13 investigator attempt to determine if a police officer, driving a white truck, lived in that area or  
14 determine his knowledge of the events.

15 d. No evidence was presented that Spannbauer's probationary period was  
16 extended for any reason; and all parties agree that Spannbauer's 18-month probationary period  
17 had been completed prior to any action being taken against Spannbauer. The parties' CBAs  
18 specifically state that "during the probationary period," the employee can be terminated  
19 however, all acts taken against Spannbauer was "after the probationary period" when he was  
20 deemed a confirmed police officer.

21 16. Should any finding of fact be more properly construed as a conclusion of law, may it  
22 be so deemed.

### 23 CONCLUSIONS OF LAW

24 1. This Board has jurisdiction over the parties and the subject matters of the complain  
25 on file herein pursuant to the provisions of NRS Chapter 288.

26 2. The City and its police department are local government employers as defined in NRS  
27 288.060.

28 3. The Association is an employee organization as defined by NRS 288.040.

1 4. Spannbauer is an employee of a local governmental employer as defined by N  
2 288.050.

3 5. Prohibited labor practices are defined in NRS 288.270. Section 2(a) thereof states  
4 it is a prohibited labor practice for an employee organization to "interfere with, restrain or coe  
5 any employee in the exercise of any right guaranteed under this chapter." This would includ  
6 breach of an employee organization's duty to represent the employees. Section 2(c) of the stat  
7 prohibits discrimination based upon race, color, religion, sex, age, physical or visual handic  
8 national origin, or because of political or personal reasons or affiliations.

9 6. Pursuant to NRS 288.110(2), the Board may hear and determine any complaint aris  
10 out of the interpretation of or the performance under the provisions of NRS chapter 2  
11 Pursuant thereto, the Board noticed this matter for hearing.

12 7. The Board concludes that a prohibited labor practice occurred by the Association  
13 the breach of its duty to fairly represent member Spannbauer.

14 8. The Board concludes that a prohibited labor practice occurred by the City and  
15 police department by interfering with the rights of a confirmed police officer to proceed throug  
16 the grievance process pursuant to the parties' CBA, the City's rules and regulations, and t  
17 Police Officers' Bill of Rights, and by discriminating against Spannbauer.

18 9. Should any conclusion be more properly construed as a finding of fact, may it be  
19 deemed.

#### 20 DECISION AND ORDER

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

22 1. IT IS HEREBY ORDERED that the Board finds in favor of Spannbauer, and again  
23 the Association, the City of North Las Vegas, and its police department.

24 2. IT IS HEREBY ORDERED that because of the Association's breach of its duty  
25 fairly represent its members, and in this case, Spannbauer, and the City's and police departmen  
26 prohibited labor practices, the said Association, City, and police department shall cease ar  
27 refrain from such acts. NRS 288.110(2)

1 3. IT IS FURTHER ORDERED that the City, police department, and Association s  
2 jointly and severally reimburse Spannbauer for all fees and costs incurred in bringing the ac n  
3 before the Board and all other fees and costs incurred by Spannbauer by reason of e  
4 Association's breach of duty of representation and the City's and police department's prohib ed  
5 labor practices. Spannbauer shall file the appropriate motion with supporting docume s  
6 evidencing the fees and costs incurred as a result of the Respondents' prohibited labor practi s  
7 within twenty (20) days from the date of this Order. The Association, City, and poir ce  
8 department shall thereafter have an opportunity to oppose the fees and costs requested.

9 4. IT IS FURTHER ORDERED that the Association, City, and police department sha  
10 post notice of their prohibited labor practices as identified in this action on all bulletin boards : n  
11 communications with all Police Department personnel and Association members. The notice o  
12 be posted shall be provided by this Board along with the order on fees and costs. The noti e  
13 shall be posted for a period of ninety (90) days and the Board's Commissioner may inspect t e  
14 facility to determine whether the Association, City, and police department are in complian ce  
15 with this Order.

16 DATED this 25th day of June, 2008.

17 LOCAL GOVERNMENT EMPLOYEE-  
18 MANAGEMENT RELATIONS BOARD

19 BY: 

20 JAMES E. WILKERSON, SR., Chairman

21 BY: 

22 JANET TROST, ESQ., Vice-Chairman

23 BY: 

24 JOHN E. DICKS, ESQ., Board Member  
25  
26  
27  
28