

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

NORTH LAS VEGAS POLICE OFFICERS
ASSOCIATION; and OFFICER GIANNI
CAVARICCI

Complainant,

vs.

THE CITY OF NORTH LAS VEGAS,
NORTH LAS VEGAS POLICE DEPT.,

Respondents.

ITEM NO. 717A

CASE NO. A1-045964

ORDER

For Complainant: North Las Vegas Police Officers Association and Officer Gianni Cavaricci,
and their attorney, Jeffrey F. Allen, Esq.,

For Respondents: The City of North Las Vegas, North Las Vegas Police Department and their
attorney Claudia E. Aguayo, Esq.

This matter came on before the State of Nevada, Local Government Employee-
Management Relations Board ("Board"), on February 15-17, 2011 for hearing and decision
pursuant to the provisions of the Local Government Employee-Management Relations Act ("the
Act"); NAC Chapter 288, NRS chapter 233B, and was properly noticed pursuant to Nevada's
open meeting laws.

Officer Gianni Cavaricci is a member of the North Las Vegas Police Officers Association
("Association.") The Association brought a complaint on Officer Cavaricci's behalf against his
employer, the City of North Las Vegas, alleging that the City violated NRS Chapter 288 by
denying him the right to union representation at an investigatory interview as recognized in
NLRB v. J Weingarten, Inc., 420 U.S. 251 (1975).

On July 23, 2009, Officer Cavaricci was provided with a notice that he would be
interviewed in connection with an Internal Affairs investigation conducted by Lt. David Jacks of
the North Las Vegas Police Department. The notice did not specify that Officer Cavaricci was

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1 the subject of the Internal Affairs investigation; it stated that Officer Cavaricci "may have some
2 important information regarding this allegation."

3 The allegation that was being investigated by Lt. Jacks arose on July 12, 2009 and
4 centered on a citizen complaint which accused police officers of sleeping while on duty and
5 included a video that was apparently taken with the citizen's cell phone. Officer Cavaricci was,
6 at the time, in a vehicle which was pulled alongside the vehicle with two officers who had fallen
7 asleep. Officer Cavaricci had arrived and conversed with the other two officers prior to their
8 falling asleep, although Officer Cavaricci himself had not fallen asleep.

9 After receiving the notice of the Internal Affairs interview, Officer Cavaricci contacted
10 his union – the North Las Vegas Police Officer's Association- and requested a representative to
11 be present for the Internal Affairs interview. Officer Cavaricci testified that even though he had
12 not fallen asleep he was concerned about the possibility of being caught up in a broad allegation
13 that all of the officers were sleeping because he had been present when the other two officers had
14 fallen asleep. The Association also asserted at the hearing that it should have been able to have a
15 representative present because of the possibility that the City would discipline Officer Cavaricci
16 for failing to report the sleeping officers.

17 The Association was willing to provide Officer Cavaricci with a representative for the
18 Internal Affairs interview, but the City did not permit Cavaricci's representative to attend. At the
19 scheduled interview, Officer Cavaricci agreed to participate in the interview without a
20 representative, under the threat of an insubordination charge.

21 The Association then brought this action, claiming that the City violated Officer
22 Cavaricci's Weingarten rights by denying him the right to representation at the internal affairs
23 interview.

24 The City contends that Weingarten rights do not apply under NRS Chapter 288, and even
25 if they do, they do not apply in this case because Officer Cavaricci did not have a reasonable fear
26 of discipline leading up to the Internal Affairs interview.

27 The Association's initial complaint also raised claims that the City breached the
28 collective bargaining agreement and that the City violated provisions of NRS Chapter 289. The

1 City argued, and the Association stipulated during the hearing, that the Board does not have
2 jurisdiction over these claims. Thus, our decision is limited only to claims arising under NRS
3 Chapter 288.

4 Applicability of Weingarten Rights to NRS Chapter 288

5 The City argues that the United States Supreme Court's decision in Weingarten does not
6 apply to NRS Chapter 288. As the City argues, the language guaranteeing employees the right to
7 act in concert for "mutual aid and protection" found in the National Labor Relations Act, 29
8 U.S.C. § 157(7), is not found in Chapter 288, therefore the right to union representation in
9 disciplinary interviews is not found either.

10 We do not agree with the City's argument and we conclude, as this Board has done
11 previously, that Weingarten rights do arise under NRS Chapter 288.

12 Weingarten recognized that granting a right to union representation during investigatory
13 interviews "plainly effectuates the most fundamental purposes of the Act." Weingarten at 261.
14 Refusing to recognize that right serves only to perpetuate "the inequality the Act was designed to
15 eliminate..." Id at 262. Thus, the rights recognized in Weingarten are not based solely upon
16 specific statutory language. They are also based upon the broader fundamental purposes of the
17 NLRA.

18 The National Labor Relations Act and NRS Chapter 288 have the same purpose and
19 policy. E.g. Truckee Meadows Fire Protection Dist. v. International Ass'n of Fire Fighters, Local
20 2487, 109 Nev. 367, 374, 849 P.2d 343, 348 (1993). See also Weiner v. Beatty, 121 Nev. 243,
21 116 P.3d 829 (2005). Therefore, we find, as United States Supreme Court did in Weingarten, that
22 a local government employee's right to union representation, when the employee has a
23 reasonable belief of being subject to discipline, effectuates the most fundamental purposes of
24 Chapter 288, and the same right to representation found in Weingarten subsists in NRS Chapter
25 288.

26 In applying Weingarten to NRS Chapter 288, we are not breaking any new ground. This
27 Board has long recognized the applicability of Weingarten to Chapter 288. In 1990, this Board
28 recognized the applicability of Weingarten's right to union representation during an employee

1 interview. Teamsters Chauffeurs Warehousemen & Helpers, and Professional Clerical Public and
2 Municipal Employees Local Union No. 533 v. Humboldt General Hospital, Item No. 246,
3 EMRB Case No. A1-045459 and A1-045460 (1990).

4 Again in 2005, this Board found Weingarten applicable to Chapter 288 and concluded
5 that:

6 A local government employee who is represented by an
7 employee organization has Weingarten rights, including the
8 right on request to have a representative of said organization
9 present at an investigatory interview that he reasonably
believes may lead to discipline or at which the employer
seeks information to enable it to impose discipline.

10 Education Support Employees Assoc. v. Clark County School Dist., Item No. 568B, Case
11 No. A1-045782, p. 14 (2005).¹

12 These prior decisions stand unchallenged, and Chapter 288 has not been changed to
13 eliminate Weingarten rights. We take such long-standing acquiescence as an indication that our
14 interpretation of Chapter 288 is consistent with legislative intent. Hughes Properties, Inc. v.
15 State, 100 Nev. 295, 1298, 1680 P.2d 970, 1972 (1984); See also Del Papa v. Board of Regents of
16 University and Community College System of Nevada, 114 Nev. 388, 956 P.2d 770 (1998).

17 Given the above, we again re-state that the rights recognized by the United States
18 Supreme Court in Weingarten, do arise under NRS Chapter 288.

19 Officer Cavaricci's Right to Union Representation

20 Although Weingarten rights clearly arise under NRS Chapter 288, it does not guarantee
21 an employee a right to representation in every employer-conducted interview. Weingarten
22 applies in cases in which a "risk of discipline reasonably inheres." Weingarten at 262. This
23 means that the right to union representation will apply to an employee who has a reasonable
24 belief that the employer-conducted interview may lead to discipline. E.g. Alfred M. Lewis, Inc.
25 v. NLRB, 587 F.2d 403, 1410 (9th Cir. 1978).

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¹ Pursuant to NAC 288.332, the Board has taken official notice of both of these prior decisions.

1 In deciding whether or not an employee's fear of discipline is reasonable, the Board asks
2 whether the employee's belief was objectively reasonable based on all the circumstances of the
3 case. Weingarten at 257, n. 5. This analysis necessarily presents a fact-specific inquiry.

4 Given all of the factual circumstances in this case, we conclude that at the time of the
5 Internal Affairs Interview on July 29, 2009 Officer Cavaricci's fear of discipline was not
6 reasonable.

7 Evidence at the hearing established that the City and the Association have negotiated a
8 procedure to protect Weingarten rights. This procedure incorporates the Police Officer Bill of
9 Rights and requires that police officers who are the actual subject of an investigation be given
10 notice of the investigation. For any Internal Affairs interview the subject officer is given notice
11 that he is the subject of the investigation. Testimony at the hearing revealed that officers who are
12 merely witnesses to the events being investigated by Internal Affairs receive a different notice
13 which states that the purpose of the interview is because the witness "may have important
14 information regarding" an allegation against another officer accused of misconduct. The Board
15 has reviewed and compared the two different types of notices.

16 The evidence in this case indicates that the City followed this negotiated-for procedure by
17 noticing the other two police officers as being the subject officers. However, Officer Cavaricci
18 was not noticed as a subject officer. He was only noticed as a witness officer.

19 On July 12, 2009, Officer Cavaricci overheard the other two officers tell Lt. Michael
20 Kincaid, who commanded all three officers, that Officer Cavaricci had not fallen asleep. On July
21 15, 2009, each of the officers involved, including Officer Cavaricci, drafted a memorandum to
22 Lt. Kincaid describing the incident. Officer Cavaricci's memorandum denies any misconduct.
23 Those memoranda, along with the citizen's complaint and video evidence were evaluated prior to
24 the July 23, 2009 notices of Internal Affairs interviews. While the two other officers received
25 notices that they were the subjects of the investigations, Officer Cavaricci received a different
26 notice stating that he was to be interviewed as a witness. Although there may have been some
27 initial question about whether Officer Cavaricci would be accused of misconduct, the Board
28 concludes that under all of these circumstances, Officer Cavaricci did not have a reasonable fear

1 of discipline upon learning on July 23, 2009 that he would only be interviewed as a witness to
2 the incident. Further the Board did not see any evidence of any circumstances arising after
3 Officer Cavaricci received his notice that would change our conclusion or subsequently give rise
4 to a reasonable belief in the possibility of discipline.

5 Thus, we conclude that even though Officer Cavaricci had a personal subjective belief
6 that he may be subject to discipline, his belief was not reasonable under the circumstances
7 outlined above.

8 Nor do we believe that Officer Cavaricci could have a reasonable belief that he would be
9 disciplined for a failure to report the misconduct of another officer, as the evidence indicated that
10 the incident was immediately reported to Lt. Kincaid by the other two officers.

11 Finally, the Board saw no credible evidence that the City used Officer Cavaricci's
12 interview as a way to obtain information to enable it to impose discipline on Officer Cavaricci.

13 Given the above, we find that the City of North Las Vegas did not commit a prohibited
14 labor practice by denying Officer Cavaricci's request to union representation in this case.

15 Based upon the forgoing, the Board makes the following findings of fact and conclusions
16 of law.

17 **FINDINGS OF FACT**

18 1. Gianni Cavaricci is employed by the City of North Las Vegas as a police officer
19 with the North Las Vegas Police Department and is a member of the North Las Vegas Police
20 Officers Association.

21 2. On July 12, 2009, a citizen approached and filmed two North Las Vegas police
22 vehicles, including a vehicle operated by Officer Cavaricci. The citizen asserted that at least two
23 the officers had fallen asleep. Officer Cavaricci however had not fallen asleep.

24 3. On July 12, 2009, Officer Cavaricci was aware that the other police officers
25 involved were not accusing Officer Cavaricci of falling asleep.

26 4. On July 15, 2009, Officer Cavaricci and the other two officers involved drafted a
27 memorandum for Lt. Michael Kincaid describing what had occurred. Officer Cavaricci's
28 memorandum denies that he had fallen asleep.

5. The Internal Affairs investigation was conducted by Lt. David Jacks. Sometime after July 15, 2009, Lt. Jacks reviewed the citizen's complaint, the video of the incident and the memoranda submitted by Officer Cavaricci and the other two officers.

6. On July 23, 2009, Lt. Jacks sent memoranda to the other two officers giving them notice of an Internal Affairs investigation into allegations that they had committed misconduct. The memoranda were sent pursuant to Article 22 of the collective bargaining agreement between the City and the Association.

7. On July 23, 2009, Lt. Jacks sent a witness memorandum to Officer Cavaricci requesting that Officer Cavaricci contact Lt. Jacks to arrange an interview because Officer Cavaricci may have important information regarding the allegations against the other two officers.

8. After receiving the notice from Lt. Jacks on July 23, 2009, Officer Cavaricci contacted the North Las Vegas Police Officers Association and requested a representative to be present at his interview with Lt. Jacks.

9. The City denied Officer Cavaricci's request to have a union representative present for his Internal Affairs interview.

10. If any of the foregoing findings is more appropriately construed a conclusion of law, it may be so construed.

CONCLUSIONS OF LAW

1. The Board is authorized to hear and determine complaints arising under the Local Government Employee-Management Relations Act.

2. The Board has exclusive jurisdiction over the parties and the subject matters of the Complaint on file herein pursuant to the provisions of NRS Chapter 288.

3. The Board does not have jurisdiction over, and therefore does not decide, whether the City's actions may have breached any provision of NRS Chapter 289 or the parties' collective bargaining agreement.

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1 4. In NLRB v. J Weingarten, Inc., 420 U.S. 251 (1975), the United States Supreme
2 Court determined that allowing an employee a right to union representation in a disciplinary
3 interview effectuates the fundamental purpose of the National Labor Relations Act.

4 5. NRS Chapter 288 has the same purpose as the National Labor Relations Act to
5 eliminate inequality of bargaining power between local government employers and local
6 government employees and to promote harmony in labor relations between employers and
7 employees. Truckee Meadows Fire Protection District v. International Ass'n of Fire Fighters, Local
8 2487, 109 Nev. 367, 374, 1849 P.2d 343, 348 (1993).

9 6. Prior decisions of this Board including Teamsters Chauffe Warehousemen &
10 Helpers, and Professional Civil Public Municipal Employees Local Union No. 533 v.
11 Humboldt General Hospital, 109 Nev. 246, 1849 P.2d 343, 348 (1993); NLRB Case No. A1-045459 and A1-045460 (1990);
12 and Education Support Employees Ass'n v. Clark County School Dist., 109 Nev. 568B, Case
13 No. A1-045782 (2005) have found that Weingarten rights arise under NRS Chapter 288.

14 7. The rights to representation recognized in Weingarten apply to NRS Chapter 288;
15 specifically that a local government employee who is represented by a recognized employee
16 organization has the right to request to have a representative of said organization present at an
17 investigatory interview that is reasonably believed may lead to discipline or at which the
18 employer seeks information that is likely to result in discipline.

19 8. NRS Chapter 288 has the same purpose as the National Labor Relations Act to
20 eliminate inequality of bargaining power between local government employers and local
21 government employees and to promote harmony in labor relations between employers and
22 employees. Truckee Meadows Fire Protection District v. International Ass'n of Fire Fighters, Local
23 2487, 109 Nev. 367, 374, 1849 P.2d 343, 348 (1993).

24 9. Given all of the factual circumstances in this case, including the witness notice
25 sent to Officer Cavaricci after his memorandum was evaluated by Lt. Jacks, and after the video
26 evidence of the incident had been reviewed and the lack of allegations that Officer Cavaricci was
27 sleeping from the other two officers, Officer Cavaricci did not have a reasonable belief that
28 discipline could result from his Internal Affairs Interview

10. The City of North Las Vegas did not commit a prohibited labor practice when it denied Officer Cavaricci's request to have a representative from the Association present at his Internal Affairs interview

11. If any of the foregoing conclusions is more appropriately construed a finding of fact, it may be so construed.

ORDER

It is hereby ordered that the Board finds that Respondent City of North Las Vegas did not commit a prohibited labor practice in this matter.

It is further ordered that each party shall bear its own fees and costs.

DATED this 3rd day of March, 2011.

**LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD**

BY: SEATON J. CURRAN, ESQ., Chairman

BY: *Sandra Masters*
SANDRA MASTERS, Vice-Chairman

BY: Philip E. Larson
PHILIP E. LARSON, Board Member

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

NORTH LAS VEGAS POLICE OFFICERS)
ASSOCIATION, and OFFICER GIANNI)
CAVARICCI Complainant,)
vs.)

CASE NO. A1045964

THE CITY OF NORTH LAS VEGAS,)
NORTH LAS VEGAS POLICE DEPT.,)

NOTICE OF ENTRY OF ORDER

Respondents.)

TO: North Las Vegas Police Officers Association and Officer Gianni Cavaricci, and their attorney, Jeffrey F. Allen, Esq.,

TO: The City of North Las Vegas, North Las Vegas Police Department and their attorney Claudia E. Aguayo, Esq.

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on March 3, 2011.

A copy of said order is attached hereto.

DATED this 3rd day of March 2011.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY


JOYCE HOLTZ, Executive Assistant

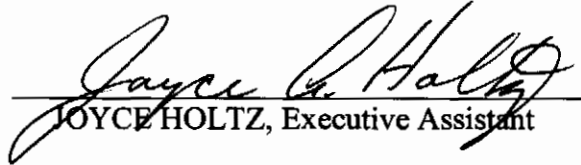
1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Local Government Employee-Management
3 Relations Board, and that on the 3rd day of March, 2011, I served a copy of the foregoing
4 ORDER by mailing a copy thereof, postage prepaid to:

5 Jeffrey F. Allen, Esq.
6 3425 West Craig Rd.
7 North Las Vegas, NV 89032

8 Claudia E. Aguayo, Esq.
9 City of North Las Vegas City Attorney's Office
10 2225 Civic Center Drive #228
11 North Las Vegas, NV 8903D-6307

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JOYCE HOLTZ, Executive Assistant