

STATE OF NEVADA  
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

EDUARDO M. FLORES,  
Complainant,

vs.

CLARK COUNTY, A NEVADA PUBLIC  
ENTITY; CLARK COUNTY DEPARTMENT  
OF JUVENILE SERVICES, A  
DEPARTMENT OF CLARK COUNTY,  
Respondent.

ITEM NO. 737

CASE NO. A1-045990

**ORDER**

For Complainant: Paul M. Gaudet, Esq.

For Respondents: Yolanda Givens, Esq., Clark County Deputy District Attorney

This matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board"), on November 1, 2010 and November 2, 2010 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.

On September 28, 2010, Respondent Clark County filed a Motion to Dismiss asserting that the complaint does not allege claims which fall within the jurisdiction of this Board, as outlined in NRS Chapter 288. As discussed herein, the County's motion is granted in part and denied in part.

The Board agrees with the County's argument that Complainant's claim for retaliation does not fall within the jurisdiction of this Board. Pursuant to NRS 288.270(1)(d), it is a prohibited labor practice for a local government employer to retaliate against any employee that has participated in a proceeding before this Board, or to retaliate against an employee because that employee has formed, joined or participated in an employee organization. The complaint does not allege that he was the victim of retaliation for his participation before this Board. The

1 complaint does state that Complainant participated in proceedings with the Clark County Office  
2 of Diversity, however, any activity before that Office does not arise under the provisions of  
3 Chapter 288. Nor does the complaint allege that Complainant was the victim of retaliation due to  
4 union activity. Because Complainant's alleged activity falls outside of the provisions of Chapter  
5 288, his claim of retaliation likewise falls outside of the jurisdiction of this Board.

6 The Board also agrees with the County that the Board lacks jurisdiction to decide a claim  
7 for a breach of the implied covenant of good faith and fair dealing. Pursuant to NRS 288.110(2),  
8 the Board is empowered to hear and determine claims of violations of the Act. Complainant's  
9 second cause of action does not assert a violation of the Act. The second cause of action asserts  
10 only a claim for a breach of a contractual covenant that lies outside of the reach of this Board.  
11 Clark County Classroom Teachers Ass'n v. Clark County School Dist., EMRB Case No. A1-  
12 045280, Item No. 44 (Aug. 19, 1975); see also City of Reno v. Reno Police Protective Ass'n 118  
13 Nev. 889, 59 P.3d 1212 (2002); Rosequist v. Int'l Ass'n of Firefighters Local 1908, 118 Nev.  
14 444, 49 P.3d 651 (2002). The second cause of action is therefore dismissed from this proceeding.

15 The Board does construe the complaint as sufficient to assert a claim for gender  
16 discrimination. The Board has jurisdiction over such claims pursuant to NRS 288.270(1)(f).  
17 There are sufficient questions of fact on this claim, including questions of timeliness of the  
18 complaint, to preclude any dismissal at this time. The Board will allow the gender discrimination  
19 claim to proceed.

20 Having considered the above, the Board unanimously finds as follows:

- 21 1. Pursuant to NRS 288.110(2) and NRS 288.280, the Board has jurisdiction over violations  
22 of NRS Chapter 288.
- 23 2. Pursuant to NAC 288.375(1) a claim against a Respondent may be dismissed if the claim  
24 lacks probable cause
- 25 3. Complainant's claim for retaliation based upon protected activity lacks probable cause  
26 because the complaint does not identify any protected activity arising under the  
27 provisions of Chapter 288.

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1 4. Complainant's second cause of action lacks probable cause because it alleges only  
2 contractual matters and does not assert a violation of NRS Chapter 288.

3 5. The complaint is sufficient to state a claim for gender discrimination under NRS  
4 288.270(1)(f), and there exist unanswered questions of fact pertaining to that claim.

5 Based upon the foregoing, and good cause appearing therefore:

6 IT IS HEREBY ORDERED that the County's Motion to Dismiss is granted in part and denied in  
7 part as set forth herein.

8 DATED this 15th day of November, 2010.

9 LOCAL GOVERNMENT EMPLOYEE-  
10 MANAGEMENT RELATIONS BOARD

11  
12 BY:   
13 SEATON J. CURRAN, ESQ., Chairman

14 BY:   
15 SANDRA MASTERS, Vice-Chairman

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17 BY:   
18 PHILIP E. LARSON, Board Member

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CLARK COUNTY, A NEVADA PUBLIC  
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OF JUVENILE SERVICES, A  
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Respondent.

**NOTICE OF ENTRY OF ORDER**

To: Paul M. Gaudet, Esq

To: Yolanda Givens, Esq.  
Clark County Deputy District Attorney


PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on  
November 15, 2010.

A copy of said order is attached hereto.

DATED this 15th day of November, 2010.

LOCAL GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

BY

  
JOYCE HOLTZ, Board Secretary

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**CERTIFICATE OF MAILING**

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 15th day of November, 2010, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

Paul M. Gaudet, Esq.  
715 So. Fourth St.  
Las Vegas, NV 89101

Yolanda Givens, Esq.  
Deputy District Attorney  
PO Box 552215  
Las Vegas, NV 89155-2215

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JOYCE HOLTZ, Board Secretary