

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

5 TRACY FAILS,

6 Complainant,

7 vs.

8 CITY OF MESQUITE AND MESQUITE
9 POLICE OFFICERS ASSOCIATION,

10 Respondents.

ITEM NO. 739

CASE NO. A1-045983

ORDER

11
12 For Complainant: Tracy Fails & his attorney David R. Ford, Esq,

13 For Respondents: City of Mesquite & their attorney Rebecca Bruch, Esq.

14 For Respondents: Mesquite Police Officers Association & their attorney Andrew F. Dixon, Esq.

15 This matter came on before the State of Nevada, Local Government Employee-
16 Management Relations Board ("Board"), on January 12, 2011 for consideration and decision
17 pursuant to the provisions of the Local Government Employee-Management Relations Act ("the
18 Act"); NAC Chapter 288, NRS chapter 233B, and was properly noticed pursuant to Nevada's
19 open meeting laws.

20 On December 20, 2010, Respondent City of Mesquite filed a motion for summary
21 judgment with the Board asking that it be dismissed from the case. The motion asserts that
22 because the agreement between the City and the bargaining agent – the Mesquite Police Officers
23 Association ("Association")- provides that only the union may bring a grievance to arbitration,
24 that the City could not have committed a prohibited labor practice when it denied Officer Fails'
25 individual grievance and request for arbitration.

26 Initially, we clarify that NAC Chapter 288 contains no provisions that incorporate NRCPL
27 56 or that recognize summary judgment as an appropriate means of resolving claims for
28 prohibited labor practices. Accordingly we re-characterize the City's motion as a motion to

1 dismiss due to a lack of probable cause under NAC 288.375(1), and consider the motion under
2 that legal standard. Because it is not disputed that Officer Fails was a member of the
3 Association, we conclude that no probable cause exists for the claims against the City, and the
4 City is entitled to be dismissed from this matter.

5 NRS 288.140(2) reserves the right for employees to act “for himself or herself with
6 respect to any condition of his or her employment,” so long as the action is consistent with the
7 negotiated agreement. The right to act for oneself is not universal and this statutory subsection
8 draws a distinction between employees who are members of a recognized employee organization
9 and those who are not. The right to act for oneself is granted only to those employees who are
10 not members of the recognized organization. NRS 288.140(2).

11 The City argues that because the CBA was amended to require that all requests for
12 arbitration be filed by the Association, that no employee is able to act for themselves by
13 demanding arbitration regardless of union membership. We do not decide this issue, as this case
14 only requires us to determine if Officer Fails is a member of the Association. If Officer Fails is a
15 member of the Association, then his right to act for himself is not to be found in the Act.

16 The City has attached, as Exhibit 15 to its motion, an affidavit from the President of the
17 Mesquite Police Officers Association affirming that at all times relevant to this case Officer
18 Tracy Fails was a member of the Association, and even an officer in the Association. Officer
19 Fails has not produced evidence to the contrary.

20 Substantial evidence therefore supports a finding that Officer Fails is a member of the
21 recognized organization. His grievance must be processed by the Association. Thus, we conclude
22 that the City was not under an obligation in this case to process Officer Fails’ personal grievance
23 and personal demand for arbitration. In the absence of such an obligation, there can be no
24 prohibited labor practice as alleged in this case.

25 Given the above, the Board concludes that the City has demonstrated a lack of probable
26 cause as to the claims against it. The City will be dismissed from this case.

27 Based upon the forgoing, the Board makes the following findings of fact and conclusions
28 of law.

1 **FINDINGS OF FACT**

- 2 1. At all times relevant to the allegations raised in the complaint, Officer Tracy Fails was a
3 member of the Mesquite Police Officers Association.
4 2. The Mesquite Police Officers Association is the recognized bargaining agent authorized
5 to negotiate with the City on behalf of the police officers in the bargaining unit.

6 **CONCLUSIONS OF LAW**

- 7 1. The Board is authorized to hear and determine complaints arising under the Local
8 Government Employee-Management Relations Act.
9 2. The Board has jurisdiction over the parties and the subject matters of the Complaint on
10 file herein pursuant to the provisions of NRS Chapter 288.
11 3. As a member of the recognized bargaining agent, the right to act for oneself under NRS
12 288.140(2) did not extend to Tracy Fails.
13 4. Because Tracy Fails did not possess the right to act for himself, the City could not
14 commit a prohibited labor practice when it refused to arbitrate his grievance.
15 5. The allegations against the City in this case are not supported by probable cause.
16 6. Dismissal of this case is appropriate pursuant to NAC 288.375(1)(a).

17 **ORDER**

18 It is hereby ordered that, pursuant to NAC 288.375(1)(a), this case be dismissed as to the
19 City of Mesquite.

20 DATED this 9th day of February, 2011.

21 LOCAL GOVERNMENT EMPLOYEE-
22 MANAGEMENT RELATIONS BOARD

23 BY: 
24 SEATON J. CURRAN, ESQ., Chairman

25 BY: 
26 SANDRA MASTERS, Vice-Chairman

27 BY: 
28 PHILIP E. LARSON, Board Member

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CASE NO. A1-045983

NOTICE OF ENTRY OF ORDER

11 TO: Tracy Fails & his attorney David R. Ford, Esq,

12 TO: City of Mesquite & their attorney Rebecca Bruch, Esq.

13 TO: Mesquite Police Officers Association & their attorney Andrew F. Dixon, Esq.
14

15 PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on
16 February 9, 2011.

17 A copy of said order is attached hereto.

18 DATED this 9th day of February. 2011.

19 LOCAL GOVERNMENT EMPLOYEE-
20 MANAGEMENT RELATIONS BOARD

21 BY 
22 JOYCE HOLTZ, Executive Assistant
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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 9th day of February, 2011, I served a copy of the foregoing
4 ORDER by mailing a copy thereof, postage prepaid to:

5 David R. Ford, Esq.
330 E. Warm Springs Road
6 Las Vegas, NV 89119

7 Rebecca Bruch, Esq.
Erickson, Thorpe, & Swainston, LTD
8 99 West Arroyo St.
Reno, NV 89521

9 Andrew F. Dixon, Esq.
10 BOWLER DIXON & TWITCHELL LLP
400 North Stephanie St. #235
11 Henderson, NV 89014

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14 JOYCE HOLTZ, Executive Assistant
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