

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

5 WASHOE COUNTY PUBLIC ATTORNEYS )  
6 ASSOCIATION, )

7 Complainant, )

8 vs. )

9 WASHOE COUNTY, )

10 Respondents, )  
11

ITEM NO. 750

CASE NO. A1-046001

**ORDER**

12 For Complainant: Francis C. Flaherty, Esq.

13 For Respondent: David Watts-Vial, Esq.

14 On the 14<sup>th</sup> day of April, 2011, this matter came on before the State of Nevada, Local  
15 Government Employee-Management Relations Board ("Board"), for consideration and decision  
16 pursuant to the provisions of NRS and NAC chapters 288, NRS chapter 233B, and was properly  
17 noticed pursuant to Nevada's open meeting laws.

18 On January 12, 2011, Respondent Washoe County filed a motion to dismiss with the  
19 Board. Complainant Washoe County Public Attorneys Association filed an opposition the  
20 motion and countermotion for summary judgment on February 4, 2011. The County filed its  
21 reply points and authorities on February 22, 2011, and the Association files its reply points and  
22 authorities in support of its countermotion on March 9, 2011. The Board has considered the  
23 pleadings and exhibits presented by the parties. Each motion will be addressed separately.

24 Motion to Dismiss

25 The County asserts in its motion that it has no obligation to negotiate with the  
26 Association over discipline and discharge procedures based upon a declaratory order entered by  
27 the Second Judicial District Court in 1992 which contains a conclusion stating:

28 ///

1 Legal professional employees of Washoe County are at-will employees  
2 serving at the pleasure of their appointing authorities and as such, Washoe  
3 County is not obligated by the provisions of NRS 288.150 to bargain with  
4 the Association over discharge and disciplinary procedures.

5 Respondent's Exhibit A.

6 The District Court's decision was apparently appealed to the Nevada Supreme Court, but  
7 was dismissed by means of an Order Dismissing Appeal, entered on November 3, 1993.

8 Respondent's Exhibit B.

9 Given these orders from the District Court and the Nevada Supreme Court, the County  
10 asserts that question of its duty to bargain with the Association is *res judicata* and asks that the  
11 Board dismiss the complaint entirely.

12 *Res judicata* is an affirmative defense. Schwartz v. Schwartz, 95 Nev. 202, 204, 591 P.2d  
13 1137, 1139 (1979). The County, as the Respondent in this matter, bears the burden to establish  
14 that each element of the *res judicata* defense is satisfied. Laborers Int'l Union of North America,  
15 Local 169 v. Washoe Medical Center, EMRB Case No. 1, Item No. 1 (1970).

16 Although the County uses the broad term *res judicata*, it is really asserting that the  
17 question in this case is controlled by the doctrine of issue preclusion. Five Star Capital Corp. v.  
18 Ruby, 124 Nev. Adv. Op. 88, 194 P.3d 709, 714 (2008).

19 In order to establish that issue preclusion applies, the County must prove: (1) the issue  
20 decided in the previous litigation must be identical to the issue presented in the current action;  
21 (2) the initial ruling must have been on the merits and become final; (3) the party against whom  
22 the judgment is asserted must have been a party or in privity with a party to the prior litigation;  
23 and (4) the issue was actually and necessarily litigated. Id. at 194 P.3d 713.

24 The County's motion and supporting evidence are insufficient to establish the defense of  
25 issue preclusion. Specifically, the Board is unable to discern from the pleadings submitted by the  
26 parties whether or not the first and fourth elements of the issue preclusion defense are  
27 established. Therefore, the County's motion will be denied, without prejudice.

28 ///

Motion for Summary Judgment

In response to the County's Motion to Dismiss, the Association filed a countermotion for summary judgment, asserting that the County has admitted its refusal to bargain with the Association over discipline and discharge procedures, contrary to NRS 288.150(2)(i). However, even if summary judgment were available under our procedural regulations, the unresolved questions surrounding the County's affirmative defense would mandate that the countermotion must also be denied. Aviation Ventures, Inc. v. Joan Morris, Inc., 121 Nev. 113, 119, 110 P.3d 59, 63 (2005). In any event, no hearing has been held in this case and the Board would be unable to order relief to a complainant. NRS 288.110(2). Therefore, the Association's motion will also be denied without prejudice.

Based upon the foregoing, and good cause appearing therefore:

It is hereby ordered that Respondent's Motion to Dismiss is denied without prejudice;

It is further ordered that Complainant's Countermotion for Summary Judgment is denied without prejudice;

It is further ordered that the parties shall submit pre-hearing statements no later than 20 days from the date that notice of entry of this order is provided to the parties.

DATED this 22nd day of April, 2011.

LOCAL GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

BY:   
SEATON J. CURRAN, ESQ., Chairman

STATE OF NEVADA  
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

WASHOE COUNTY PUBLIC ATTORNEYS )  
ASSOCIATION, )

Complainant, )

vs. )

WASHOE COUNTY, )

Respondents, )

CASE NO. A1-046001

**NOTICE OF ENTRY OF ORDER**

To: Francis C. Flaherty, Esq.

To: David Watts-Vial, Esq

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on  
April 22, 2011.

A copy of said order is attached hereto.

DATED this 22nd day of April, 2011.

LOCAL GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

BY   
JOYCE A. HOLTZ, Executive Assistant

**CERTIFICATE OF MAILING**

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 22nd day of April, 2011, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

Francis C. Flaherty, Esq.  
Dyer, Lawrence, Penrose, Flaherty, Donaldson, & Prunty  
2805 Mountain Street  
Carson City, NV 89703

David Watts-Vial, Esq.  
Deputy District Attorney  
Washoe County District Attorney  
One South Sierra Street  
P.O. Box 30083  
Reno, NV 89520

  
JOYCE HOLTZ, Executive Assistant

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28