

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

5 TAL HAREL,

6 Complainant,

7 vs.

8 CLARK COUNTY, NEVADA; ex. Rel.,
9 Department of Real Property Management;
10 DOES I thru V, inclusive; ROE
11 CORPORATIONS, I thru V, Inclusive,

Respondents,

)
) ITEM NO. 772B

)
) CASE NO. A1-046037

)
) **ORDER**

12 For Complainant: Andrew L. Rempfer, Esq.

13 For Respondent: Yolanda T. Givens, Esq.

14 This matter came on before the State of Nevada, Local Government Employee-
15 Management Relations Board ("Board"), on February 8th, 2012 for consideration and decision
16 pursuant to the provisions of the Local Government Employee-Management Relations Act ("the
17 Act"); NAC Chapter 288, NRS chapter 233B, and was properly noticed pursuant to Nevada's
18 open meeting laws.

19 On November 3, 2011, during the course a regular meeting of the Board, the Board
20 considered and granted a motion to dismiss that had been filed by Respondent Clark County on
21 October 10, 2011. At that time, the Board had not received an opposition to the motion, and the
22 Board relied upon the lack of an opposition and upon the provisions of NAC 288.240(6) to
23 dismiss the case. Item No. 772. Complainant's opposition was received by the Board sometime
24 later that same day on November 3, 2011.

25 Following our initial order to grant Clark County's motion to dismiss, Complainant filed
26 a petition for rehearing on November 28, 2011. The Board granted the petition and directed
27 Clark County to file a response to the petition for rehearing pursuant to NAC 288.362. The
28 County filed its response to the petition on December 30, 2011.

1 The petition argues that the Board should rehear the County's motion and should
2 overlook the untimeliness of the opposition and consider Mr. Harel's opposition to the County's
3 motion. Mr. Harel relies on NAC 288.235(2) which authorizes the Board to liberally construe
4 pleadings and to overlook any defects which do not affect the substantial rights of the parties.
5 Mr. Harel argues that there is no substantial prejudice to the County if the Board accepts and
6 considers the opposition to the motion. The County's response claims that the County will suffer
7 substantial prejudice.

8 The Board agrees with Mr. Harel that there is no substantial prejudice to the County if the
9 Board were to accept the opposition, and that such a course of action is proper under NAC
10 288.235(2). Therefore, the prior order in this matter, Item No. 772 shall be vacated. The Board
11 will consider the County's motion to dismiss along with Mr. Harel's opposition.

12 We turn to consider whether or not the motion and the opposition demonstrate that
13 dismissal is warranted in this matter.

14 The County's motion asserts that dismissal is proper under NAC 288.375(1) based upon a
15 lack of probable cause for the complaint. The County argues that the complaint asserts only
16 allegations of "[m]isapplication or misinterpretation of an article in the [collective bargaining
17 agreement]." The County argues that such claims are not within the scope of the Act and
18 therefore do not raise a justiciable controversy within the authority of this Board.

19 This Board has consistently held that it does not have authority to hear or decide
20 contractual disputes which do not allege a prohibited labor practice under the provisions of NRS
21 Chapter 288. *Clark County Classroom Teachers Ass'n v. Clark County School Dist.*, EMRB
22 Case No. A1-045280, Item No. 44 (Aug. 19, 1975); see also *UMC Physicians' Bargaining Unit*
23 *of Nevada Service Employees Union v. Nevada Service Employees Union/SEIU Local 1107,*
24 *AFL-CIO*, 124 Nev. 84, 90 178 P.3d 709, 713 (2008) (NRS 288.110(2) "limit[s] the Board to
25 hearing complaints . . . arising out of NRS Chapter 288's performance or interpretation").
26 Accordingly, a complaint before this Board must assert a justiciable controversy arising under
27 the Act. NAC 288.200(1)(c). A complaint that does not identify a prohibited labor practice
28 falling within the jurisdiction of the Board lacks probable cause.

1 In this case, Harel's complainant failed to allege facts sufficient to support probable cause
2 of a prohibited labor practice under NRS 288.270. The alleged facts in the complaint are drawn
3 to a breach of contract claim over which this board lacks jurisdiction.

4 Having considered the above, the Board now finds as follows:

5 **FINDINGS OF FACT**

- 6 1. Respondent Clark County filed a motion to dismiss on October 10, 2011.
7 2. Petitioner Tal Harel filed an opposition to the motion to dismiss on
8 November 3, 2011.
9 3. The alleged facts in the complaint are drawn to a breach of contract claim.
10 4. If any of the foregoing findings is more appropriately construed a conclusion of
11 law, it may be so construed.

12 **CONCLUSIONS OF LAW**

- 13 1. Pursuant to NAC 288.235(2) the Board will consider the opposition to the motion
14 to dismiss filed by Tal Harel on November 3, 2011.
15 2. Pursuant to NRS 288.110(2) and NRS 288.280, the Board has jurisdiction over
16 violations of the Local Government Employee-Management Relations Act.
17 3. Allegations of a breach of a collective bargaining agreement, without more, do
18 not assert a violation of the Act.
19 4. The complaint filed in this matter is drawn to a breach of contract claim.
20 5. This Board may dismiss any matter if the Board determines that no probable
21 cause exists for the complaint. NAC 288.375(1).
22 6. The complaint in this matter lacks probable cause because the complaint is drawn
23 towards claims over which the Board lacks jurisdiction.

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

3 **ORDER**

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

5 IT IS HEREBY ORDERED that the Board's prior order, Item No. 772, is vacated;

6 IT IS FURTHER ORDERED that this matter is dismissed without prejudice.

7 DATED this 14th day of February, 2012.

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9 LOCAL GOVERNMENT EMPLOYEE-
10 MANAGEMENT RELATIONS BOARD

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

12
13 BY: 
PHILIP E. LARSON, Vice-Chairman

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11 CORPORATIONS, I thru V, Inclusive,

Respondents,

NOTICE OF ENTRY OF ORDER

12 To: Andrew L. Rempfer, Esq.

13 To: Yolanda T. Givens, Esq.

14 PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on
15 February 14, 2012.

16 A copy of said order is attached hereto.

17 DATED this 14th day of February, 2012.

18 LOCAL GOVERNMENT EMPLOYEE-
19 MANAGEMENT RELATIONS BOARD

20 BY 
21 JOYCE A. HOLTZ, Executive Assistant
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