

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CHARLES JENKINS, individually; LAS
VEGAS POLICE MANAGERS AND
SUPERVISORS ASSOCIATION,

Complainant,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Respondents,

CASE NO. A1-046020

ITEM: 775A

ORDER

For Complainant: John P. Aldrich, Esq., for Charles Jenkins and Las Vegas Police Managers and Supervisors Association.

For Respondent: Nick Crosby, Esq., of Marquis Aurbach, for Las Vegas Metropolitan Police Department

This matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board"), on January 9 and 10, 2013 for consideration and decision pursuant to the provisions of the Local Government Employee-Management Relations Act ("the Act"); NAC Chapter 288 and NRS chapter 233B. A hearing was held September 9-10, 2012 in Las Vegas, Nevada. In lieu of closing arguments, the parties submitted post-hearing briefs to the Board on October 22, 2012.

Complainant Las Vegas Police Managers and Supervisors Association (PMSA) is the bargaining agent for the unit of supervisory employees employed by Respondent Las Vegas Metropolitan Police Department (the Department). PMSA and the Department are parties to a collective bargaining agreement and Complainant Charles Jenkins is a Sergeant with the Department and a member of the collective bargaining unit represented by PMSA.

Prior to February 22, 2011 Sgt. Jenkins worked as the property crimes supervisor in the Department's Southeast Area Command. This position is a sought-after position and includes favorable scheduling as well as an 8% Assignment Differential Pay over and above the employee's normal salary.

1 In September of 2010, the Department's Office of Employment Diversity began an
2 investigation into allegations that Sgt. Jenkins had violated the Department's policies on
3 harassment and discrimination.

4 While this investigation was pending, a body-for-body transfer was arranged that would
5 send Sgt. Jenkins to the same position as property crimes supervisor in the Department's South
6 Central Area Command, and Sgt. Michael Welch who had been the property crimes supervisor in
7 the South Central Area Command would move over to fill Sgt. Jenkins' position in the Southeast
8 Area Command, essentially swapping sergeants between the two area commands. This body-for-
9 body transfer was agreed to between Sgt. Jenkins and his counterpart in the South Central Area
10 Command, as well as the supervising Lieutenants and Captains in each area command. Although
11 Sgt. Welch ultimately transferred into the property crimes supervisor position that Jenkins had
12 held at Southeast Area Command, the body-for-body swap never occurred.

13 On February 22, 2011 the Department informed Sgt. Jenkins that he was instead being
14 transferred out of the property crimes supervisor position and would be assigned to a patrol
15 squad. Also on February 22, 2011 Sgt. Jenkins was provided with an adjudication of complaint
16 for the Office of Employment Diversity investigation in which Sgt. Jenkins was issued a written
17 reprimand for violations of the Department's policy on harassment and discrimination. Sgt.
18 Jenkins' supervisors all signed-off on this adjudication of complaint between February 2 -3,
19 2011, but it was not issued to Sgt. Jenkins until February 22, 2011. This adjudication specified
20 that Sgt. Jenkins was being disciplined by written reprimand, but made no mention of a transfer
21 to a new assignment as an element of the discipline imposed on Sgt. Jenkins.

22 The notice identified the transfer as an "administrative transfer" and stated that the reason
23 for the transfer was the determination that Sgt. Jenkins had violated the Department's harassment
24 and discrimination policies. This is the same conduct for which Sgt. Jenkins was given the
25 written reprimand.

26 Sgt. Jenkins was then contacted by patrol services and given three options for his new
27 assignment. However, when Sgt. Jenkins made his selection, he was informed that that
28 assignment was filled. When Sgt. Jenkins then made his second selection he was likewise

1 informed that that assignment was also filled, leaving Jenkins with the lone remaining
2 assignment offered by patrol services. Sgt. Jenkins' new assignment was with a patrol squad in
3 the Department's Bolden Area Command. The new assignment did not include the 8%
4 Assignment Differential Pay that Jenkins had been receiving as the property crimes supervisor,
5 nor did it allow for the more favorable scheduling that Sgt. Jenkins had previously enjoyed.

6 On March 10, 2011 Sgt. Jenkins attempted to file a grievance over this transfer. On
7 March 14, 2011, the Department responded to the grievance and stated that it could not process
8 nor accept Jenkins' grievance under Article 12 of the collective bargaining agreement, which is
9 the article of the collective bargaining agreement that sets forth the grievance process for
10 disciplinary matters. Sgt. Jenkins and PMSA then filed this complaint.

11 In this case, Complainants charge that the Department violated the Act by using the
12 administrative transfer process contained in the collective bargaining agreement as a means to
13 impose additional discipline on Sgt. Jenkins after Jenkins had separately received a written
14 reprimand for the same conduct. The Department counters that the transfer was not disciplinary
15 and that it properly transferred Sgt. Jenkins as an "administrative transfer" under the negotiated
16 terms of the collective bargaining agreement. Complainants also assert that the Department
17 violated the Act by refusing to process Jenkins's subsequent grievance over this transfer pursuant
18 to the bargained-for grievance process that applies to disciplinary matters. The Department
19 disputed this argument on the grounds that Jenkins transfer was not a disciplinary transfer and
20 therefore was not grievable under the terms of the collective bargaining agreement.

21 Both claims hinge upon the factual determination of whether or not Jenkins' transfer was
22 a form of discipline. If Jenkins' transfer was not a form of discipline then the Department
23 retained the right to transfer Jenkins within its discretion under NRS 288.150(3)(a). However, if
24 Jenkins' transfer was a form of discipline, then the transfer concerns a mandatory subject of
25 bargaining under NRS 288.150(2)(i). This would invoke the Department's obligations under the
26 Act to bargain in good faith and prevent it from changing the disciplinary process without first
27 bargaining with the Association over the change.

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1 The Department's Use of an Administrative Transfer to Discipline Jenkins

2 "‘Discipline’ means ‘to punish.’" City of Reno v. Reno Police Protective Ass'n, 118
3 Nev. 889, 900, 59 P.3d 1212, 1220 (2002) (construing the phrase "disciplinary procedures" in
4 NRS 288.150(2)(i)). As we discuss below, the conclusion that we draw from the evidence
5 presented at the hearing is that Jenkins' transfer to the patrol division in the Bolden Area
6 Command was in fact intended as a punishment on Jenkins and was therefore a form of
7 discipline.

8 The February 22, 2011 memorandum issued by Captain Brian Greenway to Sgt. Jenkins
9 unequivocally stated that Jenkins' transfer away from the property crimes supervisor was "[a]s a
10 result of it being determined that [Jenkins] engaged in inappropriate verbal communications with
11 subordinates of a nature that violates the Department's harassment and discrimination
12 policies..." This memorandum was introduced into evidence at the hearing as Exhibit 3. These
13 "inappropriate verbal communications" for which Jenkins was being transferred refer to the same
14 conduct for which Jenkins had separately been disciplined, in the form of a written reprimand.
15 (See Exhibit 1). Captain Greenway confirmed during his testimony before the Board that had it
16 not been for this misconduct, Jenkins would not have been transferred. Captain Greenway also
17 testified that he felt written reprimand was adequate punishment for Sgt. Jenkins' misconduct.
18 This same exhibit also identifies the destination of the transfer as a patrol sergeant.

19 These express statements concerning the motivation for the transfer are coupled with the
20 fact that the transfer to Bolden area command resulted in a reduction in Jenkins' pay and
21 benefits. Jenkins testified that the transfer to a patrol division resulted in a loss of an 8%
22 Assignment Differential Pay and left Jenkins with less favorable days off. Jenkins also testified
23 that the transfer has adversely affected his reputation. The Board accepts this testimony as
24 credible.

25 The fact that the Department took the unusual step to halt the proposed voluntary transfer
26 in order to send Sgt. Jenkins to a different assignment that reduced his pay and benefits also
27 indicates that this transfer was intended to punish Sgt. Jenkins. Credible testimony at the hearing
28 established that the proposed body-for-body transfer had been arranged and agreed-upon by Sgt.

1 Jenkins, Jenkins' Lieutenant Tom Roberts, and Captain Dave O'Leary, who was the Captain for
2 the South East Area Command, and by Sgt. Michael Welch, Sgt. Welch's lieutenant, and Captain
3 Charles Hank, who was the Captain over the South Central Area Command. Testimony at the
4 hearing established that voluntary transfers such as this frequently happen without the need to
5 seek approval from a Deputy Chief. In this case, Deputy Chief Marc Joseph intervened and
6 stopped this proposed body-for-body transfer from taking place. Lt. John Faulis credibly testified
7 that it was rare and infrequent that a transfer which had been agreed-upon in this way would not
8 actually take place. Captain Greenway, who had since become the new bureau commander at
9 Southeast Area Command, further testified that he and Deputy Chief Joseph had agreed to
10 transfer Sgt. Jenkins back to a patrol division because of the findings of misconduct. The
11 apparent motive for sending Sgt. Jenkins to a patrol assignment instead of accepting the body-
12 for-body transfer was to deprive Sgt. Jenkins of the benefits attached to the property crimes
13 supervisor position and send him to a less-desirable assignment.

14 The Department's defense that the body-for-body transfer would not have been sufficient
15 because Sgt. Jenkins and his accuser might periodically come into contact lacks credibility. The
16 complaint against Sgt. Jenkins was first lodged on September 27, 2010. From that time until
17 February of 2011, Jenkins continued to work with the employee that had filed the complaint. The
18 Office of Employment Diversity concluded its investigation on January 6, 2011. The adjudication
19 of complaint was not signed by Jenkins' supervisors until the beginning of February. Jenkins
20 was not issued the written reprimand or notified of the transfer until February 22, 2011. This
21 lapse of time undermines the Department's contention that eliminating even incidental contact
22 between these two employees was an imperative.

23 The Department also asserted that the transfer to patrol was necessary because Jenkins'
24 supervisors felt that he needed greater supervision. This need for more supervision was based
25 entirely upon the conduct for which Jenkins had been given his written reprimand. This
26 contention is not credible given Sgt. Jenkins' testimony that the degree of supervision was
27 actually much less as a patrol sergeant than as a property crimes supervisor. Lt. John Faulis also
28 testified and confirmed based on his experience that Jenkins would have far less time and

1 interaction with his supervising lieutenant in a patrol assignment. Even if the Department's
2 reasons were to be believed, they would only reinforce our conclusion that the transfer was a
3 form of punishment because the transfer was based exclusively upon actions which constituted
4 misconduct and was intended to subject Sgt. Jenkins' employment to stricter conditions than he
5 had previously enjoyed.

6 This decision to transfer Jenkins to a patrol division is also at-odds with the bargained-for
7 administrative transfer process that the Department claims to have followed in this case. Under
8 Article 23 of the collective bargaining agreement, if the transfer was an administrative transfer
9 Sgt. Jenkins would be allowed to select his shift area command when there were multiple
10 openings. Sgt. Jenkins testified that he was contacted by patrol services and given three nominal
11 options for his new assignment. However, Jenkins' first and second selection were both filled,
12 leaving Jenkins with effectively no choice about his new assignment despite pretenses to the
13 contrary by the Department.

14 Article 23 of the collective bargaining agreement states that the Department "will
15 consider the timing of the 'Bump' when making administrative transfers in an attempt to lessen
16 the negative impact on affected employees. Whenever possible the transfer will precede the
17 bump." Yet in this case, the Department did not advise Sgt. Jenkins of his "administrative"
18 transfer in time to take advantage of the "bump."¹ This fact is especially revealing in this case, as
19 the investigation into Sgt. Jenkins' misconduct appears to have concluded on January 6, 2011,
20 and the written reprimand had been signed off on nearly 3 weeks before it was issued to Sgt.
21 Jenkins. Had this truly been an administrative transfer under Article 23, as the Department
22 asserts as its defense in this case, it should have been included a choice of shift assignments and
23 preceded the bump. The fact that this transfer bore neither of these characteristics which
24 typically mark a transfer as an administrative transfer indicates that this was not an authentic
25 administrative transfer under Article 23. It was instead a disciplinary transfer masquerading as an
26 administrative transfer.

27
28 ¹ The "bump" refers to an annual process where sergeants and lieutenants can exercise their seniority to transfer to more favorable assignments.

1 Given this degree of evidence, not the least of which is the memorandum expressing that
2 Jenkins' transfer was due to actions for which he had already been disciplined, and Captain
3 Greenway's acknowledgement that the transfer was deemed administrative rather than
4 disciplinary in order to avoid the grievance process, we have no hesitation in concluding that
5 Metro intended this transfer as a form of additional punishment on Jenkins. Accordingly, the
6 transfer was a matter of discipline, and falls outside of management's general right to transfer
7 employees under NRS 288.150(3)(a).

8 9 Change to Disciplinary Process

10 In City of Reno, the Nevada Supreme Court affirmed that it is a violation of the Act for
11 an employer to depart from the bargained-for disciplinary process without first bargaining over
12 the change with the recognized bargaining agent. 118 Nev. 899-901, 59 P.3d 1219-1220.
13 Authority arising under the National Labor Relations Act holds that these types of changes to a
14 collective bargaining agreement violate both section 8(a)(1) and 8(a)(5) of the National Labor
15 Relations Act. N.L.R.B. v. Southwestern Elec. Co-op., Inc. 794 F.2d 276, 278 -279 (7th Cir.
16 1986). This Board has likewise held that this type of conduct violates both NRS 288.270(1)(a)
17 and NRS 288.270(1)(e). Boykin v. City of North Las Vegas Police Dept., Item No. 674E, Case
18 No. A1-045921 (2010). This Board has repeatedly reaffirmed the principle that "unilateral
19 changes by an employer during the course of a collective bargaining relationship concerning
20 matters which are mandatory subjects of bargaining are regarded as *per se* refusals to bargain."
21 Operating Engineers, Local 3 of the International Union of Operating Engineers, AFL-CIO v.
22 County of Lander, Item No. 346, Case No. A1-045553, (1994); see also N. L. R. B. v. Katz, 369
23 U.S. 736 (1962).

24 The evidence is more than sufficient to establish a prohibited labor practice of the same
25 type that was at issue in City of Reno.

26 In this case, the process which had been bargained-for is established by the terms of the
27 collective bargaining agreement. The Department and PMSA negotiated Article 23 the collective
28 bargaining agreement which addressed administrative transfers, but did not grant to the

1 Department the ability to administratively transfer an employee in order to impose discipline.
2 While Mike Snyder, the Department's Director of Labor Relations did discuss a proposal that
3 PMSA had made while negotiating Article 23 of the collective bargaining agreement, this
4 testimony carries little weight because the proposal was not accepted and incorporated into
5 Article 23 and the terms of what was actually bargained-for and agreed upon are stated in the
6 collective bargaining agreement. Jenkins' transfer occurred after the terms of the agreement had
7 already been established. Nothing in Article 23 indicates that PMSA had agreed to the use of
8 administrative transfers for disciplinary reasons. Despite this bargained-for provision, the
9 Department unilaterally invoked the separate administrative transfer process as a form of
10 discipline to transfer Jenkins to a less desirable assignment and deprive Jenkins of pay and
11 benefits.

12 We also give significant weight to the testimony elicited at the hearing which indicates
13 that the practice of using an administrative transfer as a form of discipline is not an isolated
14 incident. Testimony at the hearing established that the Department very seldom uses the
15 disciplinary transfers contemplated by Civil Service Rule 520 and instead opts for an
16 "administrative transfer" in similar situations. Lt. Faulis testified that he had never seen a
17 disciplinary transfer but had seen these same type of disciplinary transfers disguised as an
18 administrative transfers both before and after Sgt. Jenkins' transfer. Captain Greenway also
19 testified that he has never given a disciplinary transfer but instead prefers to use the
20 administrative transfer process. Mike Snyder, the Department's Director of Labor Relations,
21 emphasized that disciplinary transfers are exceedingly rare and could only recall two instances
22 over 15 years where the Department had actually made a disciplinary transfer.

23 Captain Greenway also testified on this point that the reason disciplinary transfers are not
24 used is that the employee has the right to grieve disciplinary transfers. See Tr. 9/11/12, p. 209-
25 210. This reasoning was corroborated by Mike Snyder who testified that disciplinary transfers
26 affect the Department's ability to operate and that bureau commanders are advised to transfer
27 employees as an "operational transfer" instead of a "disciplinary transfer." Tr. 9/12/12 p. 15-16.
28 Captain Greenway also testified that the reason Jenkins' transfer was labeled as an administrative

1 transfer instead of a disciplinary transfer was to deny Jenkins the right to grieve his transfer. In
2 our mind, this is a stunning admission that the Department is avoiding its negotiated obligations
3 under the collective bargaining agreement and has resorted to instead using the administrative
4 transfer process as a ruse to impose further discipline and deny employees the right to file a
5 grievance.

6 If the Department wanted to use the administrative transfer process as a form of
7 discipline as it did in this case, it was obligated to negotiate this term of employment with
8 PMSA. NRS 288.150(2)(i). That the Department did not do so, but unilaterally used the
9 administrative transfer process to discipline Sgt. Jenkins (and according to the testimony of Lt.
10 Faulis other employees as well) amounts to a repudiation of the collective bargaining
11 relationship with PMSA and is not permitted under NRS 288.270(1)(a) and NRS 288.270(1)(e).

12 Accordingly, we conclude that the Department has unilaterally changed the bargained-for
13 disciplinary procedure by using the administrative transfer process, instead of the disciplinary
14 transfer process, to impose discipline and in order to avoid its bargained-for responsibilities and
15 obligations under the collective bargaining agreement. Under City of Reno, this is a clear and
16 unmistakable violation of the Act.

17 18 Refusal to Process Grievance

19 Complainants also assert that the Department committed a prohibited labor practice by
20 refusing to process the grievance that Sgt. Jenkins filed after being transferred. Sgt. Jenkins
21 asserted that he was entitled to grieve the transfer under Article 12 of the collective bargaining
22 agreement, which is the article that allows an employee to file a grievance over disciplinary
23 matters and establishes the procedure to be followed when a disciplinary matter is grieved.
24 Discipline in the form of a transfer is not excluded from Article 12's grievance process.

25 Grievance procedures are a mandatory subject of bargaining. NRS 288.150(2)(o). One
26 component of the employer's obligation to bargain in good faith is the obligation to follow the
27 bargained-for grievance procedure. When the collective bargaining agreement allows for a
28 grievance to be filed and the employer then refuses to process that grievance under the

1 negotiated process, the employer violates the Act. Kallsen v. Clark County School Dist., Item
2 No. 393B, Case No. A1-045598 (1998); see also Advanced Architectural Metals, Inc., 351
3 N.L.R.B., 1208, 1217 (2007).

4 The Department contends that the transfer was an administrative transfer and it followed
5 the collective bargaining agreement's provisions which govern administrative transfers.

6 This claim likewise depends upon the factual determination of whether Jenkins' transfer
7 was in fact a disciplinary transfer or an administrative transfer, and our finding discussed above
8 that the transfer was a form of discipline applies with equal force to this claim.

9 As a disciplinary matter, Jenkins was allowed by the terms of Article 12 to file a
10 grievance over this transfer, and the Department was obligated to respond by processing the
11 grievance in accordance with the terms of Article 12. The evidence at the hearing conclusively
12 established that Jenkins' grievance was not processed under Article 12 of the CBA. The
13 memorandum from Captain Greenway to Sgt. Jenkins in response to this grievance states that
14 Jenkins' attempt to file a grievance "... is not accepted as a grievance under Article 12-
15 Grievance Procedures." Exhibit 4.

16 Therefore we conclude that the Department violated NRS 288.270(1)(f) by failing to
17 follow the bargained-for grievance process for disciplinary matters.

18 19 Remedy

20 NRS 288.110(2) authorizes the Board to "order any person to refrain from the action
21 complained of or to restore to the party aggrieved any benefit of which the party has been
22 deprived by" actions which violate the Act. In this case, the Department violated the Act by
23 disciplining Jenkins with a transfer to a less desirable position under the ruse of an administrative
24 transfer. The benefits of which Jenkins was deprived by this action, as testified to by Jenkins, are
25 the 8% Assignment Differential Pay and favorable days off.

26 In order to remedy this violation, the Department is ordered to reinstate Sgt. Jenkins at
27 the next available opportunity to a position equivalent to the property crimes supervisor position
28 from which Sgt. Jenkins was transferred which shall include Assignment Differential Pay. An

1 award of back pay is also appropriate to restore the benefits of Sgt. Jenkins' prior position to
2 him. Accordingly, the Department must compensate Sgt. Jenkins with the same 8% Assignment
3 Differential Pay that Sgt. Jenkins would have received had he remained a property crimes
4 supervisor. This award of back pay shall be from the effective date of Sgt. Jenkins' transfer to
5 Bolden Area Command to such time as Sgt. Jenkins is reinstated to a position equivalent to
6 property crimes supervisor.

7 The Department also refused to process Sgt. Jenkins' grievance under the bargained-for
8 grievance process. The Board will order the Department to refrain from taking future actions and
9 post the notice which is attached to this order as Attachment A at all area command facilities.

10 Additionally, the Board is authorized by NRS 288.110(6) to award costs including
11 attorney fees to the prevailing party. The actions of the Department in this case justify such an
12 award. The Board instructs counsel for Complainants to submit a memorandum detailing the
13 costs and fees incurred in this matter within 30 days of the date of this order.

14
15 Based upon the forgoing, the Board makes the following findings of fact and conclusions
16 of law.

17 FINDINGS OF FACT

18
19 1. Complainant Las Vegas Police Managers and Supervisors Association is the recognized
20 bargaining agent for the bargaining unit of police supervisors employed by Respondent Las
21 Vegas Metropolitan Police Department and PMSA and the Department are parties to a collective
22 bargaining agreement.

23 2. The use of a transfer as a means to impose discipline is stated in Civil Service Rule 520

24 3. Complainant Charles Jenkins is a Sergeant employed by the Department and a member of
25 the bargaining unit represented by PMSA.

26 4. Prior to February of 2011, Sgt. Jenkins was employed by the Department as a property
27 crimes supervisor in the Southeast Area Command. As a property crimes supervisor Jenkins was

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1 entitled to receive additional salary by way of an 8% Assignment Differential Pay and favorable
2 scheduling.

3 5. Each area command has a property crimes unit and a property crimes supervisor position
4 such as the position held by Sgt. Jenkins.

5 6. On September 27, 2010 a co-worker filed a harassment complaint against Jenkins. The
6 complaint was investigated by the Department's Office of Employment Diversity (OED).

7 7. While the OED investigation was pending, Jenkins was part of an agreed-upon transfer
8 that would transfer Sgt. Jenkins out of the property crimes supervisor position in the Southeast
9 area command to the equivalent property crimes supervisor position in the Department's South
10 Central area command.

11 8. The proposed body-for-body transfer to South Central Area Command was agreed upon
12 by Sgt. Jenkins and his counterpart property crimes supervisor in South Central Area Command,
13 as well as the supervising Lieutenants and Captains in both South Central and Southeast area
14 commands.

15 9. An agreed-upon voluntary transfer is typically allowed to proceed without involvement
16 from a Deputy Chief.

17 10. As a result of the OED investigation, Sgt. Jenkins was disciplined by the Department for
18 "several inappropriate comments." Sgt. Jenkins' discipline consisted of a written reprimand, and
19 the adjudication of complaint did not refer to a disciplinary transfer.

20 11. The OED investigation was concluded no later than January 6, 2011, and the adjudication
21 of complaint was signed by Jenkins' supervisors on February 2 and 3, 2011 and issued to Jenkins
22 on February 22, 2011.

23 12. Also on February 22, 2011, Jenkins was notified that he would be transferred to a patrol
24 squad due to the determination that Jenkins had engaged in inappropriate verbal comments. The
25 notification provided to Jenkins referred to this transfer as an "administrative transfer."

26 13. The proposed and agreed-upon body-for-body transfer to South Central Area Command
27 never occurred and was halted by Captain Brian Greenway and Deputy Chief Marc Joseph.

28 14. Instead, Sgt. Jenkins was transferred to a patrol squad in Bolden area command.

1 15. The transfer to patrol sergeant deprived Jenkins of the 8% Assignment Differential Pay
2 that he had been receiving as a property crimes supervisor as well as scheduling benefits in more
3 favorable days off.

4 16. The same conduct for which Sgt. Jenkins was given a written reprimand resulted in the
5 transfer to Bolden area command, and had it not been for this same conduct Sgt. Jenkins would
6 not have been transferred out of the property crimes supervisor position.

7 17. Sgt. Jenkins was purportedly offered a choice of three assignments when being
8 transferred, however when Sgt. Jenkins attempted to select his first and second options, he was
9 informed that each of those assignments was no longer available.

10 18. The transfer of Sgt. Jenkins to a patrol squad was intended by the Department as a form
11 of punishment. The transfer was therefore a disciplinary transfer.

12 19. On March 10, 2011 Sgt. Jenkins filed a grievance over his transfer and the cancellation of
13 the proposed body for body transfer. Jenkins' grievance invoked Article 12 (discipline) of the
14 collective bargaining agreement.

15 20. On March 14, 2011 the Department informed Jenkins that it would not accept the
16 grievance as a grievance under Article 12 of the collective bargaining agreement. The
17 Department claimed that Jenkins' transfer was instead an administrative transfer.

18 21. As a result of the transfer to the patrol squad in Bolden area command, Jenkins was
19 deprived of the benefits of continued employment as a property crimes supervisor including 8%
20 Assignment Differential Pay and favorable scheduling.

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

23 24 CONCLUSIONS OF LAW

25
26 1. The Board is authorized to hear and determine complaints arising under the Local
27 Government Employee-Management Relations Act.

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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. Employee transfers which are used as a form of discipline are excluded from the rights retained by management pursuant to NRS 288.150(3)(a)

4. Discipline procedures are a mandatory subject of bargaining pursuant to NRS 288.150(2)(i).

5. Under NRS 288.250(2)(i), a disciplinary matter is a one that is intended to punish an employee.

6. After weighing all of the circumstances surrounding Jenkins' transfer in this case, Jenkins' transfer was intended as a form of punishment and is a disciplinary transfer which is outside the scope of management rights afforded by NRS 288.150(3)(a).

7. The Department is obligated to bargain in good faith with PMSA over discipline procedures.

8. A unilateral change to discipline procedures constitutes a *per se* refusal to bargain in good faith.

9. The collective bargaining agreement does not address the use of an administrative transfer as a means to discipline employees.

10. Civil Service Rule 520 establishes a process for a disciplinary transfer to be used as punishment for an employee.

11. Article 12 of the collective bargaining agreement grants an employee the right to grieve matters of discipline, which would include transfers that are used to impose discipline.

12. Employees that are administratively transferred under Article 23 of the collective bargaining agreement are not granted the same grievance rights that attach to disciplinary matters.

13. The Department has unilaterally adopted the practice of using administrative transfers, rather than the disciplinary transfers contemplated in Civil Service Rule 520, as a means to discipline employees and as a means to circumvent the bargained-for grievance process. This conduct violates NRS 288.270(1)(a) and NRS 288.270(1)(e).

1 14. The use of the administrative transfer process was a ruse to discipline Jenkins by
2 transferring him to a less-favorable position and constitutes a *per se* refusal to bargain in good
3 faith and violates NRS 288.270(1)(a) and NRS 288.270(1)(e).

4 15. The Board is authorized to restore to Jenkins the benefit of which he was deprived,
5 including reinstatement to an equivalent position and back pay, due to the Department's violation
6 of the Act.

7 16. The duty to bargain in good faith includes an obligation on the Department to follow the
8 bargained-for grievance procedures.

9 17. Article 12 of the collective bargaining agreement establishes the bargained-for grievance
10 process for disciplinary matters.

11 18. The grievance that Jenkins filed relating to his transfer was a grievance over a
12 disciplinary matter.

13 19. The Department breached its duty to bargain in good faith when it refused to accept
14 Jenkins' grievance under Article 12 of the collective bargaining agreement.

15 20. The complaint filed by Jenkins and PMSA in this matter is well-taken.

16 21. If any of the foregoing conclusions is more appropriately construed as a finding of fact, it
17 may be so construed.

18
19 **ORDER**
20

21 IT IS HEREBY ORDERED that the Board finds in favor of Complainants Charles
22 Jenkins and Las Vegas Police Managers and Supervisors Association as stated herein;

23 IT IS FURTHER ORDERED pursuant to NRS 288.110(2) that Respondent Las Vegas
24 Metropolitan Police Department shall reinstate Charles Jenkins to the assignment of property
25 crimes supervisor, or to an equivalent position, at the next available opportunity;

26 IT IS FURTHER ORDERED pursuant to NRS 288.110(2) that Respondent Las Vegas
27 Metropolitan Police Department shall compensate Charles Jenkins with back pay in the amount
28 equal to the 8% Assignment Differential Pay that Jenkins had been receiving as a property

1 crimes supervisor for a period of time beginning as of the effective date of Jenkins' transfer to
2 the Bolden area command and until such time as Jenkins is reinstated to the assignment as
3 property crimes supervisor or to an equivalent position;

4 IT IS FURTHER ORDERED that within 30 days of the date of this order, Respondent
5 Las Vegas Metropolitan Police Department shall complete and post the Notice attached to this
6 order as Attachment A in each of its area command facilities. The Notice, or copies thereof, shall
7 be posted for a period of not less than 30 days in conspicuous places including all places where
8 notices to employees are customarily posted. The Las Vegas Metropolitan Police Department
9 shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any
10 other material. The Las Vegas Metropolitan Police Department shall notify the Commissioner of
11 the EMRB when the notices have been posted;

12 IT IS FURTHER ORDERED that, pursuant to NRS 288.110(6), Las Vegas Metropolitan
13 Police Department shall reimburse Complainants a reasonable amount of costs, including
14 attorney's fees, incurred in bringing this claim before the Board. Complainants may file with the
15 Board a memorandum detailing the fees and costs reasonably incurred in this matter. The
16 memorandum shall be filed within thirty (30) days of the date of this order. The Department shall
17 thereafter have the opportunity to oppose the fees and costs claimed by Complainants.

18 DATED this 24th day of January, 2013.

19 LOCAL GOVERNMENT EMPLOYEE-
20 MANAGEMENT RELATIONS BOARD

21 BY:



PHILIP E. LARSON, Vice-Chairman

22
23
24 BY:



SANDRA MASTERS, Board Member

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CHARLES JENKINS, individually; LAS
VEGAS POLICE MANAGERS AND
SUPERVISORS ASSOCIATION,

Complainant,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Respondents,

CASE NO. A1-046020

NOTICE OF ENTRY OF ORDER

To: John P. Aldrich, Esq., for Charles Jenkins and Las Vegas Police Managers
and Supervisors Association.

To: Nick Crosby, Esq., of Marquis Aurbach, for Las Vegas Metropolitan Police Department

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on
January 24, 2013.

A copy of said order is attached hereto.

DATED this 24th day of January, 2013.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY


JOYCE A. HOLTZ, Executive Assistant

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~~JOYCE HOLTZ~~, Executive Assistant

STATE OF NEVADA

BRIAN SANDOVAL
Governor

BRUCE BRESLOW
Director

Seaton J. Curran, Esq.
Chairman

Brian Scroggins
Commissioner

Philip E. Larson
Vice-Chairman

Joyce Holtz
Executive Assistant

Sandra Masters
Board Member

DEPARTMENT OF BUSINESS AND INDUSTRY
EMPLOYEE-MANAGEMENT RELATIONS BOARD

2501 E. Sahara Avenue, Suite 203
Las Vegas, NV 89104
(702) 486-4504 Fax (702) 486-4355
emrb.state.nv.us

January 24, 2013

Notice to Employees

**Posted By Order of the Local Government Employee-Management
Relations Board**

An Agency of the State of Nevada

The Local Government Employee-Management Relations Board has found that we violated State labor law and has ordered us to post and obey this notice.

NEVADA LAW GIVES YOU THE RIGHT TO:

Form, join, or assist an employee organization;
Choose representatives to bargain with us on your behalf;
Choose not to engage in any of these protected activities.

WE WILL NOT do anything that interferes with these rights in the bargaining unit which is represented by the LVPMSA. Specifically:

WE WILL NOT unilaterally change your terms and conditions of employment without giving prior notice to the Las Vegas Police Managers and Supervisors Association (the LVPMSA), and without affording the LVPMSA an opportunity to bargain about any such changes;

WE WILL NOT use the administrative transfer process as a means to impose discipline upon employees in the bargaining unit;

WE WILL NOT refuse to follow the grievance resolution procedure which has been bargained-for between us and the LVPMSA;

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by the Local Government Employee-Management Relations Act.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

Dated _____

By _____
(Representative)

(Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 90 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE COMMISSIONER OF THE EMRB: (702) 486-4504.

The Local Government Employee-Management Relations Board is a state agency created to administer the Local Government Employee-Management Relations Act. It conducts elections to determine union representation and it conducts hearings on prohibited labor practices by employers and unions. You may obtain information from the Board's website:

<http://emrb.state.nv.us/>