

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

DANIEL M. JENNINGS, a Local Government
Employee and member of the Employee
Organization, BOULDER CITY POLICE
PROTECTIVE ASSOCIATION,

Complainant,

vs.

CITY OF BOULDER CITY; and BOULDER
CITY POLICE DEPARTMENT,

Respondents.

ITEM: 780

CASE NO. A1-045991

ORDER

For Complainant: Daniel M. Jennings, and his attorney Amy Rose, Esq.

For Respondents: City of Boulder City & Boulder City Police Department and their attorney
Ann M. Alexander, Ph.D., Esq.

This matter came on before the State of Nevada, Local Government Employee-
Management Relations Board ("Board") on September 13, 2012 for consideration 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.

NRS 288.270(1)(f) prevents local government employers from discriminating based upon
personal reasons. In this case, Complainant Daniel Jennings claims to be the victim of
discrimination based upon personal reasons. The Board held hearings in this matter on August 8
and 9, 2012 in Las Vegas, Nevada.

Facts

Daniel Jennings is an employee of the City of Boulder City ("City") and is currently a
Sergeant with the Boulder City Police Department. In 2009, the City created a new position as
the Lieutenant within the Police Department. Testimony at the hearing established that this new

1 position was the second-in-command position within the Police Department. On December 2,
2 2009, Daniel Jennings was promoted from the rank of Sergeant to this newly-created Lieutenant
3 position.

4 One of Jennings' first assignments as a Lieutenant was to investigate a citizen complaint
5 that had been filed against Officer Woolsey, another police officer in the Boulder City Police
6 Department. As a result of this investigation, Jennings had recommended that Officer Woolsey
7 be disciplined.

8 On February 11, 2010, after approximately two months on the job, Jennings met with
9 Chief Finn to review Jennings performance to date in the Lieutenant position. This meeting took
10 place at the request of Jennings. During this meeting, Chief Finn did not offer any criticisms or
11 suggestions of improvement, and told Jennings to just keep doing what he had been doing.

12 In early 2010, Boulder City Police Chief Thomas Finn established a new warrant squad
13 within the Police Department. According to Chief Finn's testimony the City at that time had over
14 a million dollars in outstanding warrants, and the new warrant squad was intended to generate a
15 substantial amount of revenue for the City by enforcing the outstanding warrants. Chief Finn
16 wanted to assign Officer Woolsey to head up the newly created warrant squad- a decision with
17 which Jennings did not agree.

18 On March 23, 2010 Chief Finn announced to Jennings that Officer Woolsey would be in
19 charge of the warrant squad. No one else was present during this portion of the meeting. Jennings
20 voiced his opinion on the issue, which was not in agreement with Chief Finn's decision. Chief
21 Finn and Jennings had a heated discussion concerning the assignment of Officer Woolsey to
22 head up the warrant squad. Unbeknownst to Chief Finn at the time, Jennings had activated the
23 recorder on his phone and recorded the conversation. Jennings stated motivation for doing so
24 was to protect himself against being falsely accused. An audio recording of the conversation was
25 introduced into evidence at the hearing as Exhibit 24, and was played for the Board during the
26 course of the hearing.

27 The conversation ended with Chief Finn announcing to Jennings that he was "going to
28 make the recommendation to Vicki that this is not working, and perhaps you should go back to

1 patrol." Immediately following this conversation Chief Finn went to meet with Vicki Mayes, the
2 City Manager for Boulder City.

3 The next morning, March 24, 2010 Chief Finn sent a department-wide email announcing
4 that Jennings was being transferred out of the lieutenant position and would be reverting back to
5 the rank of sergeant for the Traffic Safety Bureau. At the time that Chief Finn had sent this
6 email, he was still unaware that Jennings had recorded their prior conversation.

7 After Jennings had received Chief Finn's email announcing Jennings' demotion to
8 sergeant, Jennings went straight to see Mayes. Mayes arranged for a meeting in the afternoon of
9 March 24, 2010 to meet with Jennings and Finn to discuss the matter.

10 Later that same day, Jennings met with Mayes and Chief Finn regarding the previously-
11 announced demotion. During this meeting, Mayes announced that the demotion was final which
12 then prompted Jennings to produce the audio recording he had made of the previous day's
13 meeting, ostensibly to show the animosity that Chief Finn held for Jennings.

14 Vicki Mayes then rescinded Jennings' demotion to Sergeant and Jennings was placed on
15 administrative leave with pay, pending an investigation of Boulder City Police policy 3.00,
16 *Microcassette Recorders*, and a work performance review. (Exhibit 28). The
17 investigation/performance review was conducted on March 31, 2010 by a civilian employee
18 named Bryce Boldt. Jennings testified at the hearing that he did not think this interview was part
19 of the internal investigation concerning a policy violation, in part because Boldt was not a law
20 enforcement officer and the interview had not been noticed as part of an internal investigation.
21 Yet, the interview focused exclusively on Jennings' use of his phone to surreptitiously record the
22 conversation with Chief Finn.¹ An audio recording of this interview was played for the Board
23 during the course of the hearing. (Tr. 8/9/12, pp. 104-113). During the interview Jennings
24 acknowledged that he had recorded his conversation with Chief Finn.

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28 ¹ There was some discussion at the hearing amongst the parties about whether this was proper under NRS Chapter 289; however such an issue was not before the Board and is beyond the jurisdiction of the Board. See NRS 289.120.

1 On April 5, 2010 Chief Finn sent a letter to Jennings announcing that Jennings would be
2 disciplined with a 40-hour suspension without pay based upon Jennings' violation of the
3 *Microcassette Recorders* policy. (Exhibit 32).

4 On April 8, 2010 Chief Finn sent an email announcing that Jennings had been found
5 guilty as a result of an internal investigation that had been completed on April 1, 2010.

6 When Jennings returned to work he signed a Letter of Understanding stating that the
7 terms of Jennings' continued employment with the City required him to revert to the Police
8 Sergeant classification and serve an additional 12-month probationary period. Shortly thereafter
9 on September 23, 2012 Jennings filed his complaint before this Board.

10 Analysis

11 This Board has previously stated that "[d]iscrimination based on personal reasons occurs
12 where an employer takes adverse action against an employee for non-merit-or-fitness factors
13 such the dislike of or bias against a person which is based upon an individual's characteristics,
14 beliefs, affiliations, or activities that do not affect the individuals merit or fitness for a particular
15 job." Kilgore v. City of Henderson, Item No. 550H, EMRB Case No. A1-045763 (2005).

16 Claims of discrimination based upon personal reasons are subject to the balancing test set
17 forth in McDonnell Douglas Corp v. Green, 411 U.S. 792 (1973). See Kilgore at p. 10 (adopting
18 McDonnell Douglas test for personal reasons discrimination cases). Under this approach, a
19 complainant carries the initial burden of establishing a *prima facie* case of discrimination by
20 identifying an articulable personal reason as the basis for the discrimination and proving: (1) he
21 is qualified for the job, (2) he is satisfying the job requirements, (3) he suffered an adverse
22 employment action, and (4) the employer assigned others to do the same work. Apeceche v.
23 White Pine County 96 Nev. 723, 726, 615 P.2d 975, 977 (1980); see also City of North Las
24 Vegas v. State Local Government Employee-Management Relations Bd., 127 Nev. Adv. Op. 57,
25 261 P.3d 1071, 1078 -1079 (2011).

26 If a complainant establishes a *prima facie* case the burden then shifts to the respondent to
27 articulate a reason for the adverse action which, if believed, would provide a legitimate and non-
28 discriminatory basis for its actions. Apeceche at 726-727, 615 P.2d at 977-978. The burden then

1 shifts back to the complainant to establish that the respondent's proffered justifications were
2 mere pretext. Id.

3 In this case, the Board finds that Complainant Jennings has not established a *prima facie*
4 case of discrimination. In Kilgore we noted that personal reasons were non-merit or fitness such
5 as dislike based upon characteristics, beliefs, affiliations or activities. There was no evidence
6 presented by Jennings that discrimination was on characteristics, beliefs, affiliations or activities.
7 When asked at the hearing, Jennings stated that the basis for his personal reasons discrimination
8 claim rested on his disagreement over whether Officer Woolsey should head up the new warrant
9 squad. (Tr. 8/8/12, pp. 83-84). The evidence presented by Jennings, including his recorded
10 conversation with Chief Finn where he tells the Chief that he will not support the decision to
11 assign Officer Woolsey to the warrant squad and the City's subsequent suspension and demotion
12 did not establish a *prima facie* case of discrimination. At the hearing there was testimony from
13 Jennings and from Chief Finn that Jennings admitted he would not support the decision from the
14 Chief. There was direct evidence to this effect on the recorded conversation (Exhibit 24). The
15 evidence at the hearing established that Jennings did in fact record the conversation and
16 presented that recording to the City Manager in an attempt to discredit his Chief, none of which
17 supports a *prima facie* case of discrimination based on personal reasons.

18 As Jennings has not established a *prima facie* case of discrimination, our analysis ends at
19 this stage.

20 Based upon the foregoing, and upon the evidence presented to the Board at the hearing on
21 this matter, the Board finds and concludes as follows:

22 **FINDINGS OF FACT**

- 23 1. The City of Boulder City is a local government employer.
- 24 2. Complainant Daniel Jennings is a local government employee, being employed by the
25 City of Boulder City Police Department.
- 26 3. On December 2, 2009, Daniel Jennings was promoted to the rank of Lieutenant in the
27 Boulder City Police Department and was the second-in-command of the Department behind
28 Chief Thomas Finn.

1 4. On February 11, 2010 Jennings met with Chief Finn to solicit feedback from Chief Finn
2 regarding Jennings' performance in the Lieutenant's position. Jennings did not receive any
3 negative feedback from Chief Finn during this meeting.

4 5. On March 23, 2010, Jennings and Chief Finn had a private discussion regarding Chief
5 Finn's decision to assign Officer Woolsey to the warrant squad.

6 6. Jennings recorded his conversation with Chief Finn.

7 7. On March 24, 2010 Jennings was demoted to Sergeant of the traffic safety bureau.

8 8. In the evening of March 24, 2010, Jennings' demotion was pulled back by City Manager
9 Vicki Mayes after Jennings had met with Mayes and Chief Finn earlier that same day.

10 9. Jennings was suspended without pay for 40 hours for his actions of recording his
11 conversation with Chief Finn.

12 10. Upon returning to work, Jennings signed a Letter of Understanding that demoted
13 Jennings from the Police Lieutenant classification back to the Police Sergeant classification.

14 CONCLUSIONS OF LAW

15 1. NRS 288.270(1)(f) prohibits discrimination based upon personal reasons.

16 2. Discrimination based upon personal reasons occurs where an employer takes adverse
17 action against an employee for non-merit-or-fitness factors such the dislike of or bias against a
18 person which is based upon an individual's characteristics, beliefs, affiliations, or activities that
19 do not affect the individuals merit or fitness for a particular job.

20 3. Jennings has not identified a characteristic, belief, affiliation or activity as the basis for
21 the alleged discrimination.

22 4. An adverse employment action resulting from a disagreement with a superior does not
23 amount to discrimination based for personal reasons under NRS 288.270(1)(f).

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1 5. Jennings has not established a *prima facie* case of discrimination based upon personal
2 reasons.

3 **ORDER**

4 Having considered the foregoing, the Board finds in favor of Respondent City of Boulder
5 City.

6 DATED this 10th day of October, 2012.

7 LOCAL GOVERNMENT EMPLOYEE-
8 MANAGEMENT RELATIONS BOARD

9 BY: 

10 SEATON J. CURRAN, ESQ., Chairman

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12 BY: 

13 PHILIP E. LARSON, Vice-Chairman

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15 BY: 

16 SANDRA MASTERS, Board Member
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NOTICE OF ENTRY OF ORDER

TO: Daniel M. Jennings, and his attorney Amy Rose, Esq.

TO: City of Boulder City & Boulder City Police Department and their attorney Ann M.
Alexander, Ph.D., Esq.

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on
October 10, 2012;

A copy of said order is attached hereto.

DATED this 10th day of October, 2012.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY


JOYCE HOLTZ, Executive Assistant

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JOYCE HOLTZ, Executive Assistant