

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

NORMAN W. JAHN,

Complainant,

vs.

LAS VEGAS METROPOLITAN POLICE
MANAGERS & SUPERVISORS
ASSOCIATION,

Respondents,

ITEM: 782

CASE NO. A1-046059

ORDER

For Complainant: Norman W. Jahn, in Proper Person

For Respondents: Las Vegas Metropolitan Police Managers & Supervisors Association and
their attorney Casey J. Nelson, Esq.

This matter came on before the State of Nevada, Local Government Employee-
Management Relations Board ("Board") on September 12, 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.

On July 31, 2012, the Board entered an order granting Respondent Las Vegas Police
Managers and Supervisor's Association's (LVMPMSA) motion to dismiss. The motion had been
discussed and decided upon at the Board's July 11, 2012 meeting. At that time, the Board had
not received any opposition to the motion. The Board granted the motion on the basis that
Complainant Norman Jahn had not filed an opposition to the motion per NAC 288.240(6), and
because the affidavits attached to the motion demonstrated a lack of probable cause under NAC
288.375(1). Jahn's Opposition to the motion to dismiss was received by the Board on July 31,
2012.

Shortly thereafter Jahn filed a petition for rehearing on August 6, 2012. On August 14,
2012, the Board granted rehearing on two issues: 1) Whether the Board should consider Jahn's

1 untimely opposition to the County's motion to dismiss based upon the circumstances and
2 arguments raised in the petition for rehearing; and 2) If the Board did consider the opposition,
3 whether Respondent's motion to dismiss still demonstrates that dismissal of the complaint is
4 appropriate.

5 Pursuant to NAC 288.362 LVMPMSA filed a response to the petition on August 31,
6 2012.

7 Whether the Board Should Consider Jahn's Opposition

8 Having considered the petition and LVMPMSA's response, the Board determines that
9 consideration of Jahn's opposition to the motion is appropriate. NAC 288.235 allows the Board
10 to overlook defects in the pleadings where the substantial rights of the parties are not affected.
11 LVMPMSA's substantial rights are not adversely affected by consideration of Jahn's opposition,
12 and considering the late-filed opposition is consistent with the general policy that matters should
13 be decided on the merits whenever possible. Hotel Last Frontier Corp. v. Frontier Properties,
14 Inc., 79 Nev. 150, 380 P.2d 293 (1963). Accordingly, the Board will consider Jahn's opposition
15 to the motion to dismiss.

16 Whether Dismissal is Appropriate In Light of the Opposition

17 Having determined to give consideration to Jahn's opposition, the Board now turns to
18 consider LVMPMSA's motion in light of Jahn's opposition. Jahn's complaint alleges that
19 LVMPMSA breached the duty of fair representation. A bargaining agent breaches the duty of
20 fair representation when its actions are arbitrary, discriminatory or in bad faith. Weiner v. Beatty
21 121 Nev. 243, 116 P.3d 829 (2005). The duty of fair representation is typically construed
22 narrowly in order to allow a bargaining agent the discretion to act in what it perceives to be the
23 best interests of those whom it represents. Galindo v. Stoddy Co., 793 F.2d 1502, 1514 (9th
24 Cir.1986).

25 A bargaining agent's actions are arbitrary only if conduct can be fairly characterized as so
26 far outside a "wide range of reasonableness that it is wholly 'irrational' or 'arbitrary.'" Marquez
27 v. Screen Actors Guild, Inc., 525 U.S. 33, 45 (1998). In order to prove discriminatory action, a
28 complainant must "adduce substantial evidence of discrimination that is intentional, severe, and

1 unrelated to legitimate union objectives.” Amalgamated Ass'n of St., Elec. Ry. and Motor Coach
2 Emp. of America v. Lockridge, 403 U.S. 274, 301 (1971). In order to show “bad faith,” a
3 complainant must present “substantial evidence of fraud, deceitful action or dishonest conduct.”
4 Id at 299.

5 As the Board has previously noted, the affidavits that LVMPMSA attached to its motion
6 to dismiss detail the actions that LVMPMSA took regarding the investigation and handling of
7 Jahn’s grievance. These affidavits indicate that LVMPMSA made a good faith review of Jahn’s
8 discipline and consideration of his grievance. As we have previously noted, these affidavits
9 demonstrate a lack of probable cause that LVMPMSA breached its duty of fair representation.

10 In his opposition, Jahn does not offer any countervailing relevant evidence that tends to
11 show LVMPMSA’s actions rose to the level of being arbitrary, discriminatory or taken in bad
12 faith.

13 Having considered the above, and pursuant to NAC 288.368, the Board finds that our
14 prior order, dated July 31, 2012 warrants modification as follows:

15 **FINDINGS OF FACT**

16 1. Petitioner Norman Jahn filed an opposition to the motion to dismiss on July 31,
17 2012, which the Board will consider.

18 2. If any of the foregoing findings is more appropriately construed a conclusion of
19 law, it may be so construed.

20 **CONCLUSIONS OF LAW**

21 1. Pursuant to NAC 288.235(2) the Board will consider the opposition to the motion
22 to dismiss filed by Complainant Norman Jahn on July 31, 2012.

23 2. The substantial rights of LVMPMSA are not prejudiced by consideration of the
24 opposition.

25 3. The Board may dismiss any matter if the Board determines that no probable cause
26 exists for the complaint. NAC 288.375(1).

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1 4. The complaint in this matter lacks probable cause because the affidavits attached
2 to LVMPSA's motion to dismiss demonstrate the LVMPMSA's actions were not irrational and
3 were related to legitimate association objectives.

4 5. Jahn's opposition does not present evidence which would tend to indicate
5 LVMPSA's actions were irrational or were unrelated to legitimate association objectives.

6 6. There is a lack of probable cause that LVMPMSA's actions were arbitrary or
7 discriminatory towards Jahn.

8 7. Jahn's opposition does not indicate that LVMPMSA's actions were fraudulent
9 deceitful or dishonest.

10 8. There is a lack of probable cause that LVMPMSA's actions were taken in bad
11 faith.

12 9. If any of the foregoing conclusions is more appropriately construed a finding of
13 fact, it may be so construed.

14 **ORDER**

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

16 IT IS HEREBY ORDERED that the Board's prior order of July 31, 2012 is modified as
17 set forth herein;

18 DATED this 24th day of September, 2012.

19 LOCAL GOVERNMENT EMPLOYEE-
20 MANAGEMENT RELATIONS BOARD

21 BY: 
22 SEATON J. CURRAN, ESQ., Chairman

23 BY: 
24 PHILIP E. LARSON, Vice-Chairman

25 BY: 
26 SANDRA MASTERS, Board Member
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28

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CASE NO. A1-046059

NOTICE OF ENTRY OF ORDER

To: Norman W. Jahn, in Proper Person

To: Las Vegas Metropolitan Police Managers & Supervisors Association and their attorney
Casey J. Nelson, Esq.

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on
September 24th, 2012.

A copy of said order is attached hereto.

DATED this 24th day of September, 2012.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY


JOYCE A. HOLTZ, Executive Assistant

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 24th day of September, 2012, I served a copy of the foregoing
4 ORDER by mailing a copy thereof, postage prepaid to:

5 Norman W. Jahn
6 1925 Riverside Drive
7 Sault Ste. Marie, MI 49783

8 Casey J. Nelson, Esq.
9 Aldrich Law Firm LTD.
10 1601 S. Rainbow Blvd. #160
11 Las Vegas, NV 89146

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13 JOYCE HOLTZ, Executive Assistant
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