

FILED

MAY 18 2015

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

LAS VEGAS CITY EMPLOYEES')	CASE NO. A1-046108
ASSOCIATION and VAL SHARP,)	
)	ORDER
Complainants,)	
)	<u>ITEM NO. 804</u>
vs.)	
)	
CITY OF LAS VEGAS,)	
)	
Respondent.)	
)	

On the 4th day of May, 2015, this matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Local Government Employee-Management Relations Act ("the Act") NRS Chapter 288. The Board held an administrative hearing on this matter on January 14, 2015, in Las Vegas, Nevada. The parties submitted post-hearing briefs to the Board on March 26, and 27, 2015.

In this case Complainants assert that the actions of Respondent City of Las Vegas ("City") violated the Act by interfering with protected rights in violation of NRS 288.270(1)(a) and interfering with the administration of an employee organization in violation of NRS 288.270(1)(b). Based upon the specific facts of this case, and as discussed below, we conclude that the City's actions in this particular instance did not violate these statutes.

The action of the City that is at issue before the Board is a one-day disciplinary suspension that the City imposed on Val Sharp. Mr. Sharp is a former President of the Las Vegas Employees Association ("Association") and at the time of the incident served as a representative for the Association. The discipline in this case was, ostensibly, based upon comments made by Sharp while acting as an Association representative and investigating a separate issue on behalf of other union members.

1 The subject incident stemmed from a contemplated disciplinary matter involving two City-
2 employed painters who were also members of the Association. Another City employee had
3 accused these two painters of making fun of her, and the City was pursuing the accusation against
4 the painters. Sharp's involvement began when he was contacted by the Association office and told
5 that these painters needed union representation for the disciplinary matter that they were
6 potentially facing. At that point, Sharp had never spoken with the painters, or with the employee
7 who had made the accusation against them.

8 Sharp separately called the painters to discuss the accusations with them. During these
9 conversations Sharp asked about the employee who had made the accusation. Sharp asked about
10 the other employee's sexual orientation, asked whether she was fat, asked whether she was a
11 deaf/mute and asked whether she grunted to communicate. Apparently the painters were so
12 offended by these questions from Sharp that they withdrew from the Association and complained
13 to the City about Sharp's conduct.

14 The City initially assumed the position that it could not do anything because Sharp was
15 acting in his capacity as an Association representative at the time. But the City felt that the
16 Association should address the matter and asked Henry Lujan, the President of the Association, to
17 take care of it. On July 23, 2013, Lujan met with the City's Human Resources Director Dan
18 Tarwater and Michael Scalzi, the City's Manager of Employee Relations to discuss Sharp's
19 comments. During that meeting Lujan informed Tarwater and Scalzi that the Association could not
20 do anything to address the concerns over Sharp's comments. Lujan then told Tarwater and Scalzi
21 that "you guys need to take care of it" and "you need to do what you need to do to address the
22 issue." Lujan told Tarwater and Scalzi that if the City were to discipline Sharp the Association
23 would not put up much of a fight to contest it. Both Tarwater and Scalzi testified at the hearing
24 before the Board and confirmed this meeting. Based upon this conversation with Lujan, the City
25 initiated the disciplinary proceedings that resulted in Sharp's one-day suspension. The Association
26 now complains that this action violated the Act.

27 NRS 288.270(1)(a) prohibits a local government employer from interfering, coercing or
28 restraining a right guaranteed under the Act. An employer violates this provision when it engages

1 in conduct which may reasonably be said tends to interfere with the free exercise of employee
2 rights under the Act. Clark County Classroom Teachers Assoc. v. Clark County School Dist., Item
3 No. 237, EMRB Case No. A1-045435 (Dec. 13, 1989) (quoting American Freightway Co., 124
4 NLRB 146, 147 (1959)). Similarly, this Board has refused to find a violation of NRS
5 288.270(1)(b) where an employer's conduct cannot reasonably be construed as dominating or
6 interfering with an employee organization. International Assoc. of Firefighters, Local 1285 v. City
7 of Las Vegas, Item No. 317, EMRB Case No. A1-045529 (June 15, 1993). In this case the City's
8 actions cannot, in our judgment, be reasonably said to interfere with a protected right or with the
9 Association's administration because the City's actions were prompted by the Association's
10 invitation for the City to discipline Sharp.

11 Although the City initially received a complaint about Sharp's comment from the painters,
12 the City was reluctant to take action against Sharp, instead deferring to the Association to
13 internally address the concerns about Sharp's conduct. It was only after the July 23, 2013 meeting
14 that the City moved forward with any discipline against Sharp. The City did so because the
15 Association, through President Lujan, invited the City to do so. The Board credits the testimony of
16 both Michael Scalzi and Dan Tarwater on this point. Where the Association specifically invites
17 the City to take disciplinary action against one of its officers in this way, it cannot reasonably be
18 said that the City tends to interfere with a protected right or to dominate or interfere with the
19 Association's administration of business merely by accepting the invitation. We see no evidence
20 in this case to suggest that the City controlled or compelled Lujan's invitation to Tarwater and
21 Scalzi.

22 The Board makes no findings on the issue of whether the City's actions would have been
23 permissible in the absence of the Association's invitation.

24 Based upon the foregoing, the Board makes the following findings of fact and conclusions
25 of law.

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1 **FINDINGS OF FACT**

2 1. While serving as a representative for the Las Vegas City Employees Association,
3 Val Sharp was contacted by the Association's office about representation for two City-employed
4 painters in a possible disciplinary matter.

5 2. Sharp called each of the painters to discuss the complaint against them. During
6 these phone calls Sharp asked questions about the employee that was accusing the painters.

7 3. During his phone calls with the painters, Sharp was acting in his capacity as a
8 representative for the Association.

9 4. The painters were offended by the questions Sharp asked about the accusing
10 employee's sexual orientation, weight and communication abilities.

11 5. The painters complained to the City about Sharp's conduct.

12 6. The City's initial posture was that it would not discipline Sharp because the City
13 viewed the dispute as an internal union measure.

14 7. On July 23, 2013 Association President Lujan met with Michael Scalzi and Dan
15 Tarwater. During this meeting Lujan informed Scalzi and Tarwater that the Association would not
16 take action against Val Sharp regarding his conduct with the painters.

17 8. During the July 23, 2013 meeting, President Lujan invited the City to take
18 disciplinary actions against Sharp regarding his conduct with the painters.

19 9. The City's disciplinary action against Sharp was taken as a result of President
20 Lujan's invitation.

21 10. The City disciplined Sharp with a one-day suspension for his comments and
22 questions to the painters.

23 11. If any of the foregoing findings is more appropriately construed a conclusion of
24 law, it may be so construed.

25 **CONCLUSIONS OF LAW**

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

28 2. The Board has exclusive jurisdiction over the parties and the subject matters of the

1 Complaint on file herein pursuant to the provisions of the Act.

2 3. The City's actions cannot be reasonably said to interfere with a protected right
3 under the Act because the City's actions were prompted at the request of the Association.

4 4. The specific facts of this case do not establish that the City violated NRS
5 288.270(1)(a) when it disciplined Val Sharp.

6 5. The City's actions cannot be reasonably said to interfere with or dominate the
7 administration of the Association because the City's actions were prompted at the request of the
8 Association.

9 6. The specific facts of this case do not establish that the City violated NRS
10 288.270(1)(b) when it disciplined Val Sharp.

11 7. The complaint in this matter is not well-taken.


12 8. 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, it is hereby ordered that the Board finds in favor of Respondent
16 City of Las Vegas as set forth above.

17 DATED this 18th day of May, 2015.

18 LOCAL GOVERNMENT EMPLOYEE-
19 MANAGEMENT RELATIONS BOARD

20 BY: 
21 PHILIP E. LARSON, Chairman

22 BY: 
23 BRENT ECKERSLEY, ESQ., Vice-Chairman

24 BY: 
25 SANDRA MASTERS, Board Member
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27
28

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

LAS VEGAS CITY EMPLOYEES'
ASSOCIATION and VAL SHARP,

Complainants,

vs.

CITY OF LAS VEGAS,

Respondent.

) CASE NO. A1-046108
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NOTICE OF ENTRY OF ORDER
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TO: Las Vegas City Employees' Association and Val Sharp and their attorney
Jeffrey F. Allen, Esq.

TO: City of Las Vegas and their attorney Jack Eslinger, Esq.

PLEASE TAKE NOTICE that the ORDER was entered in the above-entitled matter on
May 18, 2015.

A copy of said order is attached hereto.

DATED this 18th day of May, 2015.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY



MARISU ROMUALDEZ ABELLAR
Executive Assistant

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Jeffrey F. Allen, Esq.
LVCEA General Counsel
857 N. Eastern Avenue
Las Vegas, NV 89101


MARISU ROMUALDEZ ABELLAR
Executive Assistant