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STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

JOHN DUCAS,

Complainant,

v.

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Respondent.

CASE NO. 2015-003

ORDER

ITEM NO. 812

On January 12 and 13, 2016, the members of the Local Government Employee Management Relations Board (Board) conducted an evidentiary hearing to address allegations that Complainant John Ducas was the victim of employment discrimination and retaliation in violation of NRS 288.270(1)(d) and (f). Complainant Ducas presented the allegations by way of his Amended Complaint dated October 9, 2015. Respondent Las Vegas Metropolitan Police Department denied the allegations.

Complainant was represented by Adam Levine, Esq., of the Law Office of Daniel Marks. Respondent was represented by Nick Crosby, Esq. with the law firm of Marquis Aurbach Coffing. Upon the stipulation of the parties, the Board admitted and received in evidence Complainant's Exhibits 1 through 20, and Respondent's Exhibits 1 through 16. Additionally, the Board heard sworn testimony from multiple witnesses.

Having reviewed the evidence, both documentary and testimonial, and having further considered the arguments of counsel, the Board finds, by a unanimous vote, that there is no merit to the allegations against Respondent. The Board makes findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. John Ducas was a member the Las Vegas Metropolitan Police Department (LVMPD). On September 5, 2014, while employed as a detective for the LVMPD, Detective Ducas suffered a work-related injury to his lower back.

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1 2. As a result of the injury, Detective Ducas could no longer perform the duties to which he
2 had been regularly assigned.

3 3. As instructed by Detective Ducas' physician, and in cooperation with Detective Ducas,
4 the LVMPD assigned Detective Ducas to perform various administrative duties compatible with his
5 physical limitations. The LVMPD refers to this type of assignment as "light duty."

6 4. After six to eight months of medical treatment, it became apparent that Detective Ducas
7 had sustained a permanent or semi-permanent injury to his lower back, thus making it difficult or
8 impossible for him to return to full duty as a detective for LVMPD.

9 5. Effective June 1, 2015, Detective Ducas accepted a medical retirement. The medical
10 retirement allowed Detective Ducas to collect his pension payments prior to reaching the age of
11 retirement.

12 6. Prior to his injury, Detective Ducas was a member of the Repeat Offenders Program
13 (ROP), a unit of the LVMPD that had specialized in conducting surveillance of habitual felons. During
14 most of Detective Ducas' tenure with the ROP, the mission of the ROP was to observe and record
15 habitual felons in the act of committing, or preparing for the commission of a crime.

16 7. Having gathered the necessary evidence against a habitual felon, the members of the
17 ROP typically sought to have the habitual felon prosecuted under statutory provisions imposing
18 enhanced penalties for recidivism. These statutory provisions are sometimes referred to as the "three
19 strikes law". Detective Ducas considered surveillance to be a critical part of the ROP's mission to
20 ensure that habitual felons were prosecuted under the three strikes law.

21 8. Detective Ducas and his friend, Detective Bobby Kinch, were two of the more senior
22 members of the ROP. Detectives Ducas and Kinch did not typically socialize with the junior members
23 of the ROP.

24 9. Detectives Ducas and Kinch considered themselves to be politically conservative, while
25 they viewed the junior members of the ROP to be politically liberal. Neither Ducas nor Kinch offered
26 any specific examples of their alleged political differences with the junior members of the ROP.

27 10. At some point prior to the injury to Detective Ducas, Detective Kinch posted statements
28 on Kinch's Facebook page indicating that Kinch supported a "[c]ivil. . . revolution [and] "[r]ace war."

1 Kinch's statements related to his self-proclaimed identity as an "American, Christian, White,
2 Heterosexual."

3 11. Two of the junior members of the ROP posted Facebook comments in which they
4 criticized Detective Kinch for his comments. One of those junior members forwarded Kinch's
5 comments to LVMPD management. The LVMPD ultimately disciplined Detective Kinch. The
6 discipline related to the Facebook comments as well as other conduct for which Detective Kinch was
7 investigated by the U.S. Secret Service. The investigation by the Secret Service related to a party at
8 which Kinch was photographed with a firearm pointed at an image of President Obama. A junior
9 member of the ROP had presented the image to Kinch as a gag gift.

10 12. As a general rule, Detective Ducas never discussed politics or his political beliefs while
11 on the job. He did, however, express disagreement with the decision by LVMPD management to
12 discipline Detective Kinch.

13 13. At the hearing in this matter, Detective Ducas testified that he did not necessarily agree
14 with the views expressed by Detective Kinch on Facebook, but disagreed with the manner in which the
15 LVMPD treated Kinch after the Facebook incident. Although Detective Ducas did not post any of his
16 own comments on the Facebook page, his wife posted some comments that were supportive of Kinch.

17 14. Shortly after Detective Kinch posted his comments on Facebook, Sergeant Adrian Beas
18 assumed a supervisory position over the members of the ROP, including Detectives Ducas and Kinch.

19 15. Sgt. Beas is alleged to be of Latino origin. One of the junior members of the ROP,
20 Detective Joseph Winn, is alleged to be Afro-American and Asian. There is no evidence of record that
21 Sgt. Beas or Detective Winn, or any other member of the ROP, ever expressed hostility or prejudice
22 toward Caucasians.

23 16. At the hearing, Detective Kinch testified that he asked Sgt. Beas whether Beas had voted
24 for President Obama. According to Kinch, Beas replied that he had voted for Obama, offering the
25 explanation, "We minorities have to stick together." Detective Ducas did not overhear and could not
26 testify to the alleged exchange between Kinch and Beas regarding President Obama and minorities.

27 17. Sgt. Beas has no recollection of an exchange with Detective Kinch regarding President
28 Obama or minorities. Sgt. Beas testified that he has been a registered Republican since the age of 18

1 and did not vote for Obama. Assuming that Beas said something about voting for Obama, the context
2 of the alleged exchange suggests that his comments were made in jest.

3 18. After Sgt. Beas joined the ROP, Detective Ducas clashed with him periodically in
4 regards to the mission of the ROP. Sgt. Beas believed that it was important to incorporate some
5 investigative activities in the unit's mission, while Detective Ducas believed that surveillance was the
6 overwhelming priority of the unit. Sgt. Beas instructed the members of the ROP to conduct one
7 investigation per quarter. Detective Ducas did not document any work on investigations.

8 19. After Detective Ducas sustained his injury, the LVMPD offered to place him on light
9 duty as opposed to placing him in a temporary disability status. As a matter of policy, the LVMPD
10 offers light duty to injured employees because studies suggest that there are therapeutic benefits to
11 working, even in a limited role or restricted capacity.

12 20. Detective Ducas agreed to work in a light duty position pending his anticipated recovery.
13 While on light duty, Detective Ducas initially remained on his usual day shift with the ROP, but was
14 later was reassigned to the swing shift.

15 21. Sgt. Beas reassigned Detective Ducas to the swing shift because he determined that it
16 was not practical to assign administrative duties to Detective Ducas while he was working on the day
17 shift. In this regard, all of the other members of the unit were out in the field during the day shift, and
18 they could not train Detective Ducas to perform the various administrative duties with which Detective
19 Ducas was unfamiliar.

20 22. In the ROP, the members of day shift and swing shift enjoyed different days off. The
21 members of the swing shift did not have Fridays off, while the members of the day shift enjoyed every
22 other Friday off. Detective Ducas requested a transfer back to the day shift because he enjoyed having
23 Fridays off. The LVMPD accommodated his request and returned him to the day shift.

24 23. Because he could not supervise Detective Ducas during the day shift, Sgt. Beas asked
25 Detective Ducas to provide him with an informal log or summary of his activities during the day. Sgt.
26 Beas explained that the log did not have to be overly detailed.

27 24. On one occasion, after Sgt. Beas and Detective Ducas had eaten lunch together at the
28 Yard House, Detective Ducas provided Sgt. Beas with a detailed log in which Detective Ducas formally

1 detailed, among other things, their lunch at the Yard House. Having perceived the log to be
2 condescending and sarcastic, Sgt. Beas advised Detective Ducas in writing that his conduct had fallen
3 below acceptable standards. Sgt. Beas did not, however, take any formal disciplinary action against
4 Detective Ducas.

5 25. At some point after Detective Ducas sustained his injury and began his temporary light
6 duty assignment, Sgt. Beas asked him to relinquish his take-home vehicle. Detective Ducas alleges that
7 he should have been permitted to keep a take-home vehicle while in a light duty status. When Sgt.
8 Beas arrived at the home of Detective Ducas to claim the vehicle, Detective Ducas shouted a profanity
9 before reentering his home.

10 26. A take-home vehicle is a vehicle owned and maintained by the LVMPD for the use of
11 peace officers who are subject to being called out on an assignment at any time of the day or night. The
12 LVMD does not issue take-home vehicle as an employee benefit. They are provided to officers and
13 detectives for official use and not for personal use. Officers and detectives are expected to use their
14 own vehicles for personal use.

15 27. As a matter of policy, the LVMPD does not provide take-home vehicles to officers or
16 detectives who have been assigned to light duty positions. This is because they are not subject to call-
17 out when they are in light duty assignments. In other words, they have no need for take-home vehicles
18 because they work regular hours, typically at an assigned location. Accordingly, they are required to
19 drive their personal vehicles to and from work.

20 28. Detective Ducas alleges that the LVMPD, and Sgt. Beas in particular, did not uniformly
21 enforce the LVMPD policy concerning the use of take-home vehicles. In this regard, Detective Ducas
22 alleges that Sgt. Beas allowed Detective Winn to keep his take-home vehicle even after Detective Winn
23 had been placed on light duty as the result of an injury. At the hearing, Sgt. Beas refuted this
24 allegation. Sgt. Beas testified that he consulted with his superiors regarding the use of take-home
25 vehicles and uniformly enforced the policy as directed.

26 29. Detective Ducas alleges that various other ROP detectives were from time to time
27 permitted to keep their take-home vehicles after being assigned to light duty. Detective Ducas did not
28 corroborate his allegations with evidence or testimony based upon his own personal knowledge.

1 Further, Detective Ducas acknowledged that all of the alleged incidents occurred prior to Sgt. Beas'
2 assignment to the ROP.

3 30. Although he was on light duty, Detective Ducas expressed to Sgt. Beas his desire to
4 participate during regular working hours in firearms qualifications with the other members of the ROP.
5 Sgt. Beas sought guidance from the Risk Management Department of the LVMPD. The LVMPD
6 requires its officers to "qualify" or demonstrate proficiency with firearms on a quarterly basis. This
7 requirement is waived for officers working in a light duty status.

8 31. Risk Management is responsible, among other things, for administering worker's
9 compensation claims and monitoring the progress of injured employees. Risk Management staff
10 advised Sgt. Beas that Detective Ducas could not participate in firearms qualifications due to the
11 medical restrictions on his physical activities. In turn, Sgt. Beas advised Detective Ducas that he would
12 not be allowed to participate in firearms qualifications.

13 32. Based upon his light duty status, Detective Ducas was eligible for a waiver from
14 participating in firearms qualifications. Detective Ducas did not request a waiver, but instead made
15 arrangements with a firearms instructor to qualify with a pistol and shotgun during off-duty hours.

16 33. Detective Ducas alleges that he should have been allowed to qualify during regular duty
17 hours with the other members of the ROP. The evidence of record, however, indicates that Risk
18 Management staff made an appropriate decision to restrict Detective Ducas' physical activity.

19 34. For various reasons, Detective Ducas perceived that Sgt. Beas was harassing him.
20 Accordingly, Detective Ducas filed a complaint with the Employment Diversity Section (EDS) of the
21 LVMPD. The EDS is responsible for investigating allegations of employment discrimination within
22 the LVMPD. The EDS investigated Ducas' allegations and correctly determined that they were without
23 merit. There is no evidence of record to suggest that the LVMPD took adverse employment action
24 against Detective Ducas because of his complaint to EDS.

25 35. In light of his perceived conflict with Sgt. Beas, Detective Ducas identified a potential
26 light duty position outside of the ROP, and contacted Chuck Collingwood, a retired officer with the
27 SWAT unit. Following his retirement, Collingwood continued to work with the LVMPD as an
28 independent contractor. Collingwood advised Detective Ducas that he would speak to management

1 about creating a light duty position for Ducas within the SWAT unit. Management declined to create a
2 special position for Ducas within the SWAT unit.

3 36. In March of 2015, the LVMPD temporarily reassigned Detective Ducas from the ROP to
4 the Fusion Center. The LVMPD routinely assigns officers to the Fusion Center when they are in a light
5 duty status. The Fusion Center is a counterterrorism facility where members of various law
6 enforcement agencies, including members of the LVMPD, monitor live video feeds from different
7 locations around the city of Las Vegas.

8 37. After one day at the Fusion Center, Detective Ducas decided not to return to work. He
9 testified that the sedentary nature of his work at the Fusion Center had aggravated his back pain.

10 38. Members of the Risk Management unit offered to make changes to Detective Ducas'
11 work station at the Fusion Center so as to give Detective Ducas more freedom of movement during his
12 shift. Detective Ducas did not respond to the queries from Risk Management staff. As noted above,
13 Detective Ducas accepted a medical retirement in June of 2015.

14 CONCLUSIONS OF LAW

15 1. NRS 288.270(1)(f) makes it unlawful for a local government employer to discriminate
16 against its employees on the basis of their "race, color, religion, sex, age, physical or visual handicap,
17 national origin or because of personal or political reasons or affiliations."

18 2. As a preliminary matter, Detective Ducas alleges that he suffered discrimination on the
19 basis of his race and/or a physical handicap. Secondly, he alleges that he suffered discrimination
20 because of personal or political reasons and affiliations. The first allegation presumes that he is a
21 member of a protected class of persons. The second allegation presumes that he expressed political or
22 personal beliefs with which the LVMPD disagreed.

23 3. In the absence of direct evidence of discrimination, a claim of discrimination based upon
24 a person's membership in a protected class is analyzed under a burden-shifting framework. *City of*
25 *North Las Vegas v. State Local Gov't Employee-Mgmt. Relations Bd.*, 127 Nev. ___, 261 P .3d 1071
26 (2011). Under this framework, an employee must make a prima facie showing of discrimination by
27 establishing that: (1) he belonged to a protected class; (2) he was qualified for his job; (3) he was
28 subjected to an adverse employment action; and (4) similarly situated employees outside the protected

1 class received more favorable treatment. *Id.*

2 4. If the employee makes a prima facie showing of discrimination, the burden then shifts to
3 the employer to offer a legitimate, non-discriminatory reason for its actions. *Id.* If the employer does
4 so, the burden then shifts back to the employee to establish that the employer's proffered reason is a
5 pretext or unworthy of credence. *Id.*

6 5. When an employee alleges that he has suffered discrimination because of personal or
7 political reasons, the employee must present credible evidence from which the Board may draw a
8 reasonable inference that the employer's actions were motivated by personal or political bias against the
9 employee. *See Reno Police Protective Ass'n v. City of Reno*, 102 Nev. 98, 715 P.2d 1321 (1986); *Bisch*
10 *v. Las Vegas Metro Police Dep't.*, __Nev.__, 302 P.3d 1108 (2013). Of course, this presupposes that
11 the employee has also produced some evidence of an adverse employment action taken by the employer
12 against the employee. If the employee meets this initial burden, the employer must show by a
13 preponderance of the evidence that the employer would have taken the same action against the
14 employee notwithstanding the employee's expressions of personal or political beliefs.

15 6. With respect to the allegation that he suffered discrimination because of a physical
16 handicap, Detective Ducas has failed to make a prima facie showing that he suffered from a physical
17 handicap during the time of his employment with the LVMPD. Detective Ducas admittedly sustained a
18 work-related injury. The term "physical handicap" is synonymous with a permanent disability, not a
19 work-related injury for which an employee receives appropriate treatment pursuant to the provisions of
20 the Nevada Industrial Insurance Act (NIIA). Pursuant to the NIIA, Detective Ducas was properly
21 treated for what the LVMPD reasonably perceived to be a temporary medical condition. Detective
22 Ducas was not determined to have a permanent disability until after the events that form the basis of his
23 complaint.

24 7. Moreover, Detective Ducas has failed to make a prima facie showing that he was
25 subjected to an adverse employment action. The evidence of record establishes that the LVMPD made
26 reasonable employment decisions concerning Detective Ducas. None may reasonably be characterized
27 as "adverse" to Detective Ducas. To the contrary, the evidence of record demonstrates that the
28 LVMPD at all times treated Detective Ducas fairly and in accordance with established policies and

1 procedures designed to promote the best interests of the agency, its employees, and the public at large.

2 8. For the reasons stated above, Ducas has likewise failed to support his allegations of
3 retaliation in violation of NRS 288.270(1)(d).

4 DECISION

5 NOW, THEREFORE, in light of the foregoing Findings of Fact and Conclusions of Law, the
6 Board finds in favor of Respondent Las Vegas Metropolitan Police Department. Complainant John
7 Ducas shall take nothing by his Amended Complaint.

8 DATED the 4th day of February, 2016.

9 LOCAL GOVERNMENT EMPLOYEE-
10 MANAGEMENT RELATIONS BOARD

11 BY: 
12

PHILLIP E. LARSON, Chairman

13 BY: 
14

15 BRENT C. ECKERSLEY, ESQ.
Vice-Chairman

16 BY: 
17

18 SANDRA MASTERS, Board Member
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MARISU ROMUALDEZ ABELLAR
Executive Assistant

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 4th day of February 2016, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

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