

FILED
May 10, 2023
State of Nevada
E.M.R.B.
8:00 a.m.

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3 **STATE OF NEVADA**
4 **GOVERNMENT EMPLOYEE-MANAGEMENT**
5 **RELATIONS BOARD**
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7 NEVADA ASSOCIATION OF PUBLIC SAFETY
8 OFFICERS,

9 **Complainant,**

10 v.

11 LAS VEGAS METROPOLITAN POLICE
12 DEPARTMENT & LAS VEGAS POLICE
13 PROTECTIVE ASSOCIATION,

14 **Respondents.**

Case No. 2021-002

NOTICE OF ENTRY OF ORDER

EN BANC

15 **TO:** Complainant, by and through their attorneys, Richard P. McCann, J.D. of the Nevada
16 Association of Public Safety Officers and Nicholas M. Wiczorek, Esq. of Clark Hill, PLLC;
17 and

18 **TO:** Respondents, by and through their attorneys, Nick D. Crosby, Esq. of Marquis Aurbach Coffing,
19 David Roger, Esq. of the Las Vegas Police Protective Association, Tony Sgro, Esq. and Jennifer
20 Willis Arledge, Esq. of Sgro & Roger.

21 PLEASE TAKE NOTICE that the **ORDER ON RESPONDENT'S MOTION TO DISMISS**
22 **COMPLAINT** was entered in the above-entitled matter on May 9, 2023.

23 A copy of said order is attached hereto.

24 DATED this day of May 10, 2023.

25 GOVERNMENT EMPLOYEE-
26 MANAGEMENT RELATIONS BOARD

27 BY Isabel Franco
28 ISABEL FRANCO
Administrative Assistant II

1 CERTIFICATE OF MAILING

2 I hereby certify that I am an employee of the Government Employee-Management Relations
3 Board, and that on the day of May 10, 2023, I served a copy of the foregoing **NOTICE OF ENTRY**
4 **OF ORDER** by mailing a copy thereof, postage prepaid to:

5
6 RICHARD P. McCANN, J.D.
7 Executive Director
8 NEVADA ASSOCIATION OF PUBLIC SAFETY OFFICERS
9 145 Panama Street
10 Henderson, NV 89015

11 Clark Hill, PLLC
12 Nicholas M. Wieczorek, Esq.
13 3800 Howard Hughes Parkway, Suite 500
14 Las Vegas, NV 89169

15 Nick D. Crosby, Esq.
16 MARQUIS AURBACH COFFING
17 10001 Park Run Drive
18 Las Vegas, NV 89145

19 David Roger, Esq.
20 Las Vegas Police Protective Association
21 9330 W. Lake Mead Blvd., Suite 200
22 Las Vegas, NV 89134

23 Tony Sgro, Esq.
24 Jennifer Willis Arledge, Esq.
25 Sgro & Roger
26 720 South Seventh Street, Third Floor
27 Las Vegas, NV 89101
28



ISABEL FRANCO
Administrative Assistant II

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2 **STATE OF NEVADA**
3 **GOVERNMENT EMPLOYEE-MANAGEMENT**
4 **RELATIONS BOARD**

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6 NEVADA ASSOCIATION OF PUBLIC
SAFETY OFFICERS,

7 Complainant,

8 v.

9
10 LAS VEGAS METROPOLITAN POLICE
DEPARTMENT & LAS VEGAS POLICE
11 PROTECTIVE ASSOCIATION,

12 Respondents.

Case No. 2021-002

**ORDER ON RESPONDENT'S MOTION
TO DISMISS COMPLAINT**

EN BANC

ITEM NO. 885

13
14 On May 3, 2023, this matter came before the State of Nevada, Government Employee-
15 Management Relations Board (the "Board") for consideration and decision on Respondent's Motion to
16 Dismiss Complainant's Complaint pursuant to the provision of the Employee-Management Relations
17 Act (the Act), NRS Chapter 233B, and NAC Chapter 288. At issue in the Complaint is whether or not
18 the Respondents may preclude participation by persons associated with Complainant in investigatory
19 hearings under NRS Chapter 289.

20 NRS 289.080 states in relevant part that:

- 21 1. Except as otherwise provided in subsection 5, a peace officer who is the subject of
22 an investigation conducted pursuant to NRS 289.057 may upon request have two
23 representatives of the peace officer's choosing present with the peace officer
24 during any phase of an interrogation or hearing relating to the investigation,
including, without limitation, a lawyer, a representative of a labor union or
another peace officer.
- 25 2. Except as otherwise provided in subsection 5, a peace officer who is a witness in
26 an investigation conducted pursuant to NRS 289.057 may upon request have two
27 representatives of the peace officer's choosing present with the peace officer
28 during an interview relating to the investigation, including, without limitation, a
lawyer, a representative of a labor union or another peace officer. The presence
of the second representative must not create an undue delay in either the
scheduling or conducting of the interview.

1 3. A representative of a peace officer must assist the peace officer during the
2 interview, interrogation, or hearing.

3 * * *

4 The Board may dismiss a matter for lack of probable cause under NAC 288.375(1). *Thomas D.*
5 *Richards v. Police Managers and Supervisors Association*, Case No. A1-046094, Item No. 788 (2013).
6 A matter lacks probable cause if it is moot. *See Water Employees Association v. Las Vegas Valley*
7 *Water District*, Case No. A1-045454, Item No. 245 (1990); *Regina Harrison v. City of North Las*
8 *Vegas*, Case No. A1-045768, Item No. 558 (2003).

9 This matter has an extensive history, although the history is not necessarily pertinent because
10 some Nevada Supreme Court's decisions on the subject have ultimately rendered this case moot. In
11 *Bisch v. Las Vegas Metropolitan Police Department*, 129 Nev. 328 (2013) the Supreme court concluded
12 that NRS 289.080 provides a peace officer with additional procedural protections during an internal
13 investigation conducted by their employer, including when the officer is a witness or the target of the
14 investigation. Furthermore, the Nevada Supreme Court very recently provided guidance to the parties
15 and the Board in its decision in *Las Vegas Police Protective Association, Inc. v. The Eighth Judicial*
16 *District Court of the State of Nevada and Jordan Travers and Las Vegas Metropolitan Police*
17 *Department, Real Parties in Interest*, 515 P.3d 842, 847-848 (2022) (peace officers have the right to
18 choose their own representatives under Chapter 289 regardless of the representative's affiliations).

19 Given the scope of the Nevada Supreme Court decisions laid out above, the Complaint is now
20 moot and as such there is no justiciable controversy under NAC 288.200. Given the lack of a
21 justiciable controversy, the matter must be dismissed given the lack of probable cause under NAC
22 288.375(1).

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1 Based on the foregoing, it is hereby **ORDERED** that Respondent's Motion to Dismiss
2 Complainant's Complaint is **GRANTED WITH PREJUDICE**

3 Dated this 10th day of May 2023.

4 GOVERNMENT EMPLOYEE-
5 MANAGEMENT RELATIONS BOARD

6 By: 
7 BRENT ECKERSLEY, ESQ., Chair

8 By: 
9 SANDRA MASTERS, Vice-Chair

10 By: 
11 MICHAEL J. SMITH, Board Member

12 By: 
13 TAMMARA M. WILLIAMS, Board
14 Member

15 By: 
16 MICHAEL A. URBAN, Board Member
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