

FILED  
August 21, 2024  
State of Nevada  
E.M.R.B.

STATE OF NEVADA  
GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

EDWIN MARTIN,

Complainant,

v.

TRUCKEE MEADOWS FIRE PROTECTION  
DISTRICT,

Respondent.

Case No. 2023-036

**NOTICE OF ENTRY OF ORDER**

**PANEL B**

**ITEM NO. 901**

TO: Complainant and their attorney, Ronald J. Dreher, Esq.; and

TO: Respondent and its attorneys, Christopher J. Hicks, Esq., Wade Carner, Esq., and Brandon Price, Esq. of the Washoe County Deputy District Attorney's Office.

PLEASE TAKE NOTICE that the **DECISION, FINDINGS OF FACT AND CONCLUSIONS OF LAW** was entered in the above-entitled matter on August 21, 2024.

A copy of said order is attached hereto.

DATED this 21st day of August 2024.

GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

BY   
MARISU ROMUALDEZ ABELLAR  
Executive Assistant

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**CERTIFICATE OF MAILING**

I hereby certify that I am an employee of the Government Employee-Management Relations Board, and that on the 21st day of August 2024, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

Ronald J. Dreher, Esq.  
P.O. Box 6494  
Reno, NV 89513

Christopher J. Hicks, Esq.  
Brandon Price, Esq.  
Chaz Lehman, Esq.  
Washoe County District Attorney's Office  
One South Sierra St.  
Reno, NV 89501

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EDWIN MARTIN,  
  
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TRUCKEE MEADOWS FIRE PROTECTION  
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Case No. 2023-036

**DECISION, FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

**PANEL B**

**ITEM NO. 901**

The State of Nevada, Government Employee-Management Relations Board (“Board”) held a hearing on this matter on August 7, 2024, pursuant to the provisions of the Government Employee-Management Relations Act (“EMRA”), NRS Chapter 288, and NAC Chapter 288. .

**I. BACKGROUND**

The Complaint alleged that Respondent had engaged in both racial and personal discrimination under NRS 288.270(1)(f) and that the discrimination was the motivating factor as to why Complainant was not promoted to Fire Captain. Respondent filed a Motion to Dismiss on January 17, 2024, on the following grounds: (1) failure to exhaust administrative remedies; and (2) lack of probable cause for failure to provide sufficient proof of either racial or personal discrimination. Respondent’s Motion was granted in part and denied in part on March 1, 2024. The Board’s Decision indicated that the Complainant did not contain sufficient facts to justify the racial discrimination allegations while also noting that there were sufficient facts pled to warrant holding a hearing on the personal discrimination allegations. A hearing on the personal discrimination allegations took place on August 7, 2024. Following the presentation of evidence by Complainant, and after the Complainant had rested his case, Respondent orally moved the Board to dismiss the matter on the grounds that Complainant had failed to establish a prima facie showing that any prohibited personal discrimination under NRS 288.270(1)(f) was a

1 motivating factor in the denial of Complainant’s promotion to Fire Captain per the analytical framework  
2 set out in *Bisch v. Las Vegas Metropolitan Police Department*, 129 Nev. 328, 339 (2013).

## 3 II. DISCUSSION

4 In *Reno Police Protective Ass’n v. City of Reno*, 102 Nev. 98 (1986), the Nevada Supreme Court  
5 adopted a framework to resolve state prohibited labor practice claims against employers that are brought  
6 under NRS 288.270. *See also*, *Bisch v. Las Vegas Metropolitan Police Department*, 129 Nev. 328, 340  
7 (2013). Specifically, the Nevada Supreme Court concluded that:

8 [a]n aggrieved employee must make a prima facie showing sufficient to  
9 support the inference that protected conduct was a motivating factor in the  
10 employer’s decision. Once this is established, the burden shifts to the  
11 employee to demonstrate by a preponderance of the evidence that the same  
12 action would have taken place even in the absence of the protected conduct.  
The aggrieved employee may then offer evidence that the employer’s  
proffered “legitimate” explanation is pretextual and thereby conclusively  
restore the inference of unlawful motivation.

13 *Id.* Thus, in order to sustain a personal discrimination case brought under NRS 288.270(1)(f), at a  
14 minimum, the Complainant must make a prima-facie showing that is sufficient to support the inference  
15 that the protected conduct was a motivating fact in the employer’s decision.

16 The Board provided Complainant with ample opportunity to make the prima facie showing  
17 necessary to meet the requirements set out in *Bisch*. In fact, Complainant presented documentary and  
18 testimonial evidence in support of his alleged personal discrimination claim. The Board ultimately  
19 determined that Complainant failed to make a prima facie showing sufficient to support the inference  
20 that any personal discrimination under NRS 288.270(1)(f) was a motivating factor in the employer’s  
21 decision related to his promotion. Indeed, the Board found a remarkable absence of personal  
22 discrimination against Complainant.

23 The Board may dismiss a matter for lack of probable cause under NAC 288.375(1). *Thomas D.*  
24 *Richards v. Police Managers and Supervisors Association*, Case No. A1-046094, Item No. 788 (EMRB,  
25 Aug. 19, 2013). If there are a lack of sufficient facts to give rise to a justiciable controversy, there is also  
26 a lack of probable cause. *Adonis Valentin v. Clark Co. Public Works*, Case No. A1-046010, Item # 762  
27 (EMRB, July 1, 2011); *Teresa Daniel, Ida Sierra, Marguis Lewis, Aaron Lee, Andrew D. Gasca, Kevin*  
28 *Cervantes, Luther J. Soto, Beverly Abram, Latrice Banks, Denise Mayfield, Linda Korschinowski,*

1 *Charleen Davis-Shaw, David M. Shaw, Argretta O. Hutson, et al. v. Education Support Employees*  
2 *Association*, Case No. A1-046028, Item No. 767 (EMRB, Oct. 31, 2011); *Sherman Willoughby v. Clark*  
3 *County; Human Resources/Real Property Management*, Case No. A1-046030, Item No. 769 (EMRB,  
4 Oct. 21, 2011). Thus, a party that fails to make the prima facie showing in discrimination complaint  
5 brought under NRS 288.270(1)(f) faces dismissal of their case for failing to meet the *Bisch* prima facie  
6 burden. In this case, the Board found that Complainant failed to make a prima facie showing that personal  
7 discrimination was the basis for the Respondent's conduct and that dismissing the matter was appropriate.  
8 There were simply too many vague accusations and a lack of proof that is necessary to make the prima  
9 facie showing that the prohibited conduct was responsible for Respondent's actions in this matter.  
10 *Sherman Willoughby v. Clark County; Human Resources/Real Property Management*, Case No. A1-  
11 046030, Item No. 769 (EMRB, Oct. 21, 2011).

12 Under the *Bisch* framework, the Respondent is not required to present any evidence in the event  
13 the Complainant fails to make their prima facie showing. *Bisch* at 340. Thus, since the Complainant had  
14 rested his case, and because he had failed to meet the prima facie burden, the Respondent's Motion to  
15 Dismiss was granted.

### 16 III. FINDINGS OF FACT

- 17 1. The Board has determined the following facts based on a preponderance of evidence.
- 18 2. The entire matter rested upon whether or not alleged personal discrimination played a role  
19 in the denial of Complainant's promotion to the rank of Captain.
- 20 3. The Complainant failed to make a prima facie showing that he was discriminated against  
21 for personal reasons.
- 22 4. The vote taken by the Board was a decision based on the hearing that was conducted. The  
23 Board's decision was not a pre-hearing decision on the Respondent's Motion to Dismiss the Complaint.
- 24 5. Once the evidence had been presented by Complainant, the Board found a remarkable  
25 absence of personal discrimination against Complainant.
- 26 6. The proof that Complainant relied upon was primarily circumstantial evidence and the  
27 opinion of the Complainant.

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1 339 (2013).

2 3. The Board provided Complainant with a fair and meaningful opportunity to present  
3 evidence in support of the personal discrimination claim.

4 4. Complainant presented documentary and testimonial evidence in support of those claims.

5 5. The Board did not find any support for the discrimination claims which means that  
6 Complainant failed to make a prima facie showing that discrimination by the Respondent was a factor in  
7 the decision not to promote Complainant to Captain. *See Bisch, Supra.*

8 6. Complainant failed to make the prima facie showing which means the case lacks probable  
9 cause to continue under the *Bisch* framework set forth above.

10 7. The Board may dismiss a matter for lack of probable cause under NAC 288.375(1).  
11 *Thomas D. Richards v. Police Managers and Supervisors Association*, Case No. A1-046094, Item No.  
12 788 (EMRB, Aug. 19, 2013).

13 8. Oral Motions are allowed to be made during a hearing under NAC 288.240(2).

14 9. NAC 288.240(3) is not applicable to this case since the case is being dismissed following  
15 a hearing on the merits and it is not being dismissed due to Respondent's pre-hearing Motion to Dismiss  
16 that was filed on January 17, 2024. Furthermore, it was proper for Respondent to make the motion orally  
17 given the lack of evidence provided by the Complainant in support of their allegations.<sup>1</sup>

18 10. The Board provided every opportunity for Complainant to show that personal  
19 discrimination was the motivating factor in Respondent's alleged misconduct and failed to do so.

20 11. To the extent a conclusion of fact may be deemed a conclusion of law, it shall be  
21 considered as such.

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27 <sup>1</sup> The Respondent's oral Motion to Dismiss is akin to a request for a directed verdict at the end of a  
28 plaintiff's case in chief where a court finds that there is insufficient evidence to sustain the Plaintiff's  
claims.


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**V. ORDER**


Based on the foregoing, it is hereby **ORDERED** that claims filed by Complainant are hereby **DISMISSED WITH PREJUDICE** on the grounds that Complainant failed to make a prima facie showing required by *Bisch*, supra.

DATED this 21<sup>st</sup> day of August 2024.

GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

By:   
MICHAEL J. SMITH, Vice-Chair  
Presiding Officer

By:   
SANDRA MASTERS, Board Member

By:   
TAMMARA M. WILLIAMS, Board  
Member