

FILED
December 17, 2024
State of Nevada
E.M.R.B.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

NEVADA SERVICE EMPLOYEES UNION,

Case No. 2024-030

Complainant,

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

v.

EN BANC

CLARK COUNTY WATER RECLAMATION
DISTRICT,

ITEM NO. 905

Respondent.

On December 9, 2024, this matter came before the State of Nevada, Government Employee-Management Relations Board (“Board”) for consideration and decision on Respondent’s Motion to Dismiss pursuant to the provision of the Employee-Management Relations Act (the Act), NRS Chapter 233B, and NAC Chapter 288. The issue before the Board was Respondent’s Motion to Dismiss.

I. DISCUSSION

The Board may dismiss a matter for lack of probable cause under NAC 288.375(1). *Thomas D. Richards v. Police Managers and Supervisors Association*, Case No. A1-046094, Item No. 788 (2013). NAC 288.200 requires that a Complaint contain a “clear and concise statement of the facts constituting the alleged practice sufficient to raise a justiciable controversy under Chapter 288.” If there is a lack of sufficient facts to give rise to a justiciable controversy, there is also a lack of probable cause. *Adonis Valentin v. Clark Co. Public Works*, Case No. A1-046010, Item No. 762 (EMRB, July 1, 2011); *Teresa Daniel, Ida Sierra, Marguis Lewis, Aaron Lee, Andrew D. Gasca, Kevin Cervantes, Luther J. Soto, Beverly Abram, Latrice Banks, Denise Mayfield, Linda Korschinowski, Charleen Davis-Shaw, David M. Shaw, Argretta O. Hutson, et al. v. Education Support Employees Association*, Case No. A1-046028,

1 Item No. 767 (EMRB, Oct 21, 2011); *Sherman Willoughby v. Clark County; Human Resources/Real*
2 *Property Management*, Case No. A1-046030, Item No. 769 (EMRB, October 31, 2011).

3 In its Motion to Dismiss, Complainant incorrectly stated that the Board must apply the same
4 standard as a motion to dismiss brought under NRCP 12(b)(5). In fact, the Board is not subject to the
5 Nevada Rules of Civil Procedure because the Nevada Rules of Civil Procedure do not apply to
6 administrative proceedings unless expressly adopted by the agency. *Dutchess Business Services, Inc. v.*
7 *Nevada State Board of Pharmacy*, 124 Nev. 701, 710 (2008); *see also International Union of Operating*
8 *Engineers v. Esmeralda County Board of Commissioners*, Case No. 2018-014, Item No. 838 at
9 footnote. 5 (EMRB, March 18, 2019). Therefore, the Nevada Rules of Civil Procedure are not binding
10 on the Board unless it has specifically adopted them. NRS 288.110. The only references to the NRCP
11 in the rules promulgated by the Board are found in NAC 288.080 and NAC 288.090, and neither of
12 these provisions govern the standards applicable to a motion to dismiss.

13 **A. Claim Arising under NRS 288.270(1)(a).**

14 Under NRS 288.270(1)(a), it is a prohibited practice for a local government employer to
15 willfully interfere, restrain or coerce any employee in the exercise of any right guaranteed under
16 Chapter 288. This Board has stated that under NRS 288.270(1)(a) “the test is whether the employer
17 engaged in conduct, which may reasonably be said, tends to interfere with the free exercise of employee
18 rights under the Act.” *AFSCME, Local 4041 v. State of Nevada, Dept of Corrections*, Case No. 2020-
19 002, Item No. 862B (EMRB, April 15, 2021). Moreover, there are three elements to a claim of
20 interference with a protected right: (1) the employer's action can be reasonably viewed as tending to
21 interfere with, coerce, or deter; (2) the exercise of protected activity [by NRS Chapter 288]; and (3) the
22 employer fails to justify the action with a substantial and legitimate business reason. *Id.*, *citing*
23 *to Billings and Brown v. Clark County*, Item No. 751 (EMRB, May 2, 2012); *Medeco Sec. Locks, Inc. v.*
24 *NLRB*, 142 F.3d 733, 745 (4th Cir. 1988); *Reno Police Protective Ass'n v. City of Reno*, 102 Nev. 98,
25 101, 715 P.2d 1321, 1323 (1986). Furthermore, the Board must balance the employee's protected right
26 against any substantial and legitimate business justification that the employer may give for the
27 infringement. *Id.* Finally, “the expression of any views, argument, or opinion shall not be evidence of
28 an unfair labor practice, so long as such expression contains no threat of reprisal or force or promise of

1 benefit". *AFSCME, supra.*

2 In this case, the act that is the subject of the Complaint is the following statement that was
3 contained within a confidential adverse action issued to an employee who brought a paintball gun to
4 work and disposed of it in the garbage:

5 The fact that you brought a gun (functioning or otherwise) to work is a serious violation
6 of District policies. When a weapon is brought onto property there is no way to initially
7 determine whether it is functioning or not. This conduct impacts the safety and security
8 of all staff of the District. Had the District taken into consideration the statements made
9 by the Union on your behalf which undermined the gravity of the conduct violation; the
10 outcome would warrant the District's highest level of discipline (termination). However,
11 based solely on your testimony which accepted responsibility for your actions as well as
12 conveying your understanding of the seriousness of the safety implications of the
13 conduct, together with the personal circumstances which resulted in the serious lack of
14 judgment, it has been determined to suspend you for one week[.]

15 The question is whether the above statement constitutes the coercion, interference or restraint of any
16 right guaranteed to an employee under Chapter 288.

17 The Board finds that the above statement cannot be viewed as coercing, interfering or otherwise
18 restraining any employee rights under Chapter 288. It is also clear to the Board that the views
19 expressed above arose in the context of a legitimate business activity, i.e., explaining the level of
20 discipline meted out to an employee. Thus, taking into consideration the free speech rights of the
21 employer, the nature of the statement, the confidential status of the statement in the context of
22 employee disciplinary action, and viewing the same in light of the totality of the circumstances in which
23 both the conduct and statements were made, the Board finds that Respondent's statements are
24 insufficient to constitute a violation of NRS 288.270(1)(a). Despite this conclusion, the Board finds
25 that the statements, though insufficient to constitute a violation of NRS 288.270, were not absolutely
26 necessary to convey the employer's findings to the employee and would encourage the employer to
27 refrain from making similar statements in the future.

28 **B. Discrimination Claim.**

NRS 288.270(1)(f) states:

1. It is a prohibited practice for a local government employer or its designated representative willfully to:

* * *

1 (f) Discriminate because of race, color, religion, sex, sexual orientation, gender identity
2 or expression, age, physical or visual handicap, national origin or because of political or
3 personal reasons or affiliations.

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
6 brought under NRS 288.270. *Bisch v. Las Vegas Metropolitan Police Department*, 129 Nev. 328, 339
7 (2013). Specifically, the Nevada Supreme Court concluded that:

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

13 *Id.*

14 In this instance, the Board finds that that Complainant has failed to plead sufficient facts
15 necessary to sustain a prima facie claim of discrimination. The basis for this finding is set out in the
16 discussion in Section A above and given the fact the statement is merely explanatory in nature on its
17 face and lacking in discriminatory intent or effect.

18 II. CONCLUSION

19 As discussed above, the Board finds that there was an utter lack of probable cause necessary to
20 sustain the Complaint. Furthermore, while the Board has declined to award attorney fees in this matter,
21 such an award could have been justified because the Complaint was borderline frivolous. The Board
22 would like to remind practitioners of the need to ensure that Complaints are fully supported so as to not
23 waste the resources and time of the Board and opposing parties.

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1 **III. ORDERING PROVISIONS**

2 Based on the foregoing, it is hereby **ORDERED** that Respondent’s Motion to Dismiss is
3 **GRANTED WITH PREJUDICE.**

4 **IT IS FURTHER ORDERED** that all other requested relief is hereby **DENIED.**

5 Dated this 17th day of December 2024.

6 GOVERNMENT EMPLOYEE-
7 MANAGEMENT RELATIONS BOARD

8 By: 
9 BRENT ECKERSLEY, ESQ., Chair

10 By: 
11 MICHAEL J. SMITH, Vice-Chair

12 By: 
13 SANDRA MASTERS, Board Member

14 By: 
15 TAMMARA M. WILLIAMS, Board
16 Member

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RELATIONS BOARD

NEVADA SERVICE EMPLOYEES UNION,

Case No. 2024-030

Complainant,

NOTICE OF ENTRY OF ORDER

v.

EN BANC

CLARK COUNTY WATER RECLAMATION
DISTRICT,

ITEM NO. 905

Respondent.

TO: Complainant and its attorneys, Evan L. James, Esq. and Dylan J. Lawter, Esq., and Christensen James & Martin, Chtd.; and

TO: Respondent and its attorneys, Mark J. Ricciardi, Esq. and Judy Sanderlin, Esq., and Fisher & Phillips LLP.

PLEASE TAKE NOTICE that the **ORDER ON RESPONDENT'S MOTION TO DISMISS COMPLAINT** was entered in the above-entitled matter on December 16, 2024.

A copy of said order is attached hereto.

DATED this 17th day of December 2024.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: 
MARISU ROMUALDEZ ABELLAR
Executive Assistant

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 17th day of December 2024, I served a copy of the foregoing **NOTICE OF**
4 **ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

5 Evan L. James, Esq.
6 Dylan J. Lawter, Esq.
7 Christensen James & Martin, Chtd.
8 7440 W. Sahara Avenue
9 Las Vegas, NV 89117

10 Fisher & Phillips LLP
11 Mark J. Ricciardi, Esq.
12 Judy Sanderlin, Esq.
13 300 S. Fourth Street, Suite 1500
14 Las Vegas, NV 89101

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MARISU ROMUALDEZ ABELLAR
Executive Assistant