

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY SCHOOL DISTRICT,  
A POLITICAL SUBDIVISION OF THE  
STATE OF NEVADA,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
ELIZABETH GOFF GONZALEZ,  
DISTRICT JUDGE,

Respondents,

and

MICHAEL J. KNIGHT, AN  
INDIVIDUAL,  
Real Party in Interest.

No. 45086

**FILED**

MAY 17 2006

JANETTE A. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This is an original petition for writ of mandamus or prohibition, challenging a district court order denying petitioner's NRCP 12(b)(5) motion to dismiss in an employment law case.

Michael Knight, the real party in interest, was employed by the Clark County School District, the petitioner, as a police officer. Knight is a member of the Police Officer's Association (POA), which negotiated and entered into a collective bargaining agreement (the agreement) with the School District. As a POA member, Knight is subject to the agreement's terms.

The preamble to the agreement states, "[i]t is mutually agreed that ultimate responsibility for establishing reasonable rules rests with the Board of Trustees of the Clark County School District." Regulation 4231 states, "the Clark County School District requires . . . employees in

safety-sensitive positions to submit to testing for use of controlled substance(s) and misuse of alcohol.” Because Knight possessed and could have discharged a firearm in the performance of his duties, he is a safety-sensitive employee and subject to Regulation 4231.

The School District randomly selected Knight for a drug and alcohol test. Knight complied and tested positive for amphetamine and marijuana. Action was then taken against Knight pursuant to Regulation 4231(II)(C). Regulation 4231(II)(C) states, “[a] safety-sensitive employee who tests positive for . . . illegal/illicit drugs, absent a legitimate medical reason for a positive result, will be subject to dismissal and immediately removed from duty.” Accordingly, Knight was dismissed from employment.

Two months after the School District dismissed Knight, he sent a letter to the School District’s human resources division. The letter contained a request for arbitration. The School District responded by informing Knight that “[i]t is understood and agreed only the Association has the right to request arbitration.”<sup>1</sup>

Knight then wrote a letter to the POA requesting arbitration. The POA responded and informed Knight that the executive board of the POA had considered Knight’s grievance and found it unmeritorious. The POA reminded Knight that the agreement expressly states that “[i]t is understood and agreed only the [POA] has the right to request

---

<sup>1</sup>(Emphasis in the original).

arbitration.” Thus, the POA declined to provide legal representation or pay the costs of arbitration fees.<sup>2</sup>

Knight then filed a complaint with the district court for various causes of action related to his dismissal. Thereafter, the School District filed a motion to dismiss pursuant to NRCP 12(b)(5), claiming that Knight’s claims were preempted by the agreement. The district court denied the School District’s motion because Knight’s claims did not require the district court to interpret the meaning and scope of terms within the agreement. The School District then filed a petition for a writ of mandamus, or in the alternative, prohibition, with this court.

Motion to Dismiss

“Writ relief is an extraordinary remedy that will only issue at the discretion of this court.”<sup>3</sup> “A writ of mandamus is available ‘to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station,’ or to control manifest abuse of discretion.”<sup>4</sup>

A district court’s grant or denial of a motion to dismiss is a discretionary act.<sup>5</sup> Thus, “[w]rit relief is not proper to control the judicial discretion of the district court, ‘unless discretion is manifestly abused or is

---

<sup>2</sup>The POA did offer to “sponsor” Knight’s arbitration by paying for one-half of the arbitration fees and costs. Knight declined this offer.

<sup>3</sup>State of Nevada, 118 Nev. at 146, 42 P.3d at 237.

<sup>4</sup>Id. (quoting NRS 34.160).

<sup>5</sup>Borger v. Dist. Ct., 120 Nev. 1021, 1025, 102 P.3d 600, 606 (2004).

exercised arbitrarily or capriciously.”<sup>6</sup> Accordingly, this court generally declines to consider writ petitions challenging a district court’s denial of a motion to dismiss. Nevertheless,

we may [entertain such petitions] when: (1) no factual dispute exists and the district court is obligated to dismiss an action pursuant to clear authority under a statute or rule; or (2) an important issue of law needs clarification and considerations of sound judicial economy and administration militate in favor of granting the petition.<sup>7</sup>

Here, we conclude that no factual dispute exists and that the district court was obligated to dismiss the underlying action pursuant to clear authority. Thus, the district court manifestly abused its discretion and we will exercise our discretion to entertain the petition for mandamus relief.

Knight is a POA member and thus subject to the agreement. The agreement governs the process by which Knight, and all public employees covered by the agreement, may challenge a dismissal. The first step is to seek arbitration. The agreement states that only the POA may request such arbitration. The POA reviewed Knight’s arbitration request and concluded that Knight’s grievance was unmeritorious. Once the POA refused to submit the matter to arbitration and Knight declined the POA’s offer to sponsor one-half of the arbitration costs, Knight’s remedies were exhausted under the terms of the agreement.

---

<sup>6</sup>State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 147, 42 P.3d 233, 237-38 (2002) (quoting Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981)).

<sup>7</sup>State of Nevada, 118 Nev. at 147, 42 P.3d at 238.

“[S]tate-law rights and obligations that do not exist independently of private agreements, and that as a result can be waived or altered by agreement of private parties, are pre-empted by those agreements.”<sup>8</sup> We previously held in MGM Grand Hotel-Reno, Inc. v. Insley, however, that not every state law claim is necessarily preempted by a collective bargaining agreement.<sup>9</sup> Nevertheless, an employee who is covered by a collective bargaining agreement may not challenge his or her dismissal through claims that would require the court “to interpret the meaning or scope of a term” in the collective bargaining agreement.<sup>10</sup> Here, Knight’s causes of action implicate the terms of the collective bargaining agreement and would impermissibly require the court to interpret the terms of the agreement. Therefore, the agreement preempts Knight’s state law claims.<sup>11</sup>

We therefore conclude that the district court was obligated to dismiss the action pursuant to clear authority under Nevada law. As

---

<sup>8</sup>MGM Grand Hotel-Reno, Inc. v. Insley, 102 Nev. 513, 518, 728 P.2d 821, 824 (1986) (quoting Allis Chalmers v. Lueck, 471 U.S. 202, 213 (1985)).

<sup>9</sup>MGM Grand Hotel-Reno, Inc. v. Insley, 102 Nev. 513, 518, 728 P.2d 821, 824 (1986).

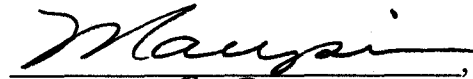
<sup>10</sup>Id. at 517, 728 P.2d at 824 (citing Allis Chalmers v. Lueck, 471 U.S. 202 (1985)).

<sup>11</sup>Knight sued the School District for wrongful termination, breach of a third-party beneficiary contract, breach of the implied covenant of good faith and fair dealing, declaratory relief, and injunctive relief against the School District. He also pleaded negligence against the school district, the doctor who administered the drug test, and the medical center where the drug test was given.

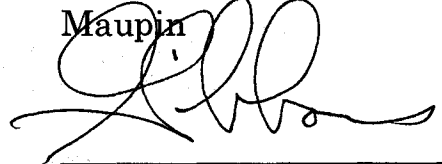
such, we conclude that the School District's petition for a writ of mandamus warrants extraordinary relief because the district court manifestly abused its discretion when it denied the School District's motion to dismiss.

Accordingly, we grant the petition and direct the court clerk to issue a writ of mandamus directing the district court to grant the School District's motion to dismiss pursuant to NRCP 12(b)(5).

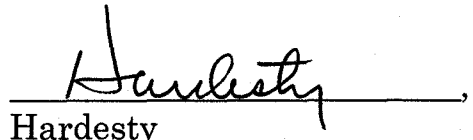
It is so ORDERED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
S. Scott Greenberg  
Flangas McMillan Law Group, Inc.  
Alverson Taylor Mortensen Nelson & Sanders  
Prince & Keating, LLP  
Clark County Clerk