

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA LOCAL  
GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD;  
AND JOHN STRAHAN, AN  
INDIVIDUAL,  
Appellants,  
vs.  
WASHOE COUNTY SHERIFF'S  
SUPERVISORY DEPUTIES  
ASSOCIATION,  
Respondent.

No. 48708

**FILED**

MAY 30 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting judicial review of a Local Government Employee-Management Relations Board decision. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

This case originated in 1998 following disciplinary action taken by the Washoe County Sheriff's Office against John Strahan. Strahan was eventually demoted from the rank of supervisory Sergeant to Deputy. Strahan appealed the disciplinary action and initiated a federal lawsuit against Washoe County and Sheriff Richard Kirkland, seeking reinstatement and backpay. Strahan's union, the Washoe County Sheriff's Supervisory Deputies Association, retained May Prosser-Strong to act as Strahan's labor representative. Strahan resigned from his position as deputy and left the employment of Washoe County in July 1999.

On March 1, 2001, the federal district court granted Washoe County and Sheriff Kirkland's motion for summary judgment on the basis that the collective bargaining agreement specified that a grievance-

arbitration procedure was the exclusive remedy to appeal Strahan's discipline. Further, the federal district court stated that, "Strahan was apparently entitled under Nevada law to demand a hearing with the local government employee-management relations board to determine whether Kirkland's actions were unfair, but he did not do so." Strahan appealed to the Ninth Circuit Court of Appeals, which affirmed the federal district court's decision on April 19, 2002.

Thereafter, Strahan filed a second lawsuit against Washoe County in federal district court on May 3, 2002, and subsequently amended his complaint twice. In his second amended complaint, Strahan alleged that he sought representation from the Association to arbitrate the matter, but that the union failed to arbitrate and should be enjoined to perform its obligation to represent him and be held responsible for lost wages incurred.

The Association wrote a letter to Strahan's counsel requesting that his complaint against the association be dismissed, and if Strahan did not voluntarily dismiss the claim, the Association would seek sanctions against him. The Association further advised Strahan that the six-month statute of limitations for seeking administrative relief against the Association before the EMRB had expired "long ago." Strahan voluntarily dismissed the action without prejudice on January 23, 2003.

After Strahan voluntarily dismissed the federal lawsuit, he sent a letter to the Association requesting the status of his grievance and any possible arbitration. The Association responded on March 19, 2003, declaring that it would not be pursuing any further grievance by Strahan and that Strahan "was on clear notice [at the time the matter was dropped in 1998] that the Association would not pursue the matter further." The

Association emphatically stated that Strahan should have pursued a grievance at that time.

Following the correspondence, Strahan filed a prohibited practices complaint with the Local Government Employee-Management Relations Board (EMRB) on July 2, 2003. In his complaint, Strahan alleged that the Association, willfully and in bad faith, breached its duty of representation when it failed to arbitrate his grievance, and that the Association concealed its decision not to arbitrate until the March 19, 2003 letter.

On May 6, 2005, Strahan filed a lawsuit in Washoe County district court against the County and the Association containing the same allegations as in his pending EMRB complaint, as well as claiming damages incurred. The lawsuit filed in Washoe County was dismissed on August 11, 2005, upon a motion to dismiss filed by Washoe County. The district court stated in its order that Strahan's complaint to the EMRB was statutorily time-barred by the six-month statute of limitations set forth in NRS 288.110(4).

On October 19, 2005, the EMRB held its hearing on the matter after denying the Association's motion for summary judgment based on res judicata, collateral estoppel, waiver and election of remedies, and the statute of limitations. The EMRB rendered its decision granting Strahan relief on February 1, 2006, stating that Strahan did not receive notice that the Association would no longer pursue the grievance until he received the letter dated March 19, 2003. Based on this decision, the EMRB found that Strahan's complaint was not barred by the statute of limitations. The EMRB also found that the Washoe County district court's order was not a final judgment for collateral estoppel purposes and that

the Association did, in fact, commit a prohibited labor practice by failing to represent Strahan. The district court, however, granted the Association's petition for judicial review of the EMRB decision, stating: "[I]t seems impossible that Strahan did not know or was not presented with evidence sufficient to warrant inquiry so that he should have known of the [Association's] alleged breach regarding this matter." The district court made its ruling pursuant to its authority under NRS 233B.135(3).<sup>1</sup> The instant appeal was timely filed.

In the context of an appeal from a district court order resolving a petition for judicial review of an administrative decision, we, like the district court, examine the administrative decision for clear error or an arbitrary abuse of discretion.<sup>2</sup> While purely legal determinations are reviewed independently, the appeals officer's fact-based conclusions of law are entitled to deference and may not be disturbed if they are supported by substantial evidence.<sup>3</sup> "Substantial evidence is that 'which a reasonable

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<sup>1</sup>NRS 233B.135(3)(a)-(f) authorizes the district court to set aside an agency decision when the substantial rights of the petitioner were prejudiced or if the final decision of the agency violated statutory or constitutional provisions, was in excess of the agency's authority, made by an unlawful procedure, was affected by another error of law, was clearly erroneous in light of the evidence or was arbitrary and capricious "characterized" by an abuse of discretion.

<sup>2</sup>Construction Indus. v. Chalue, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003); Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491 (2003).

<sup>3</sup>Ayala, 119 Nev. at 235, 71 P.3d at 491.

person might accept as adequate to support a conclusion.”<sup>4</sup> Courts may not substitute their judgment for that of the appeals officer as to “the weight of the evidence.”<sup>5</sup> Our review is limited to the record before the appeals officer.<sup>6</sup>

On appeal, the EMRB argues that the district court abused its discretion when it substituted its own judgment for that of the EMRB with respect to the evidence offered at the administrative hearing, therefore rendering the district court’s grant of judicial review erroneous. We disagree.

The EMRB argues that it found that the Association breached its duty of representation because Strahan was unaware that the Association would no longer pursue his complaint until he was informed of the Association’s decision in the March 19, 2003 letter. Further, the EMRB contends that the evidence presented at the hearing supported its decision and that the district court improperly annulled the EMRB’s authority.

We conclude that the district court was correct in its assessment that “it seems impossible that Strahan did not know or was not presented with evidence sufficient to warrant inquiry so that he should have known of the [Association’s] alleged breach regarding this matter.” Specifically, the “occurrence” of Strahan’s notice was admitted

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<sup>4</sup>Ayala, 119 Nev. at 235, 71 P.3d at 491-92 (2003) (quoting SIIS v. Montoya, 109 Nev. 1029, 1032, 862 P.2d 1197, 1199 (1993)).

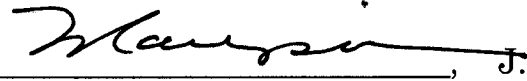
<sup>5</sup>Chalue, 119 Nev. 352, 74 P.3d at 597.

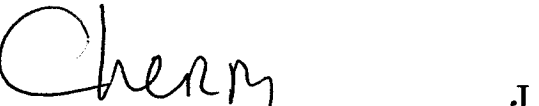
<sup>6</sup>Ayala, 119 Nev. at 235, 71 P.3d at 491.


when he filed his second amended complaint in his second federal lawsuit, where Strahan admitted that he knew that the Association was continually failing to arbitrate his grievance. Therefore, the EMRB's decision was not based upon substantial evidence in the record.

Because Strahan failed to file a grievance with the EMRB when he knew or should have known that the Association was not pursuing arbitration, we

ORDER the judgment of the district court AFFIRMED.

 J.

Maupin  
 J.  
Cherry

 J.  
Saitta

cc: Hon. Steven R. Kosach, District Judge  
Attorney General Catherine Cortez Masto/Carson City  
Attorney General Catherine Cortez Masto/Las Vegas  
Jeffrey A. Dickerson  
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Washoe District Court Clerk