IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF NORTH LAS VEGAS; AND NORTH LAS VEGAS POLICE DEPARTMENT,
Appellants,
vs.
STATE OF NEVADA, LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD; AND THOMAS G. GLAZIER, JR.,
Respondents.

No. 50761

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in an employment matter. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

This appeal stems from a complaint filed by respondent Thomas Glazier, Jr., with the Local Government Employee-Management Relations Board (EMRB). Glazier alleged that appellants the City of North Las Vegas and the North Las Vegas Police Department (collectively, CNLV) engaged in prohibited labor practices that resulted in him being denied a promotion. The EMRB determined that Glazier's complaint was timely filed and that CNLV had discriminated against Glazier. CNLV petitioned for judicial review. The district court denied the petition, finding that the EMRB had acted within its discretion and substantial evidence supported its decision.

CNLV appeals the district court's decision on the following grounds: (1) the EMRB abused its discretion when it found that Glazier was treated differently than similarly situated police officers, (2) the EMRB abused its discretion when it decided that Glazier's complaint did

not violate the statute of limitations, and (3) the EMRB exceeded its statutory authority when it considered Glazier's promotion and ordered the City of North Las Vegas to pay Glazier's backpay.[1]

For the reasons set forth below, we conclude that all of CNLV's arguments fail and therefore affirm the district court's denial of appellants' petition for judicial review. The parties are familiar with the facts, and we do not recount them further except as necessary to our disposition.

The EMRB's decision was supported by substantial evidence

CNLV argues that the EMRB's decision was arbitrary, capricious, and an abuse of discretion because it was not supported by the evidence. It contends that Glazier was not treated differently than similarly situated sergeants. We disagree.

Standard of review

NRS 233B.135, the statute governing judicial review of an administrative decision, states, in pertinent part:

> 3. The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. The court may remand or affirm the final decision or set it aside in whole or in part if substantial rights of the

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[1]CNLV also argues that NRS 288.270(1)(f), which prohibits discrimination for "personal reasons," is unconstitutionally vague. We generally afford an administrative agency's interpretation of its statutes substantial deference. See Truckee Meadows v. Int'l Firefighters, 109 Nev. 367, 369, 849 P.2d 343, 345 (1993). The EMRB has determined that NRS 288.270(1)(f) gives adequate notice and is not unconstitutionally vague. We agree with this interpretation, as it is within the language of the statute, and therefore conclude that CNLV's argument is meritless.

> petitioner have been prejudiced because the final decision of the agency is:
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> . . .
>
> (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
>
> (f) Arbitrary or capricious or characterized by abuse of discretion.

This court's review is limited to the evidence contained in the record and it may not substitute its judgment for that of the agency on factual disputes. NRS 233B.135(1), (3); Secretary of State v. Tretiak, 117 Nev. 299, 305, 22 P.3d 1134, 1138 (2001). On questions of fact, this court is limited to determining whether substantial evidence exists to support the agency's decision. SIIS v. Swinney, 103 Nev. 17, 20, 731 P.2d 359, 361 (1987).

Substantial evidence shows discrimination for personal reasons

We conclude that substantial evidence supports the EMRB's determination that Glazier was treated differently than similarly situated officers. First, Captain Tony Scott was in Glazier's chain of command and therefore had power over Glazier's schedules and promotions, all the while having an intimate affair with Glazier's ex-wife, Laura Glazier. Next, Chief Mark Paresi testified that he had heard rumors that Captain Scott was having an affair with Laura, but did not investigate the matter, even though he knew Captain Scott was in Glazier's chain of command. More telling was the fact that Glazier tested number "1" on the promotions list, but was not promoted. And at all relevant times that Glazier was attempting to be promoted, Captain Scott was sitting on the panel that considered Glazier's promotion, while carrying out an affair with Laura. Furthermore, Chief Paresi stated that Glazier was not promoted because

he had been disciplined twice; however Laura was also disciplined, and that appeared to have no effect on her ability to be promoted.

Because of the foregoing facts, we hold that the EMRB's decision was based upon reliable probative and substantial evidence. The EMRB acted within its discretion when it determined that Glazier had been discriminated against by CNLV. While we note that there was evidence presented regarding disciplinary actions taken against Glazier, it is not our place to substitute our judgment for that of the EMRB as to the weight of the evidence on a question of fact. See NRS 233B.135(3). Accordingly, we conclude that the district court properly determined that substantial evidence supported the EMRB's decision.

Glazier's complaint was timely filed

CNLV asserts that Glazier's complaint is time-barred pursuant to NRS 288.110(4) because it was filed six months after Glazier learned that he would not be promoted. CNLV's argument fails.

Nevada's law on filing prohibited-labor-practice claims sets a six-month deadline. NRS 288.110(4) states that

> [t]he [EMRB] may not consider any complaint or appeal filed more than 6 months after the occurrence which is the subject of the complaint or appeal.

While a reviewing court may decide purely legal issues de novo, without deference to the agency's interpretation of the law, the agency's conclusions of law, which are necessarily closely tied to its view of the facts, are entitled to deference on appeal and will not be overturned provided those conclusions are supported by substantial evidence. Clements v. Airport Authority, 111 Nev. 717, 722, 896 P.2d 458, 461 (1995).

Glazier filed his complaint on January 9, 2006. The subject of the complaint was that he was denied a promotion to lieutenant because of discriminatory reasons. Glazier knew his employer denied him a promotion when he became aware of the promotions of three other officers. The promotions of two officers became effective July 9, 2005, and the promotion of the third officer became effective January 7, 2006. The EMRB determined that Glazier's complaint was not time-barred and that Glazier should have been promoted on July 9, 2005. In so doing, it interpreted the statute of limitations set forth in NRS 288.110(4) to begin running on the effective date of the promotion of another, rather than the person alleging discrimination. Its decision was based on the fact that before July 9, 2005, evidence showed that Glazier only knew of his employer's intent to promote others and that on July 9, 2005, those promotions became official. Because we afford an administrative agency's interpretation of the law deference and, in the present case, the EMRB's decision was supported by substantial evidence, we agree and conclude that Glazier's complaint was not time-barred because it was filed within six months of the occurrence of the discriminatory act—the promotions of others over him. Accordingly, we hold that the district court was correct when it denied CNLV's petition for judicial review because Glazier's complaint was timely filed.

The EMRB did not exceed its statutory authority

CNLV argues that the EMRB exceeded its statutory authority when it decided Glazier's promotional complaint and ordered backpay. We disagree.

The EMRB is an administrative board created by NRS Chapter 288. NRS 288.110(2) states:

> The Board may hear and determine any complaint arising out of the interpretation of, or performance under, the provisions of this chapter by any local government employer, local government employee or employee organization. The Board shall conduct a hearing within 90 days after it decides to hear a complaint. The Board, after a hearing, if it finds that the complaint is well taken, may order any person to refrain from the action complained of or to restore to the party aggrieved any benefit of which [he or she] has been deprived by that action. The Board shall issue its decision within 120 days after the hearing on the complaint is completed.

"The language of NRS 288.110[(2)] is plain and unambiguous." City of Henderson v. Kilgore, 122 Nev. 331, 335, 131 P.3d 11, 14 (2006). This court has concluded that an administrative agency may possess an implied power but that it is a limited implied power that must be essential to carrying out the agency's statutory duties. Id. When reviewing pure issues of law, we apply de novo review. Clements, 111 Nev. at 722, 896 P.2d at 461.

CNLV's argument that promotions are not within the statutory scheme of NRS Chapter 288 is without merit. It is true that promotions are not listed as mandatory bargaining issues. However, the law does not expressly state that promotions are out of the NRS Chapter 288 scheme. NRS 288.150(3)(a) states that

> [t]hose subject matters which are not within the scope of mandatory bargaining and which are reserved to the local government employer without negotiation include:
>
> (a) Except as otherwise provided in paragraph (u) of subsection 2, the right to hire, direct, assign or transfer an employee, but

> excluding the right to assign or transfer an employee as a form of discipline.

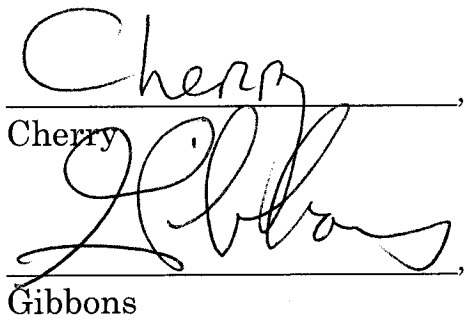
CNLV urges a broad reading of the language, insisting that the statute reserves to CNLV the right to promote. This is too broad of an interpretation in light of this court's precedent. We have concluded that "a subject not specifically enumerated in NRS 288.150 as a nonnegotiable subject is nevertheless a mandatory subject of bargaining if it bears a 'significant relationship' to wages, hours, and working conditions." Truckee Meadows v. Int'l Firefighters, 109 Nev. 367, 371, 849 P.2d 343, 346 (1993). While NRS 288.150 draws distinctions as to what is and what is not a mandatory bargaining issue, the jurisdictional statute, NRS 288.110, has been interpreted as controlling what issues the EMRB can determine. See id. at 372, 849 P.2d at 347.

In the present case, we conclude that the EMRB did not exceed its statutory power by hearing, determining, and remedying Glazier's complaint. The EMRB ordered CNLV to cease and desist unfair labor practices and restored to Glazier benefits that he had been deprived of due to CNLV's discriminatory actions. We note that this case is not so much about a promotion as it is about discrimination. Accordingly, an order directing CNLV to stop discriminatory practices is well within the EMRB's statutory authority.

Further, pursuant to the plain language of NRS 288.110(2), the EMRB may restore benefits that the aggrieved party lost due to the complained of action. Here, the EMRB ordered backpay because it determined that CNLV discriminated against Glazier by not promoting him effective July 9, 2005. The EMRB qualified its order to promote Glazier by stating, "unless there is a good cause for Glazier not to receive the promotion," thereby leaving the ultimate decision of a merit-based

promotion up to CNLV. Accordingly, we hold that the EMRB did not exceed its statutory authority when it considered Glazier's complaint and ordered backpay. Therefore, we

ORDER the judgment of the district court AFFIRMED.



Cherry, J.

Gibbons, J.

cc: Hon. Elissa F. Cadish, District Judge
M. Nelson Segel, Settlement Judge
Lionel Sawyer & Collins/Las Vegas
Attorney General/Las Vegas
Shook & Stone, Chtd.
Eighth District Court Clerk

SAITTA, J., dissenting:

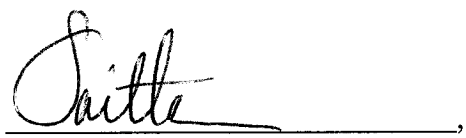
In my view, the EMRB committed legal error when it found that Glazier's complaint was timely filed. For the reasons set forth below, I would reverse the district court's denial of CNLV's petition for judicial review.

This court has never squarely addressed the issue of what "occurrence" triggers the six-month statute of limitations set forth in NRS 288.110(4): whether it is knowledge of the wrong act or whether it is the actual harm itself that triggers the statute of limitations. However, it has noted, in a footnote, that courts strictly construe the waiver doctrine. Cone v. Nevada Service Employees Union, 116 Nev. 473, 477 n.2, 998 P.2d 1178, 1181 n.2 (2000). In the same footnote, this court observed that the statute of limitations for an unfair labor claim is triggered when the aggrieved employee has reason to believe that an unfair labor practice has occurred. Id. The federal courts have analogously concluded the same. Lukovsky v. City and County of San Francisco, 535 F.3d 1044, 1050 (9th Cir. 2008) (holding that the plaintiff's awareness of the adverse employment action triggers the statue of limitations); Amini v. Oberlin College, 259 F.3d 493, 500 (6th Cir. 2001) (reasoning that "the proper focus for purposes of determining the commencement of the [statute of] limitations period is on the discriminatory act itself and when that act was communicated to the plaintiff"); Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1386 (3d Cir. 1994) (concluding that a claim accrues in a cause of action upon awareness of the actual injury, not upon awareness that the injury constitutes a legal wrong); see Thelen v. Marc's Big Boy Corp., 64 F.3d 264, 267 (7th Cir. 1995); Dring v. McDonnell Douglas Corp., 58 F.3d 1323, 1327-28 (8th Cir. 1995). In light of the

foregoing authority, I conclude that an awareness of the discriminatory action triggers the statute of limitations of NRS 288.110(4).

With that legal principle in mind, I turn to the evidence that was before the EMRB. In my view, there was overwhelming and unrefuted evidence, including Glazier's own admission, that by mid-June 2005, Glazier became aware that he would not be promoted. On June 23, 2005, the promotions of two officers were posted. On June 29, 2005, Glazier wrote to Chief Paresi about what he deemed as "Unethical Promotional Practices." At this time, he requested a meeting with Chief Paresi about not being promoted. On or about June 30, 2005, Glazier met with Chief Paresi about not being promoted to lieutenant, despite ranking number "1" on the promotions list. This timeline of events establishes, in my mind, that Glazier was aware of the occurrence that was the subject of his complaint more than six months before he filed his grievance with the EMRB in January 2006.

I would therefore reverse the district court order denying CNLV's petition for judicial review because the EMRB's decision was clearly erroneous in view of the probative, substantial evidence. In addition, while I observe that this court gives deference to an administrative agency's conclusions of law, we nevertheless decide purely legal issues de novo. Clements v. Airport Authority, 111 Nev. 717, 722, 896 P.2d 458, 461 (1995). Accordingly, I would also reverse based upon the fact that the EMRB committed legal error when it found that Glazier's complaint was timely filed pursuant to NRS 288.110(4).



_____, J.
Saitta