

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANNY PARTCH,  
Appellant,  
vs.  
CITY OF LAS VEGAS,  
Respondent.

No. 51815

**FILED**

JUL 20 2010

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

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in an employment action. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

Appellant Danny Partch challenges the district court's dismissal of his complaint, which sought to rescind an agreement regarding disciplinary proceedings initiated against him and/or to obtain declaratory relief that the agreement was unconscionable and void. On appeal, Partch contends that his claims are not subject to NRS Chapter 288 and that NRS Chapter 30 empowers the district court to provide him with the declaratory relief that he sought.

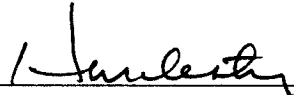
NRS 288.110(2) allows the Employee Management Relations Board (EMRB) to hear and determine any complaint arising out of the interpretation of, or performance under, the provisions of a collective bargaining agreement by any local government employer, local government employee, or employee organization. As this court has previously noted, although NRS 288.110(2) and NRS 288.280 provide the EMRB with discretionary authority to hear complaints, claimants have no discretion and must file complaints subject to the EMRB's authority with the EMRB in the first instance. Rosequist v. Int'l Ass'n of Firefighters,

118 Nev. 444, 450-51, 49 P.3d 651, 655 (2002), abrogated on other grounds by Allstate Ins. Co. v. Thorpe, 123 Nev. 565, 573 n.22, 170 P.3d 989, 995 n.22 (2007), also abrogated in part by City of Henderson v. Kilgore, 122 Nev. 331, 336 n.10, 131 P.3d 11, 15 n.10 (2006) (stating that the failure to exhaust administrative remedies does not divest the court of subject matter jurisdiction, but renders the matter unripe for judicial review). The administrative remedies provided under NRS Chapter 288 must first be exhausted before a petition for judicial review may be filed with the district court. Rosequist, 118 Nev. at 451, 49 P.3d at 655, as modified by Kilgore, 122 Nev. at 336 n.10, 13 P.3d at 15 n.10. In the case at issue here, Partch challenges the validity of an agreement that was negotiated on his behalf by the union and signed by him to resolve disciplinary actions against him that were subject to the provisions of a collective bargaining agreement. Such a claim falls under the authority of the EMRB and must therefore be brought before the EMRB in the first instance. Because Partch failed to timely file a complaint with the EMRB and exhaust his administrative remedies under NRS Chapter 288 before seeking judicial review, the district court properly dismissed his complaint. Id.; NRS 288.110(2).


Although Partch argues that the district court nevertheless had jurisdiction over his complaint for declaratory relief under NRS Chapter 30, we conclude that this argument lacks merit. Partch's complaint seeking declaratory relief to void the agreement cannot be used to circumvent NRS Chapter 288's administrative remedies, which Partch failed to timely invoke and exhaust. Baldonado v. Wynn Las Vegas, 124 Nev. 951, 965, 194 P.3d 96, 105 (2008) (disallowing declaratory relief to void an employment policy when there was a statutory administrative

remedy); Public Service Commission v. District Court, 107 Nev. 680, 685, 818 P.2d 396, 399 (1991) (acknowledging that a declaratory relief action is not a means to circumvent statutory avenues of judicial review). Accordingly, because we conclude that Partch's appellate contentions lack merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. David B. Barker, District Judge  
Eva Garcia-Mendoza, Settlement Judge  
Kirk T. Kennedy  
Las Vegas City Attorney  
Eighth District Court Clerk