

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY FRABBIELE,
Appellant,
vs.
CITY OF NORTH LAS VEGAS AND
NORTH LAS VEGAS POLICE
DEPARTMENT,
Respondents.

No. 57440

FILED

MAR 26 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying judicial review in an employment matter. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Appellant Timothy Frabbiele worked as a police officer for respondent North Las Vegas Police Department (NLVPD), an entity of respondent City of North Las Vegas, when he was informed by internal affairs that he was the subject of an investigation into his conduct. After internal affairs identified numerous possible violations, Frabbiele received a personnel order on September 10, 2007, stating that his employment was "non-confirmed" effective the following day, September 11, 2007. Frabbiele then filed a grievance over this decision, and on October 2, 2007, the North Las Vegas Police Officers Association (Association) informed Frabbiele that it would not process his grievance because he was on probationary status at the time his employment ended. On March 11, 2008, Frabbiele filed a complaint with the State Employee Management Relations Board (Board) against the NLVPD and the Association, alleging that these entities had engaged in practices prohibited by NRS 288.270. Frabbiele settled his claim against the Association, and the NLVPD



subsequently moved to dismiss the complaint for lack of jurisdiction, asserting that the complaint was filed after the six-month statute of limitations had expired. *See* NRS 288.110(4) (“The Board may not consider any complaint or appeal filed more than 6 months after the occurrence which is the subject of the complaint or appeal.”) The Board subsequently dismissed the complaint over Frabbiele’s opposition. In doing so, the Board found that the limitations period had commenced on September 10, 2007, when Frabbiele received written notice of his non-confirmation through the personnel order, and thus, that period had expired on March 10, 2008. Because he had filed his complaint on March 11, 2008, the Board concluded that the complaint was filed one-day late and was therefore time-barred. Frabbiele then sought rehearing of that decision, arguing that the September 10 personnel order did not provide him with unequivocal notice that an unfair labor practice had occurred and thus, could not trigger the limitations period, and that tolling should apply to extend the statute of limitations based on his allegations of discrimination. The Board denied rehearing, affirming its earlier finding that the personnel order provided sufficient notice of any alleged prohibited practice and concluding that tolling the statute of limitations period was not warranted. Frabbiele’s subsequent petition for judicial review was denied by the district court and this appeal followed.

On appeal, the parties’ briefs focused primarily on whether Frabbiele received proper notice so as to trigger the running of NRS 288.110(4)’s limitation period and whether this court should adopt the unequivocal notice standard used by federal courts for determining when such periods commence in unfair labor practices cases. Frabbiele also vaguely asserted that the statute of limitations should be tolled. After

briefing was completed in this matter, this court issued its decision in *City of North Las Vegas v. State Local Government Employee-Management Relations Board*, 127 Nev. ___, ___, 261 P.3d 1071, 1076 (2011), which adopted the federal unequivocal notice standard for determining the commencement of the limitations period in such cases, and delineated factors to consider when determining whether equitable tolling should apply. In light of our adoption of these federal standards in *City of North Las Vegas*, and because this matter appeared to be somewhat similar to so-called federal hybrid actions, which involve unfair labor practices claims against both employers and unions, see *DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 163-64 (1983) (noting that such matters involve both a complaint against the employer for breach of the collective bargaining agreement and the union for breach of its duty of fair representation), the parties were directed to file supplemental briefing addressing the applicability of *City of North Las Vegas* to this case, as well as certain federal authority concerning the commencement of the applicable limitations period in these hybrid actions.

In his supplemental brief, Frabbiele maintains that this court should adopt the federal approach to calculating the limitations period in hybrid cases and apply it to the instant dispute. In particular, the federal courts have held that, in such cases, the limitations period begins to run “from the date on which the employee knew or should have known of the union’s final action or the date on which the employee knew or should have known of the employer’s final action, whichever occurs later.” *Proudfoot v. Seafarer’s Int’l Union*, 779 F.2d 1558, 1559 (11th Cir. 1986) (emphasis added). Respondents, however, distinguish the instant matter from federal hybrid cases, arguing among other things that, in those cases,

the claims against the employer and union must be inextricably interrelated, which they contend is not the case here. In responding to this contention, Frabbiele concedes that the claims at issue here do not constitute “a hybrid case of the sort presented in [the federal cases],” but nevertheless asserts that this court should apply the approach to calculating the limitations period used by the federal courts in hybrid actions. But, even assuming this court was to adopt the hybrid framework, Frabbiele provides no authority to support its extension to claims that, by his own admission, fall outside the sphere of cases in which federal courts have applied this methodology to determine the applicable limitations period. Under these circumstances, we decline to reach Frabbiele’s argument for applying the hybrid-case approach to this action. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that this court need not consider arguments not cogently argued or supported by relevant authority).

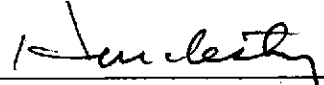
This does not end our analysis of the parties’ dispute, however. In *City of North Las Vegas*, this court adopted the federal unequivocal notice standard for determining when the limitations period commences in unfair labor practices cases, like the one presented here, and set forth factors for evaluating whether equitable tolling should be applied to the limitations period. 127 Nev. at ___, 261 P.3d at 1076-77. In particular, this court held that “the claimant’s diligence, knowledge of the relevant facts, reliance on misleading authoritative agency statements and/or misleading employer conduct, and any prejudice to the employer” should be considered in determining whether equitable tolling will apply. *Id.* at ___, 261 P.3d at 1077. In the proceedings below, which took place before our decision in *City of North Las Vegas*, the Board evaluated when

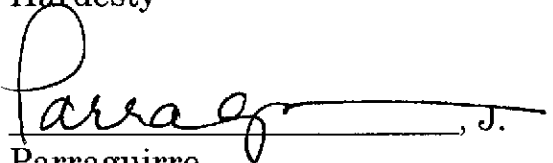
Frabbiele “knew or should have known” of the allegedly unfair labor practices underlying his complaint in determining when the limitations period began, rather than determining when he received unequivocal notice of these practices. And in denying Frabbiele’s petition for rehearing, the Board held that the events Frabbiele relied on to support his tolling arguments pre-dated the September 10, 2007, personnel order and therefore could not be the basis for tolling, and that the Association’s refusal to process his grievance also did not toll the statute of limitations. The Board, however, did not address the factors articulated in *City of North Las Vegas* when resolving the tolling issue. *See id.* at ___, 261 P.3d at 1077.

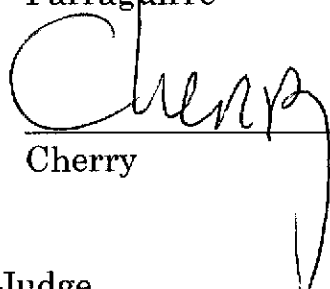
On appeal, the parties dispute when Frabbiele received unequivocal notice of the final adverse decision giving rise to his prohibited practices claim and whether tolling would apply to extend the statute of limitations. Because these determinations require factual findings as to when the limitations period commenced and expired, and are more appropriately evaluated in the first instance at the administrative level, *see State Bd. of Psychological Exam’rs v. Norman*, 100 Nev. 241, 244, 679 P.2d 1263, 1265 (1984) (explaining that the administrative agency’s factual findings enable the courts to evaluate the administrative decision without intruding on the agency’s fact-finding function), we reverse the district court’s order denying the petition for judicial review, with instructions that this matter be remanded to the Board for further proceedings. On remand, the Board shall evaluate and make factual findings as to when Frabbiele received unequivocal notice of the acts giving rise to his complaint and determine whether equitable

tolling is appropriate under the factors set forth in *City of North Las Vegas*, 127 Nev. at ___, 261 P.3d at 1076-77.

It is so ORDERED.¹


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Cherry

cc: Hon. Timothy C. Williams, District Judge
Kathleen M. Paustian, Settlement Judge
Law Office of Daniel Marks
Lionel Sawyer & Collins/Las Vegas
Eighth District Court Clerk

¹In light of our resolution of this matter, we need not consider the parties' remaining appellate contentions.