

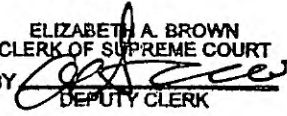
IN THE SUPREME COURT OF THE STATE OF NEVADA

VIDAL CONTRERAS, AN INDIVIDUAL,
Appellant,
vs.
LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, A LAW
ENFORCEMENT AGENCY,
Respondent.

No. 85349

FILED

AUG 17 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a motion to dismiss in a wrongful termination action. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.¹

Respondent Las Vegas Metropolitan Police Department (LVMPD) employed appellant Vidal Contreras as a police officer. Contreras was involved in a shooting and, after an investigation and a bifurcated hearing before two review boards, LVMPD terminated Contreras' employment. Contreras' grievance challenging the dismissal proceeded to arbitration where LVMPD prevailed. Contreras then filed this wrongful termination action, asserting claims for violation of NRS 289.060, breach of the collective bargaining agreement (CBA), breach of the implied covenant of good faith and fair dealing, and declaratory relief based on allegations that LVMPD failed to provide Contreras with proper notice of the alleged misconduct as required by NRS 289.060 and the CBA. On LVMPD's motion, the district court dismissed Contreras' complaint, finding that Contreras

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

failed to exhaust the contractual grievance remedies by not raising the notice issue in arbitration.

On appeal, Contreras argues that whether LVMPD provided proper notice under NRS 289.060 is separate from the grievance procedure in the CBA and thus, the notice issue did not need to be raised in arbitration to exhaust administrative remedies.

Having considered the parties' briefs and the record, we conclude that the district court properly dismissed Contreras' complaint. *Benson v. State Eng'r*, 131 Nev. 772, 776, 358 P.3d 221, 224 (2015 (reviewing de novo an order dismissing an action due to failure to exhaust administrative remedies). The CBA incorporates NRS Chapter 289 and defines "grievance" to include "[a] dispute regarding the application or interpretation of any and all provisions of the [CBA]." The CBA's process for resolving grievances for termination of employment is final, binding arbitration. An officer must exhaust grievance procedures under the CBA before seeking relief in district court, but Contreras did not raise in his grievance or in the subsequent arbitration inadequate notice under NRS 289.060 or the CBA. NRS 289.120 (allowing an officer aggrieved by an employer's action to seek relief in district court "after exhausting any applicable internal grievance procedures, grievance procedures negotiated pursuant to chapter 288 of NRS and other administrative remedies"); see *Ruiz v. City of North Las Vegas*, 127 Nev. 254, 263-64, 255 P.3d 216, 222-23 (2011) (observing that an officer has standing to challenge an arbitration decision based on information obtained in violation of NRS Chapter 289's notice provisions when the officer "exhausted the applicable internal grievance procedures required by NRS 289.120"). All of Contreras' claims are based on the allegation that the notice provided before the Use of Force

Review Board hearing did not include an adequate summary of the alleged misconduct, and the CBA does not exclude such a dispute from the scope of the grievance process.


Contreras argues that exhausting grievance remedies would have been futile. In particular, Contreras argues that the remedies afforded by the grievance process are inadequate given that he sought declaratory relief and money damages in his district court complaint and the arbitrator lacked authority to grant such relief. Arbitrators have authority under NRS 289.085 to address violations of NRS Chapter 289, however, including dismissing an administrative proceeding with prejudice when the law enforcement agency obtains evidence during an investigation in bad faith and in a manner that violates any provision of NRS 289.010 to 289.120.² Even in the absence of a bad faith finding, an arbitrator must exclude evidence obtained in a manner that violates NRS Chapter 289's provisions when the evidence concerns conduct that could result in punitive action and that may be prejudicial to the officer. NRS 289.085. Thus, we are not persuaded by Contreras' futility argument.


We also are not persuaded by Contreras' argument that he adequately raised the notice issue for purposes of administrative exhaustion because a union representative made a standing general objection to the sufficiency of notice at the Critical Incident Review Team interview that preceded the grievance and arbitration. Unlike the officer in *Ruiz*, Contreras did not preserve the notice issue by addressing it in the

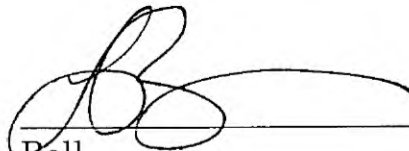
²Contreras alleged in his complaint that LVMPD breached the covenant of good faith and fair dealing "when it failed to abide by the terms of the CBA and provide adequate notice to Officer Contreras as required by NRS Chapter 289."

arbitration and he did not object to information obtained in violation of the statutory and contractual notice requirements. *Cf. Ruiz*, 127 Nev. at 257-58, 255 P.3d at 261 (concluding that the district court erred in dismissing an officer's complaint because the officer exhausted internal grievance procedures under NRS 289.120 by specifically raising a violation of notice requirements at both stages of the grievance process (in the grievance and arbitration), and rejecting the employer's reasoning that the officer did not grieve the notice "issues simply because [the employer] and arbitrator failed to give them ample consideration throughout the grievance process"). Thus, the district court did not err in finding that Contreras had to adjudicate the notice dispute through the CBA grievance process or by dismissing his complaint for failing to do so. We therefore

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Stiglich


_____, J.
Lee


_____, J.
Bell

cc: Hon. Ronald J. Israel, District Judge
Charles K. Hauser, Settlement Judge
Sgro & Roger
David J. Roger
Marquis Aurbach Chtd.
Eighth District Court Clerk