

IN THE COURT OF APPEALS FOR THE STATE OF NEVADA

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Tracie K. Lindeman
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REGINALD BINGHAM,

Appellant,

vs.

PUBLIC EMPLOYEES'
RETIREMENT SYSTEM OF
NEVADA,

Respondent.

No. 69927

Appeal from the Eighth Judicial
District Court, Clark County,
Case No. A714207

**RESPONDENT, PUBLIC EMPLOYEES RETIREMENT SYSTEM'S
ANSWERING BRIEF**

W. Chris Wicker (NV Bar No. 1037)
6100 Neil Road, Ste. 500
Reno, Nevada 89511
Telephone: (775) 688-3000
Attorney for Respondent

Chris Nielsen (NV Bar No. 8206)
693 W. Nye Lane
Carson City, Nevada 89703
Telephone: (775) 687-4200
Attorney for Respondent

NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Respondent's counsel is the general counsel for Respondent.

Respondent's co-counsel, Woodburn and Wedge, is a professional corporation organized under the laws of the State of Nevada.

Dated this 15th day of September, 2016.

PUBLIC EMPLOYEES' RETIREMENT
SYSTEM OF NEVADA

By: /s/ Chris Nielsen
Chris Nielsen, Esq.
Nevada Bar No. 8206

WOODBURN AND WEDGE
W. Chris Wicker, Esq.
Nevada Bar No. 1037

Attorneys for Respondent

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I. JURISDICTIONAL STATEMENT

The Supreme Court has jurisdiction pursuant to NRAP 3A(b)(1) and (8) as this is an appeal of a final order denying Appellant's, Ronald Bingham ("Bingham"), Petition for Writ of Mandamus. The Notice of Entry of Order was served and filed on February 5, 2015. Bingham filed his Notice of Appeal on March 4, 2016.

II. ROUTING STATEMENT

This matter appears that it is to be routed to the Court of Appeals pursuant to NRAP 17(b)(4) as the matter is related to an appeal from a quasi-administrative agency decision. It should be noted that Bingham filed his Opening Brief with the Court of Appeals pursuant to NRAP 17(b)(4).

III. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Whether the District Court abused its discretion or acted arbitrarily or capriciously when it denied the Petition for Writ of Mandamus that sought to reverse the Public Employees Retirement System of Nevada's Retirement Board's ("Board") discretionary decision to deny Bingham the right to apply for disability benefits after the time to do so had lapsed pursuant to NRS 286.620(1)(b).

IV. STATEMENT OF THE CASE

Bingham was an active member of the Respondent, Public Employees' Retirement System of Nevada ("PERS"), until he was terminated by his participating public employer on July 16, 2010. App. 9. On March 15, 2011, Bingham retired. In November 2012, Bingham inquired about disability retirement benefits. App. 9. PERS informed Bingham that he was not eligible to apply for disability benefits because he had been terminated from his employment and had not submitted an application for benefits prior to his termination. App. 9. Bingham requested that the Board review the matter, and on January 21, 2015, the Board denied Bingham's appeal to be considered eligible to apply for disability retirement benefits. App. 10-11.

On February 20, 2015, Bingham filed a Petition for Judicial Review with the District Court. App. 4. Bingham filed an Errata to his Petition for Judicial Review to include the Board's administrative decision on March 12, 2015 (App. 7), and then filed his Memorandum in Support of his Petition for Judicial Review on June 9, 2015. App. 69. Both Bingham and PERS stipulated to convert the proceedings to a Petition for Writ of Mandamus on July 24, 2015. App. 84-85. PERS then filed its Answer to the Petition for Writ of Mandamus on July 23, 2015. App. 75-83.

After a hearing on September 15, 2015, before Department XXIII in the Eighth Judicial District Court in Clark County, Judge Bixler, in Case No. A-15-714207-J, denied Bingham's Petition for Writ of Mandamus. App. 87-92. The final Order dismissing Bingham's Petition for Writ of Mandamus was filed on February 3, 2016. App. 98-99. The Notice of Entry of Order denying the Petition for Writ of Mandamus was filed and served on February 5, 2016. App. 93.

On March 4, 2016, Bingham filed his Notice of Appeal to this Court. App. 100-101.

V. STATEMENT OF THE FACTS

The fundamental facts of this matter are largely undisputed. Bingham was employed with the City of Las Vegas ("City") from June 18, 1993, until his termination on July 16, 2010. App. 9. In a letter, dated July 1, 2010, the City informed Bingham of his termination date and advised that if he wanted to pursue disability retirement through PERS he must do so prior to his termination date of July 16, 2010. App. 9, 63. Bingham alleges he did not receive the letter¹. App. 9. Around the same time period Bingham apparently was involved in an ongoing

¹ It should be noted that the Board's decision and the District Court's Order denying the Petition did not find that Bingham did not receive the July 1, 2010 letter from the City as referenced in Bingham's Opening Brief, pp. 3 and 7. As explained below, whether Bingham received or did not receive the letter is not relevant.

federal lawsuit under the ADA beginning in 2008, a case that he lost in March 2011. Bingham's Opening Brief, p. 3.

On March 15, 2011, Bingham applied for a reduced service retirement and has received a monthly benefit since that time. App. 9. In November of 2012, Bingham inquired about disability benefits with PERS and was informed by PERS that he was not eligible to apply for disability retirement benefits pursuant to NRS 286.620 because he had not submitted a disability application to PERS prior to his termination. App. 9, 55.

In a letter, dated July 22, 2014, Bingham's attorney requested a hearing and review by the Board regarding the matter. App. 10, 51. On August 27, 2014, the Attorney General's Office sent Bingham's attorney a letter on behalf of PERS explaining that the Board generally does not hear matters where there is a controlling statute. App. 10, 49-50. Despite its general policy not to hear matters that involve a controlling statute, the Board, in exercising its statutory discretion, nevertheless granted Bingham a hearing at the request of PERS Board Member Noriega. App. 10.

At the January 21, 2015 Board meeting, Bingham's appeal was heard by the Board. App. 10. There, Bingham argued that because he was not properly notified by the City of his ability to apply for disability retirement benefits, the Board should exercise its permissive equity powers to grant Bingham the right to

apply for disability retirement benefits. App. 10. After the hearing, the Board denied Bingham's appeal. App. 11. In doing so, the Board made the following findings:

First, PERS staff did not have the authority to consider a retiree or a terminated employee for disability retirement pursuant to Chapter 286 of the NRS (sometimes referred to herein as the "PERS Act"). App. 10. Second, in citing to NRS 286.190(3), it acknowledged that the Board "*may [a]djust...the allowance of benefits of....any retired employee after an error or inequity has been determined...*" (emphasis added). App. 10. It also cited NRS 286.190(4), which defines "error or inequity" to mean "the existence of extenuating circumstances, including, but not limited to, a member's reasonable and detrimental reliance on representations made by the System or the public employer pursuant to NRS 286.288 which prove to be erroneous..." App. 10.

In applying NRS 286.190, the Board found that Bingham did not rely on any erroneous information provided by PERS. App. 11. Moreover, Bingham did not timely apply for disability retirement pursuant to NRS 286.620, which requires that a member be "in the employ of a participating employer at the time of application for disability retirement." App. 11. Finally, it found that even if it was true that Bingham did not receive a letter from the City regarding his

applying for disability, which does not negate the statutory requirements provided by the PERS Act. App. 11.

In denying Bingham's Petition for Writ of Mandamus, the District Court did not substitute its judgment of the Board and denied the Petition for Writ of Mandamus. The District Court based its decision largely on the fact that Bingham waited over two years after he was terminated from the City to inquire as to his ability to receive those benefits that the Board made a permissive decision and had not acted arbitrarily or capriciously in its application of the PERS Act. App. 91-92.

VI. SUMMARY OF ARGUMENT

PERS is only authorized to pay those benefits expressly provided by the statutes contained in Chapter 286 of the Nevada Revised Statutes. PERS is governed by the Board. NRS 286.120. Under the PERS Act, a member may apply for disability retirement benefits under certain conditions, one condition being that a member must apply for the benefits while still employed by a participating public employer. NRS 286.620(1)(b). Bingham did not apply for benefits while still employed with the City. In fact, he merely inquired for those benefits (he did not even apply) more than two years after he was terminated by the City and one year after he began receiving his service retirement benefits.

Thus, Bingham is not eligible for disability retirement benefits under the PERS Act.

Recognizing that Bingham did not timely apply for disability retirement benefits, Bingham's argument relies heavily on the purported notion that he was not timely or properly notified by the City that he had to file his disability retirement application on or before his termination date in accordance with the PERS Act. On this basis, Bingham argues that the District Court erred in denying Bingham's Writ from an adverse yet completely discretionary decision by the Board in a quasi-administrative proceeding – a proceeding in which Bingham argued that the Board's equity powers compelled it to allow Bingham to apply for disability retirement benefits.

Bingham did not provide any legal authority that PERS was obligated to overlook the clear language NRS 286.620(1)(b) and find in his favor or that he relied on any misrepresentations made by PERS so as to warrant PERS exercising its discretionary authority pursuant to NRS 286.190(3) and (4). Moreover, the Board's decision and the District Court's Order denying the Petition for Writ of Mandamus did not find that Bingham did not receive the letter. Even if he did not receive the letter, however, it should have no bearing on this case as to any PERS liability as the Board reaffirmed the statutory time-sensitive law for disability benefit applicants. It also exercised its discretion to not invoke its equity

authority as Bingham cited no legal authority that PERS or even the City had a duty to inform Bingham of his disability retirement application deadline. In fact, there is no evidence suggesting that PERS even knew about Bingham's situation. The reality is that Bingham (and especially because he had an attorney at the time) simply neglected to timely apply for disability retirement – all while a federal case against the City involving Bingham's disability was ongoing.

Based on the forgoing and given that Board decisions are entitled to deference, the District Court did not abuse its discretion or act arbitrarily or capaciously when it denied Bingham's Petition for Writ of Mandamus. Simply put, this Court should not second guess the District Court's Order or the Board's decision. Based on the foregoing, this Court must find in favor of PERS.

VII. ARGUMENT

On appeal, the review of a denial of a petition for a writ of mandamus will not be overturned unless the court below manifestly abused its discretion or acted arbitrarily or capriciously. *Bldg. & Const. Trades Council of N. Nevada v. State ex rel. Pub. Works Bd.*, 108 Nev. 605, 609, 836 P.2d 633, 636 (1992).

A. The District Court's Denial of Bingham's Petition for Writ of Mandamus Should Be Affirmed Because it Did Not Abuse its Discretion When it Upheld the Board's Decision to Deny Bingham a Right to Apply for Disability Retirement.

1. *The Board's decision is entitled to deference.*

Although Bingham correctly cites the applicable standard this Court should apply to overturn the lower court's decision to deny a Petition for Writ of Mandamus, Bingham completely fails to mention that Board decisions are entitled to deference when reviewed by a court – especially in cases where an “equity” argument is raised.

The facts in this case regarding timing and the deference PERS should be afforded are eerily similar to *Nev. Public Emp. Ret. Bd. Board v. Smith*, 129 Nev. Adv. Rep. 65, 310 P.3d 560 (2013). In *Smith*, a PERS member appealed an adverse Board's decision when the member failed to retire (by only three days) prior to being elected to public office in accordance with NRS 286.541 and NRS 286.520(1)(a)(2). *Id.* at 563. Had he timely retired prior to being sworn into his elected office, Smith would have drawn his regular PERS retirement benefit while at the same time receiving compensation from another participating public employer. *Id.* at 562-63. The District Court overturned the Board's decision to not invoke its “equity” powers under NRS 286.190(3) and NRS 286.190(4). *Id.* at 562. The Nevada Supreme Court disagreed with the District Court and sided with the Board. In doing so, the Supreme Court set out the appropriate standard for the deference given to a decision of the Board:

Although not subject to the Administrative Procedure Act, “[t]he decisions of the PERS Board are re-viewable by the courts on the basis of the same standard of review applied to other administrative actions.” *State ex rel. Dep't of Transp. v.*

Pub. Emps.' Ret. Sys., 120 Nev. 19, 23, 83 P.3d 815, 817 (2004). The court may not "substitute its judgment of the evidence for that of the administrative agency." *Id.* (quoting *United Exposition Serv. Co. v. SIIS*, 109 Nev. 421, 423, 851 P.2d 423, 424 (1993)). "When the factual findings of the administrative agency are supported by [substantial] evidence, they are conclusive, and the district court is limited to a determination of whether the agency acted arbitrarily or capriciously." *Mishler v. Nev. Bd. of Med. Exam'rs*, 109 Nev. 287, 292, 849 P.2d 291, 294 (1993). "Substantial evidence is evidence which a reasonable mind might accept as adequate to support a conclusion." *Schepcoff v. State Indus. Ins. Sys.*, 109 Nev. 322, 325, 849 P.2d 271, 273 (1993).

On appeal, this court "reviews questions of statutory construction and the district court's legal conclusions de novo." *I. Cox Constr. Co. v. CH2 Invs., L.L.C.*, 129 Nev. , , 296 P.3d 1202, 1203 (2013). "However, an administrative agency charged with the duty of administering an act is impliedly clothed with the power to construe the relevant laws and set necessary precedent to administrative action, and the construction placed on a statute by the agency charged with the duty of administering it is entitled to deference." *Elliot v. Resnick*, 114 Nev. 25, 32 n.1, 952 P.2d 961, 966 n.1 (1998).

"[W]hen an agency's conclusions of law are closely related to its view of the facts, those conclusions are entitled to deference, and we will not disturb them if they are supported by substantial evidence." *Fathers & Sons & A Daughter Too v. Transp. Servs. Auth.*, 124 Nev. 254, 259, 182 P.3d 100, 104 (2008).

Id. at 564

In his appeal to the Board and in his Petition for a Writ of Mandamus, Bingham invokes NRS 286.190, which states in part that the Board "[m]ay [a]djust the service or correct the records, allowance or benefits of any member, retired employee or beneficiary after an error or inequity has been determined..."

NRS 286.190(3)(a) (emphasis added). “Error or inequity” is defined as “the existence of extenuating circumstances, including but not limited to, a member’s reasonable and detrimental reliance on representations made by the System or by the public employer pursuant to NRS 286.288 which prove to be erroneous...” NRS 286.190(4).

As in *Smith*, the Board in the instant case exercised its discretion and heard Bingham’s appeal, yet declined to provide equitable relief. In fact, the *Smith* Court specifically emphasized the permissive nature of Bingham’s administrative appeal and the deference PERS determinations must be afforded. *Smith*, 129 Nev. Adv. Rep. 65, 310 P.3d at 564, 566.

Based on the forgoing, this Court should not only apply the abuse of discretion and arbitrary capricious standard, but should also give deference to the Board’s decision. In other words, this Court should not substitute its judgment for the judgment of the Board.

2. *The Board acted properly in denying Bingham’s discretionary appeal because, as a matter of law, one cannot apply for disability benefits after one leaves the employ of a participating public employer.*

It should be noted from the onset that Bingham has not made the argument that he is statutorily eligible to apply for disability retirement benefits. As referenced in the Board’s decision, for a member to be eligible for disability retirement benefits, one condition that must be met is that the member “is in the

employee of a participating public employer at the time of application for disability retirement.” NRS 286.620(1)(b). Here, it is clear that Bingham’s employment with the City ended on July 16, 2010. App. 9. Bingham did not even inquire about disability retirement benefits until November 2012 – more than two years after his service with the City ended. Neither of those facts are disputed. App. 9. Therefore, based on the facts and on NRS 286.620, Bingham is not eligible to apply for disability retirement benefits.

It should be noted that Bingham is currently receiving regular retirement benefits that he is entitled to by statute. He began receiving those monthly retirement benefits when he applied for retirement in March of 2011.

Accordingly, PERS has complied with the PERS Act to determine what benefits Bingham is entitled to receive.

Bingham was involved in disability litigation as far back as 2008, and was presumably represented by counsel during the course of that litigation. Bingham and/or his legal counsel could or should have taken the initiative to perform their due diligence by investigating the requirements for PERS disability retirements benefits and applied for such benefits. Neither Bingham nor his legal counsel did so for more than two years after Bingham’s termination. Even when Bingham applied for and began receiving regular service retirement benefits in March

2011, there is no evidence that he inquired about disability retirement benefits at that time.

The *Smith* case turned in part on timing proscribed by statute as well. *Smith*, 310 P.3d at 564. The Supreme Court ruled in favor of PERS despite the fact the member in that case was only three days late. *Id.* at 564, 567. Here, in contrast, Bingham was more than two years late in even inquiring about disability retirement benefits. In addition, the *Smith* case makes it clear that PERS' equitable authority under NRS 286.190(3) to remedy errors or inequities is not necessarily designed to address timing or filing deadline deficiencies such as late filed applications. *Id.* at 566-67. Instead, the language of the statute demonstrates that its purpose is to adjust or correct the records. NRS 286.190(3). In the instant case, no one is suggesting or arguing that the records are incorrect or that they need to be corrected. Instead, this case involves a timing issue where a statute is directly on point, and Bingham and/or his counsel, failed to meet the statutory deadline or to even inquire about the desired retirement benefits for over two years.

Presumably, there is a sound rationale behind the requirement that a member must file for disability retirement benefits while still employed by a participating public employer. This timing rule presumably allows the medical advisors employed by PERS to evaluate the claim and decide whether a member

is truly eligible for disability retirement status under the PERS Act. *See* NRS 286.620 (requiring the public employer to file an official statement certifying the member's disability) and NRS 286.630 (authorizing the Board to employ medical advisors to examine the applicant's medical condition and then consider the medical report in determining whether the member will be approved by the Retirement Board for disability retirement).

In the instant case, Bingham is essentially asking this Court for the right to apply for disability retirement, which would require among other things, Bingham's former public employer to provide the medical records so PERS' medical advisors can evaluate Bingham's purported disability some six years after his employment ended with the City. This relief would presumably be in contravention of the presumed policy of timeliness and could result in abuses, or at the very least, inaccurate and certainly untimely medical opinions that could impact the PERS trust fund as whole.

Based on the foregoing, the Board and the District Court properly denied Bingham the right to apply for disability retirement status pursuant to NRS 286.620 - especially given the long lapse in time between his employment termination with the City and the present.

3. *The Board, in its discretion, and the District Court found that no error or inequity existed when it denied Bingham's appeal and those decisions were supported by substantial evidence that was not arbitrary or capricious.*

In his Opening Brief, Bingham argues that because the City purportedly sent its July 1, 2010 letter to the wrong address, this Court should grant him the right to file for disability retirement due to Bingham's unique extenuating circumstances. Bingham's Opening Brief, p. 8. Bingham argues that the Board ignored its discretionary equity powers. Bingham's Opening Brief, p. 8.

Notwithstanding the deference this Court should give to the Board (which the District Court recognized), and the Board's discretionary ability to assert its equitable powers, the District Court did not abuse its discretion or act arbitrarily or capriciously for several reasons.

First, both the Board's Decision and the District Court's order relied on the fact that Bingham waited over two years after his termination before contacting PERS about disability retirement benefits in contravention of NRS 286.380's requirement that disability retirement applications must be submitted prior to termination of employment. As noted above, this is a condition precedent to applying for disability retirement benefits.

Second, Bingham cannot point to any misrepresentation made by PERS or any duty owed by PERS to specifically notify Bingham in 2010 of the disability retirement rules contained in NRS 286.620. Indeed, there is no evidence that

PERS was aware of Bingham’s circumstances so that it could have notified him of the relevant application deadline. Accordingly, there was no detrimental reliance on PERS by Bingham to implicate the Board’s authority to correct errors pursuant to NRS 286.190.

Third, and perhaps most importantly, the provision of NRS 286.190(3), which allows PERS to correct errors or inequities, and which Bingham seeks to have this Court enforce to require PERS to pay disability benefits, is wholly subject to the Board’s discretion. As the *Smith* case explained, NRS 286.190(3) uses “the permissive ‘may’.” *Smith* at 566. That Court further explained, “[i]t is a well-settled principle of statutory construction that statutes using the word ‘may’ are generally directory and permissive in nature, while those that employ the term ‘shall’ are presumptively mandatory.” *Id.* (quoting *Nev. Comm’n on Ethics v. JMA/Lucchesi*, 110 Nev. 1, 9-10, 866 P.2d 297, 302 (1994)). Although PERS “may” alter any error or inequity, it is not required to do so. This is certainly the case when the alleged error or inequity is not the doing of PERS; it was simply the responsibility of Bingham and/or his attorney.

Similar to *Smith*, where a PERS member invoked the “equity” argument but the Supreme Court pointed out that the Board’s equitable powers are merely permissive, PERS is not required to exercise those powers in this case. Furthermore in *Smith*, none of the “extenuating circumstances” referenced in

NRS 286.190(4) implicates PERS so as to require an allowance of benefits.

Smith at 566. “Under NRS 286.190(4), error or inequity signifies *extenuating* circumstances, such as detrimental reliance or mental incapacity of the member.

Although its use of “including, but not limited to” makes NRS 286.190(4)’s list of extenuating circumstances nonexhaustive, it is significant that none of the examples involves employee fault or neglect.” *Id.* (emphasis original). Here, Bingham simply neglected to investigate, to contact PERS, or inquire with his counsel with respect to the rules and procedures required to obtain disability retirement. He did not even inquire about disability benefits until more than two years after he ceased to be an employee of the City and one year after he began receiving regular service based retirement benefits.

Bingham’s argument only relies on the purported notion that he did not receive the July 1, 2010 letter from the City. The Board’s decision and the District Court’s Order did not find that he did not receive the letter. In fact, it is presumed that he did receive it as there is not any evidence that suggests that the letter was not mailed or received in the regular course of the mail. NRS 47.250(1).

Based on the forgoing, the District Court had substantial evidence to deny Bingham’s Petition for Writ of Mandamus, and did not act arbitrarily or

capriciously when it affirmed the Board's decision to not invoke its equitable powers.

B. Alternatively, if any Liability Exists, Bingham Should Have Looked to his Former Public Employer for a Damages Award as it Was The One Who Allegedly Sent the Termination Letter With Disability Retirement Instructions – Not PERS.

As noted above, and contained in the record, Bingham does not allege that PERS had a duty to inform him of his application deadline, or that PERS made any misrepresentations regarding the disability retirement process. The sole basis for Bingham's argument that he should now be allowed to apply for disability retirement benefits rests on the purported fact that he never received the City's July 1, 2010 letter informing him of his termination date and of the statutes the govern disability retirements.

Assuming that Bingham did not receive the letter, he could have looked to the City for relief or sought some sort of damages award. PERS is not liable for the acts or alleged acts of the City, and is unable to provide benefits not permitted by statute. *See* NRS 286.288 (stating that PERS "is liable for any inaccurate or misleading information provided to any person...but is not responsible for inaccurate or misleading information provided by an officer or employee of a participating public employer...") (emphasis added).

While PERS is not suggesting that the City had a duty to provide Bingham with information regarding potential disability benefits, or that it could have been

potentially liable for allegedly mailing the July 1, 2010 letter to the wrong address, the only potential act giving rise to liability was that of the City, not PERS. Thus, Bingham could have looked to the City for relief in the form of a damages award. This rationale is consistent with the Supreme Court's most recent order in *PERS v. Harper*, No. 64987 Doc. 16-18428 (Nev. June 10, 2016) (unpublished decision).

XIII. CONCLUSION

This is a relatively straightforward case and perhaps a sympathetic one. PERS does not know if Bingham is genuinely disabled and certainly does not know if he would have qualified for disability retirement had he timely filed his application. That is not the issue in the case, however. NRS 286.620, as a matter of law, unambiguously precludes Bingham from applying for disability retirement benefits. Bingham's equity argument fails when one must consider the applicable standard of review, the permissive nature of NRS 286.190(3), and the deference that should be given to the Board's decision. Additionally, the decision of the Board is further bolstered by the fact that Bingham did not inquire about disability retirement until over two years after he severed his employment with the City.

Bingham presented no evidence as to why he waited so long other than an allegation that the letter sent from his former public employer, not from PERS,

did not go to the correct address. We do not know whether that is truly the case. However, even if true, it has no bearing on the discretionary nature of the Board's decision as it found that Bingham simply waited over two years past the statutory deadline to even inquire about disability benefits. Based on the Board's decision and the District Court's Order, and given that the Board permissively heard Bingham's appeal, yet denied him relief because of the foregoing, this Court must affirm the District Court's decision to deny Bingham's Petition for Writ of Mandamus because there was substantial evidence to support the denial of the writ. Simply put, because the Board and the District Court ruled in accordance with applicable statute and pursuant to the applicable standards of review, it cannot be said that the District Court abused its discretion or acted arbitrarily or capriciously. This appeal is consistent with other case law involving PERS and the Board's permissive equity authority.

Finally, if there was any liability at all (and PERS is not suggesting there is), it would be with the City, not PERS, as the letter that was purportedly not timely received by Bingham was sent by the City.

IX. ATTORNEY CERTIFICATE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been

prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, 14 point font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 5,600 words; or does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be

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subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 15th day of September, 2016.

PUBLIC EMPLOYEES' RETIREMENT
SYSTEM OF NEVADA

By: /s/ Chris Nielsen
Chris Nielsen, Esq.
Nevada Bar No. 8206

WOODBURN AND WEDGE
W. Chris Wicker, Esq.
Nevada Bar No. 1037

Attorneys for Respondents

CERTIFICATE OF SERVICE

I certify that I am an employee of Woodburn and Wedge, and I caused to be sent via electronic mail, through the Court's filing system, a true and correct copy of the foregoing **RESPONDENT PUBLIC EMPLOYEES RETIREMENT SYSTEM'S ANSWERING BRIEF** addressed as follows

Kirk Kennedy
815 South Casino Center Blvd.
Las Vegas, NV 89101

DATED this 15th day of September, 2016.

By: /s/ Kelly N. Weaver
Kelly N. Weaver