

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

Nevada Classified School Employees)	
Association, Chapter One, Clark)	
County,)	
)	
Complainant)	
)	
vs)	Case No. A1-045336
)	
Clark County School District,)	
)	
Respondent)	

DECISION

On Tuesday, October 7, 1980, the Local Government Employee-Management Relations Board held a hearing in the above matter; the hearing was properly noticed and posted pursuant to Nevada's Open Meeting Law.

This written Decision is prepared in conformity with NRS 233B.125 which requires that the final Decision contain Findings of Fact and Conclusions of Law separately stated.

Prior to hearing testimony on the Complaint itself, the Board entertained discussion on the Respondent's Motion to Dismiss. Following oral argument the Board reserved ruling on the motion and proceeded with complainant's case in chief.

In its complaint the Nevada Classified School Employees Association (hereafter Association) alleges that the failure of the Clark County School District (hereafter District) to arbitrate a promotional dispute involving Mr. Curtis Burkhalter, constitutes bad faith bargaining and an unfair labor practice.

The thrust of the Respondent's position is that the complainant, by failing to timely exhaust its remedies under

the contract, has waived its right to seek arbitration.

In order to have a clear understanding of the case before the Board certain background information is essential.

The action which gave rise to the instant complaint stems from an apparent failure to reclassify Mr. Burkhalter, a Building Maintenceman I, in July of 1977 at which time he was assigned responsibility for multiple schools within the District system. The sole distinguishing work characteristic between Building Maintenceman I and Building Maintenceman II is the added responsibility of two different sites or facilities. Despite being assigned to multiple facilities, Mr. Burkhalter never received the "promotion" or the additional monetary compensation commensurate with his increased workload. At least one other Maintenceman I, similarly situated, did.

Although initially promising, Mr. Burkhalter's subsequent discussions with both District supervisory and personnel representatives, as well as Association representatives, regarding the promotions and pay increase proved fruitless in resolving the problem.

In August of 1978, Mr. Burkhalter's supervisor, Carl Sullivan, submitted a written memorandum to the Assistant Director of Maintenance, Mr. Donald Martin, which stated that Mr. Burkhalter had been working the multi-school assignment for about two years and that the reclassification was justified and should receive immediate consideration. Following submission of that letter nothing apparently transpired.

Finally on June 4 of 1980, Mr. Burkhalter submitted a grievance regarding this matter to Carl Sullivan, the maintenance supervisor.

The grievance and its timeliness are the subjects of the dispute presently before the Board.

At the conclusion of the complainant's case in chief, the District renewed its Motion to Dismiss, claiming that the Association had failed as a matter of proof to establish an unfair labor practice. Testimony revealed that Mr. Burkhalter had knowledge of the situation since July of 1977 and that the Association had knowledge as early as August of 1978.

The District maintained that its refusal to proceed to arbitration was a good faith exercise of its rights under the contract and not a violation of NRS 288.030 or 288.270 as alleged in the complaint.

In the collective bargaining agreement currently in operation between the parties (the first and only contract between the District and this representative of the Association, effective July 12, 1979 - June 30, 1981) Section 4.1 states in relevant part:

A grievance is defined as any dispute which arises regarding an interpretation, application or alleged violation of any of the provisions of this agreement.

Section 4.4 states that all grievances shall be handled in the following manner:

Step One

- (a) A grievance, as defined above, must be filed in writing alleging which terms or provisions of this agreement under which the dispute arises, and must be filed not later than twenty one (21) school days after the affected employee or the Association first knew or should have known of the Act or condition upon which the grievance is based. A school day shall be defined as a day in which a covered employee is required to be present on the job.

It is undisputed that Mr. Burkhalter knew of the Act as early as July of 1977 and that the Association knew as early as August of 1978.

In addition to failing to allege the terms or provisions of the agreement supposedly violated by the District the formal grievance filed by Mr. Burkhalter on June 4, 1980, is, unquestionably, untimely.

The very narrow legal position and technicality urged by the District cannot, unfortunately, be swept aside or ignored. Simply stated, the Board finds that the grievance was not timely filed.

FINDINGS OF FACT

1. That the Complainant, Nevada Classified School Employees Association, Chapter One, Clark County, is a local government employee organization.
2. That Mr. Curtis Burkhalter is a local government employee.
3. That the Respondent, Clark County School District, is a local government employer.
4. That in July of 1977 Mr. Burkhalter, classified as a Maintenanceman I, was assigned responsibility for multiple schools within the District system.
5. That the only distinction between the classification of Maintenanceman I and II is the added responsibility of two different sites or facilities.
6. That Mr. Burkhalter never received the "promotion" or additional monetary compensation commensurate with his increased workload. That at least one other Maintenanceman I, similarly situated, did.
7. That Mr. Burkhalter's subsequent discussions with District and Association representatives produced no results in resolving the problem.
8. That in August of 1978 Mr. Burkhalter's supervisor submitted a written memorandum through District channels

indicating that the reclassification was justified and should receive immediate consideration.

9. That on June 4 of 1980, Mr. Burkhalter submitted a formal grievance regarding this matter to his supervisor.
10. That the District refused to proceed to arbitration.
11. That the District and the Association entered into a contract on July 12, 1979 effective through June 30, 1981.
12. That the present contract between the parties provides that a grievance must be filed in writing and must allege which terms or provisions of the agreement have been violated. The grievance must be filed within twenty one (21) school days after the affected employee or Association first knew, or should have known, of the act or condition upon which the grievance is based.
13. That Mr. Burkhalter had knowledge of the act as early as July, 1977 and that the Association had knowledge thereof as early as August, 1978.
14. That the grievance filed by Mr. Burkhalter on June 4, 1980, failed to allege which terms or provisions of the agreement were violated by the District and the grievance was not filed in a timely manner.

CONCLUSIONS OF LAW

1. That pursuant to the provisions of the Nevada Revised Statutes Chapter 288, the Local Government Employee-Management Relations Board possesses original jurisdiction over the parties and subject matter of this complaint.
2. That the complainant, Nevada Classified School Employees Association, Chapter One, Clark County, is a local government employee organization within the terms as defined in NRS 288.040.

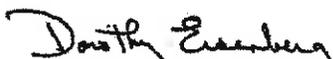
3. That Mr. Curtis Burkhalter is a local government employee within the term as defined in NRS 288.050.
4. That the Respondent, Clark County School District is a local government employer within the term as defined in NRS 288.060.
5. That the District's refusal to proceed to arbitration pursuant to an untimely filed grievance did not constitute bad faith bargaining. NRS 288.033.
6. That the District's refusal to proceed to arbitration pursuant to an untimely filed grievance did not constitute an unfair labor practice. NRS 288.270.

The requested relief is denied and the complaint dismissed.

Each party shall bear its own costs and attorney fees.

Dated this 21st day of November, 1980.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD



Dorothy Eisenberg, Board Chairman



Carole Vilaro, Board Vice Chairman



Earl L. Collins, Board Member

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