STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CLARK COUNTY PUBLIC EMPLOYEES ASSOCIATION, Complainant, v. THE COUNTY OF CLARK, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA, Respondent.	ITEM NO. 215 CASE NO. A1-045425 DECISION

For the Complainant: FRITZ REESE
RICK LOOP

For the Respondent: PAUL JOHNSON, ESQ.

For the EMRB: SALVATORE C. GUGINO, ESQ., Chairman
TAMARA BARENGO, Member
JEFFREY L. ESKIN, ESQ., Member

STATEMENT OF THE CASE

This matter came before the Local Government Employee-Management Relations Board ("Board") upon the filing of a Complaint by the Clark County Public Employees Association ("Association") alleging arbitrary, capricious, discriminatory and bad faith discipline by the County of Clark ("County") in violation of NRS 288.270(1)(f).

The case arises from the issuance of written reprimands to three County Juvenile Court Services employees who work at Child Haven: Louise Jordan, Gene Feher, and William Rokovitz. Jordan and Feher were reprimanded after a child assigned to their cottage ran away with his brother, who was assigned to another cottage. Their immediate supervisor, Rokovitz, was reprimanded

for not properly performing his supervisory function in regard to the incident. The Association contended that other employees charge of these children at the time of the incident were not reprimanded, and the policies and procedures which were supposedly violated were unclear and not commonly practiced or enforced. The County contended that the discipline, properly given for misconduct on the part of these employees, was not discriminatory or based on personal animus and was, therefore, not a prohibited practice under NRS 288.270(1).

The Board conducted a hearing in Las Vegas on May 4, 1988. The Association presented evidence and argument in support of its Complaint. The County presented evidence and argument in opposition to the Complaint and in support of its actions.

During the hearing, the Association moved to withdraw tha portion of the Complaint concerning the County's refusal to negotiate the discipline of the above-named employees with the Association. The motion was granted, and issues 4 and 5 of the Hearing Notice were withdrawn from decision by the Board.

The County moved that the Complaint be dismissed as a frivolous claim and not a proper matter to come before the Board. The Board took the motion under submission to be determined at a later date. The County also moved to strike the prehearing statement of the Association on the basis that it raised new issues not in the pleadings and was untimely. This motion was also taken under advisement by the Board.

At the conclusion of the hearing, the parties agreed to an expedited decision without post-hearing briefs, and the matter was submitted to the Board for decision.

DISCUSSION

As a threshhold matter, the Board rejects the County's argument that the Complaint should be dismissed as a frivolous claim and is not a proper matter to come before the Board. NRS 288.270 sets forth the definition of an unfair labor practice, as follows:

> 1. It is a prohibited practice for a local government employer or its designated representative willfully to:
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> ....
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> (f) Discriminate because of race, color, religion, sex, age, physical or visual handicap, national origin or because of political or personal reasons or affiliations. (Emphasis added.)

Further, NRS 288.280 states that "any controversy concerning prohibited practices may be submitted to the board ...." Therefore, the County's motion in this regard is denied. The Board also denies the County's Motion to Strike the Pre-hearing Statement of the Association.

In McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973) the United States Supreme Court established a tripartite analysis for disparate treatment claims: The plaintiff must prove a prima facie case; the defendant must offer a legitimate, nondiscriminatory reason for its actions; and the plaintiff must establish that the defendant's proffered explanation is a pretext to mask an illegal motive. 411 U.S. at 802-04. See also, Reno Police Protective Assn. v. City of Reno, 102 Nev. 98, 715 P.2d 1321 (1986); NLRB v. Transportation Management Corp., 462 U.S. 393 (1983); NLRB v. United Sanitation Service, 737 F.2d 936 (11th cir. 1984).

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I. <u>The complainant has established sufficient prima facie evidence in support of discrimination based upon personal reasons</u>.

The Board believes that the Association has made a prima facie showing sufficient to support the inference that personal animus was the motivating factor in the disciplinary action against the aggrieved employees. This long-held and continuing personal animus was directed towards Gene Feher, primarily by Nancy Williams, his division supervisor at Child Haven.

As revealed during the hearing, the other employees named in the Complaint were, in large part, reprimanded because of their proximity in job assignment to Mr. Feher. Louise Jordan, who worked with Mr. Feher in Rhyolite Cottage, received a reprimand because she was simply "in the wrong place at the wrong time." Tr. 100, 143-145. Bill Rokovitz received a reprimand because, Mr. Feher's immediate supervisor, he did not support the disciplinary measure taken against Mr. Feher or Ms. Jordan. Tr. 80, 181-183; Tr. Union Ex. G.

The personal animus toward Mr. Feher stemmed in large part from an investigation by the Metropolitan Police Department of certain practices at Child Haven. Mr. Feher felt that he was accused of being a disloyal employee, because he "cooperated" with the police in the investigation; Ms. Williams believed that Mr. Feher unfairly maligned her in the investigation. As she states in her memo to Robert Raney on April 14, 1986, "I am particularly injured and grieved by Gene Feher's...allegation...a charge that particularly strikes at the very ground of my career, my freedom and my livelihood; not to speak of my good name and good reputation in the Las Vegas community." Although the facts

surrounding the Metro investigation were not fully explored, it is clear that the following actions occurring since that time, taken in their totality, indicate that every opportunity was taken to harass, vex, and annoy Mr. Feher:

1. In her above-mentioned memo to Robert Raney following the Metro investigation, Ms. Williams wrote, "...the only remedy that will make me whole will be for you to terminate Gene Feher as a Deputy Probation Officer who is incompetent, dishonest, law breaking, and unworthy o[f] being a Probation Officer." This statement is the primary and most damaging evidence that Ms. Williams had the motive and intent to cause Mr. Feher to leave his employment.

2. On several occasions, Mr. Feher was denied administrative leave to attend professional conferences, particularly one where he was co-hosting the event. At these same conferences, other employees at Child Haven were permitted administrative leave.

3. Since 1986, Mr. Feher has not been allowed to distribute T-shirts, which he arranged to be donated to Child Haven as Christmas gifts for the children.

4. During March of 1986, Mr. Feher was reassigned to the graveyard shift in violation of department policy and past practice at Child Haven and was only removed from the shift as the result of filing a grievance on the matter.

5. In 1986, Mr. Feher received an evaluation with all 2's and 3's (out of a top score of 5) without prior indication or documentation that his work was unsatisfactory. For three years prior to 1986, he had received excellent evaluations. Upon his

challenge of the evaluation, it was rewritten to indicate satisfactory performance.

6. Ms. Williams placed a comment in Mr. Feher's 1987 evaluation concerning the reprimand that is the subject of this complaint, the result of which would be to permanently place a record of the reprimand into his file, which could possibly affect his future employment. The comment was removed through the grievance procedure.

It should be noted that Mr. Feher had his part in fomenting distrust and dislike throughout the long-standing feud. He, too, missed no opportunity to annoy Ms. Williams by discussing his problems and his alleged mistreatment by Ms. Williams and other administrators with his fellow workers, as well as others in the community.

II. <u>The Board rejects the arguments made in rebuttal by the employer</u>.

The County advanced the following reasons for the disciplinary actions taken; specifically:

1. Gene Feher was derelict in his duties, violated supervision policies, and showed poor practical judgment in his supervision of the child, age 6, who had been entrusted to his care;

2. Louise Jordan was assigned to the same cottage as Mr. Feher and, therefore, she, too, was responsible for the escape of the child that had been assigned to her care and custody; and

3. William Rokovitz was negligent in his supervisory role, because he did not hold his own staff accountable in this incident.

For the reasons stated supra and infra, said arguments are rejected by the Board.

III. Respondent's attempt to establish a legitimate explanation for its disciplinary actions is pretextual in nature.

An examination of the evidence reveals substantial evidence that the County's stated reason for the disciplinary actions was pretextual.

First, the facts do not reveal either Feher or Jordan to be negligent in this matter. At the time of the incident, they had never met or seen the child, who had been admitted to Child Haven at 11 AM that day and assigned to their cottage. The two staff members arrived at 2 PM, while he was in school. Also, the children were not under the supervision or in the locale of Feher or Jordan when the incident occurred. The children were in the process of lining up to leave their physical education class in the Activity Center, under the direct supervision of the Director of Physical Education, when the two boys escaped a few minutes before 3 PM.

Second, other employees involved in the same situation were not reprimanded. Leon Ireland, the Director of Physical Education, was at least equally culpable for allowing the children to escape; nevertheless, Mr. Ireland was not reprimanded. Further, the two boys who escaped were housed in separate cottages; but only the staff at Rhyolite Cottage were reprimanded. In fact, the individuals in the other cottage were not even consulted concerning the incident prior to the issuance of the reprimands.

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Third, the record indicates that there was little, if any, investigation of the circumstances surrounding the incident before the reprimands were issued, thus substantiating the Association's charge that the disciplinary action was arbitrary, capricious, and based on personal animus, rather than misconduct revealed through legitimate investigation.

Fourth, the record indicates that the policies allegedly violated concerning sight supervision were unclear, not well communicated, and not practiced. In his notarized, written statement, the Director of Physical Education, Leon Ireland, said, "Until this incident happened, there never had been any staff meeting the kids after any P.E. class." Tr. Union Ex. H.

It should also be noted that, as the immediate supervisor, Rokovitz did not hold Mr. Feher and Ms. Jordan accountable fo negligence, because he knew the facts discussed above. It was apparent that Mr. Rokovitz's main failing, in the eyes of his supervisor, was his lack of unquestioning support for Nancy Williams's desire to reprimand Mr. Feher regardless of the facts. This failure, rather than the lack of suitable supervision, was more likely the cause of his receiving a reprimand.

Thus, the testimony of the County's witnesses--Nancy Williams, Vern Bushgens, and Brian Albiser--concerning the County's proferred "legitimate" explanation for the issuance of the reprimands to the specific employees affected, and to no others, lacked credence and was not believed by the Board. The Board finds that the County's explanation is pretextual, and that the evidence conclusively restores the inference of unlawful motivation, particularly on the part of Nancy Williams.

Therefore, the Board concludes that Association members Feher, Jordan, and Rokovitz were subjected to arbitrary, capricious, discriminatory and bad faith discipline by their supervisors, Nancy Williams and Brian Albiser. Since it is a prohibited practice for a local government employer willfully to discriminate because of personal reasons pursuant to NRS 288.270(1)(f), the written reprimands issued to Feher, Jordan, and Rokovitz constitute a prohibited practice within the meaning of NRS 288.270(1)(f).

Because of the continuing animosity and unlawful behavior on the part of Nancy Williams towards Gene Feher, it is the recommendation of the Board that Mr. Feher be allowed to transfer to a position at a similar level within Juvenile Court Services that is not under the direct or indirect supervision of Ms. Williams.

FINDINGS OF FACT

1. The Complainant, Clark County Public Employees Association, is a local government employee organization engaged in the representation of local government employees of Clark County in Juvenile Court Services, including employees Gene Feher, Louise Jordan, and William Rokovitz.

2. That the Respondent, County of Clark, is a political subdivision of the State of Nevada, being one of its 16 counties, and is a local government employer.

3. That in April and May of 1987, Gene Feher, Louise Jordan, and William Rokovitz were issued written reprimands after a child who had been assigned to their cottage at Child Haven on . . . .

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or about April 28, 1987, ran off the grounds, along with his brother, assigned to another cottage, that same day.

4. That, at the time of the incident, Feher and Jordan had never met or seen the child, who had been admitted at 11 AM that day and assigned to their cottage. The two staff members arrived at 2 PM while he was in school.

5. That the children who escaped were not under the supervision nor in the locale of the reprimanded employees at the time of the incident. The children were in the process of lining up to leave their physical education class in the Activity Center, under the direct supervision of the Director of Physical Education, when the two boys involved escaped a few minutes before 3 PM.

6. That Leon Ireland, the Director of Physical Education was at least equally culpable for allowing the children to escape; nevertheless, Mr. Ireland was not reprimanded.

7. That there were two boys who escaped, but only the staff at Rhyolite Cottage were reprimanded. In fact, the individuals in the other cottage were not consulted concerning the incident prior to the issuance of the reprimands.

8. That there was little, if any, investigation of the circumstances surrounding the incident before the reprimands were issued.

9. That the testimony of Nancy Williams, Vern Bushgens, and Brian Albiser, concerning the County's proferred legitimate explanation for the issuance of the reprimands to the specific employees affected, and to no others, lacked credence and was not believed by the Board.

CONCLUSIONS OF LAW

1. The Local Government Employee-Management Relations Board possesses original jurisdiction over the parties and subject matter of this Complaint, as amended, pursuant to the provisions of NRS 288.

2. That the Complainant, Clark County Public Employees Association, is a recognized employee organization within the terms defined by NRS 288.040.

3. That the Respondent, County of Clark, is a local government employer within the terms defined by NRS 288.060.

4. That the Association made a prima facie showing supporting their contention that the written reprimands in question resulted from personal animus and vendettas, particularly on the part of Nancy Williams.

5. That the County's proffered legitimate explanation for the issuance of the reprimands to the specific employees affected, and to no others, was shown to be a pretext to mask an illegal motive; i.e., discrimination based on personal animus.

6. That the Association members Feher, Jordan, and Rokovitz were subjected to arbitrary, capricious, discriminatory and bad faith discipline by their supervisors, Nancy Williams and Brian Albiser.

7. That it is a prohibited practice for a local government employer willfully to discriminate because of personal reasons pursuant to NRS 288.270(1)(f).

8. That the written reprimands issued to Feher, Jordan, and Rokovitz in April and May of 1987 constituted a prohibited practice within the meaning of NRS 288.270(1)(f).

DECISION AND ORDER

Upon decision rendered by the Board at its meeting on July 20, 1988, it is hereby

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ORDERED, ADJUDGED AND DECREED, as follows:

1. That the Association's Complaint, as amended, be, and the same hereby is, upheld.

2. That the reprimands and any reference thereto shall be immediately removed from the personnel records of Feher, Jordan, and Rokovitz.

3. That the County shall publicly post a copy of this decision on the employees' bulletin board at Child Haven for a period of thirty (30) days.

4. That each party shall bear its own costs and attorney's fees in this matter.

DATED this 25th day of August, 1988.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By _____
SALVATORE C. GUGINO, Chairman

By _____
TAMARA BARENGO, Member

By _____
JEFFREY L. ESKIN, Member

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