BEFORE THE LOCAL GOVERNMENT

EMPLOYEE-MANAGEMENT RELATIONS BOARD

STOREY COUNTY EDUCATION ASSOCIATION, Complainant, v. STOREY COUNTY SCHOOL DISTRICT and the STOREY COUNTY SCHOOL DISTRICT BOARD OF SCHOOL TRUSTEES, Respondents.	ITEM NO. 217 CASE NO. A1-045422 DECISION

STATEMENT OF THE CASE

This matter came before the Local Government Employee-Management Relations Board (hereinafter referred to as the Board) upon the filing of a Complaint by the Storey County Education Association (hereinafter referred to as the Association) alleging unfair labor practices by the Storey County School District and the Storey County School District Board of School Trustees (hereinafter collectively referred to as the District). This case was heard in an all-day hearing conducted on May 24, 1988. During the hearing, the Board had the opportunity to view the witnesses testifying on behalf of the Association and the witnesses testifying on behalf of the School District and to weigh the credibility of each of the witnesses. In addition, the Board was presented with numerous documentary exhibits.

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The underlying facts which led to the filing of this action be[illegible] with the 1987-88 contract negotiations between the Association and the District. Pursuant to the ground rules of the parties, the Association first presented its proposals. Following a time for scrutiny and review of the proposals, the District, on May 11, 1987, was to present its counter proposals.

The Association alleges that at the May 11, 1987, negotiation session, Joanne McLachlan, the chief spokesperson for the District Bargaining Team, made a preliminary statement prior to presenting the formal District counter proposals. The Association asserts that the thrust of the statements made by Mrs. McLachlan were that if the Association would agree to a few minor language changes in the existing contract, the District would not undertake any reduction in force and would guarantee salaries, even if the legislature cut funding. While admitting giving a "preliminary statement" prior to submission of the formal counter proposals, the District contends that the preliminary statement was limited to merely stating that if the District would accept a few minor language changes to the contract, the District would guarantee that there would be no salary cuts even if the legislature reduced funding for education.

The District rejected the Association's preliminary offer at the May 11, 1987, bargaining session. The District then presented its formal bargaining proposals and the bargaining process continued. Subsequently, on June 8, 1987, the Association alleges that the District again reiterated its offer to assure that there would be no reduction in force if the Association would accept some min[illegible] contract language changes in the existing contract in satisfaction of the bargaining process. Again, the District denies having ever

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threatened or suggested a reduction in force and contends that any statements it may have made were limited to statements concerning guaranteeing no cuts in salaries in exchange for the Association agreeing to a few minor language changes in the existing contract.

On June 24, 1987, a negotiation session was held shortly before a scheduled Board meeting. The Association alleges that the District again reiterated its offer of no reduction in force in exchange for the Association agreeing to a few simple language changes in the existing contract. The District again denies making any such statement. The Association again rejected the Districts proposition. Thereafter, in the regularly scheduled Board meeting, the District undertook the action of reducing in force by decreasing a social studies position held by a member of the Association.[1] The District contends the RIF had nothing to do with negotiations.

In the late summer, early fall of 1987, the contract negotiations over the 1987-88 collective bargaining agreement were concluded. The school year began. However, the teacher who was RIF'ed as a result of the June 24, 1987, was not employed in a teaching position by the District during the 1987-88 school year.

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[1] The parties have informed the Board that the issue of whether the notice posted for the June 24, 1987, Board Meeting agenda complied with the requirements of the Nevada Open Meeting Law is presently being litigated and is in fact on appeal in the Nevada Supreme Court. No evidence on the sufficiency of the notice was presented by either side. This Board does not consider the issue of sufficiency of notice under the Nevada Open Meeting Law as being properly within its jurisdiction. Accordingly, no findings of either law or fact are entered on this issue.

The Association alleges that shortly after the conclusion of negotiations, the District, primarily through its Superintendent, Dr. Ramirez, undertook a series of actions which impacted negatively both financially and professionally on members of the Association Bargaining Team. Specifically, the Association alleges that the Association chief spokesperson, Rebecca Balderson, was not re-employed in a previously held extra duty contract of Special Services Coordinator; that as a result of not being re-employed as a Special Services Coordinator, Mrs. Balderson suffered a loss of income of Two Thousand Dollars ($2,000.00) for the 1987-88 school year; and that Mrs. Balderson was subjected to various forms of harassment by her Principal, Mrs. Kathy Peltier, including, but not limited to negative and unjustified comments being made on Mrs. Balderson's formal teacher evaluation. The District acknowledges that Mrs. Balderson did not receive the Special Services Coordinator contract. However, the District alleges that there was just cause for Mrs. Balderson not receiving the contract. The District argues that there was no harassment of Mrs. Balderson by Mrs. Peltier.

In addition to the actions taken against Mrs. Balderson, the Association alleges that Ms. Christy Strange, another member of the bargaining team, was reduced six extra duty days, thereby causing Ms. Strange to suffer a loss equal to the per diam amount of her annual salary per lost extra duty day. The Association further alleges that Ms. Strange was subjected to further intimidation and wrongful treatment by Dr. Ramirez in the form of insults to her professional competence and removal of a previously existing designation as a "county wide" employee on a state department listing. The District acknowledges that Ms. Strange was reduced six

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extra duty days but attempts to explain the reduction by pointing to additional days gained by Ms. Strange and other teachers, as the result of new contract negotiations. The District denies taking any action to question Ms. Strange's professional competence or with regard to removing the "county wide" designation.[2]

The Association filed certain grievances during late September and October of 1987. The Association alleges that the District, again through its Superintendent, Dr. Ramirez, attempted to coerce and intimidate Association officers into stopping the filing of grievances. Specifically, the Association alleges that the Association Grievance Chairperson, Ms. Bonnie Brown (not to be confused with Ms. Elaine Brown) was approached on two different occasions by Dr. Ramirez and advised that, in effect, that if the "vocal" group of teachers "on negotiations" did not stop filing grievances, it would create problems for all teachers in the District. The Association alleges that Dr. Ramirez indicated that he would be ordered by the Board to begin running the District in a very strict manner and this would result in "privileges" being lost. These privileges assertedly included items which would directly impact on Ms. Bonnie Brown. In addition, the Association alleges that Dr. Ramirez approached Mr. Larry Echevarria, the Association President, and warned Mr. Echevarria that he should advise the Association leadership to stop filing grievances and that failure to

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[2] The Amended Complaint which was tried to the Board, also contained allegations of harassment and intimidation against Association bargaining team member, Ms. Elaine Brown. However, due to Ms. Brown's death in an automobile accident only weeks before the hearing, the Association withdrew the allegations concerning Ms. Elaine Brown from consideration.

stop the filing of grievances would result in the District becom[illegible]y very strict. The District denies any attempt to intimidate either Ms. Brown or Mr. Echevarria. While the District acknowledges all three conversations, the District's version of the conversations is different. Specifically, the District alleges that Dr. Ramirez was only giving Ms. Brown "friendly advice" concerning working things out through discussion rather than through the grievance process and that the advice given to Mr. Echevarria was of a similar nature.

DISCUSSION

During the hearing, the Board was presented with testimony from witnesses for the Association and witnesses for the District. The testimony between Association witnesses and District witnesses was often directly contradictory. Accordingly, the Board was faced with the difficult decision, which faces all triers of fact, of weighing the creditability of the witnesses as well as assimilating the considerable amount of testimony presented. The Board has given thorough consideration to the actual testimony given and the demeanor of the witnesses. While no Nevada cases have directly addressed the issues now before the Board, it is well-settled in the federal system that even an implied threat of economic reprisal which is intended to discourage union activity is a prohibited activity for an employer to engage in. N.L.R.B. v. Brookwood Furniture, Div. of U.S. Ind., 701 P.2d 452 (5th Cir. 1983). Further, "[A] discharge is illegal if motivated in any part by anti-union animus." O.C. & Atomic Workers Int. Union, AFL-CIO v. N.L.R.B., 547 P.2d 575, 590 (D.C. Cir. 1976).

The Board has further considered contradictions which we[illegible] apparent at the time of hearing and which were reflected in mannerisms and physical and verbal reactions of the witnesses. The

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Board's conclusions are based on all these factors as well as upon the cumulative weight of the evidence. Based upon these factors, the Board makes the following findings a fact:

1. On May 11, 1987, Mrs. Joanne McLachlan did, in making her presentation to the Association bargaining team, state words to the effect that if the Association bargaining team would agree to a few minor language changes in the existing contract, that the Association would guarantee that there would be no reduction in force and that existing salary levels would be maintained, even if the legislature cut funding for education.
2. That the Association bargaining team understood Mrs. McLachlan's statements on May 11, 1987, as an attempt to intimidate the Association into accepting the District's proposal and foregoing negotiations for the 1987-88 school year.
3. That the District in fact intended, through the statements of Mrs. McLachlan, to attempt to intimidate the Association into accepting the District's proposal and foregoing negotiations for the 1987-88 school year.
4. That the substance of the May 11, 1987, "offer" to avoid a reduction in force and secure existing contract salary levels through accepting the District's proposal of minimal language changes in the existing contract and foregoing negotiations for the 1987-88 school year was repeated on June 8, 1987, and on June 24, 1987.
5. That the District on June 24, 1987, reduced in force a member of the bargaining unit as an attempt to intimidate

and coerce the Association into accepting the District proposal of minimal contract language changes for the 1987-88 contract year.

6. That the actions taken by the District in attempting to coerce the Association into foregoing negotiations for the 1987-88 contract year were taken in an attempt to coerce the Association into refraining from future negotiations and to return to a meet and confer basis of contract negotiation.

7. That in the fall of 1987, Mrs. Rebecca Balderson, the chief spokesperson for the Association bargaining team was, without any advance warning or explanation, not re-employed as Special Services Coordinator for the District. The loss of this position resulted in a loss of Two Thousand Dollars ($2,000.00) in annual salary to Mrs. Balderson.

8. That during the 1987-88 school year, Mrs. Balderson was subjected to harassment by Mrs. Kathy Peltier with such harassment being specifically reflected on her 1987-88 evaluation in the form of comments about "personal business" time.

9. That the actions taken against Mrs. Balderson appear, in the context of the entire factual background of this matter, to have been taken against Mrs. Balderson in retaliation for her service on the Association bargaining team.

10. That in the fall of 1987, the District, without justification reduced the extra contract days of Ms. Chris Strange by six days, thereby causing Ms. Strange a loss of income for the 1987-88 school year, equal to the perdiem

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amount, based upon her average daily salary, of the lost six extra contract days. The treatment of Ms. Strange was different than the treatment accorded the only other faculty member, who had the same number of extra contract days as Ms. Strange and who was not active in the Association nor a member of the Association bargaining team.

11. The District also took negative action against Ms. Strange in the form of a comment made by Dr. Ramirez that he considered Ms. Strange the worst librarian with whom he had ever worked and by the removal of Ms. Strange from the "county wide" designation on a list compiled by the State Department of Education. This removal caused Ms. Strange professional embarrassment and demeaned her position.

12. In light of all of the surrounding circumstances and facts of this situation, it appears that the action taken against Ms. Strange was taken for the purpose of intimidation and harassment of Ms. Strange for serving as a member of the Association bargaining team.

13. That on October 5, 1987, Dr. Ramirez initiated a conversation with Mr. Larry Echevarria, the Association President. During this conversation, Dr. Ramirez informed Mr. Echevarria that if more grievances were filed by the Association, he would be forced to "go by the book". Dr. Ramirez gave an example that being forced to "go by the book" would result in teachers loosing privileges which they presently enjoyed under the existing relationship between the Association and the District.

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14. The October 5, 1987, statements made by Dr. Ramirez were intended as a warning that Mr. Echevarria was to pass along to the membership of the Association in order to coerce the Association into ceasing to exercise grievance rights under the collectively bargained agreement.

15. That on October 9, 1987, Dr. Ramirez approached Ms. Bonnie Brown while she was assisting a special education student in boarding a bus. At this point, Dr. Ramirez gave Ms. Brown "some friendly advice about the grievances" that had been filed. Specifically, Dr. Ramirez referred to the grievances as having been filed by the "vocal teachers" who had been on negotiations and explained to Ms. Brown that by presenting grievances, such teachers were going to cause trouble for all teachers. Dr. Ramirez stated to Ms. Brown that the Board would most likely direct him to "run the school by the contract" and as an example, Dr. Ramirez explained how "running the school by the contract" would have a negative impact directly on Ms. Brown. At the time of this conversation, Ms. Brown was the Grievance Chairperson for the Association.

16. The October 9, 1987, statements made by Dr. Ramirez were intended to put pressure on the teachers to not file any more grievances and were intended to make Ms. Brown understand, as Grievance Chairperson, that if she continued to allow grievances to be filed, that she personally would suffer the consequences.

17. That on October 23, 1987, Dr. Ramirez again approached Ms. Bonnie Brown concerning the filing of grievances. At this

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point in time, Dr. Ramirez stated, "if you keep putting grievances in front of us, the trouble makers are going to cause trouble for all the teachers and the School Board is going to make me make it hard around here". Dr. Ramirez conveyed this threat in a manner which indicated to Ms. Brown that she personally would also suffer consequences.

18. The October 23, 1987, statements made by Dr. Ramirez were made with the intent of intimidating and coercing the Association leadership into refraining from filing grievances and exercising the Association' grievance rights under the collectively bargained for agreement.

19. That, taken collectively, the actions of the District constitute an overall pattern of intended coercion and intimidation designed to attempt to convince the Association that it should refrain from engaging in collective bargaining and should return to a meet and confer basis and that the Association should further refrain from exercising rights obtained through the collective bargaining process.

CONCLUSIONS OF LAW

Based upon the findings of facts set forth above, the Board hereby makes the following conclusions of law.

1. That the actions of the District in threatening to reduce to salaries unless the Association accepted in total the District's bargaining position constitute the prohibited labor practice of failure to negotiate in good faith in violation of NRS 288.270(1)(e).

2. That the action of the District in intentionally threatening to reduce the number of certificated employees, without

economic justification, unless the Association agreed to forego the bargaining process and accept the position of the District constitute the prohibited labor practice of refusal to bargain collectively in good faith as prohibited by NRS 288.270(1)(e).

3. That the dismissal of the employee who was reduced in force as a result of the action taken by the District on June 24, 1987, having been taken, as noted above in the findings of fact, in retaliation for the Association not accepting the District's bargaining position and foregoing formal negotiations, constitutes a prohibited labor practice under NRS 288.270 (1)(c) and (e).

4. That the actions taken against Ms. Rebecca Balderson in the form of not rehiring her for the Special Services Coordinator position and subjecting her to harassment and negative comments on her evaluation during the 1987-88 school year constitute a prohibited labor practice under NRS 288.270 (1)(a), (c) and (e).

5. That the actions taken against Ms. Christy Strange in reducing her extra contract days, intimidation through negative statements, and removal of her "county wide" designation constitute a prohibited labor practice under NRS 288.270 (1)(a), (c) and (e).

6. That the actions of the District in attempting to coerce and intimidate the Association into refraining from the grievance process through attempted intimidation of Mr. Larry Echevarria, the Association President, and Ms. Bonnie Brown, the Association Grievance Chairperson,

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constitute the prohibited labor practice of attempting to interfere or restrain and coerce an employee organization in the exercise of rights guaranteed under this chapter and an attempt to dominate and interfere in the administration of the employee organization and as such constitute a prohibited labor practice under NRS 288.270 (1)(a) and (b).

ORDER

Based upon the above findings of fact and conclusions of law, the Board hereby grants the following relief and makes the following order.

1. The District shall immediately cease and desist and in the future refrain from engaging in the prohibited practices set forth above;
2. The District shall, within thirty (30) days of the date of this Order, offer to reinstate the teacher whose employment was lost as the result of the reduction in force acted upon on June 24, 1987;
3. The District shall, within thirty (30) days of the date of this Order, reinstate Ms. Rebecca Balderson to her position as Special Services Coordinator, together with back pay for the 1987-88 school year in the amount of Two Thousand Dollars ($2,000.00);
4. The District shall, within thirty (30) days of the date of this Order, reinstate the six (6) additional contract days which were taken from Ms. Christy Strange, together with back pay for any of those days lost for the 1987-88 school year and shall elevate Ms. Strange once again to her county wide status.

5. The District shall pay Three Thousand Five Hundred Dollars ($3,500) to the Association as attorneys and, in addition, shall pay costs in the amount of Eight Hundred Sixty-eight Dollars and 10/100 ($868.10) incurred by the Association in these proceedings.

DATED this 28th day of November, 1988.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By Tamara L. Barengo
TAMARA BARENGO, Chairman

By Jeffrey L. Eskin
JEFFREY L. ESKIN

By Salvatore C. Gugino
SALVATORE C. GUGINO

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board and that on the 29 day of ~~December~~ November, 1988, I deposited for mailing, postage prepaid, certified mail, a true and correct copy of the within Decision addressed to:

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