

1 STATE OF NEVADA
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD

4 CLARK COUNTY CLASSROOM TEACHERS)
ASSOCIATION,)

ITEM NO. 237

5 Complainant,)

CASE NO. A1-045435

6 -vs-)

DECISION

7 CLARK COUNTY SCHOOL DISTRICT;)
8 TIMOTHY SANDS; JAN BENNINGTON;)
9 CAROLYN REEDOM; and ARLEN)
SIMONSON,)

10 Respondents.)

11 For the Complainant: Michael W. Dyer, Esq.
12 DYER AND McDONALD

13 For the Respondents: Thomas J. Moore, Esq.

14 For the EMRB: Salvatore C. Gugino, Chairman
15 Tamara Barengo, Vice Chairman
Howard Ecker, Board Member

16 STATEMENT OF THE CASE

17 This matter came before the Local Government Employee-
18 Management Relations Board ("Board") upon the filing of a Com-
19 plaint by the Clark County Classroom Teachers Association ("As-
20 sociation") alleging a prohibited practice by the Clark County
21 School District ("District") in violation of NRS 288.270(1).

22 The Complaint arose from statements made at meetings of
23 the Teacher Advisory Council ("TAC") at Doris Hancock Elementa-
24 ry School in Las Vegas on October 13, 1988 and on November 16,
25 1988. The Association alleges the school principal, Timothy
26 Sands, informed members of TAC on October 13, 1988 that it was
27 "unprofessional" for teachers to contact the Association for
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1 assistance in resolving problems and on November 16, 1988, Mr.
2 Sands warned members of TAC that they would have to "swear" to
3 the events of the previous meeting. The District denies the
4 alleged incidents and claims there was no wilful intent to vi-
5 olate NRS 288.270.

6 On April 24, 1988, the Board heard Complainant's Motion
7 to Amend the First Amended Complaint to include additional
8 causes of action evidenced by the District. Having heard argu-
9 ments for the Motion by the Association and arguments against
10 by the District and having reviewed the papers and pleadings
11 thereto, the Board granted permission for a second amended Com-
12 plaint and ordered the Association to specify sufficient facts,
13 such as time, circumstances and conditions, for each cause of
14 action it wished to propound.

15 In the Seconded Amended Complaint, the Association al-
16 leged four (4) further causes of action giving rise to the Com-
17 plaint.

18 The second cause of action arose from statements made on
19 or about September 25, 1988 and on or about October 5, 1988 at
20 Estes McDoniel Elementary School by school principal, Carolyn
21 Reedom to a teacher, Debbie Mayday. The Association alleges
22 that Ms. Reedom threatened to change Ms. Mayday's assignment
23 for contacting the Association, and addressed her in such a
24 manner as caused her to be afraid to contact the Association
25 further. The District denied the allegations.

26 In their Prehearing Statements, the parties submitted the
27 following issues for the Boards determination:
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1 a. Does the conduct constitute prohibited
2 practices pursuant to NRS 288.270?

3 b. Is the Association required to prove that
4 the District intended to violate NRS 288.270(1)?

5 c. If so and if any of the incidents alleged
6 in subsection (a.) above occurred in fact, was there
7 a willful intent to violate NRS 288.270(1)?

8 d. If any of the incidents alleged in subsec-
9 tion (a.) above occurred in fact, does the District's
10 conduct constitute overall interference, restraint
11 or coercion of employees in the exercise of their
12 rights guaranteed under NRS 288?

13 The Board conducted the hearing in Las Vegas, Nevada on
14 August 17, 1989. At the opening of the hearing, the parties
15 stipulated to the withdrawal of the alleged action involving
16 Jan Bennington and the cause of action alleging a pattern of
17 prohibited practices by the District and the withdrawal of the
18 alleged action involving Mr. Simonson with the stipulated
19 resolution be placed on the record. The Board recognized and
20 accepted the joint stipulations.

21 The Association proceeded with presentation of evidence
22 and argument on the first alleged action of the Complaint
23 involving Timothy Sands and the second alleged action of the
24 Complaint involving Carolyn Reedom. The District presented
25 evidence and argument in opposition to the Complaint and in
26 support of its actions.

27 The District moved to dismiss the second alleged action
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1 of the Complaint involving Carolyn Reedom because it exceeded
2 the Board's jurisdiction on the basis of the 180-day rule in
3 NRS 288.110.

4 At the conclusion of the hearing, the matter was sub-
5 mitted to the Board for decision.

6 DISCUSSION

7 As a threshold matter, the Board rejects the District's
8 argument that the Complaint is in violation of the 180-day
9 rule. NRS 288.110 sets forth the time limit for filing of a
10 complaint as follows:

11 4. The board may not consider any complaint or appeal
12 filed more than 6 months after the occurrence which
is the subject of the complaint or appeal.

13 The alleged course of conduct of Carolyn Reedom, accord-
14 ing to the record, was from September 25 through October 5,
15 1988. The Second Amended Complaint was filed on March 23,
16 1989, within six (6) months of the alleged course of conduct.
17 Therefore, the Board rejects the District's argument to
18 dismiss for failure to meet time limits.

19 I

20 SUFFICIENT EVIDENCE ESTABLISHED
21 IN FIRST CAUSE OF ACTION.

22 The Board believes that the Association has established
23 sufficient evidence in the first cause of action involving Mr.
24 Sands to support the allegations of conduct to interfere with
25 the employees rights under NRS Chapter 288.

26 The Board is concerned with any activity which may, in
27 practice or on its face, have a chilling effect upon the right
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1 of public employees to associate as members of an employee or-
2 ganization. NRS 288.270(1) provides in part:

3 It is a prohibited practice for a local govern-
4 ment employer or its designated representative wil-
5 fully to:

6 (a) Interfere, restrain or coerce any employee
7 in the exercise of any right guaranteed under this
8 chapter.

9 (b) Dominate, interfere, or assist in that for-
10 mation or administration of any employee organiza-
11 tion.

12 (c) Discriminate in regard to hiring, tenure or
13 any term or condition of employment to encourage or
14 discourage membership in any employee organization.

15 The Board may, in analyzing such an activity, draw
16 inferences from and make conclusions on proven facts with
17 regard to anti-union or animus existed. National Labor
18 Relations Board v. Electric Steam Radiator Corp., 321 F.2d
19 733, 738 (6th Cir. 1963). NRS 288.270(1) refers to "the
20 employer or its designated representative willfully"
21 interfering with employee or organization rights or
22 discouraging membership. However, the Board has found in
23 Ormsby County Teachers v. Carson City School District, Item
24 No. 197, Case No. A1-045405 (September, 1987), the requirement
25 that the employer's actions must have been willful does not
26 require that the Complainant carry the burden of showing
27 specific intent on the employer's part.

28 The United States Supreme Court has expressly stated that
although an employer's intent or motive to discriminate or to
interfere with union rights is a necessary element or an
unfair labor practice, specific evidence of the employer's
subjective intent is not required when the employer's conduct
inherently encourages or discourages union membership. Radio

1 Officer's Union, et al. v. National Labor Relations Board, 347
2 U.S. 17, 44, 74 S.Ct. 323, 338 (1954).

3 The United States Supreme Court has further noted in Erie
4 Resistor Corp. that some conduct by its very nature contains
5 the implications of the required intent. In such cases the
6 natural foreseeable consequences of an employer's action may
7 justify the conclusion that discrimination or interference was
8 intended. Thus, the existence of discrimination or
9 interference may be inferred by the Board based upon its
10 experience in the labor management relations area. National
11 Labor Relations Board v. Erie Resistor Corp., 373, U.S. 221,
12 227, 83 S.Ct. 1139, 1144 (1963); Republic Aviation Corp. v.
13 National Labor Relations Board, 324 U.S. 793, 800 65 S.Ct.
14 982, 986 (1945).

15 The Board adopts the National Labor Relations Board's
16 interpretation of the analogous section of the National
17 Labor Relations Act:

18 . . . interference, restraint, and coercion under
19 Section 8(a)(1) of the Act does not turn on the em-
20 ployers motive or whether the coercion succeeded or
21 failed. The test is whether the employer engaged in
22 conduct, which may reasonably be said, tends to in-
23 terfere with the free exercise of employee rights
24 under the Act. American Freightway Company, 124
25 NLRB 146, 147, 44, LRRN 1302 (1959).

23 II

24 TOTALITY OF CIRCUMSTANCES HAD CHILLING
25 EFFECT.

25 The Board believes Mr. Sands essentially stated that
26 going to the Association was unprofessional. Because
27 "unprofessional conduct" is a basis for job termination under
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1 statute, the reaction of the employees should have been
2 anticipated by Mr. Sands. Further, he persisted in his
3 intimidation and coercion by questioning TAC members as to who
4 was responsible for contacting the Association for remarks
5 made at the October meeting.

6 A reasonably foreseeable result of the statements and
7 behavior of Mr. Sands would be discouragement of involvement
8 and membership in the Association and discouragement of
9 processing this Complaint. It must then be presumed that Mr.
10 Sands intended the natural consequences of his action.

11 Witnesses from the two meetings called by both the
12 District and the Association recalled Mr. Sand's red face, his
13 anger and the tense atmosphere created by his statements. The
14 effect was immediate. One teacher, Shawnee Zanca, was so
15 concerned with being labeled "unprofessional" and potentially
16 losing her job, she sought assistance from the Association. A
17 second teacher, Sandra Donald, fearing reprisals for
18 contacting the Association, sought counsel from fellow
19 employees. The chairman of TAC, Doug Jacobs, fearing further
20 confrontation and involvement in this Complaint, resigned from
21 the committee. The evidence shows actual communicated threats
22 by Mr. Sands.

23 The evidence is sufficient to show the combination of
24 verbal and non-verbal communications by Mr. Sands in the TAC
25 meetings had a chilling effect on the exercise of rights by
26 employees of the District.

27 The Board is not convinced by District arguments that Mr.
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1 Sands remarks were merely misunderstood. The threats were
2 heard by several witnesses. Mr. Sands corroborated their
3 testimony with his own admission that he was angry while
4 making the statements and that he did try to find information
5 about the source of the Complaint.

6 The testimony of Mr. Sands in contradiction to the
7 witnesses is less credible. His denial of using the term
8 unprofessional and other threatening statements were simply
9 not believable.

10 III

11 EVIDENCE NOT SUFFICIENT TO FIND
12 PROHIBITED PRACTICE IN SECOND CAUSE
13 OF ACTION.

14 When the Board analyzes totality of circumstances and the
15 reasonable foreseeable effects of the second cause of action
16 involving Dr. Carolyn Reedom, it does not find that she
17 committed a prohibited practice under NRS 288.270(1) (a).

18 The Board is not unmindful that Dr. Reedom's remarks in
19 September and October, 1988 were discouraging in nature and
20 perceived as threatening. Nonetheless, the honest and sincere
21 effort by Dr. Reedom to remedy Debbie Mayday's concern for a
22 fairer work assignment, the high regard Ms. Mayday gave Dr.
23 Reedom in testimony and the accommodation of the Association's
24 request for information all weigh against the alleged conduct.

25 Evidence by the District shows the meetings with Ms.
26 Mayday called by Dr. Reedom were legitimate attempts to find a
27 more favorable noon-duty assignment for Ms. Mayday and that no
28 adverse affect was established from the meetings. National

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for Mr. Sand's conduct was a pretext to mask the foreseeable interference in the lawful conduct of the employees and the employee organization.

8. That the Association did not make a prima facie showing in support of their contention that Carolyn Reedom's conduct constituted a prohibited practice within the meaning of NRS 288.270(1)(a).

DECISION AND ORDER

Upon decision rendered by the Board at its meeting on October 27, 1989 it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. That the Association Complaint, as amended, in the First Cause of Action, be, and the same hereby is, upheld and the District's determination in the First Cause of Action, be, and the same is, reversed;

2. That the District refrain from action complained of in the First Cause of Action;

3. That the Association's Complaint, as amended, in the Second Cause of Action be, and the same hereby is, dismissed with prejudice;

4. That the Association's Complaint, as amended, in the Causes of Action stipulated for withdrawal be, and the same hereby is, dismissed with prejudice; and

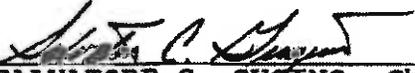
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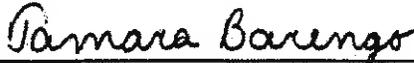
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5. That each party is to bear its own costs and fees in this action.

DATED this 13th day of December, 1989.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By 
SALVATORE C. GUINO, Chairman

By 
TAMARA BARENGO, Vice Chairman

By 
HOWARD ECKER, Member