STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CLARK COUNTY CLASSROOM TEACHERS ASSOCIATION, Complainant, -vs- CLARK COUNTY SCHOOL DISTRICT and BEVERLY DALY, Respondents.	ITEM NO. 282 CASE NO. A1-045487 **DECISION**

For the Complainant: Michael W. Dyer, Esq.
DYER AND MCDONALD

For the Respondents: Daniel S. Hussey, Esq.
CLARK COUNTY SCHOOL DISTRICT

For the EMRB: Howard Ecker, Chairman
Tamara Barengo, Member

STATEMENT OF THE CASE

In a prehearing conference held on October 29, 1991, the Complainant, CLARK COUNTY CLASSROOM TEACHERS ASSOCIATION ("Association"), and Respondents, CLARK COUNTY SCHOOL DISTRICT and BEVERLY DALY ("District"), narrowed the issues to the following:

> 1. Whether or not the subject of the Complaint is the subject of pending grievances filed pursuant to the grievance and arbitration procedures of Article 4 of the labor agreement between the parties, and, if so, whether or not the Complaint should be dismissed.
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> 2. Whether or not Beverly Daly made the statements she is alleged to have made on December 11, 1990, and, if so, whether or not said statements constitute interference, restraint or coercion of the employee in the exercise of rights guaranteed under NRS Chapter 288, in violation of NRS 288.270(1)(a), (c) and/or (d).

The parties also jointly stipulated to the followir facts:

1. The Clark County Classroom Teachers Association (hereinafter "CCCTA") is the recognized employee organization as defined in NRS 288.160 representing the certificated personnel employed by the Clark County School District (hereinafter the "District").

2. The District is a Local Government Employer pursuant to NRS Chapter 288 and is party to a Collective Bargaining Agreement with the CCCTA.

3. Beverly Daly is employed by the Clark County School District in the capacity of School Principal at Harriet Treem Elementary School.

4. Doris Roberts is a probationary, first-year, first-grade CSR teacher at Harriet Treem Elementary School.

5. By a "Certificated Employee Appraisal Report" dated November 28, 1990, and November 29, 1990, from Beverly Daly, her principal, Doris Roberts received a "Not Satisfactory" evaluation in her teaching position at Harriet Treem Elementary School.

6. Shortly thereafter, Mr. Lopez contacted Beverly Daly on Doris Roberts' behalf and followed up with a letter dated December 7, 1990, which addressed issues referenced in the evaluation prepared by Beverly Daly.

7. Beverly Daly and Doris Roberts had a classroom conversation at 1:30 p.m. on December 11, 1990.

Upon the Board's receipt of the instant Complaint, EMRB Vice Chairman Salvatore C. Gugino submitted a voluntary recusal from the case, based on the fact that Respondent Beverly Daly is a personal acquaintance. The parties were unable to agree upon a replacement for Mr. Gugino and thereupon stipulated to going forward with the case with the two remaining members of the Board to hear said case anc

decide the issue(s) presented therein.

On November 5, 1991, the Local Government Employee-Management Relations Board ("EMRB" and "Board") conducted a hearing on the instant Complaint. The Board's Discussion, Findings of Fact, Conclusions of Law, Decision and Order are set forth below.

DISCUSSION

From the facts stipulated to by the parties, the testimony of witnesses cross-examined at the Hearing and other evidence of record, the Board has determined that it has jurisdiction in the instant case, notwithstanding the five (5) pending grievances alluded to in the District's Prehearing Brief. The fact that said grievances are alleged to have arisen from the same incident that produced the Complaint does not deprive the Board of jurisdiction over the matter. The Board has held that it has exclusive jurisdiction concerning unfair labor practices and/or the resolution of charges alleging prohibited practices. Nevada Classified School Employees Association, Chapter 1, Clark County vs. Clark County School District, EMRB Item No. 105, Case No. A1-045336 (November 21, 1980).

Under the "limited deferral doctrine" adopted by the Board (see I.A.F.F. #731 vs. City of Reno, EMRB Item No. 257, Case No. A1-045466, issued February 15, 1991) in order for the Board to consider a complaint involving alleged contractual violations, such as alluded to in the aforementioned grievances, the Complainant must establish, at least prima

facie, that the alleged violations constituted a prohibite practice (or failure to bargain in good faith) under NRS Chapter 288. Esmeralda County Classroom Teachers Association vs. Esmeralda County School District, The Esmeralda County of School Trustees and Harold Tokerud, EMRB Item No. 273, Case A1-045497 (September 23, 1991). In the instant case, the Board finds that the Association has met its requisite burden of proof.

The testimony developed that on November 29, 1990, Respondent Beverly Daly, the Principal at Harriet Treem Elementary School, presented probationary teacher Doris Roberts with an appraisal report rating her performance as "not satisfactory". Mrs. Roberts did not agree with the report and discussed the matter with her union representative Mr. Ron Lopez, Deputy Executive Director of the Clark County Classroom Teachers Association. Mr. Lopez then called Principal Daly and discussed the matter, confirming his conversation with Principal Daly in a letter dated December 7, 1990. On December 11, 1990, Principal Daly went into Mrs. Roberts classroom, ostensibly to give her a "pep talk", closed the door (Mrs. Roberts and Principal Daly were the only persons present) and the two entered into a discussion. The testimony of Mrs. Roberts and Principal Daly was in conflict as to the contents of the discussion. Mrs. Roberts testified that Principal Daly told her "off the record", that the union would do her more harm than good; that going with Mrs. Sabino to the union was not a good idea, and that if she (Mrs

Roberts) wanted to go to the union, Principal Daly would make sure that everything Mrs. Roberts did was documented and it (the paperwork) would stay in Mrs. Roberts' file for three years. Mrs. Roberts also testified that Principal Daly told her that if she wanted a position in another school another principal might not like seeing a bunch of paper in her file, might consider her a bad risk and not hire her because principals prefer little paperwork. Principal Daly emphatically and unequivocally denied that she made the aforementioned statements to Mrs. Roberts. She testified that she told Mrs. Roberts she was improving. According to Principal Daly's testimony Mrs. Roberts told her that she would not meet with Principal Daly without the presence of Mr. Lopez. (Mrs. Roberts denied having made said statement at that time; i.e., on December 11, 1990.) Principal Daly also testified that she told Mrs. Roberts that she wasn't conducting an investigatory interview, but only wanted to talk to her about her lessons.

Nothwithstanding the above-described conflicting testimony, from the totality of the testimony and evidence of record the Board is persuaded that Principal Daly did in fact discourage Mrs. Roberts from utilizing the union. Principal Daly testified she was disappointed that Mrs. Roberts went to the union and she thought it was "very unusual" that one of her teachers couldn't talk directly to her. She testified to the effect that she didn't like having to deal with the union because of the time consuming phone calls concerning different

aspects of grievances; the time it takes to provide appropriate documentation and the time it takes to attend meetings concerning grievances and that she considered the grievances filed by the Association to be a form of "harassment". She also testified that Ron Lopez, Mrs. Roberts' union representative, continuely threatened and harassed her (Principal Daly). In the light of said testimony, Principal Daly's testimony as to the conversation which occurred with Mrs. Roberts in the latter's classroom, behind closed doors, on December 11, 1990, simply cannot be considered credible.

The Board recognizes that an employer is free to communicate to its employees regarding the work place and encourages them to do so. Communication between an employer and employee may even extend to general or specific views about unionism, as long as such communication does not contain a threat of reprisal or a promise of benefit. See Ormsby County Teachers Association vs. Carson City School District, EMRB Item No. 114, Case No. A1-045339 (1981). Under Section 8(c) of the National Labor Relations Act, the expression of any view, argument, or opinion or dissemination thereof, whether in written, printed or graphic form, does not constitute evidence of an unfair labor practice if the expression contains no threat of reprisal or force or promise of benefit. See NLRB vs. Movie Star, Inc., 361 F.2d 346 (5th Cir. 1966); Drummond Education Assoc. vs. Drummond Integrated School District, WERC Case No. 22183 MP-794 (Wis. 1973), Pub.

Employee Bargaining Rep. (CCH) at section 41, 276. In the instant case, however, the statements attributed to Principal Daly clearly contained a threat of reprisal; i.e., reprisal in the form of continued, unrelenting, superintensive scrutiny and documentation of Mrs. Roberts' job performance, and the threat that if she continued to utilize the union she might not be hired by another school. Said threat of reprisal was clearly directed toward Ms. Roberts because of her processing a grievance, an activity which is protected by NRS Chapter 288. NRS 288.270 provides in pertinent part:

> 1. It is a prohibited practice for a local government employer or its designated representative willfully to:
>
> (a) Interfere, restrain or coerce any employee in the exercise of any right guaranteed under this chapter.
>
> . . .
>
> (c) Discriminate in regard to hiring, tenure or any term or condition of employment to encourage or discourage membership in any employee organization.

Retaliation for such protected activity is an unfair labor practice. NLRB vs. Ford Motor Co., 683 F.2d 156, 110 LRRM 3202 (CA 6 1982); American Steel Works, 263 NLRB 826, 111 LRRM 1136 (1982) and Teamsters, Chauffeurs, Warehousemen & Helpers, and Professional, Clerical, Public and Miscellaneous Employees, Local Union No. 533 vs. Humboldt General Hospital, EMRB Item No. 246, Case Nos. A1-045459 and A1-045460 (June 11, 1990).

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FINDINGS OF FACT

The facts upon which these findings are based are stipulated to by the parties (reproduced in the Board's Statement of the Case on page 2 of this Decision) and as set forth in the Board's above Discussion.

CONCLUSIONS OF LAW

1. That the Local Government Employee-Management Relations Board has jurisdiction over the parties and is authorized to assume jurisdiction over the subject matter of this Complaint, pursuant to the provisions of NRS Chapter 288.

2. That the Complainant, Clark County Classroom Teachers Association, is a recognized employee organization as defined by NRS 288.040.

3. That the Respondent, Clark County School District is a recognized local government employer as defined by NRS 288.060, and Principal Beverly Daly was acting as agent for said local government employer.

4. That, although the Board under its deferral doctrine, will normally refuse to hear a pending grievance involving an unfair labor practice, the mere filing of a grievance between the parties will not preclude the Board from going forward with an action, as contemplated by NRS 288.110(2), particularly where the matter involves an unfair labor practice occurring after the filing of a grievance.

5. That the District and its agent, Principal Daly, committed an unfair labor practice under NRS 288.270(1)(a) and (c) by interfering, restraining and coercing Mrs. Roberts i

the exercise of protected rights.

DECISION AND ORDER

Upon decision rendered by the Board at its meeting on December 10, 1991, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

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

2. That the District and its agent, Beverly Daly, shall cease and desist, and in the future, refrain from engaging in the prohibited practice set forth in this Complaint; and

3. That each party shall bear its own costs and attorney fees in this matter.

DATED this 2nd day of January, 1992.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By _____
HOWARD ECKER, Chairman

By Tamara Barengo
TAMARA BARENGO, Member

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