STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

ALLEN ASCH, Complainant, -vs- CLARK COUNTY SCHOOL DISTRICT, THE BOARD OF TRUSTEES OF THE CLARK COUNTY SCHOOL DISTRICT, AND THE CLARK COUNTY CLASSROOM TEACHERS ASSOCIATION, Respondents.	ITEM NO. 314 CASE NO. A1-045541 **ORDER GRANTING MOTION TO DISMISS**

For Complainant: Thomas J. Moore, Esq.

For Respondents CCSD: and BOARD OF TRUSTEED: Donald H. Haight, Esq. CLARK COUNTY SCHOOL DISTRICT

For Respondent CCCTA: Michael W. Dyer, Esq. DYER AND MCDONALD

On February 24, 1993, the Board received a Complaint from Allen Asch, alleging that his contract of employment with the School District was unilaterally amended by the School District (resulting in a salary reduction) after he had resigned as a member of the Association, and the School District began deducting the over payments from his pay. Mr. Asch alleges that he requested that the Association file a grievance regarding this dispute involving his contract of employment, but the Association refused to do so because he was no longer a member of the Association. Mr. Asch then filed a grievance himself and alleges that during the level one grievance proceeding he was told by the School District's representative that the unilateral action was taken against

Mr. Asch because of threats which the Association made against the District. The District then denied Mr. Asch's grievance and allegedly refused to proceed to arbitration or to allow review of the dispute by the Board of Trustees, as allegedly provided for in the Collective Bargaining Agreement. Mr. Asch's Complaint alleges that the School District and the Association are in violation of NRS 288.140(1) and (2); the District is in violation of NRS 288.270(1)(a), (c) and (f); and the Association is in violation of NRS 288.270(2)(a) and (c).

On March 29, 1993, the Association filed the above-captioned Motion to Dismiss on the grounds that "no violation of NRS Chapter 288 has occurred and, further, that no probable cause exists to support the Complainant's allegation that Respondent has committed a prohibited labor practice."

At its meeting of May 13, 1993, conducted pursuant to Nevada's Open Meeting Law, the Board determined after due deliberation that the Respondent Association's Motion to Dismiss should be granted. The Board's determination is based on the following:

FIRST: NRS 288.140(2) specifically grants an "employee who is not a member" of the recognized employee organization the right to act for himself with respect to any condition of his employment. The logical inference to be drawn from the language of NRS 288.140(2) is that the legislature did not intend to <u>require</u> employee organizations to process the grievances of non-members.

If the legislature had intended to require employee organization to process the grievances of non-members it appears that it would have specifically so provided. However, because the legislature did not specifically so provide, but rather provided that employees who are not members of a recognized employee organization have the right to act for themselves with respect to any condition of employment (consistent with the terms of an applicable negotiated agreement, if any), the legislature clearly intended that employee organizations retain discretion in the processing of grievances in behalf of non-members.

SECOND: In exercising the discretion bestowed upon it by the legislature pursuant to NRS 288.140, the employee organization's only representation-obligation to non-members is to exercise said discretion fairly and in good faith. Accordingly, a breach of an employee organization's statutory duty of fair representation to members of the bargaining unit occurs only when the union's conduct toward said members is arbitrary, discriminatory, or in bad faith. Vaca vs. Sipes, 386 U.S. at 191. A union's duty of fair representation does not require it to process every grievance brought to its attention. Tuma vs. American Can Co., 373 F.Supp. 218, 224. Where a union makes a good faith determination that a grievance has not been filed in a timely manner or lacks merit, no breach of the duty to represent occurs. Orphan vs. Furnco Construction Corp., 325 F.Supp. 1220, 1222. In

the instant case, the union reviewed Mr. Asch's grievance and determined that it was not only void of merit but also that it had not been filed in a timely manner. Under such circumstances, there is no basis for concluding that the union's refusal to process said grievance was arbitrary, capricious or an abuse of its statutory discretion.

THIRD: From a comprehensive review of the record before it, the Board concludes that the Complaint also fails to state a claim against Respondents Clark County School District and the Board of Trustees of the Clark County School District, upon which relief can be granted, and no probable cause exists for the Complaint.

For the reasons set forth in FIRST, SECOND and THIRD above,

IT IS HEREBY ORDERED, pursuant to NAC 288.210, that the Complaint filed in behalf of Allen Asch on February 24, 1993, (designated as EMRB Case No. A1-045541) be, and hereby is dismissed with prejudice, with each party to bear its own attorney's fees and costs.

DATED this 19th day of May, 1993.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By _____
SALVATORE C. GUGINO, Chairman