STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

JANET KALLSEN, Complainant, vs. CLARK COUNTY SCHOOL DISTRICT, Respondent, CLARK COUNTY CLASSROOM TEACHERS ASSOCIATION, Intervenor.	**ITEM NO. 393-B** **CASE NO. A1-045598** **DECISION**

For Complainant: Leslie Mark Stovall, Esq.

For Respondent: L. Steven Demaree, Esq.
CLARK COUNTY SCHOOL DISTRICT

For Intervenor: Sandra G. Lawrence, Esq.
DYER, LAWRENCE & COONEY

STATEMENT OF CASE

On January 18,1996, a Complaint was filed on behalf of Janet Kallsen (hereinafter Kallsen) alleging that Clark County School District (hereinafter District) committed prohibited practices by failing to return her to a position for the 1995-1996 school year; and by the District's refusal to arbitrate her September 19,1995 grievance. The Complaint seeks a finding that (1) the District engaged in unlawful and prohibited practices under NRS 288.140(2) and NRS 288.270(1)(a); (2) the District be ordered to reinstate Kallsen to her position as a teacher in the District; (3) the District be ordered to pay Kallsen her wages and benefits accruing from September 1, 1995 to the present; (4) Kallsen be awarded reasonable attorney's fees and costs for having to bring this matter to the Board; and (5) extraordinary relief in the form of notice to a District employee of their individual right to request arbitration and to retain legal counsel. The relief requested in Item No. 2 was made moot by

the return of Kallsen to a full-time teaching position in the 1996-1997 school year. The District filed its answer on February 7, 1996, with its affirmative defenses being that the Board lacks jurisdiction because Kallsen is not a local government employee as her employment was effectively terminated at the time she was granted a leave of absence; and that the Complaint fails to state a claim against the District upon which relief can be granted.

A petition to intervene was filed on behalf of Clark County Classroom Teachers Association (hereinafter CCCTA) on August 19, 1996 and granted by the Board on September 3, 1996. See Item No. 393.

A hearing was conducted on January 12, 1998, noticed in accordance with Nevada's Open Meeting Law, at which the Board heard oral argument from counsel and testimony from three witnesses; Mary Ann Craner, Janet Kallsen and Dr. Edward Goldman. The Board's findings as to the causes of action remaining for the Board's adjudication are set forth in its Discussion, Findings of Fact and Conclusions of Law, which follows:

DISCUSSION

The Complaint filed by Kallsen challenges the District's (1) failure to assign her to a position for the 1995-96 school year; and (2) refusal to arbitrate her September 18, 1995 grievance. The burden is on Kallsen to prove that the District violated a provision of NRS Chapter 288 by its actions.

At the hearing on December 17, 1997, Kallsen failed to prove that the District interfered, restrained or coerced her in the exercise of any right guaranteed under NRS Chapter 288 by its failure to assign her to a position for the 1995-96 school year. However, Kallsen did show that the District's refusal to arbitrate her grievance interfered with a right guaranteed to her by NRS 288.140(1).

FINDINGS OF FACT

1. During the 1993-94 school year, Kallsen was employed by the District. She was and is a member of the CCCTA.

2. In August 1994, Kallsen applied for a one-year leave of absence. The District granted Kallsen's request and placed her on leave from August 1, 1994 to August 1, 1995.

3. On March 17, 1995, Kallsen informed the District that she planned to return to active service for the 1995-96 school year.

4. However, Kallsen's pre-leave position had already been filled by another teacher. The District did not offer Kallsen a full-time teaching position for the 1995-96 school year.

5. On September 18, 1995, Kallsen grieved the District's failure to offer her a position. The District denied Kallsen's grievance.

6. On October 30, 1995, the CCCTA submitted a demand for arbitration of Kallsen's grievance.

7. On November 29, 1995, the District refused to arbitrate Kallsen's grievance because the CCCTA would not be representing Kallsen at the arbitration and because the CCCTA and Kallsen had agreed that Kallsen would be responsible for its costs involved in the arbitration.

8. The District did find Kallsen a full-time teaching position for the 1996-97 school year, and she is currently employed in that position.

9. On January 18, 1996, Kallsen filed her Complaint with the Local Government Employee-Management Relations Board.

CONCLUSIONS OF LAW

1. The Local Government Employee-Relations Board has jurisdiction over the parties and the subject matter of Kallsen's Complaint pursuant to the provisions of NRS Chapter 288.

2. The District is a local government employer as defined by NRS 288.060.

3. Kallsen is a local government employee as defined by NRS 288.050. The fact that Kallsen took a leave of absence is immaterial on this point as she always had an expectation of reemployment. See Trailmobile Div., Pullman Inc. v. NLRB, 379 F.2d 419, 423 (5th Cir. 1967); cf. Pittsburgh Plate & Glass Co. v. NLRB, 427 F.2d 936, 944 (6th Cir. 1970) (retiree not "employees" under NLRA because they have no rights or expectations of reemployment), aff'd, 404 U.S. 157 (1971).

4. Kallsen has the burden of proving her allegation that the District committed a prohibited practice under NRS 288.270(1) by failing to offer her a full-time position for which she was qualified for the 1995-96 school year. She has failed to meet that burden.

5. There is no statutory requirement that a local government employee be assigned to a full-time position at the end of her leave. The District did not commit a prohibited practice by

failing to assign Kallsen to a full-time position for the 1995-96 school year.

6. NRS Chapter 288 does not grant a local government employee an individual right to arbitrate. While NRS 288.140(2), which was modeled after 29 U.S.C. § 159(a), provides that an employee may act for himself with respect to the adjustment of a grievance, it does not apply to the arbitration of a grievance. See Black-Clawson Co., Inc. v. International Ass'n of Machinists Lodge 355, 313 F.2d 179, 184-86 (2d Cir. 1962).

7. However, in this matter, the CCCTA made the request for arbitration. The District then refused to arbitrate based on the terms of the agreement between the CCCTA and Kallsen regarding the arbitration. The District's action interfered with Kallsen's relationship with the CCCTA because it sought to dictate how a grievant and her union should proceed with an arbitration.

8. The District has contractual protection to require the CCCTA to pay its share of any costs involved in an arbitration if the grievant failed to pay them. Further, the District could have filed a grievance against the CCCTA after receipt of the October 30, 1995 arbitration demand based on the anticipatory breach doctrine. However, the District cannot use the CCCTA's alleged anticipated breach, which is a contractual matter, to interfere with the statutory rights guaranteed to Kallsen under NRS Chapter 288.

9. The District may not refuse to arbitrate a grievance based on the relationship or agreement between an employee organization and a local government employee represented by that organization.

10. The District did violate NRS 288.270(1) when its based its refusal to arbitrate Kallsen's grievance on the agreement between the CCCTA and Kallsen.

11. The Local Government Employee-Management Relations Board makes no findings as to the parties' contractual obligations.

12. The Local Government Employee-Management Relations Board does not have the authority to issue an order compelling arbitration. NRS 288.110(2); see also NRS 38.045(1).

DECISION AND ORDER

IT IS ORDERED, ADJUDGED AND DECREED that the District did not commit a prohibited practice by failing to offer Kallsen a full-time teaching position for the 1995-96 school year.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the District did commit a prohibited practice as defined by NRS 288.270(1) when it based its refusal to arbitrate Kallsen's grievance on the agreement between the CCCTA and Kallsen. The District is hereby ordered to cease and desist from refusing to arbitrate a grievance based on the relationship or agreement between the CCCTA and a local government employee represented by the CCCTA.

IT IS FURTHER ORDERED that each party shall bear its own costs and attorney's fees.

DATED this 12 of February 1998.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By David Goldwater
DAVID GOLDWATER, Chairman

By Karen L. McKay
KAREN L. McKAY, Vice-Chairperson

By James E. Wilkerson
JAMES E. WILKERSON, SR., Member