

1 STATE OF NEVADA  
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
3 RELATIONS BOARD  
4

5 EDUCATION SUPPORT EMPLOYEES  
6 ASSOCIATION,

7 Complainant and Petitioner,

ITEM NO. 607A

CASE NO. A1-045820

8 DECISION  
9  
10

11 For Complainant: Sandra G. Lawrence, Esq.  
12 Dyer, Lawrence, Penrose, Flaherty & Donaldson

13 For Respondent: Jon M. Okazaki, Esq.  
14 Clark County School District

15 STATEMENT OF CASE

16 Education Support Employees Association ("Complainant" or "ESEA") initiated the  
17 subject proceeding by filing a Complaint and Petition for Declaratory Ruling on December  
18 2004, complaining that Clark County School District ("Respondent" or "the District") engaged  
19 in prohibited practices in violation of NRS 288.270(1)(a), (b), (c), (d), and/or (f), inter alia,  
20 refusing to grieve or arbitrate certain disputes and in failing to provide information, a  
21 petitioning for a ruling on certain legal issues, paraphrased as follows: (1) whether enforcement  
22 of an agreement is an extension of the negotiations process; (2) whether the duty to provide  
23 information terminates with the signing of the agreement; (3) the duty of the employer to furnish  
24 information to employee organization as part of a bargaining relationship; (4) whether employee  
25 organization has right to request information from employer regarding members for any reasons  
26 reasonably related to representation.

27 Respondent filed a motion to dismiss on February 7, 2005, which Complainant opposed  
28 on April 5, 2005. The Employee-Management Relations Board ("the Board") denied the motion  
on May 10, 2005.

Respondent filed its answer to the Complaint and Petition on May 27, 2005. Respondent filed a Pre-Hearing Statement on June 20, 2005, and Complainant filed its Pre-Hearing Statement on June 24, 2005. On August 2, 2005, the Board issued a Notice of Hearing on the Complaint. Hearing was held on September 8, 2005, at which six witnesses testified: Andrew Brown and Odalis Dominguez, employees of Respondent and members of Complainant; Rose Brennan and Thom Shelton, Uniserve Directors ("UDs") employed by Complainant; Joseph Furtado, Executive Director of Complainant; and Fran Juhasz, Director of Employee Management Relations of Respondent.

### **SUMMARY OF EVIDENCE**

#### **1. Testimony of Andrew Brown**

Andrew Brown is a bus driver for Respondent. In May, 2004, he met with Thom Shelton of Respondent, because some written warnings on his employment record were more than three years and a day old (entitling him to have them removed from his record). RT 12, L 18 to 13, L 10. Brown signed an authorization for representation for ESEA to represent him, to access his personnel files. RT 14, L 22 to 15, L 18. Brown had attempted on his own to get the negative items removed, without success. RT 18, L 17-16. After Thom Shelton wrote a letter dated May 13, 2004 requesting a copy of Brown's file, Brown never heard anything from Respondent until the following Christmas break, at which time he received a call that the warnings would be removed. RT 16, L 20 to RT 17, L 8. This occurred after a grievance was filed on Brown's behalf. RT 17, L 19-20.

Brown had himself reviewed his file on occasions previous to his meeting with Shelton. RT 19, L 12-24. Brown attributes the denial of his request made on his own to have the warnings removed was due to favoritism. RT 20, L 18-25. When Brown looked at the file, he orally requested copies but was denied. RT 21, L 21, to RT 22, L 20.

Brown and Shelton went together to view Brown's file at the District's central personnel office, but the warnings in question were not there. RT 25, L 5 to RT 26, line 24. Shelton never went with Brown to view Brown's worksite file; Shelton only wrote the letter referred to above. RT 26, L 25 to RT 28, L 3.

2. Testimony of Odalis Dominguez

Odalis Dominguez is an employee at Canyon Elementary School in North Las Vegas. Ms. Dominguez met with Rose Brennan concerning a possible grievance against Dominguez's principal, Dr. Jackson. RT 41, L1 9-25. Her issues with Dr. Jackson concerned Jackson's threat to start dismissal proceedings against her and an extension of Ms. Dominguez's probation time.

When she saw Rose Brennan, Ms. Dominguez had not had the opportunity to view Dr. Jackson's personnel file. Ms. Brennan and she wanted to look at the file. RT 42, L 10 to RT L 24. Dominguez signed an Authorization for Representation on June 14, 2004. RT 44, L 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, L 11. As part of the request letter sent on Ms. Dominguez behalf, an extension of the time to respond to her evaluation was obtained. RT 46, L1 13-22.

Ms. Dominguez learned from Rose Brennan that she had the right to look at her file. RT 47, L 10 to RT 48, L 11. Ms. Jackson let Ms. Dominguez look at her worksite file. RT 48, L 18 to RT 49, L 4. "All the documents that Jackson had Dominguez sign were not in her worksite file. RT 49, L1 10 to RT 50, L 11. Dominguez sensed hesitancy on the part of Dr. Jackson in letting her look at her worksite file and had to ask her twice. Dr. Jackson had copies made for Dominguez. RT 54, L1 1 to RT 55, L 12. Dominguez does not believe she told Brennan about obtaining the copy of the worksite file. RT 55, L1 12-14.

No grievance was ever filed on behalf of Ms. Dominguez. RT 46, 10-12.

3. Testimony of Rose Brennan

Rose Brennan joined ESEA as a Uniserve Director in June 2004. As a Uniserve Director, she is a field representative for ESEA members, representing them in meetings, doing problem solving, and handling grievances. RT 57, L1 16-22. She is assigned to over one hundred sites in the Clark County School District and to approximately 1700-1800 members. RT 57, L 23 to RT 58, L 5.

Brennan met with Dominguez on June 14, 2004 concerning an evaluation Dominguez considered unfair. Dominguez also had concerns regarding intimidation by her administrator. RT 59, L 25 to RT 61, L 8. Dominguez signed an authorization form for Brennan to review her file.

1 Dominguez's central and worksite files, which Brennan requested by letter dated June 15, 2004  
2 to Fran Juhasz, of CCSD's Employee Management Relations Board. RT 62, L1 2-24. The letter  
3 referred to Article 35-1 of the collective bargaining agreement, concerning the right to request  
4 information. RT 63, L 25 to RT 64, L 26. In the letter, Brennan also requested an extension of  
5 time for Dominguez to object to her evaluation. RT 65, L1 1-13.

6 Juhasz granted the extension regarding the evaluation over the telephone. A response to  
7 Brennan's request for the files, denying the request, came from Dean Kiernan, Juhasz's assistant,  
8 on August 31, 2004, two and a half months later. Brennan never received either files for  
9 Dominguez. RT 65, L 21 to RT 67, L 8.

10 Brennan's reason for requesting Dominguez's files was to find out if there was any  
11 information that should not be in the file. RT 67, L 25, to RT 68, L 11. The denial letter from  
12 Kiernan indicates Article 35-1 does not require Employee Management Relations office to make  
13 records available, noting that Dominguez did not have a pending employment matter, but also  
14 noting that Dominguez could herself obtain records and give them to ESEA. RT 69, L1 6-23.

15 Brennan wanted the official record for Dominguez so that Dominguez's administrator  
16 "couldn't pull something out of her drawer." RT 70, L1 4-16. She wanted to know if  
17 Dominguez's files held anything that could be held against her. RT 77, L 20 to RT 78, L 12.  
18 Brennan requests files on other occasions, such as for members who are illiterate. RT 70, L 20  
19 to RT 71, L 7.

20 Brennan recalls other file requests, by her predecessor, Dwight Blake, that were honored  
21 even though there was no pending matter. RT 72, L5 to RT 77, L 19.

22 When no files were received, Brennan had her secretary follow up on the file request. RT 78  
23 84, L. 24 to RT 85, L 1.

24 Brennan was referred at hearing to the terms of Articles 35 and 24. RT 86 to RT 92.

25 Ms. Brennan does not know why sometimes Article 24 was cited and other times Article  
26 35 was cited. RT 101, L1 5-23.

1 4. Testimony of Thom Shelton

2 Shelton is a Nevada State Education Association Employee assigned to ESEA, employed  
3 as a UD and Organizational Development Specialist. RT 108, L 25 to RT 109, L 3.

4 *Re: Carmen Shoop*

5 Shelton met with ESEA member Carmen Shoop in October 2004. She was a post-  
6 probationary employee who was on promotional probation (meaning she had been promoted but  
7 had not served six months in the promoted position). It appeared that she was going to be  
8 demoted from Secretary 3 a total of nine pay ranges to an Office Specialist 2. RT 110, L1 7-21.  
9 Ms. Shoop was demoted on September 27, 2004.

10 The grievance letter for Ms. Shoop referred to articles 24, 31, and 32 of the  
11 Bargaining Agreement in their entirety—to be narrowed at the Step 1 hearing. RT  
12 RT 113, L 23.

13 Article 31-7 of the Collective Bargaining Agreement provides that work n  
14 and procedures are to be interpreted and applied uniformly. RT 114, L1 5-10. W  
15 cited Article 32, he had in mind Article 32-1, which provides that continued empl  
16 regular status employee is contingent upon proper performance and personal fitn that  
17 regular status employees may be suspended, demoted, or dismissed for just cause. He may also  
18 have had in mind Article 32-2. RT 114, L 16 to RT 115, L 1.

19 Shelton felt that Shoop had been demoted (as opposed to failing to satisfactorily com ete  
20 probation) based on the extraordinary circumstances involved. She had just received a “n eets  
21 standards” evaluation within the previous two to three weeks. Her supervision was reassigned  
22 and her duties were changed. Shelton had also been contacted by an assistant regional  
23 superintendent (whose name Shelton doesn’t recall), who didn’t believe Shoop’s case had een  
24 fairly handled. RT 115, L 2 to RT 116, L 1. RT 152 to RT 157; RT 168-9.

25 The response to the grievance, in a letter from Fran Juhasz dated November 1, 2004, as  
26 that Ms. Shoop was not demoted as a form of discipline giving rise to a right to a grievance. RT  
27 116, L10to RTh 17, L 17.

1 Shelton views Ms. Shoop as a regular status employee within the meaning of Section 9  
2 and is therefore covered by the Collective Bargaining Agreement. RT 119, L1 1-13.

3 Shelton responded to Juhasz's letter, demanding arbitration, to which Ms. Jul z  
4 responded that the dispute was not subject to arbitration. RT 120, L 24 to RT 121, L 11.

5 On previous occasions, "promotional probationary" employees have by way of settlen t  
6 agreed to a return to their prior positions. Other than that, such employees do not lose t<sup>ier</sup>  
7 regular status when they are promoted. RT 122, L1, 4-22.

8 Shelton felt that a dispute as to whether a matter is subject to arbitration should e  
9 decided by an arbitrator. Section 4-7 states that an arbitrator has no authority to rule on a disp e  
10 between the parties other than one which qualifies as a grievance under Section 4.1. RT 123, 1 8  
11 to RT 124, L 22.

12 Shoop was apparently seen as insubordinate to new staff members after her "me s  
13 standards" evaluation. Based on that, Shelton views the action against her as a "demotion." 1 T  
14 159, L 10, RT 162, L 12.

15 As a result of the District's declining ESEA's request for arbitration, ESEA has fileu a  
16 Petition in District to Compel Arbitration. RT 125, L1 8-16.

17 *Re: Andrew Brown*

18 Shelton requested Andrew Brown's central and worksite files by letter referring t<sup>o</sup>  
19 Section 24-2 of the Collective Bargaining Agreement. That section gives ESEA the ability t o  
20 access personnel files as long as it has a written release from the employee. RT 125, L 21 to R' T  
21 126, 13; RT 140, L 23 to RT, L 13. Shelton also has relied on Sections 24-1 and 35-1 of th e  
22 Collective Bargaining Agreement. RT 142, L 17 to RT 143, L. 11.

23 Until 18 to 24 months ago, the District was providing such information pursuant to th e  
24 request. The District denied Brown's request in keeping with a policy derived since that time,  
25 whereby ESEA's request concerning an employee without an active employment matter was R' T  
26 126, L 17 to RT 127, L 5. The matter in which the new practice first arose concerned Donn a  
27 Sweat. RT 137, L 4 to RT 138, L 8.

1 Shelton became aware of the restrictive interpretation concerning employee records when  
2 he had requested records of employees concerning a pattern of questionable administrative  
3 practices by a principal. RT 127, L 21 to RT 128, L 16.

4 Kiernan's response to Shelton's May 13, 2004 request for Brown's records, was itself  
5 dated August 31, 2004. RT 129, L 12-21. The District's refusal to provide information  
6 compromises ESEA's ability to represent a member fully and constitutes a unilateral alteration of  
7 terms and conditions. RT 131, L 1 to RT 132, L 20.

8 Shelton is not aware whether Brown's records issue was grieved. RT 144, 15-21.

9 *Re: Margaret Woody*

10 Shelton also submitted a request for ESEA employee Woody, denied for similar reasons.  
11 In this case a grievance was filed. RT 133, L 5 to RT 136, L 3. It is awaiting arbitration. RT  
12 144, L 12-14.

13 5. Joseph Furtado

14 Joseph Furtado is the Executive Director of ESEA.

15 Furtado states that the preamble of the Collective Bargaining Agreement provides that the  
16 District's policies have to be consistent with the CBA. RT 181, L 7-23.

17 Based on the definition of "collective bargaining," Furtado believes that Article 35-1  
18 applies to requests for information. RT 184, L 10 to RT 186, L 1.

19 There is nothing in the CBA that provides for an employee to lose permanent status after  
20 he has passed the probationary period. RT 187, L 16-25.

21 Furtado considers it a matter for the arbiter to determine whether something is a  
22 grievance under the CBA. RT 191, L 22 to RT 193, L 8.

23 Fran Juhasz declined Furtado's request for arbitration. RT 193, L 21 to RT 194, L 21.

24 Furtado stated that the requests for information at issue related to requests to reopen the  
25 CBA or to the ongoing process of collective bargaining. RT 207, L 23 to RT 209, L 8. Furtado  
26 contends that under the CBA, ESEA is entitled to make reasonable requests for information, such  
27 as to enable it to decide whether to file a grievance. RT 209, L 9-23.

1 Furtado testified that grievances that are filed under the District's rules and regulations  
2 have very seldom been scheduled for hearing by the Board of Trustees. RT 182, L 13 to RT 183,  
3 L 10.

4 6. Testimony of Fran Juhasz

5 Ms. Juhasz has been the Director of Employee Management Relations for the  
6 County School District for two years. Her office is responsible for contract disputes and  
7 dispute resolution, concerning the CBA, policies and regulations. All appeals and grievance  
8 through her office. From 1990 to 2001, she worked for ESEA, six of which years  
9 Executive Director. RT 224, L 23 to RT 226, L 12.

10 Shoop's and Woody's grievances were the first that Ms. Juhasz had received concerning  
11 promotional probationary employees being returned to their previous status. RT 227, L 16-25  
12 Ms. Shoop and Ms. Woody still retain their status as regular status employees. RT 229, L 2-8.

13 Employee Management Relations processes information requests from the union,  
14 receiving 339 such requests in the course of the 04-05 school year, 180 of which came from  
15 ESEA, which requests related to pending employment matters. RT 229, L 24 to RT 230, L 2  
16 Juhasz's office responds to requests where there is no formal grievance. She listed an example  
17 of the union rep calling in to seek the information in advance of an investigatory conference.  
18 There was no record in Juhasz's log that Brown or Dominguez had a pending matter. RT 231, L  
19 5-17.

20 Ms. Juhasz has no problem honoring requests for information by telephone where the  
21 stated purpose is to avoid a grievance. RT 232, L 5-18.

22 Ms. Juhasz logs every single thing that comes into her office and checks her log and the  
23 phone log when she gets a request for information. RT 234, L 9-20.

24 Individual employees may request to review their files any time. CT 231, L 24 to CT  
25 232, L 4. Requests by individuals to review their files do not go through Juhasz's office. CT  
26 236, L 7-14.

27 The names referred to by Ms. Brennan as prior information requests where there was a  
28 pending matter actually had pending matters on Ms. Juhasz's logs. CT 239, L 18-21.



1 There are 32,000 school district employees, and Ms. Juhasz is concerned about the  
2 potential of their filing requests through her office. CT 242, Ll 23-25.

3 **FINDINGS OF FACT**

4 1. Complainant is an employee organization as defined by NRS 288.040 and is the  
5 exclusive representative and bargaining agent of the education support staff employees of  
6 Respondent.

7 2. Respondent is a local government employer as defined by NRS 288.060.

8 3. Complainant and Respondent are parties to a Collective Bargaining Agreement  
9 ("the CBA") effective from July 1, 2003 to June 30, 2007.

10 **FAILURE TO GRIEVE REINSTATEMENTS TO PRE-PROMOTION POSITIONS**

11 *Margaret Woody*

12 4. Margaret Woody was hired by Respondent on August 14, 1998, finished  
13 probationary status six months later and became a regular status employee working as an Office  
14 Specialist II. On or about February 2004, she was promoted from Office Specialist II to  
15 Secretary II. Four months later, Respondent determined Ms. Woody's performance in the  
16 promoted position to be unsatisfactory, and she was returned to the position from which she was  
17 promoted, i.e., Office Specialist II.

18 5. Two grievances were filed by Complainant on behalf of Ms. Woody: (1)  
19 Demotion in violation of the CBA "and without evaluation or direction for change" (Grievance  
20 #03-04/C/13/65) and (2) Demotion in violation of CCSD Policy and Regulations "and without  
21 evaluation or direction for change" (Grievance #03-04/C/13/66).

22 6. Ms. Woody's grievances concerning her return to Office Specialist II were  
23 rejected by Respondent based on its contention that she had no right to grieve said return because  
24 she was on probationary status with respect to the position to which she was promoted and  
25 therefore had no appeal rights.

26 *Carmen Shoop*

27 7. Carmen Shoop was hired on November 6, 1991, as a teacher's aide/instructional  
28 assistant and thereafter acquired regular status. In 1998, she acquired regular status as an Office

1 Specialist II. On June 8, 2004, she was promoted to Secretary III. On or about September 24,  
2 Respondent determined Ms. Shoop's performance to be unsatisfactory in the promoted position  
3 and returned her to the Office Specialist II position.

4 8. Complainant thereafter filed a "Statement of Grievance and Terms of Provision  
5 of Master Agreement, School, Policy or Administrative Regulation Allegedly Violated," citing  
6 several articles of the CBA and to "(a)ny and all other applicable articles, policies, rules,  
7 regulations and other related matters." (04-05/C/03/16)

8 9. Ms. Shoop's grievance was rejected by Respondent based on its contention that  
9 she had no right to grieve said return because she was on probationary status with respect to the  
10 position to which she was promoted and therefore had no appeal rights.

11 *CBA and Other Provisions Related to Ms. Woody and Ms. Shoop*

12 10. In the CBA it is stated that "(t)he parties hereby recognize the existence of  
13 policies and administrative regulations of the School District to which the Employees covered by  
14 this agreement are bound, and which are subject to change by the School Trustees of the School  
15 District." Article 4-1 of the CBA.

16 11. District Regulation 4323(III) states as follows:

17 A regular-status employee who is promoted shall also serve a required  
18 probationary period of six (6) months in the position to which promoted. If the  
19 employee's performance in the higher classification is unsatisfactory, the  
20 employee shall be reinstated to an available position at a lower classification for  
which the employee is qualified and/or has previously demonstrated satisfactory  
work performance.

21 12. In the CBA, a "regular-status employee" means "an education support Employee  
22 who has successfully completed his or her initial six (6) month probationary period and any  
23 extensions thereof." Article 1-9.

24 13. "Demotion" is not defined in the CBA.

25 14. The CBA imposes certain limits on demotion of a regular-status employee, to wit:  
26 it may only be for just cause, after specified notice is given. Article 32.

27 15. Under the CBA, a regular status employee covered thereunder or the Association  
28 (Complainant) may file a grievance. A "grievance" is "any dispute which arises regarding a

1 interpretation, application, or alleged violation of any of the provisions of' the CBA. Article 4

2 1.

3 FAILURES TO PROVIDE INFORMATION

4 *Andrew Brown*

5 16. Pursuant to Article 24-2 of the CBA, Complainant requested from Respondent  
6 Andrew Brown's personnel and worksite files by letter dated May 13, 2004. The letter purports  
7 to enclose a release from Mr. Brown.

8 17. Article 24-2 provides in pertinent part that

9 "... Upon request, an Employee shall be provided, at the prevailing rate per page,  
10 a reproduction of any material, excluding any pre-employment documents, in the  
11 Employee's file. Unless requested by the Association, such a request may not be  
made more than one time per year."

12 18. Respondent answered by letter dated August 31, 2004 that Article 24-2 did not  
13 apply since there was no pending employment matter with Mr. Brown.

14 19. Article 24-1, not cited by Respondent in its August 31, 2004 letter but cited in its  
15 Pre-hearing statement, provides in pertinent part as follows:

16 "...If any Employee is involved in a grievance regarding matters in the personnel  
17 file which may be material, an Association officer or other Association  
18 Representative with the written approval of the Employee may also be granted  
19 access to the Employee's personnel file at reasonable times where such access is  
authorized in advance by the Employee. The District shall provide copies of all  
legally permissible information pertinent to the grievance."

20 20. Complainant did not seek to grieve denial of the Brown request.

21 *Odalis Dominguez*

22 21. By letter dated June 15, 2004, Complainant requested that Respondent provide i  
23 with a copy of Odalis Dominguez' personnel and worksite files pursuant to Article 35-1 of the  
24 CBA. The letter purports to enclose a release from Ms. Dominguez.

25 22. Article 35 of the CBA provides that

26 35-1 "The parties to this Agreement shall make all relevant information  
27 available to each other within a reasonable time of its request. If the party  
has documents containing the information requested, these will be  
provided. In the event that documents containing the requested  
28 information are not available, reasonable access to files containing the  
needed information shall be permitted. Both parties agree to pay  
reasonable costs for collecting information."

1 35-2 "Requests for information shall be made in accordance with NRS  
2 288.180."

3 23. Respondent, by letter dated August 31, 2004, refused the request on the ground  
4 that Article 35 only applies to negotiations, noting that while Article 24 would apply to  
5 individual records requests, as Dominguez had no pending grievance, Article 24 did not apply.

6 24. Complainant did not seek to grieve denial of the Dominguez request.

7 *Linford Winget*

8 25. Complainant stated that it requested and grieved the failure of Respondent to  
9 request a tape of an evidentiary hearing concerning the dismissal of Mr. Winget.

10 26. Respondent acknowledged receiving the request but asserts that the request was  
11 received after Mr. Winget's right to appeal had expired, and therefore the request was untimely.

12 27. At the hearing, ESEA withdrew the portion of the Complaint concerning the  
13 member. RT 136, Ll 6-11.

#### 14 CONCLUSIONS OF LAW

15 1. The Employee Management Relations Board ("the Board") has jurisdiction over  
16 this matter, as the dispute is between a local government employer and an employee organization  
17 and alleges prohibited practices under NRS 288.270 and seeks a declaratory order pursuant to  
18 NAC 288.380 regarding the applicability or interpretation of NRS Chapter 288 concerning good  
19 faith enforcement of an agreement and the duty to provide information outside the negotiation  
20 process.

21 2. The duty to provide information under NRS 288.180 is limited to information  
22 requested in the negotiations process.

23 3. While it is not the jurisdiction of the Board to enforce collective bargaining  
24 agreements, under NRS 288.270(1)(e) and NRS 288.033, the parties to a collective bargaining  
25 agreement must act in good faith with respect to implementation of the collective bargaining  
26 agreement.

1 4. A right under NRS 288.270 or any other provision of Chapter 288 may be waived  
2 or narrowed, in a collective bargaining agreement or elsewhere, but such waiver or narrowing  
3 must be clear and unmistakable.

4 5. The CBA at issue herein is ambiguous as to whether an employee who has passed  
5 the initial probation and is subsequently promoted is without rights to grieve involuntary return  
6 to the prior position, especially in the case of Ms. Shoop, whose return occurred under  
7 circumstances that may be a demotion. Complainant properly requested arbitration.  
8 Respondent's refusal to grieve the issue of arbitrability is bad faith negotiation. Respondent  
9 should have submitted the matter to arbitration, including the threshold issue of arbitrability.

10 6. The CBA at issue, Section 24-2, entitles Claimant to request employee files and  
11 does not limit such requests to when there is a pending employment matter. That Respondent's  
12 refusal to comply with such records requests was in bad faith is shown by the protracted delay in  
13 issuing a response. The stated reason for refusal, the administrative workload of the office  
14 charged with complying with such requests, was not substantiated to the satisfaction of the  
15 Board. The time necessary for the Respondent's Employee Management Relations office to  
16 check their records for the existence of a pending matter before complying with such requests  
17 could be better used in complying with the requests themselves. Neither of the requests for  
18 records raised in the present matter constitute an abuse of the record request procedure under  
19 Section 24-2. If there is an abuse in the future by Complainant, Respondent would be within its  
20 rights to raise that as a prohibited labor practice.

21 7. It appears that the records requests of Brown and Dominguez have been mooted.

#### 22 DECISION AND ORDER

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that

24 1. Respondent committed a prohibited labor practice in failing to submit the issue of  
25 arbitrability of the return of promotional-probationary employees to an arbitrator pursuant to the  
26 Collective Bargaining Agreement. The parties are ordered to notify the Commissioner of the  
27 status of compliance with the arbitration provision with respect to the employees in question  
28 within ninety days of this decision.

1           2.       Respondent committed a prohibited labor practice in failing to comply with the  
2 records requests at issue herein of Complainant. The existence of a pending disciplinary matter  
3 is irrelevant to a records request by a complainant.

4           3.       IT IS ORDERED that for the benefit of employee-management relations,  
5 Complainant and Respondent shall post copies of this Decision at conspicuous locations, which  
6 are accessible to their respective employees at offices at ESEA, CCSD administration, and at  
7 each of the schools involved herein, for a period of thirty (30) days.

8  
9           4.       IT IS FURTHER ORDERED that Complainant and Respondent CCSD forward  
10 copy of this decision to each of their respective employees involved herein either as designees  
11 agents of Complainant or supervisors of Respondent, as the case may be, and that Complainant  
12 and Respondent CCSD provide proof to the Board of their doing so (e.g., by obtaining a written  
13 acknowledgment of receipt) within twenty (20) days.  
14

15           DATED this 1<sup>st</sup> day of February, 2006.

16                               LOCAL GOVERNMENT EMPLOYEE-  
17                               MANAGEMENT RELATIONS BOARD

18  
19           BY: Tamara E. Barengo

TAMARA E. BARENGO, Chairman

20  
21           BY: John E. Dickson

JOHN E. DICKSON, ESQ., Vice-Chairman

22  
23           BY: Janet Frost

24           JANET FROST, ESQ., Board Member  
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