

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

5 CAROLINE RANGEN, RON SUFANA, JR.,)
6 PERAL MORRIS, SANDRA-LEE A.)
7 PUGLIA, LILIA CASTRO, MICHAEL S.)
8 HAMPTON, MICHAEL POWELL, KARL)
9 ESPARZA, ANA L. INZUNZA, MARI)
FERNANDEZ, JANET GILES, EMILY F.)
KLEIER, DELINDA SLOCUM and GINA)
CHINCHILLA, on behalf of themselves and)
others similarly situated,)

ITEM NO. 643D

CASE NO. A1-045894

10 Complainants,

11 vs.

12 EDUCATION SUPPORT EMPLOYEES
13 ASSOCIATION,

14 Respondent.

15 For Complainants: Kristina L. Hillman, Esq.
Kerianne R. Steele, Esq.

16 For Respondents: Michael W. Dyer, Esq.
17 James W. Penrose, Esq.
18 Dyer, Lawrence, Penrose, Flaherty & Donaldson

19 **FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER**

20 On April 3, 2008, the contested administrative hearing in this matter came on before the
21 Local Government Employee-Management Relations Board ("Board"). The matter was duly
22 noticed for hearing pursuant to NRS and NAC Chapters 288, NRS Chapter 233B, and Nevada's
23 open meeting laws.

24 **Discussion of Case**

25 On November 3, 2006, a complaint was filed by Caroline Rangen, Ron Sufana, Jr., Pearl
26 Morris, Sandra-Lee Puglia, Lilia Castro, Michael S. Hampton, Michael Powell, Karl Esparza,
27 Ana L. Inzunza, Mari Fernandez, Janet Giles, Emily F. Kleier, Delinda Slocum and Gina
28 Chincilla, "on behalf of themselves and others similarly situated." (Collectively "Rangen.") A

1 motion to dismiss was filed by the Education Support Employees Association ("Association") on
2 November 29, 2006. The motion was opposed, and reply points and authorities were also filed.
3 The Board denied the motion. An answer was filed by the Association, and the Association
4 moved to join the Clark County School District ("School District") as a respondent. That motion
5 was granted but the School District was later dismissed.

6 This matter was originally scheduled for hearing in October 2007, but was continued
7 until December 2007. A motion to continue was filed by Rangen, and the hearing was
8 rescheduled for April 1, 2, and 3, 2008. The matter was then rescheduled for hearing on April 2
9 and 3, 2008.

10 Prior to commencing the hearing, a motion was filed by Rangen requesting permission
11 for an out-of-state attorney to represent the complainants along with their current attorney. The
12 motion was granted. The Association then verbally moved to have this matter dismissed as a
13 class action. As a resolution of that motion, the complainants agreed to strike "and others
14 similarly situated" from the case.

15 The complainants called two witnesses, Ron Taylor and Rangen. In lieu of further
16 testimony from Mr. Taylor, the Board agreed to take notice of the Board's Case No. A1-045899.

17 Rangen testified that she was employed with the School District as a specialized teaching
18 assistant I; however, she claims her current position does not have a title. She has been an
19 Association member for approximately 11 ½ years; and she is not working at an empowerment
20 school nor has she applied to work at an empowerment school.

21 She testified that she began calling the Association in approximately March 2006
22 requesting a copy of the memorandum of understanding ("MOU") concerning empowerment
23 school staffing and appeared at School Board meetings. She helped to create hearing Exhibit C,
24 which formally requested copies of all of the MOUs from the Association. Exhibit C is dated
25 June 5, 2006 and was hand delivered to the Association on June 6, 2006. On that date, the
26 Association gave her a copy of the MOU. Rangen also testified that she belongs to a group
27 called "Clark County Parents United."

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1 Rangen testified that pursuant to the MOU (Exhibit B), School District employees would
2 be "fired" and "terminated." She herself has not been fired or terminated due to a MOU.
3 Rangen testified that her harm was the denial of her right to vote on the MOU as an Association
4 member. She also indicated that employees at empowerment schools make a higher salary. She
5 admitted that Exhibit B (the MOU) does not contain the word "resign." The MOU at issue in
6 this matter was signed on May 5, 2006.

7 The complainants rested their case as no additional complainants were present and they
8 chose to call no additional witnesses. Complainants did not call the Association officials as
9 witnesses although such officials were present at the hearing. The Association verbally moved
10 to dismiss this action based upon the failure to provide substantial evidence to support the
11 allegations raised in the complaint. Rangen vigorously opposed the motion; and the Board
12 deliberated on the case.

13 FINDINGS OF FACT

14 1. Rangen, and other identified complainants, are local government employees pursuant
15 to NRS 288.050.

16 2. Pursuant to NRS 288.027, the Association is the recognized bargaining agent for the
17 employees at issue in this matter.

18 3. The School District is a local government employer pursuant to NRS 288.060.

19 4. A MOU was entered into by the Association and the School District on May 5, 2006.
20 This MOU was provided to Rangen on June 6, 2006.

21 5. It is a past practice/pattern between the Association and the School District to enter
22 into MOUs for matters arising between the negotiations of collective bargaining agreements.

23 6. Pursuant to NRS Chapter 233B, the burden of proof at this administrative hearing was
24 "substantial evidence."

25 7. For an employee organization to be found in breach of its duty of fair representation,
26 its actions/conduct must be arbitrary, capricious, discriminatory, or in bad faith. Weiner v.
27 Beatty, 121 Nev. ___, 116 P.3d 829 (2005).

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1 8. The Board finds that the only harm proven at the hearing was that Rangen was not
2 allowed to vote on the MOU as an Association member.

3 9. Although Rangen testified that the Association officers would not return her telephone
4 calls beginning in March 2006 regarding the MOU in question, such was finally provided to her
5 on June 6, 2006 after physically visiting the Association office.

6 10. From the facts presented by the Complainants in their case in chief in this matter, it
7 does not appear the Association's conduct in the case arose to the level of a breach of it's duty of
8 fair representation.

9 11. Rangen was not employed at an empowerment school nor did she apply for
10 employment at such a school. Thus, the MOU at issue has not impacted her employment at the
11 School District.

12 12. The Board finds that complainants had notice that the hearing would be held on April
13 1-2-3, 2008. Such notice is dated January 25, 2008. Although the Board may sympathize with
14 employees having to arrange to take time off from their employment, such employees filed the
15 instant complaint requesting the Board to resolve their dispute and to do so would require their
16 testimony.

17 13. No credible evidence of employees being fired, under the common use and
18 application of that word, was presented, nor was any credible evidence presented that any
19 employee was forced to resign.

20 14. The Board finds that the Complainants had the option, under the Association's By-
21 laws, to seek the impeachment or recall of the Association officials. The Complainants
22 considered such action but elected to come to this Board rather than pursue that course of action.
23 Complainants in their case in chief did not call the Association officials, and such officials were
24 present at the hearings. Complainants did not request any subpoenas from the Board requiring
25 such officials' appearances at the hearing.

26 15. Lastly, the Board finds that it does not have any jurisdiction under NRS Chapter 288
27 to hear complaints from parents.

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1 CONCLUSIONS OF LAW

2 1. The Board concludes that substantial evidence was not presented during the
3 Complainants' case in chief, warranting the continuation of this contested hearing, and that the
4 Association is entitled, as a matter of law, to have it's motion granted and the case decided in the
5 Association's favor.

6 ORDER

7 IT IS, THEREFORE, ORDERED that this matter is dismissed, with prejudice.

8 It is also noted by the Board that the Association in its pleadings requested recovery of
9 the attorneys' fees and costs incurred in this matter. The Board will entertain such an award
10 upon Respondent's submission of an accounting within twenty (20) days of this order.
11 Complainants shall have ten (10) days thereafter to contest same.

12 DATED this 4th day of April, 2008.

13 LOCAL GOVERNMENT EMPLOYEE-
14 MANAGEMENT RELATIONS BOARD

15 BY: 
16 JAMES E. WILKERSON, SR., Chairman

17 BY: 
18 JANET TROST, ESQ., Vice-Chairman

19 BY: 
20 JOHN E. DICKS, ESQ., Board Member
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