

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

5 NEVADA CLASSIFIED SCHOOL
6 EMPLOYEES ASSOCIATION, AFT/PSRP,
7 LOCAL 6181, AFL-CIO,

8 Complainant,

9 vs.

10 TRUCKEE-CARSON IRRIGATION
11 DISTRICT,

12 Respondent.

ITEM NO. 647B

CASE NO. A1-045895

FINDINGS OF FACT, CONCLUSIONS
OF LAW & ORDER

13 For Complainant: Michael E. Langton, Esq.

14 For Respondent: Robert L. Zaletel, Esq. of Littler Mendelson
15 Michael J. Van Zandt, Esq. of Hanson Bridgett, LLP

16 On the 14th day of May, 2009, this matter came before the Local Government Employee-
17 Management Relations Board ("Board") for deliberations, discussions, and final decision. This
18 matter was noticed pursuant to NRS and NAC chapters 288, NRS chapter 233B, and Nevada's
19 Open Meeting laws.

20 A. Procedural History.

21 On the November 29, 2006, the Nevada Classified School Employees Association,
22 AFT/PSRP, Local 6181, AFL-CIO ("Association") filed a complaint with the Board against the
23 Truckee-Carson Irrigation District ("District"), alleging prohibited labor practices. The District
24 filed a motion to dismiss, and the Association filed a motion for permission to conduct
25 discovery. These motions were opposed; and the Board entered its order on March 13, 2007. An
26 Answer was filed to the complaint, and the parties filed their respective prehearing statements.
27 The District filed a motion for summary judgment, which was opposed. The Board entered its
28 order regarding the same on December 18, 2007; and this case proceeded to hearing. The parties
were allowed to file post hearing briefs as well as reply post hearing briefs.

1 This decision is based upon the exhibits offered at the hearing, the testimony presented,
2 and post hearing briefs of counsel; and a discussion of the same is warranted to support this
3 decision.

4 B. Summary of Testimony Presented/Evidence Submitted at Administrative Hearing.

5 On November 13, 2007, the hearing commenced, at which time the Truckee Carson
6 Irrigation District Employees Association ("TCIDEA") indicated it became affiliated with the
7 complainant in 2003.

8 Steve Simmons was the first witness. Transcript of Hearing on 11-13-07 ("Tr."), p. 30.
9 He testified he was the Association's President. He indicated he received a letter from Mike
10 Adams "concerning disaffiliation" with the Association. Tr. P. 34. He indicated 11 employees
11 out of approximately 30 total employees pay dues to the Association. Tr. P. 35-6. When the
12 District ceased deducting the dues, the employees paid the Association directly in cash or check.

13 Chuck Richards testified that he was a ditch rider for the District and is President of the
14 TCIDEA. Tr. P. 46. He indicated he knew Mike Adams, and that Adams dropped his
15 membership with TCIDEA when it affiliated with the Association. Tr. P. 51. He and his
16 members did not participate in the vote concerning affiliation and disaffiliation with the
17 Association. Tr. P. 52. He indicated that Mike Adams closed TCIDEA's bank account and took
18 the dues money therein. Tr. P. 53. The money was apparently used by Adams to form another
19 employee organization ("TCIDEA II"), whose membership included Adams, W. C. Cecil, and
20 Debbie Sherman. Tr. P. 57. More specifically, in June 2006, Adams presented the District with
21 notice that the employees were disaffiliating from the Association, creating TCIDEA II. Tr. P.
22 85. Those employees were not current members of TCIDEA. Adams became president of
23 TCIDEA II; W. C. Cecil was the vice president; and Debbie Sherman was the secretary. Tr. P.
24 87. Without objection of the parties, the Board indicated it would use the date of June 15, 2006,
25 as the date TCIDEA II came into existence. Tr. P. 110. At all times, the mail for TCIDEA was
26 sent to the District's office; and Mike Adams' wife, Ida, would receive it. Tr. P. 116. He also
27 indicated that the TCIDEA mail would be opened, and he is not aware of anyone giving
28 authorization to the District's employees to open the same. Id.

1 Richards also offered that prior to the employees affiliating with the Association, they
2 would receive cost of living raises annually; however, after 2004, they received only one such
3 raise in July 2007. Tr. P. 60. On cross-examination, he was questioned whether the employees
4 received a raise in October 2006; and he indicated that “[t]here could have been.” Tr. P. 92.

5 Richards also explained “water season” which typically begins in March and continues
6 through November 15 of each year. Tr. P. 60-1. It is during this time period that he would be a
7 ditch rider. Typically, after November 15, he would be reassigned to operations and
8 maintenance (“O & M”). Tr. P. 61. However, he indicated he was transferred to O & M either in
9 September or October, 2006. Arguments were made that such an early transfer was due to anti-
10 union/employee association animus. Tr. P. 62. Richards testified that when he was transferred
11 to O & M in 2006, prior to the end of the water season, a “non-union member” employee with
12 only six months of experience replaced him as a ditch rider to finish out the season. Tr. P. 175.

13 The duties of a ditch rider were described as:

14 The water comes from Lake Lahontan, and it’s distributed out through the
15 valley to a series of laterals and canals to farmers’ head gates that have water rights.

16 You pick up a water order, you schedule this guy to get water. And you
17 deliver the water down a canal. (Tr. P. 63.) . . .

18 You do clean the weeds out when they get into the head gate so it won’t get
19 plugged up. (Tr. P. 64.) . . .

20 [S]ome runs are three days or four days, and you have to schedule the
21 water when the person is going to be done. Then you move it onto the next user
22 down the canal. (Tr. P. 67.) . . .

23 Right. Right, it’s a 24-hour operation. It never stops. The water never
24 stops. Tr. P. 67.

25 Richards indicated there were 16 ditch riders in 2006. Tr. P. 65. He also indicated that
26 when the ditch riders are sent to O & M, they “[p]our concrete, shovel. Labor work basically.”
27 Tr. P. 68. As a ditch rider, he is on call 24 hours a day, “25 days a month” and he is required to
28 live in company provided housing. *Id.* He indicated that it was necessary that he place plastic on
the window(s) of the housing to “keep out the cold from blowing” in. Tr. P. 69. The District
provides the plastic film, and other ditch riders have also used the plastic. He has not been
disciplined for using plastic on the windows. He further indicated that only Lenny Lynch’s
house had mold and that Lynch was told to remove the plastic from the windows. Tr. P. 91.
Richards testified that the company housing is not well built and is typically “very old and not

1 insulated." Tr. P. 145-6. He claims he uses a wood stove to warm his house, and the District
2 does not provide the wood.

3 He indicated one farmer would turn off the water himself; yet Lynch was fired because of
4 it. Tr. P. 73-4. He indicated that he, Lynch, Mike Story, Mike Landry, W. C. Cecil, Jeff
5 Herringshaw, Tom Kenney, and "one or two others" sued the District for unpaid overtime wages
6 in 2005. Tr. P. 74. The case was settled. Richards also testified that, in his belief, the District
7 did not negotiate in good faith with the Association.

8 In response to the Board's question, he indicated that the employees did not advise the
9 District to cease deducting the dues from the wages, and that a memo was sent by the District
10 that it would simply, and unilaterally, cease doing the same. Tr. P. 143.

11 Richards confirmed that at Lynch's termination hearing he (Richards) testified that he
12 had told Lynch to turn the water off. Tr. P. 650. Richards was also questioned about a break-in
13 at the Lahontan Reservoir control tower, but denied involvement in the same. Tr. P. 672.

14 Don Watson was the next witness. He is a carpenter employed by the District. Tr. P.
15 194. He was previously an excavator "operator/driver" but no one from the District told him he
16 was being reassigned. Tr. P. 195. He indicated he is a member of TCIDEA, and was formerly
17 the treasurer. He did not participate in any vote to disaffiliate with the Association. Tr. P. 198-
18 99. He indicated that Wells Fargo gave TCIDEA's money to Mike Adams and Debbie Sherman,
19 without his authorization. Tr. P. 201-02. Prior to Adams receiving the money from the bank,
20 Watson claims Sherman demanded the account twice, which he (Adams) refused. Tr. P. 202-03.
21 He also testified that he did not authorize anyone to open the TCIDEA mail. Id.

22 Upon cross-examination, he indicated he did request his foreman to return to his prior
23 "operator/driver" position, but the District refused. No grievance was filed by Watson regarding
24 any reassignment of his classification. He further testified that dues ceased being deducted from
25 his wages, and that he did not request the same. Tr. P. 229.

26 Paul Boswell was called as the next witness and testified that he has been a carpenter for
27 the District for 16 years. Tr. P. 237-38. He also indicated that he belonged to the TCIDEA since
28

///

1 he was first hired. He stated that he was secretary for TCIDEA as well as treasurer, vice
2 president, and president. When TCIDEA II formed he was serving as secretary for TCIDEA and
3 saw no petition circulated for employees to sign. Furthermore, he stated that he was aware of the
4 vote to disaffiliate from NCSEA. Tr. P. 239-41.

5 When asked whether he had conversations with Debbie Sherman about money in
6 TCIDEA's account, he stated that he had and that Sherman had approached him the day after
7 TCIDEA II formed and wanted the checkbook and all account information. Tr. P. 241. Boswell
8 went on to state that W.C. Cecil approached him before TCIDEA II was to have their vote to
9 become a union explaining to him that he could "get four percent if they would drop the union
10 and go to [TCIDEA II]." Tr. P. 242. Boswell stated that Cecil was not a member of TCIDEA
11 but that he "considered W.C. a pretty good believable source." Tr. P. 242. Boswell indicated
12 that Cecil had family in management and that his father-in-law was a District board member. He
13 stated that Cecil indicated that the District wanted TCIDEA out of there and that they would "go
14 through whatever it took to get them out of there." Tr. P. 243. Boswell and Cecil spoke about
15 tentative agreements that had been made between the District and TCIDEA, and that the District
16 management did not approve of the tentative agreements and wanted to exclude them from the
17 contract. Tr. P. 244.

18 Mike Story was called as the next witness and stated that he was employed by the
19 District, assisting in operations and maintenance ("O & M"). His job title, however, was a ditch
20 rider and he had held that position for approximately eleven years. On or about October 9th,
21 2006 he was transferred out of the districts that he served as a ditch rider and placed in O & M.
22 Tr. P. 268-71. He stated that during the middle of negotiations between the District and the
23 TCIDEA, he was training a new ditch rider and was under the impression that the District had
24 hired approximately 16 new ditch riders, thus refusing to negotiate with TCIDEA. Tr. P. 273-74.

25 Story also had heard that a petition was being circulated around June of 2006 by
26 TCIDEA II seeking to get rid of the Association, but he had never seen it or voted on it. It was
27 during this time that he was training a new ditch rider. When asked if he had ever been
28 disciplined for mistakes he made as a ditch rider, Story noted that he had been written up by the

1 District for an altercation with a farmer. Tr. P. 275-77. Story acknowledged that the District and
2 TCIDEA were unable to reach a tentative agreement on the subjects of wages and insurance. Tr.
3 P. 281-86.

4 Lenny Lynch was called as the next witness. He was formally employed by the District
5 as a ditch rider and acted as President of TCIDEA during their affiliation with the Association.
6 Tr. P. 312-16. During his time as a ditch rider for the District, Lynch was instructed to place
7 plastic over the windows of his District assigned house to keep the cold out. Because of a mold
8 problem, Lynch was instructed to remove the plastic from the windows, which he did. However,
9 he later replaced the plastic over a few of the windows. Tr. P. 314-17. Lynch was further
10 accused of letting water run too long on a water user's property. These incidents along with a
11 derogatory religious statement he made about the O & M crew and shop employees were used as
12 charges by the District committee to fire him. Tr. P. 318-19. Lynch testified that he felt the real
13 reason he was fired was because of his support of TCIDEA and that he had filed a complaint
14 with the federal government alleging fraud by the District. Tr. P. 319. Additionally, he stated
15 that District management knew about previous complaints he had filed with OSHA concerning
16 ditch operations and that the District told him "they won't put up with it." Tr. P. 321.

17 Lynch testified that in November or December of 2005, his relationship with District
18 President, Mr. Schank, was compromised after he (Lynch) confronted him (Schank) about a
19 news article that Schank wrote in the local paper about how easy it was to be a ditch rider. Tr. P.
20 322. Lynch went on to say that his job security with the District went downhill from that point
21 on. Lynch also filed a complaint with the district attorney's office alleging that the District was
22 not filing the proper documents regarding their monthly expenditures as required by Nevada law.
23 Lynch also testified that he received a mysterious letter that he claims was a death threat during
24 the end of TCIDEA's negotiation process with the District. He stated that the letter was not
25 postmarked but contained the address of the "ditch house" where he was living at the time.

26 The text of the letter was neither written nor typed. rather the text of the message
27 contained cut outs of letters that were "put together as words . . . like Zodiac murder letters."
28 Lynch stated that he did not have a copy of the letter as it was in the possession of a "federal

1 agent of the government.” Tr. P. 324-38. He also admitted that he made an error in
2 communication with a farmer resulting in an overflow. Tr. P. 365. Lynch also could not specify
3 anyone besides John Baker who knew that he had made a fraud complaint with the federal
4 government. Tr. P. 370-71. When asked about the OSHA complaints that he filed for unsafe
5 conditions, Lynch testified that OSHA did not write up a report or follow up very effectively
6 with his several complaints. Tr. P. 388-93. He also gave a long dialogue of the unsafe
7 conditions which served as a basis for his complaints. Tr. P. 394-407.

8 The next witness was Lyman McConnell. Tr. P. 502. McConnell stated that he is
9 currently the District’s legal counsel. He had worked as a project manager for the District from
10 November of 1984 to March of 2006. Tr. P. 503. McConnell stated that he was appointed as the
11 chief negotiator for the District during negotiations with TCIDEA. He stated that TCIDEA had
12 formed sometime around 1978 or 1979. Over the years as a project manager and negotiator for
13 the District, McConnell said that the District always recognized TCIDEA as the recognized
14 employee organization for bargaining purposes. Tr. P. 506.

15 McConnell stated that the District approved a cost of living raise for employees in January
16 2004, which was requested by TCIDEA. Tr. P. 508. When asked about his understanding about
17 TCIDEA’s affiliation with the Association, McConnell responded that the Association was going
18 to handle the bargaining representation for TCIDEA but not completely override the TCIDEA.
19 Tr. P. 509. During the course of negotiations, it was McConnell’s understanding that the
20 tentative agreements reached between TCIDEA and the District would be “conditioned on a
21 whole package.” Tr. P. 512. McConnell testified that that shortly after a tentative agreement was
22 reached between the District and TCIDEA, a lawsuit emerged in June or July, 2005. Tr. P. 516-
23 17. About 10 to 14 ditch riders were named as plaintiffs in the lawsuit concerning nonpayment
24 of overtime wages. He stated the District wanted to settle that case rather than spend a million
25 dollars defending it. Tr. P. 520-521. The settlement amount was \$150,000.

26 McConnell stated that in 2005, and prior to being served with the lawsuit, the District
27 made a cost of living offer of five percent to TCIDEA. This agreement was conditioned upon
28 TCIDEA accepting the District’s new system operations involving the combining of certain

1 water districts and other controls on the amount of overtime that would be required. TCIDEA
2 rejected the offer. Tr. P. 524-25. McConnell stated that in February 2006, Michael Langton
3 became the chief negotiator for TCIDEA. McConnell spoke about a counter offer that was made
4 and communicated to Mr. Langton through a letter. He stated that the offer would give District
5 employees a 5.4 percent cost of living raise. This offer was not accepted by TCIDEA and the
6 two parties continued to correspond through letters with counter proposals. Tr. P. 526-29.

7 McConnell was presented with a letter dated June 15, 2006, addressed to the District.
8 Attached to the letter was a petition containing signatures from several individuals who wanted
9 to negotiate with the District independent of TCIDEA or the Association. Tr. P. 530. There
10 were 17 signatures on the petition, and McConnell stated that the District had approximately 30
11 total employees at the time. Tr. P. 530. He stated that the District did not have any role in
12 circulating the petition from TCIDEA II members. Moreover, he had no knowledge that the
13 petitions were even being circulated. McConnell said neither he, nor any other management
14 personnel, promised that a raise would be given to TCIDEA II members if they dropped
15 TCIDEA. He also testified that the District confirmed that a majority of bargaining unit
16 employees had signed the petition. McConnell also verified that as of June 21, 2006, TCIDEA
17 had eleven dues paying members. Correspondence indicated that TCIDEA II had an
18 organization meeting on June 21, 2006 and voted in Adams as president, Cecil as vice-president,
19 and Sherman as secretary-treasurer. The correspondence also indicated that notification would
20 be given to the Association and TCIDEA about the new arrangements. Correspondence dated
21 June 30, 2006, notified the District of TCIDEA II and that its officers would act as the
22 negotiation team on behalf of TCIDEA II members. McConnell also testified that he sent an
23 email to Mike Langton asking him if he had talked to TCIDEA members about whether they
24 would conduct a secret ballot. Tr. P. 527-35. McConnell said that he asked Langton this
25 question because the District had copies of Langton's letters to Adams that indicated that
26 TCIDEA II could not remove Langton as chief negotiator and take over negotiations on behalf of
27 TCIDEA members. Tr. P. 536. Langton's email indicated that TCIDEA was the lawfully-
28 recognized bargaining agent. Tr. P. 536. Langton's email to McConnell also addressed the

1 District's unilateral decision to change its operations without negotiation and that because of
2 that, Langton felt that a complaint needed to be filed with the EMRB.

3 McConnell stated that no negotiations between the District and TCIDEA II took place
4 between June and September, 2006. McConnell stated, in October 2006, the District and
5 TCIDEA II began negotiations and signed an agreement on October 9, 2006. McConnell
6 confirmed that after March 21, 2009, the District and TCIDEA never negotiated again. Tr. P.
7 1254.

8 Upon being asked about Lynch, McConnell stated that he did not consider Lynch to be a
9 good employee. Tr. P. 540. McConnell made a recommendation to the District that Lynch be
10 terminated. The District's employee relations committee instead gave Lynch a 60-day suspension
11 and required him to pay rent on the house. Tr. P. 541. McConnell stated that the first allegation
12 against Lynch was dismissed by the committee because there was conflicting evidence as to
13 whether Lynch did threaten the District president. Tr. P. 542.

14 McConnell testified as to his knowledge about the various OSHA complaints. He said
15 that the OSHA officer did not disclose who filed the complaint. The officer found no violations.
16 Approximately one or two months later, another OSHA officer came to the District. This time,
17 the OSHA officer found some violations and wrote a formal report finding the District in
18 violation and assessed a fine of \$2,500. McConnell got the fine reduced to \$500. Tr. P. 543-44.

19 McConnell said that Ida Adams (wife of Mike Adams) is another District secretary who
20 retrieves the District's mail at the post office. McConnell also testified that he never participated
21 in any discussions with District management about transferring ditch riders who had TCIDEA
22 membership to the O & M crew. He also claimed that he did not tell TCIDEA II officers that
23 they would receive a raise if they agreed to negotiate directly with the District without the
24 influence of TCIDEA or the Association.

25 McConnell testified that he signed the formal agreement on behalf of the District which
26 grants TCIDEA formal recognition as the sole bargaining agent that the District would work
27 with. Tr. P. 547. McConnell indicated that the District's ground rules require that the District
28 negotiate in good faith with whoever TCIDEA designated as its chief negotiators. Tr. P. 554.

1 McConnell testified, that to his knowledge, the petition he received from TCIDEA II members to
2 establish itself as the recognized union contained no dues paying members of the Association.
3 Tr. P. 564. He also conceded that in order for a person to vote on something that affects an
4 organization, that person has to be a member of that organization.

5 He indicated that the existence of the overtime lawsuit impeded negotiations with
6 TCIDEA. Tr. P. 565-68. After the settlement agreement was reached regarding the lawsuit filed
7 by the ditch riders in April of 2006, TCIDEA's counter-proposals dated June of 2006 were not
8 accepted by the District. By the time McConnell was able to make arrangements for a discussion
9 on TCIDEA's counter-proposal, Adams had provided him with notice that TCIDEA II had
10 formed.

11 The next witness was David Overvold. Tr. P. 705. Overvold indicated his position was
12 project manager for the district. Tr. P. 706. Prior to 2006, he was employed as the District's
13 engineer from May of 1998 to March of 2006. When Overvold became the project manager, he
14 did not assume any role as a negotiator for the District, however, he did attend negotiation
15 sessions. Tr. P. 707. He claims to have never told Adams, Cecil, or Sherman that the District
16 would give them a wage increase if they dropped the Association and negotiated with the District
17 directly. Overvold was presented with a termination letter that he signed recommending that
18 Lynch be fired. Tr. P. 707-08. Overvold denied that any employee organization/union activity
19 or membership affected his recommendation to terminate Lynch. Tr. P. 709.

20 Overvold recalled two negotiation sessions he had with TCIDEA II representatives. Tr.
21 P. 716. After the negotiation sessions, Overvold indicated that Adams had told him that the
22 collective bargaining agreement was ratified by TCIDEA II. Tr. P. 717.

23 He confirmed his involvement in the transfer of some ditch riders to the O & M
24 department in October of 2006. Tr. P. 718. He testified that union involvement was not
25 considered when deciding which ditch riders would be transferred to O & M. Tr. P. 718-20. He
26 had no knowledge that Lynch filed OSHA complaints. Tr. P. 722.

27 Overvold indicated that he was familiar with the break-in at the Lahontan reservoir
28 control tower. Tr. P. 724. He described the control tower and indicated that all ditch riders have

1 a key to the gate protecting the tower. He did not see any damage to the lock when he looked at
2 it. Tr. P. 726. He testified regarding the broken window, missing logbook, and the standard
3 operating procedures that controlled how the dam is operated. Tr. P. 728. He indicated that the
4 District would not benefit from the missing items taken from the control tower. Tr. P. 730.

5 The next witness called to testify was Michael Adams. Adams stated that he began his
6 employment with the District in March of 1999. His current position is lead mechanic and he
7 indicated that he was a member of TCIDEA from 1999 to 2003 and then from June of 2006 to
8 the present, he has been a member of TCIDEA II. Tr. P. 1112-14. He was elected as president
9 of TCIDEA II in June, 2006. Adams also indicated that he was never advised of a particular
10 method by which TCIDEA could "de-affiliate" with the Association. He also was never
11 approached by Lyman McConnel or anyone from the District with a promise of cost of living
12 increases if he could terminate affiliation with the Association and negotiate directly with the
13 District. Id.

14 Adams stated that his letter of June 15, 2006 and the petition were products of frustrated
15 TCIDEA members who were dissatisfied with the pace of negotiations and unhappy with the
16 Association's inability to reach an agreement with the District. Tr. P. 1114-15. Adams testified
17 that he had no arrangements with the District encouraging him to circulate the petition, and that
18 no incentives were promised by the District for doing so. Tr. P. 1116-17. Adams indicated that
19 Cecil and Jack Norcutt helped circulate the petition for disaffiliation. Tr. P. 1116-17.

20 Adams testified that Chuck Richards made a threatening phone call to him and warned
21 him about "union busting" and that there would be "real recourse." Tr. P. 1117. Concerning the
22 first formal TCIDEA II meeting, Adams stated that a secret ballot election was conducted and
23 that he was voted in as president. Adams also indicated that prior to the election he posted notice
24 of the meeting "in the shop department, the O & M department, the bulletin board in the main
25 office, and the bulletin board in the water department. Tr. P. 1118-19.

26 Regarding the TCIDEA's Wells Fargo Bank account, Adams indicated that the account
27 money came from multiple sources including money as dues from TCIDEA members, donations
28 made to TCIDEA, and raffles conducted by TCIDEA members to raise money. Tr. P. 1136-37.

1 Adams admitted that after he became president of TCIDEA II, he tried to get control of the Wells
2 Fargo account. After Adams became President he began receiving all mail addressed to
3 TCIDEA. Adams had Cecil, Sherman, and some other TCIDEA II members with him when he
4 went to Wells Fargo to try to get control of the account. None of the mail that Adams received
5 as TCIDEA II President had Richards name on it. Adams opened up a new bank account for
6 TCIDEA II after its formation and charged members \$5 per year in dues. Tr. P. 1149-51.

7 Upon cross examination, Adams said that he was never in favor of TCIDEA's affiliation
8 with the Association. Tr. P. 1155. Adams withdrew his membership from TCIDEA in the
9 summer of 2003, and then organized TCIDEA II in 2006. Tr. P. 1156-57. In TCIDEA II's
10 agreement with the District, Adams indicated that the five percent increase in living allowances
11 were justified because the Association failed to negotiate cost of living increases for a two year
12 period. Tr. P. 1163. Adams admitted that he had not paid any dues to either the Association or
13 TCIDEA from the summer of 2003 to October, 2006. Tr. P. 1171. Adams admitted that he and
14 Sherman had check writing authority for TCIDEA II. He also admitted that he closed the old
15 TCIDEA Wells Fargo bank account. Adams indicated that he received a check and deposited it
16 in the new bank account for TCIDEA II. Tr. P. 1172-73. Adams reviewed bank statements from
17 the old TCIDEA bank account with the help of Sherman. Adams stated that he used the dues
18 paid from the June 21st organizational meeting to open a new bank account for TCIDEA II.

19 Regarding a letter addressed to Chuck Richards accompanied by a check, Adams
20 deposited it into TCIDEA II's bank account and notified Richards that the TCIDEA's bank
21 account had been closed. Tr. 1183-84.

22 When asked about pay raises, Adams indicated he received a merit increase in March,
23 2008. Before that, he received a cost of living increase in July 2007, March 2007, and October
24 2006, when the TCIDEA II's agreement with the District was executed. Tr. P. 1192.

25 Jack Norcutt was the next witness. Tr. P. 1307. Norcutt confirmed that he was currently
26 employed by the District. He holds the position of equipment operator and has been employed
27 by the District for 17 years. Tr. P. 1307-1308. He indicated he was involved in circulating the
28 petition to disaffiliate from the Association and form TCIDEA II. Tr. P. 1308. To his

1 knowledge, no one at the District knew about the petition being circulated and no benefits or
2 incentives were offered or promised by management if he withdrew from TCIDEA or dropped
3 affiliation with the Association. Tr. P. 1308-09. Prior to signing the petition for TCIDEA II,
4 Norcutt dropped his membership with the Association. Norcutt further indicated that he felt the
5 Association and TCIDEA were favoring the ditch riders in their proposals to the District.
6 Norcutt, not being a ditch rider, felt he was not being represented and therefore stopped paying
7 dues to the Association. Norcutt was never told by the Association that disaffiliation from the
8 Association had to be carried out by some particular method. Tr. P. 1311. Norcutt stated that he
9 was not aware that the contract he voted on for TCIDEA II did not contain a provision for future
10 raises. Tr. P. 1323-27.

11 The next witness was W.C. Cecil. He is employed by the District as both a ditch rider and
12 a meter tech. He has been employed by the District for nearly 12 years. Tr. P. 1340-41. He is
13 currently the President of TCIDEA II. Tr. P. 1341. Cecil served as president of TCIDEA from
14 2003 to 2005. During that time, Cecil indicated the District did not retaliate against him for
15 belonging to TCIDEA. Tr. P. 1341-42. It was also never explained to him that disaffiliation
16 could only occur during certain times of the year and by some particular vote or method. Tr. P.
17 1343. Cecil also testified that he was never encouraged by the District to disaffiliate with the
18 Association.

19 Cecil also indicated that his brother Kelly Cecil was employed by the District and a
20 member of the bargaining unit before being promoted to the hydro plant foreman position. Cecil
21 denied alleged conversations with District employees about incentives for dropping affiliation
22 with the Association and forming TCIDEA II. Cecil indicated he dropped out of TCIDEA in
23 February 2006. Tr. P. 1359-60.

24 The next witness was David Watkins. Tr. P. 1399. Watkins indicated that he was
25 employed as a water meter technician for the District, and has been employed by the District for
26 25 years. Tr. P. 1399-1400. Watkins signed the petition to disaffiliate with the Association in
27 June 2006. Watkins indicated that no threats or promises of wage increase were offered by any
28 District if he agreed to disaffiliate from the Association. Tr. P. 1400-01. Watkins was unaware

1 of any bylaws or provisions governing the process of disaffiliation. Tr. P. 1402. Watkins
2 recalled a discussion with Mike Story about a pending law suit filed by the ditch riders employed
3 by the District, and that Story said that he was going to "get three million [dollars] and that he
4 was going to destroy [the District]." Tr. P. 1402-03. Watkins also remembered Lynch making
5 negative comments about the LDS church. Watkins recalled other disparaging statements made
6 by Lynch about Mormons and Watkins talked to him about it at one point, but Lynch continued
7 to make statements critical to the LDS church. Tr. P. Tr. P. 1405-1406.

8 Upon cross examination, Watkins indicated that he was never a member of the
9 Association. Watkins never voted to elect Lynch as president of TCIDEA, and he was never
10 informed that Lynch was elected as president of TCIDEA. Tr. P. 1414

11 The next witness was Lester Debraga, chairman of the District's Board of Employee
12 Relations Committee ("Committee"). Tr. P. 1417-18. Debraga indicated that the Committee's
13 role was to essentially be an intermediary between management and the employees for "any
14 problems that may arise." He also stated that the Committee has the authority to disagree with
15 the project manager's recommendation to terminate someone. Tr. P. 1419-20. He recalled
16 project manger McConnel recommending to the Committee that Lynch be terminated in
17 December 2005. Tr. P. 1419. However, he recalled that the Board insisted that he be suspended
18 rather than terminated. Tr. P. 1420. Debraga indicated that his vote to suspend Lynch was not
19 influenced by Lynch's union membership. Tr. P. 1421.

20 Ted Renfroe testified next. Tr. P. 1451. Renfroe indicated that he was employed by the
21 District and that his current position was shop foreman and purchasing agent. Overall, Renfroe
22 has been with the District a total of 31 years. Tr. P. 1452. His duties included taking care of the
23 ditch rider's houses and maintaining vehicles. Tr. P. 1452. Renfroe indicated that on April 18,
24 2005, he inspected Lynch's ditch house and upon noticing mold, he contacted a mold company.
25 His instructions from the mold company were to remove the plastic from the windows. Tr. P.
26 1453-55. Lynch indicated to Renfroe that he would comply with the order but subsequently the
27 District learned that he still had plastic on his windows. McConnel instructed Renfroe to take
28 pictures of the house to evidence whether Lynch complied with the order to remove the plastic.

1 Tr. P. 1456-58. Renfroe stated that the District never refused to repair Lynch's ditch house
2 because of Lynch's employee association/union activity. Tr. P. 1465. Renfroe could not recall
3 any negative comments made by District management regarding Lynch's employee
4 association/union membership. Tr. P. 1467.

5 Renfroe indicated that he inspected the truck that Lynch allegedly damaged. He
6 indicated that the truck ran out of coolant. Tr. P. 1468-69. Renfroe stated that Lynch would
7 have had notice of the problem and that he could have prevented the engine failure. Tr. P. 1470.

8 The next witness was Walt Winder. Tr. P. 1487. Winder's current position with the
9 District was O & M foreman. Tr. P. 1489. He reports regularly to Overvold and has been
10 employed by the District since 1979. Tr. P. 1489. Winder indicated that he was involved in the
11 decision to transfer some individuals from the water department to the O & M department in
12 2006. Winder explained the difference between the ditch rider shifts in 2006 from those of prior
13 years. The difference, as he explained it required the ditch riders to be on a shift of 12 hours and
14 then 12 hours off. At the end of the water season, the ditch riders would transfer over to the O &
15 M department. Tr. P. 1489. Winder also indicated that the District adopted both a night and a
16 day ditch riding crew and rotated each shift. Beginning in 2006, this increased the number of
17 ditch riders that the District needed for the water season. Tr. P. 1489-90.

18 The individuals in charge of making the decision to transfer ditch riders to the O & M
19 department at the end of the season were Winder, Overvold, and the water masters. Tr. P. 1493.
20 No change in pay or benefits were incurred by those individuals transferred from the water
21 district to O & M. Tr. P. 1493-94. When asked why Mike Story was transferred to O & M,
22 Winder responded that Mike had shown a reluctance to work in the expanded water district area
23 assigned to him. Employee associaton/union activity had no bearing on the District's decision to
24 transfer Story to O & M. Tr. P. 1494-95. Other individuals besides Story and Richards were
25 transferred to O & M in November 2006. Those individuals included Sharlene Haddox, Gary
26 Barenchea, and Scott Heath. Tr. P. 1495-96. These individuals, however, were temporary
27 employees. Tr. P. 1496. The District considered ditch rider transfers to O & M to be temporary
28 and those who were transferred were reassigned to the water district when the next water season

1 began. Tr. P. 1497. On cross examination, Winder also indicated that a ditch rider who was
2 transferred from the water district to O & M received less hours at O & M. Tr. P. 1513-14.

3 Winder indicated that at three different times he acted as president of TCIDEA. He never
4 saw any bylaws or constitution for the Association, nor was he ever asked to vote on any bylaws
5 or rules for the Association. Tr. P. 1504.

6 The next witness was Wesley John Baker. Tr. P. 1541. At the time of the hearing, Baker
7 was retired from the District. The last position he held at the District was that of water master.
8 Tr. P. 1542. Baker began his employment with the District in 1976. Baker was questioned
9 about a written warning given to Lynch in June 2006 regarding water user Allen Smith. Tr. P.
10 1543. Smith had called Baker on the phone indicating that "he didn't have nearly the water that
11 he had ordered." Tr. P. 1543. Baker indicated that at the time of Smith's complaint, Lynch was
12 still on shift. Tr. P. 1543. Baker indicated that Lynch should have been checking on Mr.
13 Smith's water and should have caught the error. Tr. P. 1544.

14 Regarding the transfer of Story and Brian Hyde to O & M in the fall of 2006, Baker
15 indicated that employee organization/union activity had nothing to do with the transfer. Tr. P.
16 1544-45. Baker did not feel Story could make the adjustments required to take on additional
17 districts and that he was a good candidate for transfer to O & M. Tr. P. 1545-46. Baker recalled
18 various comments that Lynch had made about the Mormon religion and the complaints he had
19 received regarding those comments. Baker verified documents that he gave Lynch a verbal
20 warning for anti-Mormon comments in November 2006. Tr. P. 1554-55.

21 On cross examination Baker indicated that Story was not the only senior ditch rider who
22 had complained about the additional areas he had to cover. Tr. P. 1582. Baker also
23 acknowledged that he himself had made some disparaging remarks about Catholics, but was
24 using that as a comparison when counseling Lynch about his negative remarks about Mormons.
25 Tr. P. 1584. Baker acknowledged that the increased number of ditch riders was due to the
26 District's effort to decrease overtime hours reported by the ditch riders. Tr. P. 1593.

27 ///

1 A video of the deposition of Shelby Cecil was shown to the Board, and such concluded
2 the administrative hearing. Tr. P. 1607. The parties agreed to submit post hearing briefs rather
3 than offer closing arguments.

4 **FINDINGS OF FACT**

5 1. This Board finds that the Complainant in this matter is an employee organization as
6 defined in NRS 288.040.

7 2. This Board finds that the Respondent in this matter is a local government employer as
8 defined in NRS 288.060; and the witnesses who testified at the hearing that they were employed
9 by Respondent are local government employees as defined in NRS 288.050.

10 3. This Board finds that NRS 288.270(1)(a) provides, in part, that it is a prohibited labor
11 practice for a local governmental employer to interfere, restrain or coerce any employee in the
12 exercise of any right guaranteed under NRS chapter 288. NRS 288.270(1)(b) states that it is a
13 prohibited labor practice for a local government employer to dominate, interfere, or assist in the
14 formation or administration of any employee organization. NRS 288.270(1)(c) and (d) discuss
15 discrimination and/or discharge for various situations.

16 4. This Board finds that credible testimony was provided that TCIDEA II was formed
17 without the knowledge and consent of TCIDEA; and that the employees who got to vote in
18 TCIDEA II were not members of TCIDEA.

19 5. This Board finds that credible testimony was provided that members of TCIDEA were
20 not informed of the creation and/or vote to create TCIDEA II.

21 6. This Board finds that certain individuals, including but not limited to Mike Adams,
22 improperly closed the Wells Fargo Bank account belonging to TCIDEA and improperly used
23 that money, and refund monies from the Association, to establish a bank account for TCIDEA II.

24 7. This Board finds that District employees, who were aligned with District management,
25 including but not limited to Ida Adams, wife of Mike Adams, would improperly open mail
26 specifically addressed to the TCIDEA and improperly provide the same to TCIDEA II. This
27 mail would include, but is not limited to, bank statements. The Board finds credible testimony

28 ///

1 was offered that authorization was not provided by TCIDEA to District employees to so open
2 and re-route TCIDEA's mail.

3 8. This Board finds, however, that the transfer of ditch rider/employees to O & M was
4 not for improper purposes.

5 9. This Board finds that the company provided housing was offered to ditch riders and
6 no evidence of improper motive or anti-union/employee organization animus can be seen
7 regarding the assignment of and/or condition of the housing, e.g., mold, having to use plastic to
8 cover windows, and wood-burning stoves for heaters.

9 10. This Board finds that the District unilaterally and improperly ceased deducting dues
10 from the members of TCIDEA and thereby "interfered or assist(ed)" in the formation or
11 administration of the TCIDEA and TCIDEA II as prohibited by NRS 288.270(1)(b).

12 11. This Board finds credible testimony that certain bargaining unit employees were
13 unaware of a petition for the creation of TCIDEA II, did not see any such petition, and were
14 thereby restrained in signing or not signing any such petition as prohibited by NRS
15 288.270(1)(a).

16 12. The Board finds that shortly after the District's acknowledgement of TCIDEA II,
17 negotiations commenced resulting in an agreement of October 9, 2006. This agreement provided
18 employees with a cost of living raise. The Board is unable to determine if this raise was the
19 effectuation of a District management promise or not.

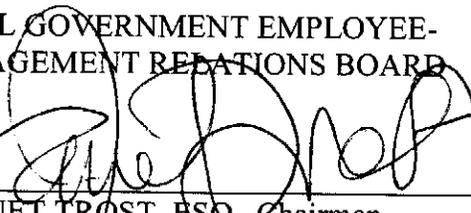
20 13. The Board finds that complaints were made to Nevada OSHA regarding the
21 conditions of the District property, and such complaints were filed by bargaining unit employees.
22 One complaint resulted in a confirmed violation and an assessment made against the District.
23 The Board is unable to resolve whether District Management retaliated against bargaining unit
24 employees because of the Nevada OSHA complaint.

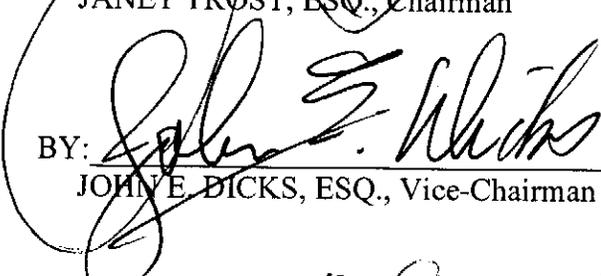
25 14. The Board finds that the District, through the testimony of McConnel, formally
26 acknowledged TCIDEA as the exclusive bargaining agent for the District's employees at issue in
27 this matter. The Board also finds that the District did not formally withdraw its recognition of
28 TCIDEA pursuant to the provisions of NRS and NAC chapters 288.

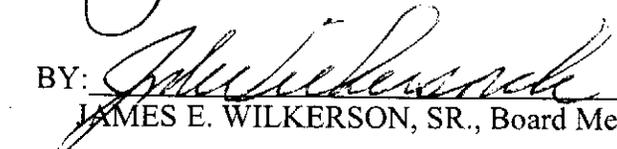
- 1 3. That the District immediately cease and desist in its actions violative of NRS and NAC
2 chapters 288.
- 3 4. That the District post a notice of its prohibited labor practices for a period of ninety (90)
4 days; that such notice be prepared by the Commissioner; posting shall be accomplished in
5 all public locations, visible to all District employees used for communication to District
6 employees; and that the Board's Commissioner is hereby instructed to visit the District's
7 property to determine if the posting was indeed accomplished, if possible, at his earliest
8 convenience.
- 9 5. That the District immediately resume its recognition of TCIDEA as the recognized
10 bargaining agent for the employees at issue in this matter; and immediately cease its
11 recognition of TCIDEA II. All funds erroneously obtained from TCIDEA shall be
12 immediately returned from TCIDEA II to TCIDEA.

13 DATED this 14th day of May, 2009.

14 LOCAL GOVERNMENT EMPLOYEE-
15 MANAGEMENT RELATIONS BOARD

16 BY: 
17 JANET TROST, ESQ., Chairman

18 BY: 
19 JOHN E. DICKS, ESQ., Vice-Chairman

20 BY: 
21 JAMES E. WILKERSON, SR., Board Member