STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

RONALD G. TAYLOR, Complainant, vs. CLARK COUNTY EDUCATION ASSOCIATION (CCEA), CCEA REVIEW BOARD, AFRICA SANCHEZ, ESQ., VICKI COURTNEY, and KAREN ACKERMAN, Respondents.	ITEM NO. 657C CASE NO. A1-045904
RONALD G. TAYLOR, Complainant, vs. CLARK COUNTY EDUCATION ASSOCIATION (CCEA) and MARY ELLA HOLLOWAY, Respondents.	CASE NO. A1-045906

For Complainant: Ronald G. Taylor

For Respondents: Francis C. Flaherty, Esq.
Dyer, Lawrence, Penrose, Flaherty & Donaldson

FINDINGS OF FACT, CONCLUSIONS OF LAW & DECISION

This matter having come on for hearing before the State of Nevada Local Government Employee-Management Relations Board ("Board") for June 24-25, 2008, noticed pursuant to NRS and NAC chapters 288, NRS chapter 233B, as well as Nevada's Open Meeting Laws, finds, concludes, and orders as follows:

I. History of Case.

The complaint in A1-045904 was filed by Ronald G. Taylor ("Taylor") with the Board on February 26, 2007, against the Clark County Education Association ("Association" or "CCEA").

the Association's Review Board, Africa Sanchez, Esq., Vicki Courtney, and Karen Ackerman. The allegations against the Respondents were that they discriminated against Taylor due to his involvement in a rival employee organization. An answer was filed in this matter, along with various motions to dismiss, to strike pleadings, and to consolidate this matter with A1-045906.

The complaint in A1-045906 was filed by Taylor with the Board on March 2, 2007, against the Association and Mary Ella Holloway. At issue in this matter was the Respondents' breach of its duty to represent Taylor and his expulsion from the Association. An answer and counterclaim were filed in this matter, along with motions to dismiss and to strike pleadings.

On September 20, 2007, Case Nos. A1-045904 and A1-045906 were consolidated for purposes of an administrative hearing. Taylor filed his pre-hearing statement on October 12, 2007 and the Respondents filed their pre-hearing statement on November 1, 2007. As indicated above, this consolidated case was scheduled for hearing before the Board. Several witnesses were called, and the following is a brief discussion of their testimony.

II. Testimony at Hearing.

Robyn Hultengren was the first witness. She was on the Association's Executive Board and heard Taylor's expulsion hearing. She indicated the Executive Board is the governing body for the Association, and it was upset that Taylor had contacted Teamsters. She resigned from the Executive Board because of differing opinions with John Jasonek. She indicated that a member on the Review Board can be impeached, although she has not researched how to impeach a member.

Bonnie Peck was the next witness. She is a Building Representative and was a complaining party against Taylor, although she did not know that it would result in Taylor's expulsion. She has seen his remarks on the Interact site, but Ackerman asked her and her husband to be complainants against Taylor. Fourteen individuals were contacted to be complainants; and had she the opportunity to do it again, she would not be a complainant against Taylor since it resulted in his expulsion. She does not believe that any dues-paying member should be expelled. Peck indicated that if members are dissatisfied with an Executive Board member, they should seek that Board member's impeachment.

Although her husband, Michael, indicated a desire to contact AFT, they were not disciplined or expelled from the Association for discussing another employee organization. They, however, never formed a competing organization or tried to decertify the Association. In response to a question from this Board, Peck indicated that if she was confronted with a dissenter, she would put that person to work for the Association in some capacity.

Michael Peck also testified. He does not recall talking with Taylor but he is listed as a charging party. Ackerman asked permission for the use of his name on the charge against Taylor; and he thought that Taylor would only be brought before the Review Board. He does not recall any specific charges against Taylor, but he personally thinks the action against Taylor was proper. He stated he was only "venting" when he talked about AFT, and he only vocalized such a feeling to his wife. Neither he nor his wife appeared at the Review Board hearing.

Michael Steinbrink was the next witness. Although he did not appear at the Review Board hearing, he is a charging party against Taylor. Vicki Courtney asked permission to use his name as a complainant. He stated he understood the charge to be forming a competing union and was aware that Taylor could be expelled. He indicated to this Board that he would still be a charging party today against Taylor knowing that the result would be expulsion.

Kenneth Zelasko was Taylor's witness at this Board's hearing as well as at the hearing before the Association's Review Board. Zelasko stated that he was a moderator for the Clark County School District's Interact website, Teacher's Lounge. He testified that Taylor is the only teacher to his knowledge without privileges to use the Interact website from home. He also testified that he and Taylor made suggestions to the Association, and the Association retaliated with their article "Setting It Straight" which he believes defames him.

Zelasko offered testimony concerning the possibility of altered emails and/or memoranda. He testified that Attorney Sanchez was at the Review Board hearing, but Taylor was not allowed an attorney to represent him at the hearing. A copy of the transcript of the Review Board hearing was presented as an exhibit and Sanchez is noted therein as being present at the Review Board hearing.

Zelasko also testified that Taylor was not allowed the opportunity to present an opening statement or a closing statement, and that the decision was rendered shortly after the meeting without Taylor being afforded the opportunity to submit a post-hearing brief. Zelasko also stated that Taylor was concerned with becoming an at-will employee should he be expelled from the Association. He also stated that Taylor should not have been expelled because a dissenting opinion, or a voice of opposition, assures proper representation by an employee organization.

According to Zelasko, Mary Ella Holloway informed him that as long as she was involved with the Association, he would not be "welcomed" within the Association.

The Association's first witness was Africa Sanchez. She is the Association's general counsel having been admitted to the Nevada bar in October, 2000; and she provides daily legal advice to the Association. Such advice included advice to the Review Board that Taylor could not have an attorney present at the Review Board hearing. She testified regarding hearing Exhibit B which is the Review Board's policies and procedures, and admits that Section I pertains to impeachment and Section II pertains to censure, suspension, or expulsion of a member. This document is silent as to whether attorneys can be present at the Review Board hearing. She also assisted in the drafting of the charges against Taylor and believes Taylor had an opportunity to make an opening statement when it became time to present his case to the Review Board. She claims that Taylor also did not ask to file any post-hearing documents. She also stated that she attended the Review Board hearing to assure that all parties' rights were protected.

She stated that because of Taylor's activities in forming a new rival organization, all correspondence or documents pertaining to Taylor came straight to her. She claims that Taylor campaigned for teachers to stop paying dues to the Association, and if that occurred, the Association could no longer exist. Sanchez stated that Taylor even picketed during the drop period for employees to drop their Association membership. Taylor also allegedly solicited teachers to contact him regarding the new organization and the possibility of better health insurance than that offered by the Association.

Sanchez testified that all of Taylor's activities indicated that he was a rival union organizer. She considered him a serious threat to the Association. She did state, however, that Association members will typically talk to disgruntled members, but she is not aware of anyone ever talking to Taylor. She also admits that rank and file members of the Association did not complain about Taylor to her knowledge.

As for damages suffered by Taylor due to his expulsion from Association membership, Taylor no longer can buy cheaper movie tickets; allegedly he has no right to Association representation in a grievance; Taylor cannot attend Association meetings or vote in elections for Association officers-directors; additional life insurance is no longer being provided to Taylor through the Association; and malpractice insurance is no longer being provided to Taylor through the Association.

The next witness was Karen Ackerman. She has been a Building Representative for the Association as well as on the Executive Board and has been Treasurer. She claims members and non-members approached her regarding Taylor's messages on the Interact website. She personally did not like Taylor's use of the website for his own purpose of forming a rival employee organization. His postings led her to believe that Taylor was seeking decertification of the Association and that led to her seeking the complaint and hearing before the Review Board. She stated that Taylor created "great tension" in her life. She stated she is not aware of any Association member approaching Taylor regarding his concerns.

Ms. Ackerman discussed the Association's goals and principles and how Taylor could have allegedly violated the same. She admits that principles are not set out in the bylaws, policies, and procedures offered as hearing exhibits. Goals are found in the preamble. She stated she contacted several members to be the complainants against Taylor, and Vicki Courtney contacted the other complainant members. She stated that she did not think that the Review Board would expel Taylor.

Testimony was also offered as to the timing of the complaint against Taylor versus the date Taylor actually filed his complaint with this Board. The complaint bringing Taylor before the Review Board was dated November 2006; however, the complaint was not filed with this

Board until January 2007. She stated that she did not think it was a personal attack against Taylor by her soliciting complaining members against him. She claims the only reason the charges were filed against Taylor was because he was organizing a competing employee organization. Ackerman further claims that by seeking decertification of the Association, you are not helping its members, and that filing a complaint with this Board is an extreme measure.

Testimony was also presented that Chet Miller was not disciplined or expelled from the Association for any dissenting remarks he made against the Association. During questioning of Ackerman by this Board, counsel for the Association stipulated that Taylor was expelled from the Association based upon his efforts to form a rival union and his attempt to decertify CCEA, which efforts culminated with him filing a petition with this Board seeking decertification. Taylor moved for summary judgment that, pursuant to NRS 288.270(2)(a), it is a prohibited labor practice to "interfere with, restrain or coerce any employee in the exercise of any right guaranteed" in NRS chapter 288; and pursuant to NRS 288.140(1), "[i]t is the right of every local governmental employee, . . . to join any employee organization of his choice or to refrain from joining any employee organization." The Board granted the summary judgment in favor of Taylor and against the Respondents; and based thereon, dismissed the Respondents' counterclaim.

FINDINGS OF FACT

1. That only two of the fourteen charging parties were present at the Review Board hearing, namely, Ackerman and Vicki Courtney; and those two (Ackerman and Courtney) were the individuals who solicited the complainants for the "Initiation of Proceedings" against Taylor.

2. Testimony was presented that no rank-and-file members of the Association complained of Taylor's conduct. Testimony was presented, however, that Sanchez believed Taylor was a serious threat to the Association and that Taylor caused great tension in the life of Ackerman.

3. Ackerman testified that the Review Board only deliberated for approximately ½ hour, and that the deliberations were immediately after the hearing, without Taylor being provided an opportunity to file any post-hearing briefs or documents. Pursuant to the Review Board's

policies and procedures, Taylor had the right to submit post-hearing briefs and/or documents. Sanchez indicated she attended the Review Board hearing to protect the rights of the parties; however, she failed to advise or remind Taylor of his rights to file any post-hearing documents and/or appeal. In fact, she was instrumental in denying Taylor legal representation before the Review Board. This is especially alarming considering the serious ramifications suffered by Taylor. In light of the short time in which the deliberations were conducted and the immediate commencement of the deliberations, a predetermined outcome was evident, especially in light of the apparent animosity towards Taylor, after a summary hearing.

4. Arguments were made by Taylor that he was fearful of becoming an at-will employee with no protection at all, even through such is a misunderstanding of the law.

5. Taylor lost certain rights-benefits by expulsion from the Association, namely, Taylor no longer can buy cheaper movie tickets; allegedly he has no right to Association representation in a grievance and representation by others would be at an increased hourly rate; Taylor cannot attend Association meetings or vote in elections for Association officers-directors; additional life insurance is no longer being provided to Taylor through the Association and Taylor testified he travels to a prison as his teaching assignment (i.e., a greater risk of exposure than traditional teachers); and malpractice insurance is no longer being provided to Taylor through the Association.

6. Based upon the demeanor of the witnesses, there is an appearance of personal animosity towards Taylor. e.g., Ackerman testified Taylor gives her "great stress" or "tension" in her life and all matters involving Taylor are immediately forwarded to the Association's general counsel.

7. No one from the Association ever contacted Taylor about his concerns or attempted to have him be more involved with the Association.

8. This Board finds that expulsion from the Association upon the filing of a complaint with this Board will have a chilling effect on members to complain about the Association and or may cause the members not to file prohibited labor practice complaints with this Board.

9. Substantial evidence exists in the record that Taylor wished to remain in the Association, such as appearing at the Review Board hearing concerning his expulsion.

10. Furthermore, animosity is evident in the comments made that if certain members dropped their membership in the Association, they would never be allowed back into Association, or "welcomed" into the Association.

11. Taylor's acts of allegedly posting improper messages on the Interact website may be a violation of a Clark County School District policy, but no evidence was submitted that such a mere act of posting was so egregious that he should be expelled from the Association along with the accompanying loss of benefits and rights. Testimony was provided that if there is a dissenter of the Association, that such a dissenter should be brought into a more active role or provided duties within the Association. Simply making comments against the Association, or creating a website, or even attempting to achieve the impeachment of an officer is not so egregious to warrant Taylor's expulsion from the Association with the associated loss of benefits and rights. Based upon a credibility determination of the witnesses' testimony, Taylor was simply unable to get the Association to respond to his concerns, and he merely took the next step he deemed necessary.

12. There were members who may have voiced a concern against the Association, namely, Chet Miller and Michael Peck, but they were not disciplined nor expelled from the Association, yet discriminatorily they did so with Taylor.

13. The applicable documents, bylaws and policies/procedures do not prevent attorneys appearing before the Review Board on behalf of a party, yet Taylor was precluded from having an attorney at the Review Board hearing.

14. The allegations concerning Taylor violating the Association's principles are groundless, as principles are not defined in the Bylaws. Although goals may be referenced in the Preamble to the Bylaws, insufficient evidence was presented at the hearing before this Board of Taylor's alleged violations of the same to warrant his expulsion.

15. Should any finding of fact be more properly construed as a conclusion of law, may it be so deemed.

CONCLUSIONS OF LAW

1. The Local Government Employee-Management Relations Board ("Board") has jurisdiction over the parties and the subject matters of the complaint on file herein pursuant to the provisions of NRS Chapter 288.

2. The Association is an employee organization serving as the exclusive bargaining agent for the teachers in the Clark County School District as defined in NRS 288.027 and NRS 288.040.

3. Taylor is a local governmental employee as defined in NRS 288.050.

4. Pursuant to NRS 288.270(2), the Board concludes that it is a prohibited labor practice to "interfere with, restrain or coerce any employee in the exercise of any right guaranteed" in NRS chapter 288 and/or discriminate against an employee for personal reasons.

5. Pursuant to NRS 288.140(1), this Board concludes that "[i]t is the right of every local governmental employee . . . to join any employee organization of his choice or to refrain from joining any employee organization."

6. This Board concludes that the Respondents and each of them discriminated against Taylor in that certain members were disciplined for dissenting with the Association and others were not. Taylor was the member who was disciplined by formal expulsion from the Association, although the acts and/or conducts of voicing a dissenting opinion of the Association were not so egregious warranting the severe sanction of expulsion.

7. This Board concludes that the Respondents and each of them committed a prohibited labor practice by interfering and restraining Taylor "in the exercise" of his right to join the employee organization representing the bargaining unit of which he is a member, i.e., the Association; and that Taylor has undisputedly lost certain rights, privileges, and/or benefits as identified herein.

8. Should any conclusion be more properly construed as a finding of fact, may it be so deemed.

DECISION AND ORDER

Based upon the above, the Board decides and orders as follows:

Pursuant to NRS 288.110(2), the Board may order that a party refrain from the action complained of and restore to the aggrieved petitioner any benefit of which he has been deprived of by the prohibited labor practice. BASED THEREON, IT IS ORDERED that the Association shall immediately reinstate Taylor into membership with the Association, with all benefits, and compensate Taylor for any benefit deprived by the prohibited expulsion from the Association.

FURTHERMORE, the Association is hereby ORDERED to cease and desist from any further prohibited practices against Taylor in the exercise of his guaranteed rights under NRS chapter 288.

Taylor is hereby awarded costs incurred in bringing these consolidated cases, and an itemization for the same shall be filed within twenty (20) days of the service of this order. Respondents shall have ten days thereafter to file an opposition to the itemization of costs incurred.

Lastly, relying on guidance by the National Labor Relations Act, a posting shall be made concerning the Association's prohibited labor practices as alleged herein. The Board staff shall draft a notice and present it to this Board for approval and decision regarding the length of time and other details pertaining to the posting.

DATED this 16th day of July, 2008.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: _____
JAMES E. WILKERSON, SR., Chairman

BY: _____
JANET TROST, ESQ., Vice-Chairman

BY: _____
JOHN E. DICKS, ESQ., Board Member