

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

5 BRIAN HEITZINGER, )  
6 Complainant, ) ITEM NO. 728  
7 vs. ) CASE NO. A1-045977  
8 LAS VEGAS-CLARK COUNTY LIBRARY )  
9 DISTRICT; TEAMSTERS LOCAL 14; and ) **ORDER**  
10 AMANDA LIVELY, )  
Respondents. )

11 For Complainant: Amberlea Davis, Esq.  
12 Law Offices of Amberlea Davis

13 For Respondent Las Vegas-  
14 Clark County Library Dist.: Scott M. Abbott, Esq.  
Kamer Zuker Abbott

15 For Respondent  
16 Teamsters Local 14: Amanda Lively, Esq.  
Wohlner Kaplon Phillips Young and Cutler

17 This matter came on before the State of Nevada, Local Government Employee-  
18 Management Relations Board ("Board"), for consideration and decision pursuant to the  
19 provisions of the NRS and NAC chapters 288, NRS chapter 233B, and was properly noticed  
20 pursuant to Nevada's open meeting laws.

21 Respondents Las Vegas-Clark County Library District ("District") and Teamsters Local  
22 14 ("Teamsters") have each filed a Motion to Dismiss asserting that there is no probable cause to  
23 maintain the separate claims asserted against them in the Complaint. Complainant Brian  
24 Heitzinger filed an opposition to each motion. As discussed herein, the motions are granted in  
25 part and denied in part.

26 The District's Motion

27 The first cause of action asserted against the District claims a violation of Heitzinger's  
28 Weingarten rights. The District asks that this claim be dismissed because Heitzinger's Complaint

1 identifies an instance in which he was questioned by District personnel and the subject matter of  
2 that questioning is identified as "his personal life, including marital status, health and life style."  
3 The District asserts that under these circumstances an employee would not reasonably believe  
4 that the interview would result in disciplinary action, and that therefore his Weingarten rights  
5 could not be violated.

6 Under Weingarten, a fact-finder should consider "all the circumstances of the case."  
7 N.L.R.B. v. J. Weingarten, Inc. 420 U.S. 251, 257 n. 5 (1975). At this time, the Board lacks  
8 sufficient evidence to evaluate all the circumstances or determine if in fact an employee would  
9 reasonably believe that Heitzinger's interview could result in discipline. On the first cause of  
10 action, the District's motion will be denied.

11 The District asserts that the third and fourth causes of action should be dismissed as well  
12 as they are internally inconsistent. The third cause of action claims that the District interfered  
13 with union membership when the District instructed Heitzinger to contact the union; and when  
14 union members and District administrators traveled to Laughlin in the same vehicle. Heitzinger  
15 does, of course, have the right to join, or to refrain from joining any union as he so chooses, and  
16 an interference with that right would be a prohibited labor practice. NRS 288.140; NRS  
17 288.270(1)(a). But Heitzinger's third cause of action amounts to an allegation that an employer  
18 interferes with that right when it advises its employees to contact the bargaining agent when the  
19 employer is contemplating discipline. We are not aware of any situation, nor has any been  
20 pointed out to us by the parties, where such an action amounts to a prohibited labor practice.  
21 Thus, there is no probable cause to believe that this action was improper or constituted an  
22 interference with union membership.

23 Similarly, the fourth cause of action claims interference with union administration based  
24 upon the same facts. In essence, the allegation claims that influencing the union to represent  
25 Heitzinger interferes with union administration. For the same reasons stated above, there is no  
26 probable cause to support this allegation. When an employer advises the bargaining agent of  
27 disciplinary action against a member of the bargaining unit it does not commit a prohibited labor  
28 practice. Thus, the third and fourth cause of action will be dismissed.

1 Heitzingers's seventh cause of action asserts a breach of the collective bargaining  
2 agreement by the District, and the eighth cause of action asserts a conspiracy to breach the  
3 collective bargaining agreement. This Board's authority is limited to hear and determine cases  
4 arising "out of the interpretation of, or performance under" the Local Government Employee-  
5 Management Relations Act. NRS 288.110(2). Thus, the Board will not hear claims that assert  
6 only contractual disputes and do not assert a violation of the Act. Clark County Classroom  
7 Teachers Ass'n v. Clark County School Dist., EMRB Case No. A1-045280, Item No. 44 (Aug.  
8 19, 1975). Because these claims assert only contractual claims, which are beyond the authority  
9 of this Board, we will dismiss the seventh and eighth causes of action as well.

10 We cannot say that there is no probable cause on Heitzinger's remaining claims against  
11 the District- the second, fifth, and sixth causes of action. Therefore we do not dismiss those  
12 causes of action against the District at this time.

#### 13 The Teamster's Motion

14 The Teamsters have also filed a motion to dismiss, asking the Board to dismiss causes of  
15 action eight through twelve, which assert allegations against the Teamsters.

16 The eighth cause of action asserts the conspiracy to breach the collective bargaining  
17 agreement, and the twelfth cause of action asserts that the Teamsters breached the collective  
18 bargaining agreement. As noted above, this Board does not hear purely contractual disputes, and  
19 for that reason the eighth and twelfth causes of action will be dismissed.

20 However, the remaining causes of action- nine, ten, and eleven- are sufficient to state a  
21 claim against the Teamsters, and we cannot say that these claims lack probable cause. Thus, the  
22 motion to dismiss will be denied as to those claims.

#### 23 Claims Asserted Against Amanda Lively

24 We also dismiss all claims against Amanda Lively in her individual capacity. Lively is  
25 not a local government employee organization and a complaint against her personally is not  
26 proper under the Act. See Rosequist v. International Ass'n of Firefighters Local 1908 118 Nev.  
27 444, 448, 49 P.3d 651, 653 - 654 (2002).

28 Having considered the above, the Board unanimously finds as follows:



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8 LAS VEGAS-CLARK COUNTY LIBRARY  
9 DISTRICT; TEAMSTERS LOCAL 14; and  
10 AMANDA LIVELY,

11 Respondents.

CASE NO. A1-045977

**NOTICE OF ENTRY OF ORDER**

12 To: Amberlea Davis, Esq.  
Law Offices of Amberlea Davis

13 To: Scott M. Abbott, Esq.  
amer Zuker Abbott

14 To: Amanda Lively, Esq.  
15 Wohlner Kaplon Phillips Young and Cutler

16 PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on  
17 June 30th, 2010.

18 A copy of said order is attached hereto.

19 DATED this 30<sup>th</sup> day of June, 2010.

20 LOCAL GOVERNMENT EMPLOYEE-  
21 MANAGEMENT RELATIONS BOARD

22 BY   
23 \_\_\_\_\_

24 ANDY ANDERSON, Commissioner  
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**CERTIFICATE OF MAILING**

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 30th day of June, 2010, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

Amberlea Davis, Esq.  
Law Office of Amberlea Davis  
8275 S. Eastern Ave., Ste. 256  
Las Vegas, NV 89123

Scott M. Abbott, Esq.  
3000 W. Charleston Blvd., Ste. 3  
Las Vegas, NV 89102

Amanda Lively, Esq.  
Wohlner Kaplon Phillips Young & Cutler  
15456 Ventura Blvd., Ste. 500  
Sherman Oaks, CA 91403

  
ANDY ANDERSON, Commissioner