

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

BRIAN HEITZINGER,

Complainant,

vs.

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

Respondents.

ITEM NO. 728C

CASE NO. A1-045977

ORDER

For Complainant: Amberlea Davis, Esq. from Law Offices of Amberlea Davis

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

For Respondent: Teamsters Local 14: David T. Spurlock, Esq.

This matter came on before the State of Nevada, Local Government Employee-
Management Relations Board ("Board") on January 12, 2012 for consideration and decision
pursuant to the provisions of the Local Government Employee-Management Relations Act ("the
Act"); NAC Chapter 288, NRS chapter 233B, and was properly noticed pursuant to Nevada's
open meeting laws.

The EMRB conducted hearings in this matter on July 12, 13 and 14, 2011 and October
11, 12 and 13, 2011 in Las Vegas, Nevada. This decision is issued pursuant to NRS 288.110(2)
and NRS 233B.125.

Complainant Brian Heitzinger worked as a Library Associate at the Laughlin, Nevada
branch of the Las Vegas-Clark County Library District ("Library District"). Heitzinger was part
of a bargaining unit of Library District employees that is represented by Respondent Teamsters

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1 Local 14 ("Teamsters"), as the recognized bargaining agent. Mr. Heitzinger was not a member of
2 the Teamsters.

3 In the spring of 2008, Mr. Heitzinger began to experience difficulties with the new
4 Branch Manager at the Laughlin branch. Mr. Heitzinger complained that the new manager did
5 not routinely work at the reference desk as previous managers had done. Heitzinger also had
6 other concerns about the Branch Manger and throughout May and June of 2008, Mr. Heitzinger
7 communicated his concerns to Marie Cuglietta, the Library District's Public Services Director
8 and to Nancy Hutchinson, a Library District Regional Branch Services Director.

9 On July 10, 2008, Marie Cuglietta and Nancy Hutchinson traveled to Laughlin to address
10 the developing situation at the Laughlin branch on behalf of the Library District. On that date,
11 Cuglietta and Hutchinson conducted in investigatory interview with Heitzinger at the Laughlin
12 Branch. The purpose of this interview was to discuss Heitzinger's interactions with his
13 supervisors and with other personnel at the Laughlin branch. This meeting with Mr. Heitzinger
14 lasted approximately three hours and covered a wide array of topics, including questions about
15 Heitzinger's background and personal information. Mr. Heitzinger attempted to make an audio
16 recording of the meeting, but was told that he would not be allowed to do so. Mr. Heitzinger
17 testified that he began to fear he would be disciplined and requested a union representative.
18 Cuglietta and Hutchinson denied this request and proceeded with their interview of Mr.
19 Heitzinger. Cuglietta and Hutchinson also conducted meetings with other library employees on
20 the same day, however those meetings lasted approximately 30 minutes.

21 On July 28, 2008, Marie Cuglietta and Jerilyn Gregory, the Library District's Human
22 Resources Director, traveled to the Laughlin branch to deliver a letter of reprimand to Mr.
23 Heitzinger. Dana Phillips, a business agent with Teamster Local 14, accompanied Cuglietta and
24 Gregory to Laughlin. Cuglietta and Gregory again met with Heitzinger and delivered to him the
25 letter of reprimand. The letter of reprimand referenced Heitzinger's email to Karen Deshazer and
26 other conduct which pre-dated the July 10 meeting as the basis for imposing discipline on
27 Heitzinger. During this July 28 meeting, Dana Phillips was present on behalf of the Teamsters to

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1 represent Mr. Heitzinger. Ms. Phillips successfully negotiated the removal of one paragraph of
2 the letter of reprimand which referred to an incident which Heitzinger denied had occurred.

3 In addition to delivering the letter of reprimand to Heitzinger, Cuglietta and Gregory had
4 another purpose for meeting with Heitzinger on July 28, 2008. Cuglietta and Gregory were
5 investigating a separate incident which arose on July 15, 2008. On that date, a document which
6 depicted the Laughlin Branch Manager as a representation of the cartoon character Mr. Magoo
7 was created and was left on the staff computer that Mr. Heitzinger had been using the day before.
8 Karen Deshazer discovered the document and brought it to the attention of the Branch manger,
9 Arlene Cohen. The document was in turn reported to Cuglietta and Gregory. When Cuglietta and
10 Gregory met with Mr. Heitzinger on July 28, 2008, Mr. Heitzinger informed them that he did not
11 create the document, but that had been working at the reference desk when a patron approached
12 and handed him a disk that contained the offensive image. Mr. Heitzinger then asked the patron
13 if they wished to print the document, but the patron simply walked away. Cuglietta and Gregory
14 instructed Heitzinger to disclose the identity of the individual that created the document but Mr.
15 Heitzinger refused to do so, ostensibly, stating that disclosing the identity of the patron would
16 violate the patron's privacy rights

17 Dana Phillips interrupted the meeting and met privately with Mr. Heitzinger. Ms. Phillips
18 advised him to cooperate with the Library District. Ms. Phillips was eventually able to reach an
19 understanding with Cuglietta and Gregory which called for Mr. Heitzinger to ask the patron who
20 did create the document to voluntarily come forward.

21 On August 5, 2008, the Library District had not heard from the patron or Mr. Heitzinger
22 and issued a letter of proposed termination to Mr. Heitzinger. The stated basis for the termination
23 was that Mr. Heitzinger had refused to assist the Library District in investigating the matter by
24 refusing to disclose the patron's name. On August 11, 2008, Dana Phillips received an email
25 from an individual named Blair Wise which acknowledged responsibility for creating the
26 document. A pre-termination hearing nonetheless was held on August 11, 2008, and Mr.
27 Heitzinger's termination became effective on August 18, 2008.

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1 Employees Assoc. v. Clark County School Dist., Item No. 568B, Case No. A1-045782 (2005);
2 North Las Vegas Police Officers Association v. City of North Las Vegas, Item No. 717A, EMRB
3 Case No. A1-045964 (2011).

4 Under Weingarten an employee is entitled to request that union representation be present
5 for meetings with his employer when the employee believes that the meeting may lead to
6 discipline. Weingarten at 261-262. The employee's belief that a meeting may lead to discipline
7 must be objectively reasonable based upon all the circumstances of the case. Weingarten at 257,
8 n. 5. Additionally, it is incumbent upon the employee to request union representation; an
9 employer has no obligation to gratuitously offer up union representation to the employee. Bethel
10 Home Inc., 275 N.L.R.B. 154 (1985).

11 Mr. Heitzinger points to two separate meetings with the Library District that he alleges
12 violated his Weingarten rights. First, Heitzinger claims a Weingarten violation for the meeting
13 that occurred on July 10, 2008. At that meeting Mr. Heitzinger met with Marie Cuglietta and
14 Nancy Hutchinson who were acting on behalf of the Library District. No representative from
15 Teamster 14 was present at the meeting. At the hearing before this Board, Mr. Heitzinger
16 testified that he believed he could be disciplined as a result of this meeting. The Board accepts
17 Mr. Heitzinger's testimony as credible on this point. We next consider whether Mr. Heitzinger's
18 belief was objectively reasonable.

19 A consideration of all of the relevant circumstances demonstrates that Mr. Heitzinger's
20 belief that the meeting could lead to discipline was objectively reasonable. Prior to this July 10,
21 2008 meeting, Mr. Heitzinger had had difficulties with the new Branch Manager and other
22 personnel at the Laughlin branch. Evidence at the hearing established that the Library District
23 was aware of these difficulties between Mr. Heitzinger and his supervisors. Marie Cuglietta
24 testified that the purpose of the July 10, 2008 meeting was to discuss the troubles that Mr.
25 Heitzinger was having with his supervisors. Mr. Heitzinger requested to make an audio
26 recording of this meeting, however his requested was refused. This refusal represented a
27 departure from typical meetings. Mr. Heitzinger had routinely recorded staff meetings prior to
28 this July 10, 2008 meeting and he testified before this Board that the refusal to allow him to

1 record the meeting created a fear of discipline. This meeting lasted for approximately three
2 hours per the testimony of Mr. Heitzinger, whereas meetings with other Library District
3 employees on the same day lasted only approximately half an hour. 18 days after this meeting
4 Mr. Heitzinger received a letter of reprimand. The letter of reprimand referenced Mr.
5 Heitzinger's insubordinate tone and communications that Mr. Heitzinger had sent to Karen
6 Deshazer prior to July 10, 2008. Based upon these circumstances, we conclude that Mr.
7 Heitzinger's belief that the meeting could lead to possible discipline was objectively reasonable.

8 Mr. Heitzinger requested union representation at this meeting after being instructed that
9 he could not record the meeting. The Board acknowledges that there was conflicting testimony
10 presented at the hearing on the question of whether Mr. Heitzinger did in fact request union
11 representation. However, Mr. Heitzinger testified that his request was precipitated by the
12 instruction not to record the meeting and the Board accepts Mr. Heitzinger's testimony as
13 credible. Mr. Heitzinger's testimony also establishes that the Library District denied his request.

14 Accordingly, the Board finds that on July 10, 2008 Mr. Heitzinger had an objectively
15 reasonable belief that his meeting with Marie Cuglietta and Nancy Hutchinson could lead to
16 discipline. During the meeting Mr. Heitzinger requested union representation, which request was
17 refused by the Library District. In doing so, the Library District committed a prohibited labor
18 practice by violating Mr. Heitzinger's Weingarten rights.

19 Mr. Heitzinger also alleged a Weingarten violation for the meeting on July 28, 2008.
20 However, Mr. Heitzinger was represented by Dana Phillips from the Teamsters during the entire
21 course of that meeting. As Heitzinger had union representation present for the entire course of
22 that meeting, there was no Weingarten violation arising out of the July 28, 2008 meeting.

23 Interference

24 NRS 288.140(2) provides that local government employees who are not members of a
25 recognized organization retain the right to act "for himself or herself with respect to any
26 condition of his or her employment." It is a prohibited labor practice for an employer to willfully
27 interfere, coerces or restrain an employee from exercising any right granted under the Act. NRS

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1 288.270(1)(a). Heitzinger alleges that the Library District violated NRS 288.270(1)(a) by
2 interfering with his right to act for himself .

3 An employer violates NRS 288.270(1)(a) when the employer takes action which would
4 reasonably tend to interfere with and employee's exercise of his rights. *Clark County Classroom*
5 *Teachers Ass'n v. Clark County School Dist.*, Item No. 237, EMRB Case No. A1-045435 (1989).
6 As to the Library District, Heitzinger claims that the lapse of time between the request to
7 arbitrate in January of 2009 and the scheduled arbitration date in October of 2009 constituted an
8 unreasonable delay and interfered with a protected right.

9 The testimony and evidence at the hearing established that the arbitration was scheduled
10 to occur on October 22, 2009, approximately 10 months after Mr. Heitzinger had paid a
11 \$5000.00 retainer to the Teamsters to proceed with the arbitration. There was no evidence
12 presented that would indicate that this amount of time between requesting arbitration and the
13 scheduled arbitration date was unreasonable or that it tended to interfere with Mr. Heitzinger's
14 protected rights in any way. The evidence at the hearing demonstrated that the Library District
15 was fully participating in the grievance process, having addressed Mr. Heitzinger's grievances at
16 the Step 1 and Step 2 levels, and by participating in the arbitration process. The Library District's
17 participation in the grievance process does not indicate a violation of NRS 288.270(1)(a).

18 Heitzinger also asserts that the Library District interfered with his rights to act for himself
19 when the Library District agreed to the Teamster's proposed resolution of the grievance to
20 change Heitzinger's termination to a voluntary quit. The evidence at the hearing established that
21 at the time of this agreement Mr. Heitzinger was represented by the Teamsters. There was no
22 evidence at the hearing that at the time of the settlement offer Mr. Heitzinger had withdrawn his
23 request to be represented by the Teamsters or that Mr. Heitzinger had notified the Library
24 District that he wished to act for himself in processing the grievance. The Library District
25 properly dealt with the Teamsters, as Mr. Heitzinger's representative, to address the grievance
26 and the Library District accepted a settlement offer that was posed by the Teamsters. When Mr.
27 Heitzinger did retain private counsel and requested to move forward with arbitration, the Library

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1 District declined, relying upon the already-negotiated grievance resolution that had been reached
2 with the Teamsters. As the grievance had already been resolved, the Library District actions did
3 not reasonably tend to interfere with Mr. Heitzinger's protected rights. Accordingly, the Board
4 finds in favor of the Library District on the interference claims raised by Mr. Heitzinger.

5 Discrimination

6 NRS 288.270(1)(f) states that it is a prohibited labor practice for a local government
7 employer to "discriminate because of race, color, religion, sex, age, physical or visual handicap,
8 national origin or because of political or personal reasons or affiliations." Heitzinger also asserts
9 that the Library District discriminated against him due to a physical handicap and due to personal
10 reasons and political reasons in violation of NRS 288.270(1)(f).

11 Mr. Heitzinger did not present any direct evidence at the hearing to show that the Library
12 District discriminated against him due to his health issues. In the absence of direct evidence of
13 discrimination, a complainant asserting discrimination based upon a protected class may
14 nonetheless establish his claim under a burden-shifting analysis which first requires a
15 complainant to establish a *prima facie* case of discrimination based upon a protected class. City
16 of North Las Vegas v. State Local Government Employee-Management Relations Board, 127
17 Nev. Adv. Op. 57, 261 P.3d 1071 (2011). In order to establish his *prima facie* case of
18 discrimination, Mr. Heitzinger must demonstrate (1) that he belonged to a protected class; (2)
19 that he was qualified for his job; (3) that he was subjected to an adverse employment action; and
20 (4) that similarly situated employees not in the protected class received more favorable
21 treatment. Id. at 1078.

22 The evidence presented at the hearing indicated that the Library District was aware of
23 some health issues which Mr. Heitzinger was experiencing which caused Mr. Heitzinger to call
24 in sick for periods of time and may have affected his ability to be at work. However, there was
25 not sufficient evidence at the hearing to establish that the health issues experienced by Mr.
26 Heitzinger rose to the level of a "physical handicap" under NRS 288.270(1)(f). The evidence
27 merely established that on occasion Mr. Heitzinger would call in sick. There was no testimony to
28 establish that Mr. Heitzinger's health problems impaired his long-term ability to perform his job,

1 other than taking an occasional sick day, nor was there any evidence to establish Mr.
2 Heitzinger's health problems limited any other major life activity. See Mustafa v. Clark County
3 School District, 876 F.Supp. 1177, 1181 (D.Nev.,1995). As Mr. Heitzinger has not established
4 that he had a physical handicap, Mr. Heitzinger has not established that he is a member of a
5 protected class under NRS 288.270(1)(f). Therefore Mr. Heitzinger has not established his *prima*
6 *facie* case of discrimination and a finding in favor of the Library District is warranted.

7 To the extent that Mr. Heitzinger alleges discrimination based upon his sexual
8 orientation, we note that the Legislature has not given this Board jurisdiction over such claims.
9 Compare NRS 288.270(1)(f); NRS 613.330(1).

10 Mr. Heitzinger also alleges discrimination based upon personal reasons and political
11 reasons. In the absence of direct evidence of discrimination, a complainant must adduce
12 sufficient evidence to support an inference that the complainant's protected conduct was a
13 motivating factor in the employer's actions. "Once this is established, the burden of proof shifts
14 to the employer to demonstrate by a preponderance of the evidence that the same action would
15 have taken place even in the absence of the protected conduct." Reno Police Protective Ass'n v.
16 City of Reno, 102 Nev. 98, 101, 715 P.2d 1321, 1323 (1986) (citing N.L.R.B. v. Transportation
17 Management Corp., 462 U.S. 393 (1983)).

18 Discrimination based on personal reasons occurs where an employer takes adverse action
19 against an employee for "non-merit-or-fitness factors such the dislike of or bias against a person
20 which is based upon an individual's characteristics, beliefs, affiliations, or activities that do not
21 affect the individual's merit or fitness for a particular job." Kilgore v. City of Henderson, Item
22 No. 550H, EMRB Case No. A1-045763 (2005). The evidence at the hearing does not establish a
23 dislike or bias against Mr. Heitzinger by the Library District personnel who were responsible for
24 his termination. There was no evidence from which to infer that Heitzinger's criticism of Arlene
25 Cohen was a motivating factor in the termination. Nor does the evidence give rise to an inference
26 that Mr. Heitzinger was terminated for any conduct other than refusing to disclose the name of
27 the patron that created the offending document. Therefore Mr. Heitzinger has not met his burden
28 to raise the inference of discrimination based upon personal reasons.

1 Similarly, Mr. Heitzinger has not met his burden to raise an inference of discrimination
2 based upon political reasons. Mr. Heitzinger asserts that his refusal to disclose the name of the
3 patron was a form of political activity because it protected the privacy rights of the patron.
4 However, the Board does not agree with Heitzinger that refusing to disclose the name of the
5 patron was a form of political activity. There was no other credible evidence presented at the
6 hearing to suggest that Mr. Heitzinger's actions were political activities, and therefore Mr.
7 Heitzinger has failed to establish that he was engaging in any conduct which is deemed to be
8 protected conduct by the Act. Accordingly, there is no basis in the evidence to support a finding
9 of discrimination against the Library District based upon a claim of protected political activity.

10 Claims Against Teamsters Local 14

11 Duty of Fair Representation

12 When a bargaining agent furnishes legal counsel to an employee, the duty of fair
13 representation attaches. Weiner v. Beatty, 121 Nev. 243, 250, 116 P.3d 829, 833 (2005). A
14 union breaches the duty of fair representation when it acts in a manner that is arbitrary,
15 discriminatory or in bad faith. Id. at 249, 116 P.3d at 832.

16 Heitzinger's complaints against the union are focused on the manner in which the
17 Teamsters handled his grievance. After Heitzinger's grievances were denied at the Step 2 level,
18 Heitzinger requested the Teamsters to advance his grievance to arbitration, which is the next step
19 in the grievance process under the applicable collective bargaining agreement. On January 6,
20 2009, Heitzinger gave the Teamsters a check for \$5,000.00 as a retainer towards his
21 representation in the arbitration proceedings. The Teamsters and the Library District then
22 scheduled arbitration proceedings for October 22, 2009.

23 Heitzinger did not hear back from the Teamsters until a few days before the arbitration
24 proceedings when he participated in a conference telephone call with Dana Phillips and Amanda
25 Lively, the attorney tasked to handle Heitzinger's arbitration. During this telephone call,
26 Heitzinger revealed for the first time that the patron who supposedly created the offending
27 document was Heitzinger's roommate and that Heitzinger was involved in a relationship with the
28 patron. Following this revelation, Ms. Lively contacted legal counsel for the Library District and

1 reached an agreement to cancel the arbitration proceedings and to resolve Mr. Heitzinger's
2 grievance by changing his termination to a "voluntary resignation." The Teamsters did not obtain
3 advance approval from Mr. Heitzinger to extend such an offer to the Library District, and when
4 Mr. Heitzinger became aware of the negotiated resolution to his grievance, he indicated that he
5 did not want to accept it.

6 The Nevada Supreme Court's decision in *Weiner* directs that the federal standard for duty
7 of fair representation claims applies to NRS Chapter 288. *Weiner* at 245, 116 P.3d at 830. Under
8 federal standards for such claims, an employee does not have an absolute right to have his union-
9 handled grievances advanced to arbitration. *Vaca v. Sipes*, 386 U.S. 171, 191-193 (1967). A
10 union does not breach its duty of fair representation merely because it resolves grievances short
11 of arbitration and against the will of an individual grievant; in order to prevail on such a claim, a
12 complainant must demonstrate that the decision to resolve a grievance short of arbitration was
13 either arbitrary, discriminatory or in bad faith.

14 A union's actions are arbitrary only if the union's conduct can be fairly characterized as
15 so far outside a "wide range of reasonableness that it is wholly 'irrational' or 'arbitrary.'" *Marquez v. Screen Actors Guild, Inc.*, 525 U.S. 33, 45 (1998). In this case, Heitzinger has not
16 established that the Teamsters action was arbitrary. The Board accepts as credible the testimony
17 of Amanda Lively that the last-minute revelation of Heitzinger relationship with the creator of
18 the patron document, and the course of action that Heitzinger indicated he would take when it
19 came to testifying on that point, created insurmountable difficulties for Ms. Lively to move
20 forward with the arbitration. The decision to cancel the arbitration and resolve the grievance was
21 not irrational or arbitrary because the newly-revealed information was not beneficial to Mr.
22 Heitzinger's case at arbitration and because Ms. Lively reasonably believed that she was in a
23 position where Mr. Heitzinger might not testify truthfully, which raised ethical issues for her
24 under her chosen profession's code of professional conduct. Rather than abandon Mr.
25 Heitzinger, the Teamsters negotiated a settlement of the grievance which was beneficial to
26 Heitzinger. These actions were not arbitrary.

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1 Heitzinger asserts that the Teamsters' decision to resolve the grievance was
2 discriminatory. In order to establish discrimination under the duty of fair representation, a
3 complainant must "adduce substantial evidence of discrimination that is intentional, severe, and
4 unrelated to legitimate union objectives." Amalgamated Ass'n of St., Elec. Ry. and Motor Coach
5 Emp. of America v. Lockridge, 403 U.S. 274, 301 (1971). Heitzinger has not done so in this
6 case. Heitzinger asserts that the Teamsters decision not to arbitrate was discriminatory due to Mr.
7 Heitzinger's sexual orientation. However, the Board was not presented with any credible
8 evidence to show that the Teamsters' decision was motivated by Mr. Heitzinger's sexual
9 orientation. Instead, the evidence indicates that the decision not to arbitrate was based upon the
10 decision that Mr. Heitzinger's grievance no longer had merit in light of the previously-withheld
11 information concerning Mr. Heitzinger's relationship with the patron and Ms. Lively's ethical
12 dilemma. In the absence of any evidence of discrimination, the Board finds that the Teamsters
13 did not discriminate against Mr. Heitzinger.

14 Nor do we find any evidence to show that the Teamsters acted in bad faith. In order to
15 show "bad faith," a complainant must present "substantial evidence of fraud, deceitful action or
16 dishonest conduct." Lockridge at 299. Heitzinger did not present any evidence of deceitful or
17 dishonest conduct on the part of the Teamsters in this proceeding. Accordingly, the Board
18 concludes that the Teamsters did not breach the duty of fair representation in resolving the
19 grievance without Mr. Heitzinger's consent.

20 Heitzinger also claims a breach of the duty of fair representation because the Teamsters
21 did not refund his retainer fee to him for approximately four months. When the fee was refunded
22 to him, the Teamsters returned the full \$5,000.00. Heitzinger presented no evidence to show that
23 this refund was arbitrary, discriminatory or in bad faith. Therefore the Teamsters did not commit
24 a prohibited labor practice when it returned Mr. Heitzinger's retainer fee to him.

25 Interference

26 NRS 288.270(2)(a) prohibits employee organizations from interfering with an
27 employee's exercise of his rights arising under Chapter 288. Heitzinger asserts that the
28 Teamsters interfered with his right to act himself in processing his grievance guaranteed by NRS

1 288.140(2) when the Teamsters resolved his grievance without his consent. We disagree. The
2 evidence at the hearing established that although Heitzinger was not a union member, he
3 requested and agreed to be represented by the Teamsters in his grievance. In doing so, Heitzinger
4 consented to have the Teamsters resolve the grievance in his favor. A union is entitled to settle a
5 grievance without an employee's consent, provided that the union's actions do not breach the
6 duty of fair representation. See Courie v. Alcoa Wheel & Forged Products, 577 F.3d 625,
7 631 (6th Cir. 2009); Mercado v. Hart Dist. Teacher's Ass'n, Case No. LA-CO-801-E, Calif.
8 PERB Decision No. 1456 (July 31, 2001). A union does not undertake different obligations when
9 a non-member elects to be represented by the union. E.g. Weiner v. Beatty, *supra*. Therefore the
10 interference claim must be analyzed through the lens of duty of fair representation claim. As
11 noted above, the Teamster's conduct does not breach the duty of fair representation; therefore
12 there cannot be a claim for interference based upon the Teamster's resolution of the grievance.

13 Discrimination

14 Finally, Heitzinger alleges that the Teamsters discriminated against him based upon his
15 sexual orientation. NRS 288.270(2)(c) does not place stand-alone claims of discrimination based
16 upon sexual orientation within the jurisdiction of this Board. To the extent that Heitzinger's
17 allegation of discrimination arise under the duty of fair representation, we do not find such
18 discrimination as noted above.

19 Remedy

20 NRS 288.110(2) authorizes this Board to remedy a prohibited labor practice by
21 "order[ing] any person to refrain from the action complained of. . ." Having found a prohibited
22 labor practice committed by the Library District, we will order the Library District to refrain
23 from violating the Weingarten rights of its employees by posting the notice attached to this order
24 (Attachment A) at the Laughlin, Nevada branch library for a period of 90 days.

25 Based upon the forgoing, the Board makes the following findings of fact and conclusions
26 of law.

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1 **FINDINGS OF FACT**

2 1. Complainant Brian Heitzinger was employed as Library Associate at the Laughlin,
3 Nevada branch of the Las Vegas-Clark County Library District.

4 2. Mr. Heitzinger was a member of a bargaining unit of Library District employees;
5 Respondent Teamsters Local 14 was and is the recognized bargaining agent for the bargaining
6 unit.

7 3. The terms of employment for members of the bargaining unit of which Mr. Heitzinger
8 was a member are established by a collective bargaining agreement entered into between the
9 Library District and Teamsters Local 14

10 4. Mr. Heitzinger was not a member of Teamsters Local 14 at any time relevant to this
11 matter.

12 5. Mr. Heitzinger's employment with the Library District was terminated effective July 18,
13 2008.

14 **Weingarten Rights**

15 6. On July 10, 2008 Heitzinger was interviewed by Marie Cuglietta, the Library District's
16 Public Services Director and Nancy Hutchinson, a Library District Regional Branch Services
17 Director.

18 7. The subject of the interview concerned Heitzinger's interactions with other Library
19 District personnel at the Laughlin branch.

20 8. The interview lasted approximately three hours.

21 9. Mr. Heitzinger requested to make an audio recording of the interview, which request was
22 denied by the Library District.

23 10. During the course of the July 10, 2008 meeting, Brian Heitzinger requested that a union
24 representative be present for the meeting.

25 11. The Library District denied Heitzinger's request for union representation at the July 10,
26 2008 meeting.

27 12. Heitzinger received discipline in the form of a letter of reprimand for conduct that was
28 discussed at the July 10, 2008 meeting.

1 Interference (Library District)

2 13. After being terminated from the Library District, Respondent Teamsters, Local 14 filed a
3 grievance on behalf of Heitzinger.

4 14. Mr. Heitzinger requested representation by the Teamsters, and agreed to be represented
5 by the Teamsters in his grievance.

6 15. The Teamsters filed grievances on behalf of Heitzinger at the Step 1 and Step 2 levels
7 according the procedure required by the collective bargaining agreement.

8 16. The Library District participated in the grievance resolution procedure at Steps 1 and 2.

9 17. In January 2009, the Teamsters advised the Library District that Heitzinger's grievance
10 would be advanced to arbitration.

11 18. The Library District participated in scheduling the arbitration proceedings with the
12 Teamsters.

13 19. On or about October 19, 2009, prior to the scheduled arbitration proceeding, the Library
14 District received and accepted an offer from Teamsters 14 to resolve Heitzinger's grievance by
15 changing his termination to a "voluntary resignation."

16 20. On January 14, 2010, Mr. Heitzinger, acting through private counsel requested that the
17 Library District proceed with arbitration proceedings.

18 21. On January 15, 2010, Library District declined to proceed with arbitration because
19 Heitzinger's grievance had already been resolved.

20 Discrimination

21 22. Heitzinger's health issues did not impair his ability to perform his job.

22 23. Heitzinger's health issues did not limit any other major life activity.

23 24. On July 28, 2008, Heitzinger met with Marie Cuglietta and Jerilyn Gregory the Library
24 District's Human Resources Director.

25 25. At the July 28, 2008 meeting Cuglietta and Gregory instructed Heitzinger to reveal the
26 identity of the patron who had created the document which had depicted the Laughlin branch
27 manager as the cartoon character Mr. Magoo.

28 26. Heitzinger refused to disclose the identity of the patron who had created the document.

1 27. Heitzinger cited a concern for the patron's privacy rights as the reason that he refused to
2 identify the creator of the document.

3 28. No other evidence was presented at the hearing indicating that Heitzinger was terminated
4 for political activities.

5 29. The Library District personnel who were involved in the decision to terminate
6 Heitzinger's employment did not harbor animus or bias against Heitzinger.

7 30. Heitzinger's employment was terminated due to a refusal to assist the Library District in
8 indentifying the creator of the document.

9 Duty of Fair Representation.

10 31. Mr. Heitzinger requested that the Teamsters Local 14 represent him in processing his
11 post-termination grievances with the Library District.

12 32. Heitzinger accepted representation by the Teamsters for his post-termination grievance.

13 33. The Teamsters filed grievances on behalf of Heitzinger at the Step 1 and Step 2 levels.

14 34. In January 2009, the Teamsters advanced Heitzinger's grievance to arbitration.

15 35. The arbitration proceeding was scheduled for October 22, 2009.

16 36. Attorney Amanda Lively handled Heitzinger's arbitration case.

17 37. A few days prior to the scheduled arbitration, Heitzinger participated in a conference call
18 with Amanda Lively and Dana Phillips to prepare for the arbitration proceeding.

19 38. During the conference call, Heitzinger revealed that the creator of the document was
20 Heitzinger's roommate and that Heitzinger was in a relationship with the creator of the
21 document.

22 39. During the conference call, Heitzinger indicated that he might not testify as to his
23 relationship with the creator of the document.

24 40. Amanda Lively believed that Heitzinger might not testify truthfully at the arbitration
25 proceeding.

26 41. After the conference call, Amanda Lively contacted counsel for the Library District and
27 agreed to resolve Heitzinger's grievance by changing his termination to a "voluntary
28 resignation."

1 42. The Library District accepted the Teamster's offer.

2 43. The resolution to the grievance benefitted Heitzinger.

3 44. The Teamsters actions in handling and resolving the grievance were not motivated by
4 unlawful discrimination.

5 45. The Teamsters did not act deceitfully or untruthfully at any time towards Heitzinger.

6 Interference (Teamsters)

7 46. Heitzinger requested and retained the Teamsters to represent him in processing his post-
8 termination grievance.

9 47. If any of the foregoing findings is more appropriately construed a conclusion of law, it
10 may be so construed

11 **CONCLUSIONS OF LAW**

12 1. The Board is authorized to hear and determine complaints arising under the Local
13 Government Employee-Management Relations Act.

14 2. The Board has exclusive jurisdiction over the parties and the subject matters of the
15 Complaint on file herein pursuant to the provisions of NRS Chapter 288.

16 Weingarten Rights

17 3. The rights recognized by the United States Supreme Court in NLRB v. J Weingarten,
18 Inc., 420 U.S. 251 (1975) also arise under the provisions of NRS Chapter 288.

19 4. Heitzinger had a belief that the July 10, 2008 meeting could lead to disciplinary action
20 against him, and this belief was objectively reasonable under all the circumstances, as set forth
21 above.

22 5. The Library District committed a prohibited labor practice when it denied Heitzinger's
23 request for union representation at the July 10, 2008 meeting.

24 Interference (Library District)

25 6. NRS 288.140(2) extends to Heitzinger the right to act for himself with respect to any
26 condition of his employment with the Library District.

27 ///

28 ///

1 7. NRS 288.270(1)(a) prohibits a local government employer from interfering with,
2 coercing or restraining any right guaranteed under the Local Government Employee-
3 Management Relations Act.

4 8. An employer breaches NRS 288.270(1)(a) if its conduct reasonably tends to interfere
5 with a protected right.

6 9. Heitzinger did not present sufficient evidence to establish that the Library District
7 interfered with Heitzinger's right to act for himself.

8 10. The Library District reached a settlement to Heitzinger's grievance with Teamsters Local
9 14, which was Heitzinger's representative at the time of the settlement.

10 Discrimination (Library District)

11 11. Heitzinger did not have a physical disability under NRS 288.270(1)(f).

12 12. The Library District did not violate NRS 288.270(1)(f) by discriminating against
13 Heitzinger due to a physical disability.

14 13. Heitzinger's refusal to disclose the identity of the creator of the patron document was not
15 political activity under NRS 288.270(1)(f).

16 14. The Library District did not discriminate against Heitzinger due to political reasons or
17 affiliations.

18 15. Heitzinger did not establish that any individual with the Library District who was
19 involved in the decision to terminate his employer held or harbored any animus, bias or dislike
20 against him.

21 16. The Library District did not discriminate against Heitzinger due to personal reasons.

22 17. The Local Government Employee-Management Relations Act does not grant this Board
23 jurisdiction over claims of discrimination based upon sexual orientation which are raised against
24 local government employers.

25 Duty of Fair Representation

26 18. The Teamsters owed a duty of fair representation to Heitzinger.

27 19. The Teamsters' actions in handling and resolving the grievance were not arbitrary as set
28 forth above.

1 20. Heitzinger did not present sufficient evidence to establish that the Teamster's actions in
2 handling and resolving the grievance were discriminatory.

3 21. The Teamsters did not discriminate against Heitzinger.

4 22. Heitzinger did not present sufficient evidence to establish that the Teamsters acted
5 deceitfully or dishonestly at any stage of the grievance process.

6 23. The Teamsters did not breach the duty of fair representation.

7 Interference (Teamsters)

8 24. A bargaining agent may elect to resolve a grievance proceeding short of arbitration so
9 long as the resolution does not breach the duty of fair representation pursuant to the authorities
10 cited herein.

11 25. A bargaining agent does not undertake different obligations when a non-member elects to
12 be represented by the bargaining agent in a grievance proceeding.

13 26. Inasmuch as Heitzinger requested union representation, he also consented to the union
14 being able to resolve the grievance.

15 27. The Teamsters' did not interfere with Heitzinger's right to act for himself.

16 Discrimination (Teamsters)

17 28. The Local Government Employee-Management Relations Act does not grant this Board
18 jurisdiction over claims of discrimination based upon sexual orientation.

19 29. If any of the foregoing conclusions is more appropriately construed a finding of fact, it
20 may be so construed.

21 **ORDER**

22 It is hereby ordered that the Board finds that Respondent Las Vegas-Clark County
23 Library District shall cease and desist from denying its employees' reasonable requests for union
24 representation during investigatory interviews.

25 It is further ordered that within 30 days of the date of this order, the Las Vegas-Clark
26 County Library District shall complete and post the Notice attached this order as Attachment A
27 in the Laughlin, Nevada branch library. The Notice, or copies thereof, shall be posted in
28 conspicuous places including all places where notices to employees are customarily posted. The

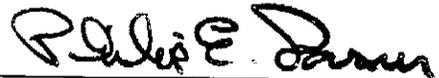
1 Library District shall take reasonable steps to ensure that the notices are not altered, defaced, or
2 covered by any other material. The Library District shall notify the Commissioner of the EMRB
3 when the notices have been posted.

4 It is further ordered that each party shall bear its own fees and costs in this matter.

5 DATED this 30th day of January, 2012.

6 LOCAL GOVERNMENT EMPLOYEE-
7 MANAGEMENT RELATIONS BOARD

8 BY: 
9 SEATON J. CURRAN, ESQ., Chairman

10 BY: 
11 PHILIP E. LARSON, Vice-Chairman

12 BY: 
13 SANDRA MASTERS, Board Member
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1 (Attachment A)

2 **Notice to Employees**

3 **Posted By Order of the Local Government Employee-Management**
4 **Relations Board**

5 An Agency of the State of Nevada

6 The Local Government Employee-Management Relations Board has found that we violated State
7 labor law and has ordered us to post and obey this notice

8 **NEVADA LAW GIVES YOU THE RIGHT TO:**

9 Request union representation in any interview which you reasonably feel may lead to
10 disciplinary proceedings against you.

11 **WE WILL NOT** deny any employee's reasonable request for effective union representation
12 during investigatory interview.

13 **LAS VEGAS-CLARK COUNTY LIBRARY DISTRICT**

14 Dated _____

15 By _____
16 (Representative)

17 _____
18 (Title)

19 **THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

20 THIS NOTICE MUST REMAIN POSTED FOR 90 CONSECUTIVE DAYS FROM
21 THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR
22 COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS
23 NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE
24 COMMISSIONER OF THE EMRB: (702) 486-4504.

25 The Local Government Employee-Management Relations Board is a state agency created to
26 administer the Local Government Employee-Management Relations Act. It conducts elections to
27 determine union representation and it conducts hearings on prohibited labor practices by
28 employers and unions. You may obtain information from the Board's website:
<http://emrb.state.nv.us/>

1 **CERTIFICATE OF MAILING**

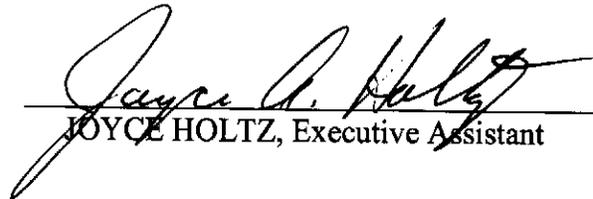
2 I hereby certify that I am an employee of the Local Government Employee-Management
3 Relations Board, and that on the 30th day of January, 2012, I served a copy of the foregoing
4 ORDER by mailing a copy thereof, postage prepaid to:

5 Amberlea Davis, Esq.
6 Law Office of Amberlea Davis
7 415 South 6th Street #300
8 Las Vegas, NV 89101

9 Scott M. Abbott, Esq.
10 3000 W. Charleston Blvd., Ste. 3
11 Las Vegas, NV 89102

12 Julie Wallace
13 Teamster's Union Local #14
14 1250 Burnham Ave. Floor 2
15 Las Vegas, NV 89104

16 David T. Spurlock, Esq.
17 PMB 296
18 7121 West Craig Rd. #113
19 Las Vegas, NV 89129

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JOYCE HOLTZ, Executive Assistant