STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

JAMES CROM, Complainant, vs. LAS VEGAS CLARK COUNTY LIBRARY DISTRICT; TEAMSTERS LOCAL 14; DOE INDIVIDUALS 1-300; ROE INDIVIDUALS 1-300, Respondents,	ITEM NO. 752E CASE NO. A1-046004 **ORDER**

For Complainant: Robert P. Spretnak, Esq.

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

This matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board"), on June 24, 2013 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. A hearing was held in this matter on November 13-15, 2012 and May 24, 2013 12-13, 2013 in Las Vegas, Nevada. In lieu of closing arguments, the parties agreed to submit post-hearing briefs. Mr. Crom submitted his post hearing brief on June 20, 2013. Respondent International Brotherhood of Teamsters, Local 14 ("Local 14") did not file a timely post-hearing brief.

This case addresses James Crom's complaints against Local 14. Crom asserts that Local 14 breached its duty of fair representation, that Local 14 discriminated against him due to his health status, and that Local 14 interfered with his protected rights.

Prior to November of 2009, Mr. Crom was employed by the Las Vegas-Clark County Library District as a Systems and Network Supervisor in the Library District's IT Department. This position contained a job requirement of the ability to drive a Library District motor vehicle for the purpose of traveling to various geographic locations within the Library District.

On August 19, 2009, Mr. Crom informed the Library District's IT Director that he had been charged with a DUI offense. As a result of this incident the Department of Motor Vehicles suspended Mr. Crom's driving privileges for 90 days. The incident occurred while Mr. Crom was off-duty, however the Library District disciplined Mr. Crom with a letter of reprimand on September 22, 2009. Mr. Crom did not grieve the letter of reprimand.

Shortly thereafter, Mr. Crom obtained a restricted driver's license from the Department of Motor Vehicles that allowed him to drive during his working hours with the Library District.

The true difficulty arose when Philadelphia Insurance Companies ("Philadelphia"), which was the Library District's insurer, informed the Library District that it would no longer insure Mr. Crom under the Library District's policy. According to evidence presented at the hearing, the fact that Mr. Crom would no longer be insured by Philadelphia, and therefore no longer eligible to operate the Library District's motor vehicles as required in the job description for a Systems and Network Supervisor, led to the decision by the Library District to terminate Mr. Crom's employment. Neither Philadelphia insurance nor the Library District are parties to this proceeding, the Library District having been previously dismissed from this proceeding by agreed settlement under NAC 288.375(1).

Local 14 is the bargaining agent for the bargaining unit which included Mr. Crom's position with the Library District. Mr. Crom was not a member of Local 14, but sought assistance from Local 14 to fight against his termination. On November 25, 2009, five days after

Mr. Crom's employment had been terminated, Local 14 filed a grievance at Step 1 of the grievance procedure on Mr. Crom's behalf. Initially Dana Phillips was the business agent from Local 14 that initially handled Mr. Crom's grievance; however there was a great deal of transition going on at Local 14 during this time. Ms. Phillips left her position with Local 14, and eventually a new business agent, Phil Nelson, was assigned to Mr. Com's grievance. During this time, Larry Griffith who had been newly elected and installed as Secretary/Treasurer on January 1, 2010, also worked on handling Mr. Crom's grievance for Local 14. Mr. Griffith worked on Mr. Crom's grievance from January of 2010 until the grievance was transitioned to Mr. Nelson in early February 2010.

As Mr. Crom was not a union member, Local 14 required him to submit payment of $700.00 to secure union representation during the grievance process. This practice was accepted by the Nevada Supreme Court in Cone v. Nevada Service Employees Union/SEIU Local 1107, 116 Nev. 473, 998 P.2d 1178 (2000).

The Library District denied Mr. Crom's Step 1 grievance on February 1, 2010. During January of 2010, Larry Griffith, the new Secretary/Treasurer, became aware of Mr. Crom's pending grievance. Mr. Griffith investigated the facts surrounding the grievance by meeting with Mr. Crom and with Jerilyn Gregory, the Library District's Human Resources Director. After learning the facts, Mr. Griffith and a new business agent named Phil Nelson made the determination that Mr. Crom's grievance was ultimately unwinnable based upon the DUI charge, Mr. Crom's inability to be insured by Philadelphia and Mr. Griffith's previous experience handling similar matters. This assessment that the case was unwinnable was corroborated by Dana Phillips, although it was clear from the evidence that the decision not to arbitrate the matter was made by Mr. Griffith and Phil Nelson after Ms. Phillips had left Local 14. Mr. Crom

disputes Local 14's assessment and in particular claims that Philadelphia misread the governing guidelines, applying the California standard, rather than the Nevada standard for a reckless driving charge.

Even though Local 14 believed that this grievance was unwinnable, it made additional efforts to obtain a favorable result for Mr. Crom after learning that the Library District had formally denied Mr. Crom's grievance.

Mr. Griffith met at least three times with Ms. Gregory, who informed him that the basis for the termination was the fact that Philadelphia would not insure Mr. Crom. Mr. Griffith then obtained the contact information for Philadelphia and spoke with Philadelphia to see if it were possible to obtain a high-risk policy for Mr. Crom, either paid for by the Library District or by Mr. Crom, but Philadelphia refused to offer such an option. Mr. Griffith also approached the Library District to see if there were accommodations that could be made for Mr. Crom, or another available position that Mr. Crom could fill until he was eligible to be insured again. These efforts were not successful. After early February 2010, business agent Phil Nelson took over the handling of Mr. Crom's grievance from Mr. Griffith and continued to attempt to resolve Mr. Crom's grievance with the Library District.

Mr. Nelson sent correspondence to Philadelphia to provide them information concerning the resolution of Mr. Crom's DUI charge, which was apparently reduced to a reckless driving charge, and demanding that it reconsider Mr. Crom's status. Mr. Nelson also sent written correspondence to the Library District demanding that Mr. Crom be reinstated. These efforts stretched from February 2010 through June of 2010 but were not successful either. On July 1, 2010 Local 14 wrote to Mr. Crom informing him of these results, and indicating that because his case "has no merit" the file would be closed.

During this entire process Local 14 did not inform Mr. Crom of his rights to act for himself in pursuing his grievance. After learning that Local 14 was closing his matter, Mr. Crom retained private legal counsel who contacted the Library District about progressing further with the grievance. The Library District responded that as the grievance had not been advanced to Step 2, the matter was closed.

Mr. Crom then brought this complaint against Local 14.

Duty of Fair Representation

A bargaining agent, such as Local 14, owes a duty of fair representation to the members of the bargaining unit and to those employees whom it represents in grievance proceedings. See Rosequist v. International Ass'n of Firefighters Local 1908, 118 Nev. 444, 449, 49 P.3d 651, 654 (2002). A breach of the duty of fair representation violates the Act, and therefore is within the exclusive jurisdiction of this Board. Id.

"The duty of fair representation requires that when the union represents or negotiates on behalf of a union member, it must conduct itself in a manner that is not 'arbitrary, discriminatory, or in bad faith.'" Weiner v. Beatty, 121 Nev. 243, 249, 116 P.3d 829, 833 (2005). The duty of fair representation is typically construed narrowly in order to allow a union the discretion to act in what it perceives to be the best interests of those whom it represents. Galindo v. Stoody Co., 793 F.2d 1502, 1514 (9th Cir.1986).

A union's actions are arbitrary only if the union's conduct can be fairly characterized as 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, Local 14's actions were not arbitrary. The evidence presented at the hearing indicates that Local 14 concluded that Mr. Crom's grievance was unwinnable at arbitration based upon the fact that Mr. Crom had a

DUI charge, which was eventually reduced to reckless driving. Specifically, Larry Griffith testified at the hearing that he had previously dealt with similar DUI related issued and that such cases were unwinnable if the employee could not be insured. Mr. Griffith was directly involved in the decision to not push Mr. Crom's grievance to arbitration, and the Board finds Mr. Griffith's testimony to be credible. Additionally, Local 14 investigated the issues involved in Mr. Crom's grievance before deciding not to advance the grievance to Step 2 and arbitration. Evidence at the hearing, including the testimony of Larry Griffith and Phil Nelson, Local 14's business agent who primarily handled Mr. Crom's grievance, indicated that Local 14 had spoken with the Library District and with Philadelphia insurance company and explored the options for getting Mr. Crom insured under the Library District's insurance policy. Local 14 received confirmation from the Library District that Crom could not be insured by Philadelphia insurance based upon the fact that his license had been suspended.

Local 14's determination that the case was unwinnable was essentially a business decision that was informed by its experienced analysis of similar matters, and was not arbitrary. A bargaining agent that represents an employee generally has discretion to evaluate the merits of a grievance and on that basis determine whether to advance a grievance to arbitration. e.g. Vaca v. Sipes, 386 U.S. 171 (1967); see also Scott v. Machinists Automotive Trades Dist. Lodge No. 190 of Northern California, 827 F.2d 589, 593 (9th Cir. 1987). The bargaining agent does not violate the duty of fair representation when it exercises this discretion. Mr. Crom's argument that Philadelphia had misread the governing California guidelines and that he would have been successful at arbitration is speculative, and does not show that Local 14's actions were wholly irrational.

Local 14's additional efforts to resolve the grievance in Mr. Crom's favor short of advancing the matter to arbitration were an attempt to obtain a benefit for Mr. Crom. These actions were consistent with Mr. Crom's best interests and were based upon the developing status of Mr. Crom's DUI charge. These actions were not arbitrary.

Crom also asserted that Local 14 did not inform him of its decision to not advance the grievance to Step 2 and that Local 14 engaged in a series of futile actions with the Library District and with Philadelphia in order to conceal that decision from Mr. Crom. However, Phil Nelson testified at the hearing that he spoke frequently and at length with Mr. Crom regarding the status of his grievance and that Mr. Nelson informed Crom of the decision not to advance the grievance. Based upon this evidence the Board finds that Local 14 did in fact keep Mr. Crom informed of the status of his grievance.

Mr. Crom also asserts that Local 14's actions were discriminatory based upon his health status as HIV positive. The duty of fair representation prohibits a bargaining agent from taking discriminatory action that is intentional, severe and unrelated to legitimate union objectives. Amalgamated Ass'n of St., Elec. Ry. and Motor Coach Emp. of America v. Lockridge, 403 U.S. 274, 301 (1971). In this case, the Board sees no evidence to show that Local 14's actions were discriminatory against Mr. Crom. Mr. Crom asserts that he informed Dana Phillips that he was HIV positive. However, even if Local 14 was aware of Mr. Crom's health status, there was no additional evidence to show that Local 14's actions were motivated in any way by Mr. Crom's status. Rather, Local 14's actions suggest that there was no discrimination occurring in this case. Despite its determination that it could not win the case at arbitration, Local 14 continued to represent Mr. Crom by repeatedly contacting the Library District and Philadelphia Insurance Company and pressing for a resolution that was favorable to Mr. Crom. When contacting the

Library District, Local 14 explored whether there were any alternatives available that would allow Mr. Crom to continue employment with the Library District. Evidence at the hearing indicated that Local 14 proposed alternatives means of insuring Mr. Crom, providing special accommodations to allow Mr. Crom to continue his employment as a Network and Systems Supervisor, and the possibility of placing Mr. Crom in a different position that did not require him to be insured under the Library District's policy with Philadelphia insurance. Local 14 also contacted Philadelphia to explore options for getting Mr. Crom insured again under the Library District's policy. Local 14 also extended out the grievance and kept it open for an extended period of time in order to buy Mr. Crom some time to try to have the DUI reduced to a reckless driving offense, which did not finally occur until April of 2010. These efforts on Mr. Crom's behalf are not consistent with the animus of unlawful discrimination that Mr. Crom ascribes to Local 14. While this continued advocacy was ultimately unsuccessful, it does negate the suggestion that the Local 14's conduct fell short of the duty of fair representation or was based upon Mr. Crom's health status.

Additionally, Mr. Crom only mentioned his HIV status to Dana Phillips. Ms. Phillips pursued the grievance until she left her position with Local 14. The decision that Mr. Crom's grievance was unwinnable and would not be advanced to Step 2 and arbitration was made after Ms. Phillips had left Local 14 and was made by Larry Griffith and Phil Nelson. The Board received no evidence that either Mr. Griffith or Mr. Nelson were ever aware of Mr. Crom's health status. Thus, there is no indication that the decision to not continue to Step 2 was based upon discriminatory motives due to Mr. Crom's health status.

Given these facts, and the absence of evidence that indicates Local 14's actions were motived by Mr. Crom's health status, the Board concludes that Local 14 did not discriminate

against Mr. Crom. Similarly, because the individuals at Local 14 who decided not to advance the grievance were unaware of Mr. Crom's health status, there was no evidence to show that Local 14's actions violated NRS 288.270(2)(c).

Finally, the Board does not find any evidence that Local 14 acted in bad faith. A bargaining agent breaches the duty of fair representation by acting in bad faith when there is evidence of fraud, deceitful action or dishonest conduct. Lockridge at 299. The evidence at the hearing does not show that Local 14 was dishonest or deceitful towards Mr. Crom at any point while it was handling his grievance.

The Board therefore concludes that Local 14 did not breach its duty of fair representation, and did not discriminate against Mr. Crom.

Interference With Protected Rights

Mr. Crom also asserts that Local 14 interfered with his right to pursue his grievance on his own. While Crom is correct to state that since he was not a member of Local 14 he did have the right to act for himself in pursuing a grievance, see NRS 288.140(2), the Board sees no evidence that Local 14 interfered with that right.

Mr. Crom's interference claim is based solely upon the fact that Local 14 did not advise him of his right to act for himself. Crom's claim therefore is not based upon any of Local 14's actions, but only upon Local 14's inactions. No evidence was presented at the hearing which indicated that Crom was attempting to act on his own prior to July 1, 2010 or that Local 14 somehow obstructed his effort to do so after Mr. Crom had retained private legal counsel. The Board has not previously read the Act to require a bargaining agent to actively advise non-union members of their right to act for themselves in grievance proceedings, and Mr. Crom has not

raised any authority to the contrary. Therefore the Board concludes that Local 14 did not violate NRS 288.270(2)(a) by failing to inform Mr. Crom of his right to act for himself.

Having considered the above, the Board makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Prior to November 20, 2009 James Crom had been employed by the Las Vegas-Clark County Library District as a Systems and Network Supervisor.

2. Effective November 20, 2009, James Crom's employment was terminated by the Library District because the Library District's insurer would not cover Mr. Crom under its policy with the Library District.

3. International Brotherhood of Teamsters, Local 14 is the recognized bargaining agent for the bargaining unit which includes the position of Systems and Network Supervisor.

4. James Crom was not a member of Local 14.

5. Local 14 represented Mr. Crom in his termination proceedings before the Library District.

6. On November 25, 2009 Local 14 filed a grievance with the Library District over Mr. Crom's termination.

7. Dana Phillips was the business agent from Local 14 that initially represented Mr. Crom in his termination proceedings and facilitated filing the grievance over Mr. Crom's termination.

8. Larry Griffith was installed as Secretary/Treasurer for Local 14 on January 1, 2010 and became involved in Mr. Crom's grievance during January of 2010 until representation was fully transitioned to business agent Phil Nelson in February of 2010.

9. Larry Griffith has previous experience with grievances which were similar to Mr. Crom's. The Board finds Mr. Griffith's testimony on this point to be credible.

10. Local 14 decided that Mr. Crom's grievance was ultimately unwinnable based upon its analysis of the case informed by its prior experience, and the fact that Philadelphia would not insure Mr. Crom to operate Library District vehicles. The Board finds Mr. Griffith's testimony on this point to be credible.

11. Local 14 adequately investigated the facts and circumstances surrounding Mr. Crom's termination before concluding that Mr. Crom's grievance was unwinnable.

12. The decision not to advance Mr. Crom's grievance to Step 2, which would commit Local 14 to proceed to arbitration over the greiavnce, was made by Larry Griffith and Phil Nelson.

13. Neither Larry Griffith nor Phil Nelson were aware that Mr. Crom was HIV positive.

14. The decision not to advance Mr. Crom's grievance was essentially a business decision that was based upon Local 14's prior experience in similar matters.

15. Despite the fact that Local 14 had decided not to advance Mr. Crom's grievance to arbitration, it made additional efforts to obtain a favorable result for Mr. Crom.

16. During January of 2010, Larry Griffith contacted Philadelphia to explore alternative options for insuring Mr. Crom which would allow Mr. Crom to continue his employment with the Library District.

17. During January and February of 2010, Larry Griffith met at least three times with Jerilyn Gregory, the Library District's Human Resources Director to discuss Mr. Crom's grievance and attempt to reach a resolution that was favorable to Mr. Crom.

18. The Library District denied Mr. Crom's Step 1 grievance on February 1, 2010.

19. On Feburary 9, 2010 Mr. Crom reached a resolution in his DUI charge that would lead to the charge being reduced to reckless driving. According to court records introduced into evidence, this resolution was completed on April 8, 2010.

20. On February 23, 2010, Phil Nelson wrote to Philadelphia and explaining the outcome of Mr. Crom's DUI charge and requesting that Philadelphia reconsider its position about Mr. Crom's insurability. This letter was supplemented with additional information to Philadelphia on March 1, 2010.

21. On June 11, 2010, Phil Nelson again wrote to Philadelphia and demanded that it review its position regarding Mr. Crom as the DUI charge had been resolved.

22. On June 14, 2010 Phil Nelson wrote to the Library District demanding that Mr. Crom be reinstated based upon the outcome of his DUI charge.

23. Local 14's efforts were not successful in reinstating Mr. Crom's employment with the Library District.

24. After the Library District refused to reinstate Mr. Crom in response to Phil Nelson's June 14, 2010 letter, Local 14 closed the matter.

25. During the time that Local 14 represented Mr. Crom, Mr. Crom and Phil Nelson frequently spoke regarding the status of the case. During these conversations Local 14 kept Mr. Crom informed regarding the status of his grievance.

26. Local 14 did not obstruct Mr. Crom's efforts to pursue his own grievance when Mr. Crom attempted to do so by hiring private legal counsel.

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

CONCLUSIONS OF LAW

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

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

3. Local 14, as a recognized bargaining agent, owes a duty of fair representation to the employees that it represents.

4. The decision not to advance Mr. Crom's grievance to arbitration was informed by Local 14's prior experience in similar matters and was made following an adequate investigation, and was not arbitrary.

5. The decision not to advance Mr. Crom's grievance to arbitration was within the allowable discretion that is afforded to bargaining agents.

6. As neither Larry Griffith nor Phil Nelson were aware of Mr. Crom's health status, the evidence does not support a finding that Local 14's actions were discriminatory towards Mr. Crom based upon his health status.

7. Mr. Crom did not establish evidence of fraud, deceitful action or dishonest conduct on the part of Local 14.

8. Local 14 did not breach the duty of fair representation when it handled Mr. Crom's grievance.

9. Local 14 did not discriminate against Mr. Crom in violation of NRS 288.270(2)(c).

10. The Act does not require a bargaining agent to advise non-union members of their right to act for themselves when pursuing a grievance.

11. Local 14 did not interfere with Mr. Crom's protected rights under the Act.

12. Mr. Crom's complaint against Local 14 is not well-taken.

13. An award of costs is not warranted under NRS 288.110(6).

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

ORDER

Based upon the foregoing the Board finds in favor of the International Brotherhood of Teamsters, Local 14.

It is further ordered that an award of costs pursuant to NRS 288.110(6) is not appropriate in this case and each party shall bear its own costs.

DATED the 17th day of July, 2013.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: _____
SEATON J. CURRAN, ESQ., Chairman

BY: _____
PHILIP E. LARSON, Vice-Chairman

BY: _____
SANDRA MASTERS. Board Member

STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

JAMES CROM, Complainant, vs. LAS VEGAS CLARK COUNTY LIBRARY DISTRICT; TEAMSTERS LOCAL 14; DOE INDIVIDUALS 1-300; ROE INDIVIDUALS 1-300, Respondents,	)	CASE NO. A1-046004 **NOTICE OF ENTRY OF ORDER**

To: Robert P. Spretnak, Esq.

To: Scott M. Abbott, Esq. for Las Vegas-Clark County Library District

To: David T. Spurlock, Jr., Esq. for Teamsters Local 14

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on July 17, 2013.

A copy of said order is attached hereto.

DATED this 17 day of July, 2013.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY _____
BRIAN SCROGGINS, Commissioner

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 17 day of July, 2013, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

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BRIAN SCROGGINS, Commissioner