STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

CLARK COUNTY EDUCATION ASSOCIATION, Petitioner, vs. CLARK COUNTY SCHOOL DISTRICT, Respondents,	ITEM NO. 779 CASE NO. A1-046044 **ORDER**

For Petitioner: Francis C. Flaherty, Esq., for Clark County Education Association.

For Respondent: S. Scott Greenberg, Esq., for Clark County School District

This matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board") on April 11 and 12, 2012 for oral arguments, 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. This order is issued pursuant to NAC 288.410 and NRS 233B.120.

NRS 288.110(2) authorizes this Board to "hear and determine any complaint arising out of the interpretation of" the Act. In this proceeding, Petitioner Clark County Education Association ("CCEA") seeks an interpretation of the Act in the form of a declaratory order regarding the applicability of NRS 288.217(8) and NRS 288.200(7)(b) and the statutory imperative that an arbitrator shall consider whether or this Board "found that either party had bargained in bad faith" to the sequence of the special impasse resolution procedures contained in NRS 288.217. CCEA asks this Board to declare that these provisions of the Act require that an arbitrator acting pursuant to NRS 288.217 must refrain from issuing a final decision while there remains a bad-faith bargaining complaint pending before this Board.

CCEA's request for a declaratory order to resolve the answer to this question is appropriate. NRS 233B.120; NAC 288.410.

CCEA has submitted its points and authorities in support of its position as required by NAC 288.380(3)(e). Respondent Clark County School District ("CCSD") has submitted points and authorities in opposition to CCEA's petition pursuant to NAC 288.390. The Board heard oral arguments from each party on April 11, 2012.

Analysis

When interpreting the Act, this Board applies the same principles of statutory construction that are wielded by the Nevada Supreme Court. The objective of any statutory construction exercise is to give effect to the legislative intent behind the statute. Ronnow v. City of Las Vegas, 57 Nev. 332, 65 P.2d 133 (1937). In Harris Associates v. Clark County School Dist., 119 Nev. 638, 81 P.3d 532 (2003), the Nevada Supreme Court set forth the governing principles of statutory construction as follows:

> When "the words of the statute have a definite and ordinary meaning, this court will not look beyond the plain language of the statute, unless it is clear that this meaning was not intended." However, if a statute "is ambiguous, the plain meaning rule of statutory construction" is inapplicable, and the drafter's intent "becomes the controlling factor in statutory construction." An ambiguous statutory provision should also be interpreted in accordance "with what reason and public policy would indicate the legislature intended." Additionally, we "construe statutes to give meaning to all of their parts and language, and this court will read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation." Further, no part of a statute should be rendered meaningless and its language "should not be read to produce absurd or unreasonable results."

Id. at 641-642, 81 P.3d at 534 (internal citations omitted).

NRS 288.217 provides for specialized dispute resolution procedures for teachers and education support employees to resolve an impasse in negotiations with a school district employer by submitting the dispute to an arbitrator. The standards for dispute resolution found in

NRS 288.200 had been enacted prior to legislative codification of NRS 288.217 and NRS 288.217 specifically refers to and incorporates those standards. NRS 288.217(8).

Section 217 imposes detailed deadlines in order to ensure a streamlined process to resolve the parties' impasse. NRS 288.217(3) requires that the arbitrator must hold a hearing within 30 days of being selected by the parties. The arbitrator is permitted to adjourn the hearing for the parties to resume negotiations; however the period of adjournment may only last "for a period of 3 weeks." NRS 288.217(6). Within 30 days of concluding the hearing, the parties are required to submit a final offer to the arbitrator who is then permitted to select only one of the final offers as the final and binding resolution to the dispute. NRS 288.217(7)-(8). The arbitrator has 10 days from the date that the parties submit their final offers to select one and to issue a final decision. NRS 288.217(8).

Embedded within this procedure is the requirement that the arbitrator's decision must be based upon "the criteria set forth in NRS 288.200." NRS 288.217(8). NRS 288.200 lists a number of criteria to be considered, including the criterion that is relevant to this proceeding – a consideration of "whether the Board found that either party had bargained in bad faith." NRS 288.200(7)(b).[1]

CCEA asserts that an arbitrator cannot comply with these provisions if the arbitrator's decision is rendered in advance of the Board's decision on a pending bad-faith-bargaining complaint between the same parties. CCEA asserts that the consequence of these sections is that an arbitrator must refrain from closing the arbitration hearing and making a final decision until this Board has considered and made a determination on a pending bad-faith-bargaining complaint.

CCSD did not dispute that a bad-faith-bargaining finding from this Board is a proper consideration for the arbitrator under NRS 288.217(8) and NRS 288.200(7)(b), but CCSD does dispute CCEA's contention that an arbitrator is required to wait for this Board to decide a pending complaint before the arbitrator's decision can be made. CCSD points to the notable

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[1] "Board" refers to the Local Government Employee-Management Relations Board. NRS 288.030.

absence of any statutory provision in NRS 288.217 that specifically requires the arbitrator to wait for this Board to act on a pending complaint before making a decision.

The Board agrees with CCSD on this point. A review of the plain language in NRS 288.217 shows that an arbitrator is under an obligation to provide a decision pursuant to the deadlines established by the Legislature. Where the Legislature has not imposed a restriction on an arbitrator's duty to follow this streamlined procedure, this Board does not find that such a restriction exists under the Act. The plain language of NRS 288.217 compels an arbitrator to take action to resolve an impasse; not to wait for any other proceeding to conclude.

CCEA has argued that such an interpretation would render meaningless the statutory language that an arbitrator must consider a bad-faith bargaining charge because the practical realities are such that an arbitrator who adheres to the deadlines in NRS 288.217 will complete the arbitration before this Board decides the prohibited labor practice case. Thus, the arbitrator's decision would not be informed by this Board's finding and would therefore be an improper finding because it would not account for a bad-faith bargaining finding as required by NRS 288.217(8).

Bad-faith bargaining by a local government employer, or by a recognized bargaining agent is a prohibited labor practice and is outlawed by the Act. NRS 288.270(1)(e); NRS 288.270(2)(b). A bad-faith bargaining complaint is within the exclusive jurisdiction of this Board, and therefore may only be resolved by this Board. City of Reno v. Reno Police Protective Ass'n, 118 Nev. 889, 59 P.3d 1212 (2002). With limited exceptions, the Board must first hold a hearing before it may reach a finding on the merits of a prohibited labor practice charge. See City of Henderson v. Kilgore, 122 Nev. 331, 335, 131 P.3d 11, 14 (2006).

The Legislature has established timelines that govern Board proceedings which are, without exception, longer than the impasse-resolution timelines established by NRS 288.217. The Board is directed to hold a hearing on a complaint within 90 days; however that 90 day requirement is not triggered until the Board decides to hear a complaint. NRS 288.110(2). Once the Board has concluded its hearing, the Board is directed to issue its decision within 120 days. Id.

In contrast, an arbitrator acting under NRS 288.217 has 30 days to hold a hearing after being selected, and has but 10 days after submission of the parties' final offer to make a decision.

However, the fact that the Legislature was presumptively aware of the lengthier requirements for Board proceedings and yet did not require the Board to follow any different timeline to resolve bad-faith bargaining claims affecting 288.217 further strengthens our conclusion that allowing an arbitrator to act under NRS 288.217 before this Board reaches a finding on a prohibited labor practice complaint is consistent with legislative intent. The Legislature has identified a narrow class of prohibited labor practice complaints that must be expedited by this Board, but did not include a general bad-faith bargaining complaint as a type of complaint that must be expedited. NRS 288.280. Thus, this Board is under no obligation to expedite a hearing on a bad-faith bargaining complaint,[2] and an arbitrator who waits for this Board to act may be waiting for a time of unknown duration. This potential consequence is at odds with the streamlined process to provide for a quick decision mandated by NRS 288.217.

Further, our interpretation does not render NRS 288.217(8) and NRS 288.200(7)(b) meaningless as an arbitrator is still capable of considering any instances in which this Board "found that either party had bargained in bad faith." NRS 288.200(7)(b). Accordingly, under the interpretation set forth herein, an arbitrator is able to comply with both the mandate to consider findings of bad-faith bargaining and the mandate to follow the streamlined process established by NRS 288.217.

The Board also notes that the resolution of a bad-faith bargaining charge before this Board is an independent proceeding from an impasse-resolution proceeding under NRS 288.217. Nothing in NRS 288.217 limits or restricts the authority of this Board to remedy a prohibited labor practice by ordering a full and complete make-whole remedy under NRS 288.110(2) in the event that the Board finds a complaint to be well taken.

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[2] CCEA argued in favor of a process that combined a delay in arbitration proceedings with an expedited hearing before this Board as a way to resolve the difficulties created by a stay in arbitration proceedings

Having considered the foregoing analysis, the Board makes it findings of fact and conclusions of law as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner Clark County Education Association is an employee organization and a recognized bargaining agent.

2. Respondent Clark County School District is a local government employer.

3. This Board is authorized to hear and determine any complaint arising out of the interpretation of the Local Government Employee-Management Relations Act.

4. CCEA's petition for a declaratory order is proper under the provisions of NRS 233B.120 and NAC 288.410.

5. NRS 288.217(8) and NRS 288.200(7)(b) require an arbitrator who is an impasse-resolution arbitration under NRS 288.217 to consider whether this Board had found that either party bargained in bad faith.

6. An arbitrator acting pursuant to NRS 288.217 is not required by the Act to suspend the arbitration hearing pending the outcome of a claim of bad-faith bargaining currently pending before this Board.

7. Under NRS 288.110(2) this Board retains full authority to order appropriate relief for any bad-faith bargaining complaint if the Board finds that the complaint is well taken.

DECLARATION AND ORDER

Having made the foregoing findings, and good cause appearing therefore as set forth above,

IT IS HEREBY ORDERED AND DECLARED that the Local Government Employee-Management Relations Act does not require an arbitrator acting pursuant to NRS 288.217 to

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suspend or otherwise postpone or delay an arbitration hearing while a bad-faith bargaining complaint between the affected parties remains pending before this Board.

DATED this 17th day of April, 2012.

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

CLARK COUNTY EDUCATION ASSOCIATION, Petitioner, vs. CLARK COUNTY SCHOOL DISTRICT, Respondents,	CASE NO. A1-046044 **NOTICE OF ENTRY OF ORDER**

To: Francis C. Flaherty, Esq., for Clark County Education Association.

To: S. Scott Greenberg, Esq., for Clark County School District

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on April 17, 2012.

A copy of said order is attached hereto.

DATED this 17th day of April, 2012.

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

BY _____
JOYCE A. HOLTZ, Executive Assistant

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 17th day of April, 2012, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

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Joyce C. Holtz

JOYCE HOLTZ, Executive Assistant