

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

5 MICHAEL TURNER,) CASE NO. A1-046106
6 Complainant,)
7 vs.) ITEM NO. 800
8 CLARK COUNTY SCHOOL DISTRICT,) ORDER
9 Respondent.)
10)
11)

12 This matter came on before the State of Nevada, Local Government Employee-
13 Management Relations Board (“Board”), on January 14, 2015, for consideration and decision
14 pursuant to the provisions of the Local Government Employee-Management Relations Act (“the
15 Act”) and NAC Chapter 288 and was properly noticed pursuant to Nevada’s Administrative
16 Procedures Act.

17 The Board held a hearing in this matter on January 13 and 14, 2015, in Las Vegas, Nevada.
18 At the outset of the hearing Respondent Clark County School District made a motion to dismiss
19 asserting, *inter alia*, that the duty to bargain in good faith does not extend to arguments made in an
20 adversarial arbitration proceeding. The School District also argued that the complaint was
21 untimely.

22 The Board deferred ruling on the motion until after Complainant Michael Turner had
23 presented his case in chief to the Board. See NAC 288.301(1). Having heard the testimony of
24 Complainant and the witnesses produced by the Complainant, the Board granted the School
25 District’s motion to dismiss.

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1 We do not find merit in the School District's contentions that the complaint was untimely
2 under the six-month limitation period stated at NRS 288.110(4). The limitations period begins to
3 run only when a complainant has unequivocal notice of a prohibited labor practice. City of N. Las
4 Vegas v. State Local Gov't Employee-Mgmt. Relations Bd., 261 P.3d 1071 (Nev. 2011). In this
5 case the School District argued that Turner had unequivocal knowledge that the Field Supervisor
6 position was being phased out as of May 6, 2013. However, this does not render the complaint
7 untimely as the filing date of the complaint under the Board's mailing rule, NAC 288.080(2), was
8 November 6, 2013 and therefore the complaint would not be untimely under any reckoning.

9 We do grant the School District's motion on the basis that the Complainant has not
10 demonstrated probable cause for the complaint. NAC 288.375(1).

11 At the hearing the Board heard evidence that Mr. Turner was employee of the School
12 District and held the position of Transportation Operations Manager as of February 5, 2012. At
13 that time Turner was in a probationary period in that position, having recently been promoted
14 from the position of Field Supervisor. On February 5, 2012, Turner was involved in an off-duty
15 driving incident. Although the incident occurred when Turner was off-duty, it did result in a
16 temporary suspension of his driver's license.

17 The School District's initial reaction was to terminate Turner's employment. However,
18 Turner, with the assistance of the Education Support Employees Association (ESEA), grieved his
19 termination and won reinstatement following arbitration. At the arbitration the School District
20 argued that the termination was proper, but also argued in the alternative that should Turner be
21 reinstated that he be reinstated as a Field Supervisor rather than a Transportation Operations
22 Manager. This was based upon the School District's contention that he would not have
23 successfully completed his probation in any event based upon this incident and the resulting
24 suspension of driving privileges. The arbitrator accepted that argument and ordered Turner be
25 reinstated as a Field Supervisor with back pay.

26 The School District, despite its arguments to the arbitrator, did not immediately reinstate
27 Turner as a Field Supervisor. Instead the School District placed Turner in a lower position of
28 Transportation Operations Assistant. In the words of Mr. Turner, this was basically like being

1 back as a bus driver. The School District's rationale for doing so was that the Field Supervisor
2 position was being phased out, and thus there was no existing Field Supervisor position in which
3 to place Mr. Turner.

4 The ESEA disputed this action and demanded that Mr. Turner be placed in the higher
5 position of Field Supervisor as ordered by the arbitrator. The School District did comply upon
6 receiving clarification from the arbitrator that her order for reinstatement as a Field Supervisor
7 required reinstatement as a Field Supervisor and not at a lesser position. Turner also received
8 additional back pay to compensate him for the time that he had been improperly reinstated as a
9 Transportation Operations Assistant.

10 From these facts Turner complained that the School District's actions at the arbitration
11 were in violation of the duty to bargain in good faith.

12 The duty to bargain in good faith is stated at NRS 288.270(1)(e). This duty requires a
13 local government employee to "bargain collectively in good faith." Under the Act, "collective
14 bargaining" is defined to include "the resolution of any question arising under a negotiated
15 agreement." NRS 288.033(3). Grievance and arbitration procedures are, in turn, mandatory
16 subjects of bargaining. NRS 288.150(2)(o). We have previously recognized that the duty to
17 bargain in good faith includes adhering to the bargained-for grievance process. See, e.g., Kallsen
18 v. Clark County School District, Item No. 393-B, EMRB Case No. A1-045598 (Feb. 12, 1998)
19 (finding the School District in violation of NRS 288.270(1) for refusing to arbitrate a grievance).

20 The duty to bargain in good faith entails that once the School District has agreed to the
21 terms for processing grievances under collective bargaining agreement the School District must
22 follow what has been bargained for. The duty does not require the School District to individually
23 bargain over individual grievances, nor does it require the School District to bargain over the
24 position it takes at an arbitration proceeding. In this case, the evidence indicated that the School
25 District did participate in arbitration and merely advanced the positions that it viewed most
26 favorable to it when making arguments before the arbitrator. This is not a breach of the duty to
27 bargain in good faith. Rather this is exactly what is contemplated in an arbitration proceeding. To
28 the extent that Turner claims the School District did not properly implement the arbitrator's order

1 we find that any arguable breach of the duty to bargain in good faith was resolved upon
2 clarification from the arbitrator to reinstate Turner as a Field Supervisor.

3 The School District's motion essentially argued that the duty to bargain in good faith does
4 not require further negotiations within the context of arbitration proceeding. This argument is
5 well-taken and we grant the motion on this basis.

6 Based upon the forgoing, the Board makes the following findings of fact and conclusions
7 of law.

8 **FINDINGS OF FACT**

9 1. Complainant Michael Turner is a local government employee and was employed
10 by the Clark County School District as a Transportation Operations Manager as of February 5,
11 2012.

12 2. As of February 5, 2012, Turner held a probationary status for the position of
13 Transportation Operations Manager.

14 3. On February 5, 2012, an off-duty driving incident occurred which led to a 30-day
15 suspension of Turner's driving privileges.

16 4. The School District terminated Turner's employment due to this off-duty incident.

17 5. Turner filed a grievance over his termination pursuant to the terms of the applicable
18 collective bargaining agreement.

19 6. Turner won reinstatement to the position of Field Supervisor following the
20 arbitration.

21 7. The School District did not refuse to participate in the arbitration.

22 8. Upon receiving clarification from the arbitrator, the School District reinstated
23 Turner to the position of Field Supervisor.

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

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1 CONCLUSIONS OF LAW

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

4 2. A local government employer is obligated to bargain collectively in good faith with
5 a recognized bargaining agent.

6 3. The duty to bargain in good faith does not require negotiations over the respective
7 positions taken in an arbitration proceeding.

8 4. The School District did not violate any bargaining obligations under NRS
9 288.270(1)(e) or NRS 288.150(1) in this case.

10 5. The complaint is not supported by probable cause.

11 6. Dismissal is warranted under NAC 288.375(1).

12 7. An award of costs and fees is not warranted in this case.

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

15 ORDER

16 It is hereby ordered that the complaint filed in this matter is dismissed.

17 DATED the 21st day of January, 2015.

18 LOCAL GOVERNMENT EMPLOYEE-
19 MANAGEMENT RELATIONS BOARD

20 
21 BY: _____
22 PHILIP E. LARSON., Chairman

23 
24 BY: _____
25 BRENT C. ECKERSLEY, Vice-Chairman

26 
27 BY: _____
28 SANDRA MASTERS, Board Member

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

5 MICHAEL TURNER,)
6 Complainant,) CASE NO. A1-046106
7 vs.) ITEM NO. 800
8 CLARK COUNTY SCHOOL DISTRICT,) NOTICE OF ENTRY OF ORDER
9 Respondent.)
10 _____)

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12 To: Michael Turner and his attorney of record, Kristina S. Holman, Esq.

13 To: Clark County School District and their attorney, S. Scott Greenberg, Esq.

14 PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on
15 January 21, 2015.

16 A copy of said order is attached hereto.

17 DATED this 21st day of January 2015.

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19 LOCAL GOVERNMENT EMPLOYEE-
20 MANAGEMENT RELATIONS BOARD

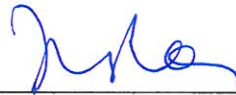
21 BY 
22 _____
23 MARISU ROMUALDEZ ABELLAR
24 Executive Assistant
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1 CERTIFICATE OF MAILING

2 I hereby certify that I am an employee of the Local Government Employee-Management
3 Relations Board, and that on the 22nd day of January, 2015, I served a copy of the foregoing
4 ORDER by mailing a copy thereof, postage prepaid to:

5 Kristina S. Holman, Esq.
6 703 S. Eighth Street
7 Las Vegas, NV 89101

8 S. Scott Greenberg, Esq.
9 Clark County School District
10 Office of the General Counsel
11 5100 West Sahara Avenue
12 Las Vegas, NV 89146



13 _____
14 MARISU ROMUALDEZ ABELLAR
15 Executive Assistant
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