

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

In the Matter of the)
VALDEMAR ARREDONDO and)
CLARK COUNTY CLASSROOM)
TEACHERS ASSOCIATION,)

Complainants,)

vs.)

Case No. A1-045337

BOARD OF TRUSTEES of THE)
CLARK COUNTY SCHOOL DISTRICT)
and THE CLARK COUNTY SCHOOL)
DISTRICT,)

Respondents.)

DECISION

On September 18, October 8, October 20, and November 18, 1980, The Local Government Employee-Management Relations Board held a hearing in the above matter; the hearing was properly noticed and posted pursuant to Nevada's Open Meeting Law.

This written Decision is prepared in conformity with NRS 233.B.125 which requires that the final Decision contain Findings of Fact and Conclusions of Law separately stated.

Introduction

By complaint filed July 23, 1980, the Complainants, Valdemar Arredondo and the Clark County Classroom Teacher's Association (hereinafter Arredondo or Association) allege that the Respondents, Board of Trustees of the Clark County School District and the Clark County School District (hereinafter Board of Trustees or District) attempted to transfer Arredondo administratively without complying with District Regulations, particularly regulation 4141. (On May 22, 1980 the District had notified Arredondo by letter that he was being administratively transferred for the 1980-81 School year.)

More importantly the Complainants charge the District with violation of NRS 288.270(1) and seek that the District: refrain

from transferring Arredondo; restore Arredondo to his position on the same terms and conditions as in prior school years in the math department at Valley High School; and pay costs and attorney fees pertaining to this action.

Concurrently Complainants, pursuant to Rule 3.03 of the General Rules of the Local Government Employee-Management Relations Board (hereinafter Board) moved the Board for its order that the District be prohibited from transferring Arredondo from Valley High School for the 1980-81 School year, pending a hearing and final determination in this matter:

In addition to denying the allegations the District asserts that the transfer was effected by their agents in compliance with Regulation 4141, particularly section II. The District also contends that the transfer was in accord with the 1980-81 teaching contract between the District and Arredondo as well as NRS 288.150 (3)(a) which reserves the right regarding the transfer of an employee to the local government employer.

Prior to the hearing on the merits of the case the Board considered the Complainant's Motion for Preliminary Injunction and issued its order granting the motion on August 15, 1980. See EMRB item #102 and note that that action is expressly limited to the facts and circumstances surrounding this very unique case. At the time of the hearing of the case the District's motion to set aside that order was deferred until the conclusion of the hearing and is hereby denied. At the hearing, the District's motion to dismiss the complaint was also denied as was their motion to quash Dr. Brown's subpoena duces tecum.

Background

Contrary to the District's characterization of Mr. Arredondo as "an overzealous gadfly whose negative attitude and personality conflicted with those school administrators operating Valley", the evidence revealed that Arredondo, a twenty year veteran of teaching (fifteen of those teaching math at Valley High), has a long and extensive background as both a highly involved and con-

scientious teacher as well as a vocal and involved advocate of teacher rights. In addition to serving on various committees to review textbooks, curriculum, and to generally upgrade the quality of education Arredondo is a long standing member of the Clark County Classroom Teacher's Association which he has served at various times in the capacities of: Building Senator, Building Grievance Representative, negotiating team member, treasurer, and executive board member. He has also served on the Valley Teachers Advisory Committee and for four years functioned as the Nevada State Education Association's Teacher Rights Chairman. Arredondo has been the math department chairperson at Valley, has been active with the Southern Nevada Mathematics Teachers Council, and was a member of the State Professional Practices Board.

In his capacity as the 1979-80 Valley High Building Grievance Representative Arredondo assisted fellow teachers with the preparation and processing of grievances which arose at Valley.

Prior to January 10, 1980, Arredondo had been requested by other teachers to attend meetings called by one or more administrators at Valley High School, and the issue of whether he could attend such meetings as a witness was being considered at that time in proceedings pursuant to the grievance process. On January 10, 1980, two Valley teachers requested that Arredondo attend a meeting as their witness. The Valley administrator in charge advised Arredondo that the meeting would be cancelled if Arredondo did not leave. Two other administrators who were also present physically evicted Arredondo from the meeting room.

Based on the January 10, 1980, incident, Arredondo received on January 23, 1980, a written admonition and notice of short-term suspension under NRS 391.314 for insubordination. In addition, the incident was cited in a Certificated Employee Appraisal Report, which was placed in Arredondo's personnel file. Arredondo pursued his remedies under NRS Chapter 391 to challenge the short-term suspension and obtained an order from the Eighth Judicial

Between January 10 and January 23, 1980, Arredondo requested assistance from the District under Article XII of the collective bargaining agreement and requested the presence of the President of the Association under Article V of that agreement at a meeting called by a Valley administrator. Also during that period, Arredondo was a co-plaintiff, along with the Association and two other teachers, in a law suit against the Board of Trustees and the District concerning teacher evaluations. By letter dated May 22, 1980, the District notified Arredondo that he was being transferred administratively from Valley High School to Kenneth C. Guinn Junior High School.

While the suspension proceedings have been properly deferred to the grievance - arbitration procedure and will not be addressed in this decision, an awareness of the totality of the circumstances is essential to resolve the central issue pending before the Board: Whether the attempted transfer of Arredondo by the District constitutes an unfair Labor practice prohibited by NRS 288.270(1).

Legal Standards

To assign a work place, to transfer or to discipline an employee are long standing common law rights of management; however an employer may not exercise these rights in a discriminatory manner because of union membership or activities. Macy's Missouri-Kansas Division vs. NLRB, 389F_{2d} 835 (8th Cir. 1968). See also Laborers International Union of North America, Local Union No. 169 for Reginald D.J. Becker vs. Washoe Medical Center, EMRB Case No. 1, Item No. 1.

The legal standards governing an employer's discriminatory conduct are outlined in National Labor Relations Board vs. Great Dane Trailers, 388 US 26,34; 87 S.Ct. 1792 1798, 18 Lawyers Edition 2nd 1027, 1032 (1967) as follows:

"First, if it can reasonably be concluded that the employer's discriminatory conduct was "inherently destructive" of important employee rights, no proof of an antiunion motivation is needed and the Board can find an unfair labor practice even if the employer introduces evidence that the conduct was motivated by business considerations. Second, if the adverse effect of the discriminatory conduct on employee

rights is "comparatively slight" antiunion motivation must be proved to sustain the charge IF the employer has come forward with evidence of legitimate and substantial business justifications for the conduct. Thus, in either situation, once it has been proved that the employer engaged in discriminatory conduct which could have adversely affected employee rights to SOME extent, the burden is upon the employer to establish that he was motivated by legitimate objectives since proof of motivation is most accessible to him."
(italics in original)

In this regard see also WASHOE COUNTY SCHOOL DISTRICT NURSES ASSOCIATION ET. AL. vs. WASHOE COUNTY SCHOOL DISTRICT ET.AL., Case No. Al-045329, Item No. 109 (1981); LAS VEGAS POLICE PROTECTIVE ASSOCIATION METRO, INC. ET.AL. vs. LAS VEGAS METROPOLITAN POLICE DEPARTMENT, Case No. Al-045309, Item #75 (March 1978). For the California approach see OCEANSIDE-CARLSBAD FEDERATION OF TEACHERS, LOCAL 1344, CFT/AFT vs. CARLSBAD UNIFIED SCHOOL DISTRICT, Case No. LA-CE-61, PERB Decision No. 89, January 30, 1979.

Based upon Arredondo's years of involvement with the Association, his years of involvement in teacher rights activities at Valley High School, and his involvement as a teachers right advocate during the 1979-80 School year at Valley, the evidence demonstrates, and the Board concludes, that his attempted transfer destroys important employee rights, that is, his ability to function as an effective advocate under Chapter 288. Concomitantly the Board is not unmindful of the very real potential for a chilling effect upon fellow teachers and Association members to result should such a transfer be permitted under these circumstances. The Board notes that not only has the Association lost membership in School year 1980-81 but noone has been willing to assume the position of Building Grievance Representative of Valley High for 1980-81.

Further even were the Board of the view that the adverse effect of the discriminatory conduct of Arredondo's rights was "comparatively slight" the Board is unpersuaded that the District established legitimate and substantial business justifications for their conduct.

The record reflects that this type of attempted transfer was highly infrequent and in fact unique. The attempted transfer was a result of a managerial concern that Arredondo was a "disruptive" force at Valley and was purportedly accomplished via District Regulation 4141, which governs Administrative Transfers and Regulation

7

However Regulation 4141 governs voluntary transfers (which this clearly was not) and involuntary transfers (explained as "when a principal identifies a staff member to be transferred to alleviate overstaffing in the school"). There was no overstaffing problem at Valley High, nor did the District carefully consider the criteria outlined in 4141 to be examined in effecting such a transfer.

Similarly Regulation 4130, Assignment, suggests that assignments (transfers) may be implemented in situations which require an immediate change in the best interests of the students of the District. There was never any indication that Arredondo was not an effective teacher. Certainly there was no immediacy in the attempted action. The District's position that it was easier to transfer one "disruptive" teacher than four administrators best summarizes the "legitimacy" of their action. Clearly the District has not demonstrated legitimate and substantial business justifications for their conduct.

Finally even if the District had been successful in establishing ample justification for their action there is strong and convincing evidence of anti-union motivation in this instance.

Despite a 1978 Northwest Accreditation Report Recommendation to transfer "old guard" teachers, a reference to Valley teachers of long standing including Arredondo, only the teacher rights advocate Arredondo was in fact ultimately transferred and, perhaps not ironically, following an increased number of grievance filings at Valley where he was the Building Grievance representative.

Valley's principal, Dr. Richard Brown, openly acknowledged that he had become more cautious in his dealings with the Association and the Teachers Advisory Committee following an incident wherein the Association had "burned him". Dr. Brown also admitted that transferring Arredondo would "take care of my problem." It is uncontroverted that the number of grievances filed at Valley was part of that (his) problem. At the time of the attempted transfer several math openings existed at several Clark County

Schools yet Arredondo was transferred to Kenneth C. Guinn Junior High School, where it was common knowledge that the principal was anything but a union sympathizer. Some prospective math department applicants were questioned about their Association membership, activities and sympathies.

Thus applying either or both tests enunciated in The Great Dane Case, the Association and Arredondo's position must be sustained. The attempted transfer of Arredondo by the District constitutes an unfair labor practice prohibited by NRS 288.270(1).

The Board's ruling by no means gives carte blanche protection to an Association member simply because he dons a union hat. However Arredondo is simply not just an association member. He has demonstrated an extensive, active and involved role as a visible and vocal advocate of teachers rights. The District and its Administrators may not solve their problem by attempting to sweep him under the rug and by so doing put fellow teachers and Association members on notice that active Association participation will result in potentially grave consequences.

FINDINGS OF FACT

1. Complainant Valdemar Arredondo is a local government employee.
2. Complainant Clark County Classroom Teachers Association is a local government employee organization.
3. Complainant Valdemar Arredondo is and has been employed by the Board of Trustees of the Clark County School District as a certified employee since 1960, and has been a science and mathematics teacher assigned to Valley High School, Clark County, Nevada, since 1965.
4. Complainant Clark County Classroom Teachers Association is and was at all times relevant hereto an employee organization recognized as the bargaining agent for certificated employees of the Board of Trustees of the Clark County School District, as

defined in NRS Chapter 288.

5. Defendant Board of Trustees of the Clark County School District is a local government employer as defined in NRS Chapter 288, and defendant Clark County School District is charged by said Board of Trustees with administering the public school system in Clark County, Nevada.

6. Arredondo has been an active member of the Association and its predecessor organization, the Las Vegas Classroom Teachers Association, throughout his years at Valley High School and has served on Association and Association - District joint committees and in various Association capacities, including Building Senator and Building Grievance Representative at Valley High School. During the 1979-80 school year, Arredondo was the Building Grievance Representative for the Association at Valley and was elected by his fellow teachers to be one of their representatives on Valley's Teacher Advisory Council (TAC), a committee created under a collective bargaining agreement negotiated pursuant to NRS Chapter 288. Arredondo was known among teachers and administrators at Valley and in the District as one to whom inquiries concerning teacher rights could be made and as one who would act as an advocate for teacher rights.

7. In his capacity as Building Grievance Representative, Arredondo assisted other teachers at Valley with the preparation and processing of grievances which arose at Valley High School. These grievances were handled through the grievance process set forth in the negotiated collective bargaining agreement between the Association and the Board of Trustees.

8. Prior to January 10, 1980, Arredondo had been requested by other teachers to attend meetings called by one or more administrators at Valley High School, and the issue of whether he could attend such meetings as a witness was being considered at that time in proceedings pursuant to the grievance process.

9. On January 10, 1980, two Valley teachers requested that Arredondo attend a meeting as their witness. The Valley adminis-

trator in charge advised Arredondo that the meeting would be cancelled if Arredondo did not leave. Two other administrators who were also present physically evicted Arredondo from the meeting room.

10. Based on the January 10, 1980, incident, Arredondo received on January 23, 1980, a written admonition and a notice of short-term suspension under NRS 391.314 for insubordination. In addition, the incident was cited in a Certificated Employee Appraisal Report, which was placed in Arredondo's personnel file.

11. Arredondo pursued his remedies under NRS Chapter 391 to challenge the short-term suspension and obtained an order from the Eighth Judicial District restraining the suspension while his remedies were pursued.

12. Between January 10 and January 23, 1980, Arredondo requested assistance from the District under Article XII of the collective bargaining agreement and requested the presence of the President of the Association under Article V of that agreement at a meeting called by a Valley administrator. Also during that period, Arredondo was a co-plaintiff, along with the Association and two other teachers, in a lawsuit against the Board of Trustees and the District concerning teacher evaluations.

13. By letter date May 22, 1980, the District notified Arredondo that he was being transferred administratively from Valley High School to Kenneth C. Guinn Junior High School.

14. Arredondo's performance as a classroom teacher was never criticized by any employees or agents of the Clark County School District.

15. The Certificated Employee Appraisal Report criticized Arredondo for refusing to leave the January 10, 1980, meeting, for leaving school a few minutes early on one day (which was occasioned by Arredondo's car pool driver having to leave early), and for not submitting certain reports on time. None of these three cited incidents occurred again after they were brought to Arredondo's attention.

16. There was no overstaffing problem in the mathematics department at Valley High School for the 1980-81 school year.

17. Arredondo never consented to be transferred from Valley High School.

18. Arredondo had the most seniority at Valley and in the mathematics department among other mathematics teachers, having been employed at that department from the time the school opened in 1965.

19. No immediate administrative need of defendants required the transfer of Arredondo, and his presence at Valley was not harmful to the interests of the students.

20. Dr. Richard Brown, principal at Valley, recommended the transfer of Arredondo from Valley but did not communicate any regulatory justification for the transfer. The responsibility for finding reasons for the transfer was left to the District administration.

21. Most of the grievances filed at Valley involved teachers other than Arredondo. Arredondo's role, if any, was to assist the teachers involved in the proper processing of the grievances under the collective bargaining agreement.

22. Transferring Arredondo would have eliminated his advocacy of teacher rights at Valley as a problem faced by Dr. Brown.

23. Although defendants' witnesses blamed Arredondo for such things as being involved in the publication of an underground newspaper at Valley several years ago, turning students against other teachers, deliberately arranging to use up the supplies of another teacher and disrupting teaching, no credible evidence was presented of such activities having occurred, either with or without Arredondo's involvement.

24. Arredondo was not disruptive or physically aggressive at any meeting at Valley High School and did not disrupt the classroom instruction, the educational process of students at Valley, or teacher preparation time.

25. Testimony of Dr. Brown and Ray Wilke reflected an anti-association animus. For example, Dr. Brown testified concerning the difference between the Association and a "union", about griev-

ances being frivolous and filed because he is Black, and about deceitful members of TAC. Ray Wilke, assistant principal at Valley High School, and Arredondo testified about Wilke's handling of separate note cards on teacher evaluations, Wilke's comments to Arredondo about the relationship between grievances filed and the Association staffing levels, and the comments on Arredondo's appraisal report. Other witnesses testified about being asked at job interviews about their Association membership, activities, and sympathies. Dr. Brown also testified about how the Association had "burned" him three years ago, and that he had not been cooperative with it since then. Ralph Cadwallader testified about a disciplinary action he had taken around 1970 against Mr. Hood, an Association representative, which was disregarded by his supervisor because Mr. Hood was acting on Association business when the incident occurred. These instances are all evidence of an anti-Association bias by defendants, their agents and employees.

26. Testimony of Dr. Brown and Mr. Wilke reflected a personal animosity toward Arredondo. For example, Dr. Brown testified that transferring Arredondo would take care of his problem; Mr. Wilke testified that he was pleasantly surprised to learn that Arredondo had been transferred. The transfer to Guinn was to a school with two administrators with whom Arredondo had been involved as an advocate on behalf of another teacher. Defendants advanced a "personality clash" as one reason for the transfer.

27. The District administration relied solely on Dr. Brown's statements concerning Arredondo and made no independent investigation to determine if his recommendation to transfer Arredondo was based on legitimate business reasons. In fact, no such legitimate business justification was present for the transfer.

28. Defendants did not have a policy or practice in May, 1980, to make school assignments as close as possible to the residences of teachers.

29. The attempted transfer of Arredondo was made by defendants because of Arredondo's Association activities.

30. The attempted transfer affects substantial rights of Arredondo, the Association and other teachers employed by defendants.

31. Arredondo declined to run for the TAC position for the 1980-81 school year at Valley and would not serve as the Building Grievance Representative, at least in part because the attempted transfer has made it more difficult for him to fulfill those responsibilities, and teachers have stopped confiding in him concerning problems with the collective bargaining agreement at Valley.

32. The attempted transfer of Arredondo operates to interfere, restrain and coerce him and other teachers in the exercise of their rights under NRS Chapter 288.

33. Defendants did not have a policy or practice of assigning a teacher like Arredondo to the newest facility available.

34. The attempted transfer of Arredondo discriminated against him with regard to the terms and conditions of his employment, i.e., his school assignments were changed, and the transfer if carried out, would modify his position from that of the most senior at Valley to that of the newest teacher at Guinn, with the effect of discouraging him and other teachers from becoming members or continuing their membership in the Association.

35. The attempted transfer of Arredondo discriminated against him because of his signing and filing a complaint and requesting assistance under the collective bargaining agreement.

36. The attempted transfer of Arredondo discriminated against him because of personal reasons.

37. The attempted transfer of Arredondo was a willful act of the defendants, their agents or employees, done with the intent to interfere, restrain and coerce employees of defendants in exercise of their rights under Chapter 288, and with the intent to discriminate with regard to terms and conditions of employment.

38. The attempted transfer injures the Association in terms of the effect it has on the members of the Association, their degree of participation in Association activities, and the effect on nonmembers of the Association.

39. The attempted transfer of Arredondo interferes with the rights of teachers to choose their representatives in TAC.

40. There was no practice or procedure at Valley in May, 1980, to transfer the "old guard" teachers, i.e., those who had been at the school since its opening.

41. Arredondo and the Association have necessarily incurred reasonable attorneys' fees in the amount of \$6,244.50 and costs in the amount of \$1,956.30 in the prosecution of this matter.

Conclusions of Law

1. Pursuant to the provisions of Nevada Revised Statutes, Chapter 288, The Local Government Employee-Management Relations Board possesses original jurisdiction over the parties and subject matter of this complaint. NRS 288.110, NRS 288.280.

2. The Board has jurisdiction to hear cases involving the transfer of the work assignment of a public employee where such transfer is alleged to be in violation of the employee's or the employee organization's rights under NRS Chapter 288.

3. Complainant Arredondo is a local government employee within the term as defined in NRS 288.050.

4. Complainant Clark County Classroom Teachers Association is a local government employee organization and a bargaining agent as the terms are defined in NRS 288.040 and NRS 288.027, respectively.

5. That the defendants (Respondents) Board of Trustees of the Clark County School District; Clark County School District is a local government employer within the terms as defined in NRS 288.060. The Board of Trustees is chargeable with the conduct of the District and its administrative employees, to whom it has given the responsibility of administering the public school system in Clark County, Nevada.

6. The attempted transfer of Arredondo constitutes a prohibited practice under NRS 288.270 (1)(a), (c), (d) and (f) and affects substantial rights of complainants.

7. A change of class assignments can be a prohibited practice under NRS Chapter 288, although the Board recognizes the prerogative of the Administrators to make class assignments in accord with sound educational and administrative principles.

Based on the foregoing Findings of Fact and Conclusions of Law, the Board hereby decides in favor of Complainants and against Defendants, and further orders that Valdemar Arredondo be assigned by defendants to a position as a certified employee in the mathematics department at Valley High School on substantially the same terms and conditions as in prior school years, that defendants remove all references concerning the transfer from Arredondo's personnel file, and the defendants pay to complainants the sum of \$6,244.50 as and for reasonable attorneys' fees and \$1,956.30 as and for costs incurred herein.

To minimize class disruption at this point in the semester the Board further orders that the status quo of class assignments be maintained until the close of the current (1980-81) school year. However, for forthcoming years, commencing with the 1981-82 school year, the District is ordered to assign Arredondo on substantially the same terms and conditions as in prior school years, excluding the class assignments made for school year 1980-81 as a result of this litigation.

Dated this 22 day of April 1981.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

Earl L. Collins
Earl L. Collins, Board Vice-Chairman

Dorothy Eisenberg
Dorothy Eisenberg, Board Member


Certified Mail: Peter Bernard
Thomas Moore
XC: Board members
Distribution: Mailing List

DISSENT FROM AWARD OF COSTS AND ATTORNEY FEES

Although I am in agreement with the Decision reached by the Board, I respectfully dissent from the Board's award of costs and attorney fees in this action.

Dated this 22 day of April 1981.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD



Carole Vilardo, Chairman