

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

In the Matter of the  
ORMSBY COUNTY TEACHERS  
ASSOCIATION,

Complainant,

vs

CARSON CITY SCHOOL  
DISTRICT,

Respondent.

Case No. Al-045339

D E C I S I O N

On Friday, December 19, 1981, 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.123 which requires that the final Decision contain Findings of Fact and Conclusions of Law separately stated.

By complaint filed September 29, 1980, the Ormsby County Teachers Association (hereinafter Association) alleges that the Respondent Carson City School District (hereinafter District) attempted to circumvent the requirements of NRS 288.150(1) by distributing a document entitled "Response to Allegations From 'OCTA Negotiation Update'" (hereinafter the Response) among all certificated employees of the District. The Association also charges that the Response was designed to undermine the confidence of the membership of the Association, its officers and bargaining representatives and to create dissension and derision within the membership in violation of NRS 288.270(1)(e). Finally the Response is alleged to have weakened the Association's negotiation position during collective bargaining and to have constituted interference with the administration of and domination of the Association in violation of NRS 288.270(1)(f).

The District denied the allegations and moved to dismiss the complaint. Prior to hearing testimony on the complaint the Board entertained argument on the District's Motion and denied the same as well as the Association's Motion to strike a segment of the District's Answer.

The incidents which led to the complaint began in March of 1980 when the Association printed a publication entitled "OCTA News Update". The News Update was published approximately twice monthly and distributed to employees throughout the District. The newsletter contained information regarding the negotiations between the District and the Association as well as numerous quasi-satirical "shorts" which the District characterized as constant ridicule of non-association members, the District's negotiators, the School Board and the Administration.

In the September 19, 1980 issue, the Newsletter singled out a few Directors and Administrators and made salary comparisons of those select individuals with the salary increase offer for teachers as an average. It openly criticized the District's handling of the budget and, in the District's view, included half truths, distortions, discrepancies, inaccuracies, and misinformation. About this time the Association had discussed the possibility of a teacher strike, an account of which had appeared in the Carson City Newspaper, the Nevada Appeal.

With this background in mind the District published its sole Response to inform the employees of the relative financial positions of the employees and to explain the District's position.

NRS 288.150(1) provides that negotiations be conducted in good faith through representatives of the recognized employee organization. The provision is designed to preclude the employer from engaging in such practices as "end run bargaining" and direct dealing with the employees. See, for example, In the Matter of the Ormsby County Teachers Association vs. Carson City School District, case no. A1-045273, item no. 28 (1975).

In general the Board believes that communication by an employer with an employee organization or employee is an exercise of its Constitutional right of free speech. See NLRB vs. Four Winds Industries, Inc. 530F<sub>2d</sub> 75 (9th Cir. 1976); NLRB vs. Gissel Packing Co., 89 S.Ct. 1918, 395 US 575 (1969).

In the private sector it is well settled that an employer is free to communicate to his employees regarding any general or specific views about unionism so long as such communications do not contain threat of reprisal or promise of benefit. NLRB vs. Four Winds Industries, Inc.; NLRB vs. Gissel Packing Co., supra. See also National Labor Relation Act section 7, 8(a)(1), (c) as amended 29 U.S.C.A. section 157, 158(a)(1)(c).

These types of communication do not violate the spirit of NRS 288.150(1) unless such communications contain subjects or discussions of negotiations not previously presented to the recognized employee organization's designated negotiating representatives. Reporting previously presented positions or responses to allegations by the opposite party such as the Response herein does not in and of itself constitute a violation of good faith bargaining. See In the Matter of: City of Madison Heights and Madison Firefighters Association, case no. C79G-169 (Mi 2/19/80), 2 NPER 23-11029 (Mi 2/19/80).

In NLRB vs. Movie Star, Inc., 361F<sub>2d</sub> 346, (5th Cir. 1966) the Court quoted from section 8(c) of the NLRB Act which states as follows:

"The expressing of any views, argument or opinion or the dissemination thereof whether in written, printed, graphic, or visual form, shall not constitute or be evidence of any unfair labor practice under any of the provisions of this subchapter, if such expressions contain no threat of reprisal or force or promise of benefit."

The Response was not an attempt to circumvent NRS 288.150(1) nor did it violate that section by attempting to bargain directly with the employees. There was no threat of reprisal or force or promise of benefit contained therein.

Where a communication, such as the Response, is restricted

to a discussion of the facts or to a summary of the parties previously stated positions or to a response to allegations by the opposite party's representatives and does not attempt to dominate or interfere with the administration of an employee's organization, there is no violation of NRS 288's provisions of good faith bargaining or prohibited practices.

The Association's final contention that the Response weakened its negotiation position during collective bargaining and constituted an interference with the administration of and domination of the Association has been examined by the Board and found to be without merit. The evidence presented at the hearing simply does not support such a finding.

#### FINDINGS OF FACT

1. That the Complainant, Ormsby County Teachers Association is an employee organization.

2. That the Respondent, Carson City School District, is a local government employer.

3. That in March, 1980, the Association began a publication entitled "OCTA News Update" which summarized and commented upon contract negotiations between the District and the Association.

4. That following the September 19, 1980 issue of the News Update the District published and distributed its sole response to the "OCTA News Update" series which Response informed the employees of the relative financial positions of the employees and explained the District's position.

5. That the Response was an exercise of the District's Constitutional Right of free speech.

6. That the Association had discussed the possibility of a teacher strike, an account of which had appeared in the Carson City Nevada Appeal.

7. That the response was not an attempt to circumvent NRS 288.150(1) nor did it attempt to bargain directly with the employees.

8. That the response contained no threat of reprisal or force nor promise of benefit.

9. That the evidence presented at the hearing did not support a finding that the Response weakened the Association's negotiation position during collective bargaining.

10. That the evidence did not support a finding that the Response constituted an interference with the administration of and domination of the Association.

#### CONCLUSIONS OF LAW

1. That pursuant to the provisions of Nevada Statutes, Chapter 288, The Local Government Employee-Management Board possesses original jurisdiction over the parties and subject matter of this complaint.

2. That the Complainant, Ormsby County Teachers Association, is a local government employee organization within the term as defined in NRS 288.040.

3. That the Respondent, Carson City School District, is a local government employer within the term as defined in NRS 288.060.

4. That communications by an employer to an employee organization or its members do not violate the spirit of NRS 288.150(1) unless such communications contain subjects of discussions of negotiations not previously presented to the recognized employee organization's designated negotiating representatives. NRS 288.150(1).

5. That reporting previously presented positions or responses to allegations by the opposite party such as the Response herein does not in and of itself constitute a violation of good faith bargaining. NRS 288.270(1)(e).


6. That the evidence presented at the hearing failed to support a finding that the Response weakened the Association's negotiation position during collective bargaining or constituted

an interference with the administration of the Association. NRS  
288.270(1)(b).

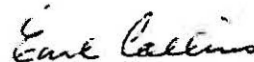
The requested relief is denied and the Complaint dismissed.  
Each party shall bear its own costs and attorney's fees.

Dated this 22 day of April 1981.

LOCAL GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD



Carole Vilardo, Board Chairman



Earl Collins, Board Vice-Chairman



Dorothy Eisenberg, Board Member

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xc: Board Members