

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

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ORMSBY COUNTY TEACHERS
ASSOCIATION,

Petitioner,

-vs-

CARSON CITY SCHOOL DISTRICT and
the CARSON CITY SCHOOL DISTRICT
BOARD OF SCHOOL TRUSTEES,

Respondents.

CASE NO. A1-045405

DECISION

For the Petitioner:

MICHAEL W. DYER, Esq.

For the Respondent:

E. THOMAS ECK, III, Esq.

For the EMRB:

SALVATORE C. GUGINO, Esq., Chairman
TAMARA BARENGO, Vice Chairman
JEFFREY L. ESKIN, Esq., Member

STATEMENT OF THE CASE

On December 9, 1985, the ORMSBY COUNTY TEACHERS ASSOCIATION ("OCTA") filed its Complaint against the CARSON CITY SCHOOL DISTRICT and its Trustees ("CCSD") alleging that Respondents had engaged in certain unfair labor practices in the administrative selection process for the appointment of a new vice-principal at Eagle Valley Junior High School. Chief among Petitioner's concerns was the use by the CCSD of a written examination question submitted to the candidates which stated as follows:

You are serving as assistant principal at Eagle Valley Junior High School. In your prior capacity as a classroom teacher you have developed a number of personal and professional associations with current staff members. You have been an active member of the teacher's association and have served on a number of committees for the association.

It has come to your attention that a teacher with whom you have been associated on both a personal and professional basis, has committed

1 an infraction which would make him/her subject to
2 possible dismissal under the provisions of NRS 391.
3 312 (copy attached) for unprofessional conduct
4 (evident intoxication while on duty). The teacher
5 was insubordinate to you when initially confronted
6 with the problem.

7 Please write a letter of admonition (NRS 391.313)
8 reprimanding the individual for his/her conduct in
9 this regard, giving instructions for remedial and
10 corrective action, and indicating the steps which
11 may be taken if the situation is not appropriately
12 resolved. (Emphasis added).

13 There were seven (7) applicants for the position of vice-principal
14 of which three (3) names were submitted to the school principal for her
15 selection. The finalists, who were ranked according to their cumulative
16 scores in written and oral examination, included, respectively, Royston
17 Waltemyer (45.25), Nellana DeGraff (44.37), and Thomas Badillo (41.0). Re-
18 garding the above-cited question, the three candidates achieved the following
19 scores out of twelve (12) possible points: Waltemyer (11), DeGraff (8),
20 Badillo (7).

21 The principal of Eagle Valley Junior High School reviewed the
22 above-named candidates and selected Mr. Badillo. It has been noted for the
23 record that Mr. Waltemyer was a prior president of the OCTA and was an active
24 member of the Association; and that Mr. Badillo had recently resigned from
25 the OCTA. Although the OCTA does not question Mr. Badillo's qualifications
26 for the position, it is the Association's belief that the above question,
27 among other things, acts to discourage membership in the OCTA, particularly
28 among individuals who may wish to apply for administrative positions. It is
also their contention that such a question unfairly discriminates against
Association members who do apply for such positions.

D I S C U S S I O N

I

THE QUESTION, AS WRITTEN, CONSTITUTES A PROHIBITED

1 PRACTICE IN VIOLATION OF NRS 288.270(1)(a) AND (c)

2 The Board is concerned with any activity which may, in practice or
3 on its face, have a chilling effect upon the right of public employees to
4 associate as members of an employee organization. NRS 288.270 provides in
5 part:

6 "1. It is a prohibited practice for a local govern-
7 ment employer or its designated representative will-
8 fully to:

9 (a) Interfere, restrain or coerce any employee
10 in the exercise of any right guaranteed under
11 this chapter.

12 (b) Dominate, interfere or assist in the forma-
13 tion or administration of any employee organization.

14 (c) Discriminate in regard to hiring, tenure or
15 any term or condition of employment to encourage
16 or discourage membership in any employee organiza-
17 tion." (See NRS at 10541).

18 In analyzing the "drunken teacher Association member" question,
19 the Board may draw inferences from and make conclusions on proven facts with
20 regard to whether antiunion or animus existed. National Labor Relations
21 Board v. Electric Steam Radiator Corp., 321 F.2d 733, 738 (6th Cir. 1963).
22 NRS 288.270(1)(c) refers to "the employer willfully" discriminating to dis-
23 courage membership. However, the requirement that the employer's actions
24 must have been willful does not require that the Petitioner or Complainant
25 carry the burden of showing specific intent on the employer's part.

26 The United States Supreme Court has expressly stated that although
27 an employer's intent or motive to discriminate or to interfere with Union
28 rights is a necessary element of an unfair labor practice, specific evidence
29 of the employer's subjective intent is not required when the employer's
30 conduct inherently encourages or discourages Union membership. Radio Offi-
31 cer's Union, etc. v. National Labor Relations Board, 347 U.S. 17, 44, 74 S.Ct.
32 323, 338 (1954).

33 The Supreme Court has further noted that some conduct by its very nature

1 contains the implications of the required intent. In such cases the natural
2 foreseeable consequences of an employer's action may justify the conclusion
3 that discrimination was intended. Thus, the existence of discrimination may
4 be inferred by the Board based upon its experience in the labor management
5 relations area. National Labor Relations Board v. Erie Resistor Corp., 373
6 U.S. 221, 227, 83 S.Ct. 1139, 1144 (1963); Republic Aviation Corp. v. National
7 Labor Relations Board, 324 U.S. 793, 800, 65 S.Ct. 982, 986 (1945).

8 The language of the test question leaves the Board with the clear
9 and unambiguous impression that it casts aspersions upon the OCTA and its
10 members. By requiring that the candidate assume that he or she has been "an
11 active member of the teacher's association" in the past, the CCSD is inferren-
12 tially instructing the candidate to "overcome" this background in dealing with
13 the drunken teacher. Moreover, it is informing the applicant that membership
14 in the employee association serves as a detriment to the person who is required
15 to think like an administrator.

16 Placing the "drunken teacher association member" question on the
17 promotional examination has a natural tendency to discourage Association member-
18 ship. Stated differently, the discouragement of Association membership is a
19 reasonably foreseeable result of utilizing questions on promotional examinations
20 which display the teacher association members in an unfavorable light and
21 express the employer's doubt that association members, especially ones who have
22 been active in the organization, can become effective administrators.

23 Since the negative impact is reasonably foreseeable, the Respondents
24 must be presumed to have intended the natural consequences of their action.
25 See Radio Officer's Union, Erie Resistor Corp., Electric Steam Radiator Corp.
26 cases cited supra. The Board also relied upon the comments of the designer
27 of the test, Dr. Rowley, who admitted under oath that he assumed the applicants
28 for the position would be members of the OCTA. See Transcript of Proceedings,

1 February 27, 1986 at 115, 143.

2 Thus, in light of the testimony at the hearing and the clear and
3 obvious import of the language in the test question, the Board has concluded
4 that the Respondents CCSD have committed a prohibited practice in violation
5 of NRS 288.270(1), subsections (a) and (c), and that the OCTA has presented
6 sufficient facts and evidence to prevail on the First Cause of Action in its
7 Complaint on file herein.

8 II

9 DISMISSAL OF ALL OTHER
10 CAUSES OF ACTION

11 The Board has reviewed the remaining Causes of Action, numbered Two
12 through Seven, in Petitioner's Complaint, and has determined that they are
13 cumulative in nature and duplicitous of the first two Causes of Action. Accord-
14 ingly, and for that reason, they are hereby denied.

15 FINDINGS OF FACT.

16 1. That the ORMSBY COUNTY TEACHERS ASSOCIATION is a local government
17 employee organization.

18 2. That the CARSON CITY SCHOOL DISTRICT and the CARSON CITY SCHOOL
19 DISTRICT BOARD OF SCHOOL TRUSTEES are a local government employer.

20 3. That during the course of 1985, an administrative position for
21 vice-principal of Eagle Valley Junior High School was opened for competitive
22 application.

23 4. That, as part of the written examination, applicants were
24 required to answer a question in which they were to assume that they had been
25 active members of the teacher's association, and which involved a "drunken
26 teacher" with whom the applicants had been personally and professionally
27 associated.

28 5. That the question was written with the assumption that the

1 applicants were all members of the ORMSBY COUNTY TEACHERS ASSOCIATION.

2 C O N C L U S I O N S O F L A W

3
4 1. That the Local Government Employee-Management Relations Board
5 possesses original jurisdiction over the parties and subject matter of this
6 Complaint and/or Petition pursuant to the provisions of NRS Chapter 288.

7 2. That the CARSON CITY SCHOOL DISTRICT and the CARSON CITY SCHOOL
8 DISTRICT BOARD OF SCHOOL TRUSTEES are a local government employer within the
9 term defined in NRS 288.060.

10 3. That the ORMSBY COUNTY TEACHERS ASSOCIATION is a local govern-
11 ment employee organization within the term as defined in NRS 288.040.

12 4. That there is sufficient evidence, based upon the express lang-
13 uage of the test question and the testimony of witnesses at hearing, as well
14 as the arguments of counsel, for the Board to conclude and thereby hold tha
15 the inclusion of the "drunken teacher association member" question by the
16 Respondents in their written examination of applicants for the administrative
17 position in question was a prohibited practice in violation of NRS 288.270(1)
18 (a) and (c).

19 5. That the Petitioner/Complainant has sustained its Burden of
20 Proof on its First Cause of Action.

21 6. That the Second through Seventh Causes of Action in Petitioner/
22 Complainant's Complaint are cumulative, duplicitous, inclusive of the general
23 allegations contained in the First Cause of Action and, for that reason, are
24 hereby denied.

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1 7. That each party is to bear its own costs and fees in this
2 action.

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4 DATED this 21st day of September, 1987.

5 LOCAL GOVERNMENT EMPLOYEE-
6 MANAGEMENT RELATIONS BOARD

7 By Salvatore C. Gugino
8 SALVATORE C. GUGINO, Esq.
Chairman

9 By Tamara Barengo
10 TAMARA BARENGO
Vice-Chairman

11 By Jeffrey L. Eskin
12 JEFFREY L. ESKIN, Esq.
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13
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18 REGULAR MAIL: All Interested Parties
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