

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CLARK COUNTY PUBLIC EMPLOYEES
ASSOCIATION,

Complainant,

v.

THE COUNTY OF CLARK, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,

Respondent.

ITEM NO. 215

CASE NO. A1-045425

DECISION

For the Complainant: FRITZ REESE
RICK LOOP

For the Respondent: PAUL JOHNSON, ESQ.

For the EMRB: SALVATORE C. GUGINO, ESQ., Chairman
TAMARA BARENGO, Member
JEFFREY L. ESKIN, ESQ., Member

STATEMENT OF THE CASE

This matter came before the Local Government Employee-
Management Relations Board ("Board") upon the filing of a
Complaint by the Clark County Public Employees Association
("Association") alleging arbitrary, capricious, discriminatory
and bad faith discipline by the County of Clark ("County") in
violation of NRS 288.270(1)(f).

The case arises from the issuance of written reprimands to
three County Juvenile Court Services employees who work at Child
Haven: Louise Jordan, Gene Feher, and William Rokovitz. Jordan
and Feher were reprimanded after a child assigned to their
cottage ran away with his brother, who was assigned to another
cottage. Their immediate supervisor, Rokovitz, was reprimanded

1 for not properly performing his supervisory function in regard to
2 the incident. The Association contended that other employees
3 charge of these children at the time of the incident were not
4 reprimanded, and the policies and procedures which were
5 supposedly violated were unclear and not commonly practiced or
6 enforced. The County contended that the discipline, properly
7 given for misconduct on the part of these employees, was not
8 discriminatory or based on personal animus and was, therefore,
9 not a prohibited practice under NRS 288.270(1).

10 The Board conducted a hearing in Las Vegas on May 4, 1988.
11 The Association presented evidence and argument in support of its
12 Complaint. The County presented evidence and argument in
13 opposition to the Complaint and in support of its actions.

14 During the hearing, the Association moved to withdraw the
15 portion of the Complaint concerning the County's refusal to
16 negotiate the discipline of the above-named employees with the
17 Association. The motion was granted, and issues 4 and 5 of the
18 Hearing Notice were withdrawn from decision by the Board.

19 The County moved that the Complaint be dismissed as a
20 frivolous claim and not a proper matter to come before the Board.
21 The Board took the motion under submission to be determined at a
22 later date. The County also moved to strike the prehearing
23 statement of the Association on the basis that it raised new
24 issues not in the pleadings and was untimely. This motion was
25 also taken under advisement by the Board.

26 At the conclusion of the hearing, the parties agreed to an
27 expedited decision without post-hearing briefs, and the matter
28 was submitted to the Board for decision.

1 I. The complainant has established sufficient prima
2 facie evidence in support of discrimination based
3 upon personal reasons.

4 The Board believes that the Association has made a prima
5 facie showing sufficient to support the inference that personal
6 animus was the motivating factor in the disciplinary action
7 against the aggrieved employees. This long-held and continuing
8 personal animus was directed towards Gene Feher, primarily by
9 Nancy Williams, his division supervisor at Child Haven.

10 As revealed during the hearing, the other employees named in
11 the Complaint were, in large part, reprimanded because of their
12 proximity in job assignment to Mr. Feher. Louise Jordan, who
13 worked with Mr. Feher in Rhyolite Cottage, received a reprimand
14 because she was simply "in the wrong place at the wrong time."
15 Tr. 100, 143-145. Bill Rokovitz received a reprimand because,
16 Mr. Feher's immediate supervisor, he did not support the
17 disciplinary measure taken against Mr. Feher or Ms. Jordan. Tr.
18 80, 181-183; Tr. Union Ex. G.

19 The personal animus toward Mr. Feher stemmed in large part
20 from an investigation by the Metropolitan Police Department of
21 certain practices at Child Haven. Mr. Feher felt that he was
22 accused of being a disloyal employee, because he "cooperated"
23 with the police in the investigation; Ms. Williams believed that
24 Mr. Feher unfairly maligned her in the investigation. As she
25 states in her memo to Robert Raney on April 14, 1986, "I am
26 particularly injured and grieved by Gene Feher's...allegation...a
27 charge that particularly strikes at the very ground of my career
28 my freedom and my livelihood; not to speak of my good name and
29 good reputation in the Las Vegas community." Although the facts

1 surrounding the Metro investigation were not fully explored, it
2 is clear that the following actions occurring since that time,
3 taken in their totality, indicate that every opportunity was
4 taken to harass, vex, and annoy Mr. Feher:

5 1. In her above-mentioned memo to Robert Raney following
6 the Metro investigation, Ms. Williams wrote, "...the only remedy
7 that will make me whole will be for you to terminate Gene Feher
8 as a Deputy Probation Officer who is incompetent, dishonest, law
9 breaking, and unworthy o[f] being a Probation Officer." This
10 statement is the primary and most damaging evidence that Ms.
11 Williams had the motive and intent to cause Mr. Feher to leave
12 his employment.

13 2. On several occasions, Mr. Feher was denied
14 administrative leave to attend professional conferences,
15 particularly one where he was co-hosting the event. At these
16 same conferences, other employees at Child Haven were permitted
17 administrative leave.

18 3. Since 1986, Mr. Feher has not been allowed to distribute
19 T-shirts, which he arranged to be donated to Child Haven as
20 Christmas gifts for the children.

21 4. During March of 1986, Mr. Feher was reassigned to the
22 graveyard shift in violation of department policy and past
23 practice at Child Haven and was only removed from the shift as
24 the result of filing a grievance on the matter.

25 5. In 1986, Mr. Feher received an evaluation with all 2's
26 and 3's (out of a top score of 5) without prior indication or
27 documentation that his work was unsatisfactory. For three years
28 prior to 1986, he had received excellent evaluations. Upon his

1 challenge of the evaluation, it was rewritten to indicate
2 satisfactory performance.

3 6. Ms. Williams placed a comment in Mr. Feher's 1987
4 evaluation concerning the reprimand that is the subject of this
5 complaint, the result of which would be to permanently place a
6 record of the reprimand into his file, which could possibly
7 affect his future employment. The comment was removed through
8 the grievance procedure.

9 It should be noted that Mr. Feher had his part in fomenting
10 distrust and dislike throughout the long-standing feud. He, too,
11 missed no opportunity to annoy Ms. Williams by discussing his
12 problems and his alleged mistreatment by Ms. Williams and other
13 administrators with his fellow workers, as well as others in the
14 community.

15 II. The Board rejects the arguments made in rebuttal
16 by the employer.

17 The County advanced the following reasons for the
18 disciplinary actions taken; specifically:

19 1. Gene Feher was derelict in his duties, violated
20 supervision policies, and showed poor practical judgment in his
21 supervision of the child, age 6, who had been entrusted to his
22 care;

23 2. Louise Jordan was assigned to the same cottage as Mr.
24 Feher and, therefore, she, too, was responsible for the escape of
25 the child that had been assigned to her care and custody; and

26 3. William Rokovitz was negligent in his supervisory role,
27 because he did not hold his own staff accountable in this
28 incident.

1 For the reasons stated supra and infra, said arguments are
2 rejected by the Board.

3 III. Respondent's attempt to establish a legitimate
4 explanation for its disciplinary actions is
5 pretextual in nature.

6 An examination of the evidence reveals substantial evidence
7 that the County's stated reason for the disciplinary actions was
8 pretextual.

9 First, the facts do not reveal either Feher or Jordan to be
10 negligent in this matter. At the time of the incident, they had
11 never met or seen the child, who had been admitted to Child Haven
12 at 11 AM that day and assigned to their cottage. The two staff
13 members arrived at 2 PM, while he was in school. Also, the
14 children were not under the supervision or in the locale of Feher
15 or Jordan when the incident occurred. The children were in the
16 process of lining up to leave their physical education class in
17 the Activity Center, under the direct supervision of the Director
18 of Physical Education, when the two boys escaped a few minutes
19 before 3 PM.

20 Second, other employees involved in the same situation were
21 not reprimanded. Leon Ireland, the Director of Physical
22 Education, was at least equally culpable for allowing the
23 children to escape; nevertheless, Mr. Ireland was not
24 reprimanded. Further, the two boys who escaped were housed in
25 separate cottages; but only the staff at Rhyolite Cottage were
26 reprimanded. In fact, the individuals in the other cottage were
27 not even consulted concerning the incident prior to the issuance
28 of the reprimands.

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1 Third, the record indicates that there was little, if any,
2 investigation of the circumstances surrounding the incident
3 before the reprimands were issued, thus substantiating the
4 Association's charge that the disciplinary action was arbitrary,
5 capricious, and based on personal animus, rather than misconduct
6 revealed through legitimate investigation.

7 Fourth, the record indicates that the policies allegedly
8 violated concerning sight supervision were unclear, not well
9 communicated, and not practiced. In his notarized, written
10 statement, the Director of Physical Education, Leon Ireland,
11 said, "Until this incident happened, there never had been any
12 staff meeting the kids after any P.E. class." Tr. Union Ex. H.

13 It should also be noted that, as the immediate supervisor,
14 Rokovitz did not hold Mr. Feher and Ms. Jordan accountable for
15 negligence, because he knew the facts discussed above. It was
16 apparent that Mr. Rokovitz's main failing, in the eyes of his
17 supervisor, was his lack of unquestioning support for Nancy
18 Williams's desire to reprimand Mr. Feher regardless of the facts.
19 This failure, rather than the lack of suitable supervision, was
20 more likely the cause of his receiving a reprimand.

21 Thus, the testimony of the County's witnesses--Nancy
22 Williams, Vern Bushgens, and Brian Albiser--concerning the
23 County's proffered "legitimate" explanation for the issuance of
24 the reprimands to the specific employees affected, and to no
25 others, lacked credence and was not believed by the Board. The
26 Board finds that the County's explanation is pretextual, and that
27 the evidence conclusively restores the inference of unlawful
28 motivation, particularly on the part of Nancy Williams.

1 Therefore, the Board concludes that Association members
2 Feher, Jordan, and Rokovitz were subjected to arbitrary,
3 capricious, discriminatory and bad faith discipline by their
4 supervisors, Nancy Williams and Brian Albiser. Since it is a
5 prohibited practice for a local government employer willfully to
6 discriminate because of personal reasons pursuant to NRS
7 288.270(1)(f), the written reprimands issued to Feher, Jordan,
8 and Rokovitz constitute a prohibited practice within the meaning
9 of NRS 288.270(1)(f).

10 Because of the continuing animosity and unlawful behavior on
11 the part of Nancy Williams towards Gene Feher, it is the
12 recommendation of the Board that Mr. Feher be allowed to transfer
13 to a position at a similar level within Juvenile Court Services
14 that is not under the direct or indirect supervision of Ms.
15 Williams.

16 FINDINGS OF FACT

17 1. The Complainant, Clark County Public Employees
18 Association, is a local government employee organization engaged
19 in the representation of local government employees of Clark
20 County in Juvenile Court Services, including employees Gene
21 Feher, Louise Jordan, and William Rokovitz.

22 2. That the Respondent, County of Clark, is a political
23 subdivision of the State of Nevada, being one of its 16 counties,
24 and is a local government employer.

25 3. That in April and May of 1987, Gene Feher, Louise
26 Jordan, and William Rokovitz were issued written reprimands after
27 a child who had been assigned to their cottage at Child Haven on

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1 or about April 28, 1987, ran off the grounds, along with his
2 brother, assigned to another cottage, that same day.

3 4. That, at the time of the incident, Feher and Jordan had
4 never met or seen the child, who had been admitted at 11 AM that
5 day and assigned to their cottage. The two staff members arrived
6 at 2 PM while he was in school.

7 5. That the children who escaped were not under the
8 supervision nor in the locale of the reprimanded employees at the
9 time of the incident. The children were in the process of lining
10 up to leave their physical education class in the Activity
11 Center, under the direct supervision of the Director of Physical
12 Education, when the two boys involved escaped a few minutes
13 before 3 PM.

14 6. That Leon Ireland, the Director of Physical Education
15 was at least equally culpable for allowing the children to
16 escape; nevertheless, Mr. Ireland was not reprimanded.

17 7. That there were two boys who escaped, but only the staff
18 at Rhyolite Cottage were reprimanded. In fact, the individuals
19 in the other cottage were not consulted concerning the incident
20 prior to the issuance of the reprimands.

21 8. That there was little, if any, investigation of the
22 circumstances surrounding the incident before the reprimands were
23 issued.

24 9. That the testimony of Nancy Williams, Vern Bushgens, and
25 Brian Albiser, concerning the County's proffered legitimate
26 explanation for the issuance of the reprimands to the specific
27 employees affected, and to no others, lacked credence and was not
28 believed by the Board.

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1 ORDERED, ADJUDGED AND DECREED, as follows:

2 1. That the Association's Complaint, as amended, be, and
3 the same hereby is, upheld.

4 2. That the reprimands and any reference thereto shall be
5 immediately removed from the personnel records of Feher, Jordan,
6 and Rokovitz.

7 3. That the County shall publicly post a copy of this
8 decision on the employees' bulletin board at Child Haven for a
9 period of thirty (30) days.

10 4. That each party shall bear its own costs and attorney's
11 fees in this matter.

12 DATED this 26th day of August, 1988.

13 LOCAL GOVERNMENT EMPLOYEE-
14 MANAGEMENT RELATIONS BOARD

15 By 
16 SALVATORE C. GUGINO, Chairman

17 By Tamara t. Baungr
18 TAMARA BARENGO, Member

19 By 
20 JEFFREY L. ESKIN, Member

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26 Copies to: Board members
27 Interested parties
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