

1 BEFORE THE LOCAL GOVERNMENT
2 EMPLOYEE-MANAGEMENT RELATIONS BOARD
3
4

5 STOREY COUNTY EDUCATION)
6 ASSOCIATION,)

ITEM NO. 217

7 Complainant,)
8 v.)

CASE NO. A1-045422

DECISION

9 STOREY COUNTY SCHOOL DISTRICT)
10 and the STOREY COUNTY SCHOOL)
11 DISTRICT BOARD OF SCHOOL TRUSTEES,)

Respondents.)
_____)

12 STATEMENT OF THE CASE

13 This matter came before the Local Government Employee-
14 Management Relations Board (hereinafter referred to as the
15 Board) upon the filing of a Complaint by the Storey County
16 Education Association (hereinafter referred to as the
17 Association) alleging unfair labor practices by the Storey
18 County School District and the Storey County School District
19 Board of School Trustees (hereinafter collectively referred to
20 as the District). This case was heard in an all-day hearing
21 conducted on May 24, 1988. During the hearing, the Board had
22 the opportunity to view the witnesses testifying on behalf of
23 the Association and the witnesses testifying on behalf of the
24 School District and to weigh the credibility of each of the
25 witnesses. In addition, the Board was presented with numerous
26 documentary exhibits.

27 ***

28 ***

1 The underlying facts which led to the filing of this action be
2 with the 1987-88 contract negotiations between the Association and
3 the District. Pursuant to the ground rules of the parties, the
4 Association first presented its proposals. Following a time for
5 scrutiny and review of the proposals, the District, on May 11, 1987,
6 was to present its counter proposals.

7 The Association alleges that at the May 11, 1987, negotiation
8 session, Joanne McLachlan, the chief spokesperson for the District
9 Bargaining Team, made a preliminary statement prior to presenting
10 the formal District counter proposals. The Association asserts that
11 the thrust of the statements made by Mrs. McLachlan were that if the
12 Association would agree to a few minor language changes in the
13 existing contract, the District would not undertake any reduction in
14 force and would guarantee salaries, even if the legislature cut
15 funding. While admitting giving a "preliminary statement" prior to
16 submission of the formal counter proposals, the District contends
17 that the preliminary statement was limited to merely stating that if
18 the District would accept a few minor language changes to the
19 contract, the District would guarantee that there would be no salary
20 cuts even if the legislature reduced funding for education.

21 The District rejected the Association's preliminary offer at the
22 May 11, 1987, bargaining session. The District then presented its
23 formal bargaining proposals and the bargaining process continued.
24 Subsequently, on June 8, 1987, the Association alleges that the
25 District again reiterated its offer to assure that there would be no
26 reduction in force if the Association would accept some min
27 contract language changes in the existing contract in satisfaction
28 of the bargaining process. Again, the District denies having ever

1 threatened or suggested a reduction in force and contends that any
2 statements it may have made were limited to statements concerning
3 guaranteeing no cuts in salaries in exchange for the Association
4 agreeing to a few minor language changes in the existing contract.

5 On June 24, 1987, a negotiation session was held shortly before
6 a scheduled Board meeting. The Association alleges that the District
7 again reiterated its offer of no reduction in force in exchange for
8 the Association agreeing to a few simple language changes in the
9 existing contract. The District again denies making any such
10 statement. The Association again rejected the Districts proposition.
11 Thereafter, in the regularly scheduled Board meeting, the District
12 undertook the action of reducing in force by decreasing a social
13 studies position held by a member of the Association.¹ The District
14 contends the RIF had nothing to do with negotiations.

15 In the late summer, early fall of 1987, the contract negotiations
16 over the 1987-88 collective bargaining agreement were concluded. The
17 school year began. However, the teacher who was RIF'ed as a result
18 of the June 24, 1987, was not employed in a teaching position by the
19 District during the 1987-88 school year.

20 ***

21 ***

22
23
24 ¹

The parties have informed the Board that the issue of whether the notice posted for the June 24, 1987, Board Meeting agenda complied with the requirements of the Nevada Open Meeting Law is presently being litigated and is in fact on appeal in the Nevada Supreme Court. No evidence on the sufficiency of the notice was presented by either side. This Board does not consider the issue of sufficiency of notice under the Nevada Open Meeting Law as being properly within its jurisdiction. Accordingly, no findings of either law or fact are entered on this issue.

1 The Association alleges that shortly after the conclusion of
2 negotiations, the District, primarily through its Superintendent,
3 Dr. Ramirez, undertook a series of actions which impacted negatively
4 both financially and professionally on members of the Association
5 Bargaining Team. Specifically, the Association alleges that the
6 Association chief spokesperson, Rebecca Balderson, was not re-
7 employed in a previously held extra duty contract of Special Services
8 Coordinator; that as a result of not being re-employed as a Special
9 Services Coordinator, Mrs. Balderson suffered a loss of income of Two
10 Thousand Dollars (\$2,000.00) for the 1987-88 school year; and that
11 Mrs. Balderson was subjected to various forms of harassment by her
12 Principal, Mrs. Kathy Peltier, including, but not limited to negative
13 and unjustified comments being made on Mrs. Balderson's formal
14 teacher evaluation. The District acknowledges that Mrs. Balderson
15 did not receive the Special Services Coordinator contract. However,
16 the District alleges that there was just cause for Mrs. Balderson not
17 receiving the contract. The District argues that there was no
18 harassment of Mrs. Balderson by Mrs. Peltier.

19 In addition to the actions taken against Mrs. Balderson, the
20 Association alleges that Ms. Christy Strange, another member of the
21 bargaining team, was reduced six extra duty days, thereby causing
22 Ms. Strange to suffer a loss equal to the per diem amount of her
23 annual salary per lost extra duty day. The Association further
24 alleges that Ms. Strange was subjected to further intimidation and
25 wrongful treatment by Dr. Ramirez in the form of insults to her
26 professional competence and removal of a previously existing
27 designation as a "county wide" employee on a state department
28 listing. The District acknowledges that Ms. Strange was reduced six

1 extra duty days but attempts to explain the reduction by pointing to
2 additional days gained by Ms. Strange and other teachers, as the
3 result of new contract negotiations. The District denies taking any
4 action to question Ms. Strange's professional competence or with
5 regard to removing the "county wide" designation.²

6 The Association filed certain grievances during late September
7 and October of 1987. The Association alleges that the District, again
8 through its Superintendent, Dr. Ramirez, attempted to coerce and
9 intimidate Association officers into stopping the filing of
10 grievances. Specifically, the Association alleges that the
11 Association Grievance Chairperson, Ms. Bonnie Brown (not to be
12 confused with Ms. Elaine Brown) was approached on two different
13 occasions by Dr. Ramirez and advised that, in effect, that if the
14 "vocal" group of teachers "on negotiations" did not stop filing
15 grievances, it would create problems for all teachers in the
16 District. The Association alleges that Dr. Ramirez indicated that
17 he would be ordered by the Board to begin running the District in a
18 very strict manner and this would result in "privileges" being lost.
19 These privileges assertedly included items which would directly
20 impact on Ms. Bonnie Brown. In addition, the Association alleges
21 that Dr. Ramirez approached Mr. Larry Echevarria, the Association
22 President, and warned Mr. Echevarria that he should advise the
23 Association leadership to stop filing grievances and that failure to
24

25 ² The Amended Complaint which was tried to the Board,
26 also contained allegations of harassment and intimidation
27 against Association bargaining team member, Ms. Elaine
28 Brown. However, due to Ms. Brown's death in an automobile
accident only weeks before the hearing, the Association
withdrew the allegations concerning Ms. Elaine Brown from
consideration.

1 stop the filing of grievances would result in the District becoming
2 very strict. The District denies any attempt to intimidate either
3 Ms. Brown or Mr. Echevarria. While the District acknowledges all
4 three conversations, the District's version of the conversations is
5 different. Specifically, the District alleges that Dr. Ramirez was
6 only giving Ms. Brown "friendly advice" concerning working things out
7 through discussion rather than through the grievance process and that
8 the advice given to Mr. Echevarria was of a similar nature.

9 DISCUSSION

10 During the hearing, the Board was presented with testimony from
11 witnesses for the Association and witnesses for the District. The
12 testimony between Association witnesses and District witnesses was
13 often directly contradictory. Accordingly, the Board was faced with
14 the difficult decision, which faces all triers of fact, of weighing
15 the creditability of the witnesses as well as assimilating the
16 considerable amount of testimony presented. The Board has given
17 thorough consideration to the actual testimony given and the demeanor
18 of the witnesses. While no Nevada cases have directly addressed the
19 issues now before the Board, it is well-settled in the federal system
20 that even an implied threat of economic reprisal which is intended
21 to discourage union activity is a prohibited activity for an employer
22 to engage in. N.L.R.B. v. Brookwood Furniture, Div. of U.S. Ind.,
23 701 P.2d 452 (5th Cir. 1983). Further, "[A] discharge is illegal if
24 motivated in any part by anti-union animus." O.C. & Atomic Workers
25 Int. Union, AFL-CIO v. N.L.R.B., 547 P.2d 575, 590 (D.C. Cir. 1976).

26 The Board has further considered contradictions which were
27 apparent at the time of hearing and which were reflected in
28 mannerisms and physical and verbal reactions of the witnesses. The

1 Board's conclusions are based on all these factors as well as upon
2 the cumulative weight of the evidence. Based upon these factors, the
3 Board makes the following findings a fact:

- 4 1. On May 11, 1987, Mrs. Joanne McLachlan did, in making her
5 presentation to the Association bargaining team, state words
6 to the effect that if the Association bargaining team would
7 agree to a few minor language changes in the existing
8 contract, that the Association would guarantee that there
9 would be no reduction in force and that existing salary
10 levels would be maintained, even if the legislature cut
11 funding for education.
- 12 2. That the Association bargaining team understood
13 Mrs. McLachlan's statements on May 11, 1987, as an attempt
14 to intimidate the Association into accepting the District's
15 proposal and foregoing negotiations for the 1987-88 school
16 year.
- 17 3. That the District in fact intended, through the statements
18 of Mrs. McLachlan, to attempt to intimidate the Association
19 into accepting the District's proposal and foregoing
20 negotiations for the 1987-88 school year.
- 21 4. That the substance of the May 11, 1987, "offer" to avoid a
22 reduction in force and secure existing contract salary
23 levels through accepting the District's proposal of minimal
24 language changes in the existing contract and foregoing
25 negotiations for the 1987-88 school year was repeated on
26 June 8, 1987, and on June 24, 1987.
- 27 5. That the District on June 24, 1987, reduced in force a
28 member of the bargaining unit as an attempt to intimidate

1 and coerce the Association into accepting the District
2 proposal of minimal contract language changes for the 1987-
3 88 contract year.

4 6. That the actions taken by the District in attempting to
5 coerce the Association into foregoing negotiations for the
6 1987-88 contract year were taken in an attempt to coerce
7 the Association into refraining from future negotiations
8 and to return to a meet and confer basis of contract
9 negotiation.

10 7. That in the fall of 1987, Mrs. Rebecca Balderson, the chief
11 spokesperson for the Association bargaining team was,
12 without any advance warning or explanation, not re-employed
13 as Special Services Coordinator for the District. The loss
14 of this position resulted in a loss of Two Thousand Dollars
15 (\$2,000.00) in annual salary to Mrs. Balderson.

16 8. That during the 1987-88 school year, Mrs. Balderson was
17 subjected to harassment by Mrs. Kathy Peltier with such
18 harassment being specifically reflected on her 1987-88
19 evaluation in the form of comments about "personal business"
20 time.

21 9. That the actions taken against Mrs. Balderson appear, in
22 the context of the entire factual background of this matter,
23 to have been taken against Mrs. Balderson in retaliation for
24 her service on the Association bargaining team.

25 10. That in the fall of 1987, the District, without
26 justification reduced the extra contract days of Ms. Christi
27 Strange by six days, thereby causing Ms. Strange a loss of
28 income for the 1987-88 school year, equal to the per diem

1 amount, based upon her average daily salary, of the lost six
2 extra contract days. The treatment of Ms. Strange was
3 different than the treatment accorded the only other faculty
4 member, who had the same number of extra contract days as
5 Ms. Strange and who was not active in the Association nor
6 a member of the Association bargaining team.

7 11. The District also took negative action against Ms. Strange
8 in the form of a comment made by Dr. Ramirez that he
9 considered Ms. Strange the worst librarian with whom he had
10 ever worked and by the removal of Ms. Strange from the
11 "county wide" designation on a list compiled by the State
12 Department of Education. This removal caused Ms. Strange
13 professional embarrassment and demeaned her position.

14 12. In light of all of the surrounding circumstances and facts
15 of this situation, it appears that the action taken against
16 Ms. Strange was taken for the purpose of intimidation and
17 harassment of Ms. Strange for serving as a member of the
18 Association bargaining team.

19 13. That on October 5, 1987, Dr. Ramirez initiated a
20 conversation with Mr. Larry Echevarria, the Association
21 President. During this conversation, Dr. Ramirez informed
22 Mr. Echevarria that if more grievances were filed by the
23 Association, he would be forced to "go by the book". Dr.
24 Ramirez gave an example that being forced to "go by the
25 book" would result in teachers losing privileges which they
26 presently enjoyed under the existing relationship between
27 the Association and the District.

28 ***

1 14. The October 5, 1987, statements made by Dr. Ramirez were
2 intended as a warning that Mr. Echevarria was to pass along
3 to the membership of the Association in order to coerce the
4 Association into ceasing to exercise grievance rights under
5 the collectively bargained agreement.

6 15. That on October 9, 1987, Dr. Ramirez approached
7 Ms. Bonnie Brown while she was assisting a special education
8 student in boarding a bus. At this point, Dr. Ramirez gave
9 Ms. Brown "some friendly advice about the grievances" that
10 had been filed. Specifically, Dr. Ramirez referred to the
11 grievances as having been filed by the "vocal teachers" who
12 had been on negotiations and explained to Ms. Brown that by
13 presenting grievances, such teachers were going to cause
14 trouble for all teachers. Dr. Ramirez stated to Ms. Brown
15 that the Board would most likely direct him to "run the
16 school by the contract" and as an example, Dr. Ramirez
17 explained how "running the school by the contract" would
18 have a negative impact directly on Ms. Brown. At the time
19 of this conversation, Ms. Brown was the Grievance
20 Chairperson for the Association.

21 16. The October 9, 1987, statements made by Dr. Ramirez were
22 intended to put pressure on the teachers to not file any
23 more grievances and were intended to make Ms. Brown
24 understand, as Grievance Chairperson, that if she continued
25 to allow grievances to be filed, that she personally would
26 suffer the consequences.

27 17. That on October 23, 1987, Dr. Ramirez again approached Ms.
28 Bonnie Brown concerning the filing of grievances. At this

1 point in time, Dr. Ramirez stated, "if you keep putting
2 grievances in front of us, the trouble makers are going to
3 cause trouble for all the teachers and the School Board is
4 going to make me make it hard around here". Dr. Ramirez
5 conveyed this threat in a manner which indicated to Ms.
6 Brown that she personally would also suffer consequences.

7 18. The October 23, 1987, statements made by Dr. Ramirez were
8 made with the intent of intimidating and coercing the
9 Association leadership into refraining from filing
10 grievances and exercising the Association's grievance rights
11 under the collectively bargained for agreement.

12 19. That, taken collectively, the actions of the District
13 constitute an overall pattern of intended coercion and
14 intimidation designed to attempt to convince the Association
15 that it should refrain from engaging in collective
16 bargaining and should return to a meet and confer basis and
17 that the Association should further refrain from exercising
18 rights obtained through the collective bargaining process.

19 CONCLUSIONS OF LAW

20 Based upon the findings of facts set forth above, the Board
21 hereby makes the following conclusions of law.

22 1. That the actions of the District in threatening to reduce
23 to salaries unless the Association accepted in total the
24 District's bargaining position constitute the prohibited
25 labor practice of failure to negotiate in good faith in
26 violation of NRS 288.270(1)(e).

27 2. That the action of the District in intentionally threatening
28 to reduce the number of certificated employees, without

1 economic justification, unless the Association agreed
2 forego the bargaining process and accept the position of the
3 District constitute the prohibited labor practice of refusal
4 to bargain collectively in good faith as prohibited by NRS
5 288.270(1)(e).

6 3. That the dismissal of the employee who was reduced in force
7 as a result of the action taken by the District on June 24,
8 1987, having been taken, as noted above in the findings of
9 fact, in retaliation for the Association not accepting the
10 District's bargaining position and foregoing formal
11 negotiations, constitutes a prohibited labor practice under
12 NRS 288.270 (1)(c) and (e).

13 4. That the actions taken against Ms. Rebecca Balderson in the
14 form of not rehiring her for the Special Services
15 Coordinator position and subjecting her to harassment and
16 negative comments on her evaluation during the 1987-88
17 school year constitute a prohibited labor practice under
18 NRS 288.270 (1)(a), (c) and (e).

19 5. That the actions taken against Ms. Christy Strange in
20 reducing her extra contract days, intimidation through
21 negative statements, and removal of her "county wide"
22 designation constitute a prohibited labor practice under
23 NRS 288.270 (1)(a), (c) and (e).

24 6. That the actions of the District in attempting to coerce
25 and intimidate the Association into refraining from the
26 grievance process through attempted intimidation
27 Mr. Larry Echevarria, the Association President, and
28 Ms. Bonnie Brown, the Association Grievance Chairperson,

1 constitute the prohibited labor practice of attempting to
2 interfere or restrain and coerce an employee organization
3 in the exercise of rights guaranteed under this chapter and
4 an attempt to dominate and interfere in the administration
5 of the employee organization and as such constitute a
6 prohibited labor practice under NRS 288.270 (1)(a) and (b).

7 ORDER

8 Based upon the above findings of fact and conclusions of law, the
9 Board hereby grants the following relief and makes the following
10 order.

- 11 1. The District shall immediately cease and desist and in the
12 future refrain from engaging in the prohibited practices
13 set forth above;
- 14 2. The District shall, within thirty (30) days of the date of
15 this Order, offer to reinstate the teacher whose employment
16 was lost as the result of the reduction in force acted upon
17 on June 24, 1987;
- 18 3. The District shall, within thirty (30) days of the date of
19 this Order, reinstate Ms. Rebecca Balderson to her position
20 as Special Services Coordinator, together with back pay for
21 the 1987-88 school year in the amount of Two Thousand
22 Dollars (\$2,000.00);
- 23 4. The District shall, within thirty (30) days of the date of
24 this Order, reinstate the six (6) additional contract days
25 which were taken from Ms. Christy Strange, together with
26 back pay for any of those days lost for the 1987-88 school
27 year and shall elevate Ms. Strange once again to her county
28 wide status.

