

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CLARK COUNTY CLASSROOM TEACHERS ASSOCIATION,)	ITEM NO. 237
)	
Complainant,)	CASE NO. A1-045435
)	
-vs-)	<u>DECISION</u>
)	
CLARK COUNTY SCHOOL DISTRICT;)	
TIMOTHY SANDS; JAN BENNINGTON;)	
CAROLYN REEDOM; and ARLEN)	
SIMONSON,)	
)	
Respondents.)	

For the Complainant: Michael W. Dyer, Esq.
DYER AND McDONALD

For the Respondents: Thomas J. Moore, Esq.

For the EMRB: Salvatore C. Gugino, Chairman
Tamara Barengo, Vice Chairman
Howard Ecker, Board Member

STATEMENT OF THE CASE

This matter came before the Local Government Employee-
Management Relations Board ("Board") upon the filing of a Com-
plaint by the Clark County Classroom Teachers Association ("As-
sociation") alleging a prohibited practice by the Clark County
School District ("District") in violation of NRS 288.270(1).

The Complaint arose from statements made at meetings of
the Teacher Advisory Council ("TAC") at Doris Hancock Elementa-
ry School in Las Vegas on October 13, 1988 and on November 16,
1988. The Association alleges the school principal, Timothy
Sands, informed members of TAC on October 13, 1988 that it was
"unprofessional" for teachers to contact the Association for

1 assistance in resolving problems and on November 16, 1988, Mr.
2 Sands warned members of TAC that they would have to "swear" to
3 the events of the previous meeting. The District denies the
4 alleged incidents and claims there was no wilful intent to vi-
5 olate NRS 288.270.

6 On April 24, 1988, the Board heard Complainant's Motion
7 to Amend the First Amended Complaint to include additional
8 causes of action evidenced by the District. Having heard argu-
9 ments for the Motion by the Association and arguments against
10 by the District and having reviewed the papers and pleadings
11 thereto, the Board granted permission for a second amended Com-
12 plaint and ordered the Association to specify sufficient facts,
13 such as time, circumstances and conditions, for each cause of
14 action it wished to propound.

15 In the Seconded Amended Complaint, the Association al-
16 leged four (4) further causes of action giving rise to the Com-
17 plaint.

18 The second cause of action arose from statements made on
19 or about September 25, 1988 and on or about October 5, 1988 at
20 Estes McDoniel Elementary School by school principal, Carolyn
21 Reedom to a teacher, Debbie Mayday. The Association alleges
22 that Ms. Reedom threatened to change Ms. Mayday's assignment
23 for contacting the Association, and addressed her in such a
24 manner as caused her to be afraid to contact the Association
25 further. The District denied the allegations.

26 In their Prehearing Statements, the parties submitted the
27 following issues for the Boards determination:
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1 a. Does the conduct constitute prohibited
2 practices pursuant to NRS 288.270?

3 b. Is the Association required to prove that
4 the District intended to violate NRS 288.270(1)?

5 c. If so and if any of the incidents alleged
6 in subsection (a.) above occurred in fact, was there
7 a willful intent to violate NRS 288.270(1)?

8 d. If any of the incidents alleged in subsec-
9 tion (a.) above occurred in fact, does the District's
10 conduct constitute overall interference, restraint
11 or coercion of employees in the exercise of their
12 rights guaranteed under NRS 288?

13 The Board conducted the hearing in Las Vegas, Nevada on
14 August 17, 1989. At the opening of the hearing, the parties
15 stipulated to the withdrawal of the alleged action involving
16 Jan Bennington and the cause of action alleging a pattern of
17 prohibited practices by the District and the withdrawal of the
18 alleged action involving Mr. Simonson with the stipulated
19 resolution be placed on the record. The Board recognized and
20 accepted the joint stipulations.

21 The Association proceeded with presentation of evidence
22 and argument on the first alleged action of the Complaint
23 involving Timothy Sands and the second alleged action of the
24 Complaint involving Carolyn Reedom. The District presented
25 evidence and argument in opposition to the Complaint and in
26 support of its actions.

27 The District moved to dismiss the second alleged action
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1 of the Complaint involving Carolyn Reedom because it exceeded
2 the Board's jurisdiction on the basis of the 180-day rule in
3 NRS 288.110.

4 At the conclusion of the hearing, the matter was sub-
5 mitted to the Board for decision.

6 DISCUSSION

7 As a threshold matter, the Board rejects the District's
8 argument that the Complaint is in violation of the 180-day
9 rule. NRS 288.110 sets forth the time limit for filing of a
10 complaint as follows:

- 11 4. The board may not consider any complaint or appeal
12 filed more than 6 months after the occurrence which
is the subject of the complaint or appeal.

13 The alleged course of conduct of Carolyn Reedom, accord-
14 ing to the record, was from September 25 through October 5,
15 1988. The Second Amended Complaint was filed on March 23,
16 1989, within six (6) months of the alleged course of conduct.
17 Therefore, the Board rejects the District's argument to
18 dismiss for failure to meet time limits.

19 I

20 SUFFICIENT EVIDENCE ESTABLISHED
21 IN FIRST CAUSE OF ACTION.

22 The Board believes that the Association has established
23 sufficient evidence in the first cause of action involving Mr.
24 Sands to support the allegations of conduct to interfere with
25 the employees rights under NRS Chapter 288.

26 The Board is concerned with any activity which may, in
27 practice or on its face, have a chilling effect upon the right
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1 of public employees to associate as members of an employee or-
2 ganization. NRS 288.270(1) provides in part:

3 It is a prohibited practice for a local govern-
4 ment employer or its designated representative will-
fully to:

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

6 (b) Dominate, interfere, or assist in that for-
7 mation or administration of any employee organiza-
tion.

8 (c) Discriminate in regard to hiring, tenure or
any term or condition of employment to encourage or
discourage membership in any employee organization.

9 The Board may, in analyzing such an activity, draw
10 inferences from and make conclusions on proven facts with
11 regard to anti-union or animus existed. National Labor
12 Relations Board v. Electric Steam Radiator Corp., 321 F.2d
13 733, 738 (6th Cir. 1963). NRS 288.270(1) refers to "the
14 employer or its designated representative willfully"
15 interfering with employee or organization rights or
16 discouraging membership. However, the Board has found in
17 Ormsby County Teachers v. Carson City School District, Item
18 No. 197, Case No. A1-045405 (September, 1987), the requirement
19 that the employer's actions must have been willful does not
20 require that the Complainant carry the burden of showing
21 specific intent on the employer's part.

22 The United States Supreme Court has expressly stated that
23 although an employer's intent or motive to discriminate or to
24 interfere with union rights is a necessary element or an
25 unfair labor practice, specific evidence of the employer's
26 subjective intent is not required when the employer's conduct
27 inherently encourages or discourages union membership. Radio
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1 Officer's Union, et al. v. National Labor Relations Board, 347
2 U.S. 17, 44, 74 S.Ct. 323, 338 (1954).

3 The United States Supreme Court has further noted in Erie
4 Resistor Corp. that some conduct by its very nature contains
5 the implications of the required intent. In such cases the
6 natural foreseeable consequences of an employer's action may
7 justify the conclusion that discrimination or interference was
8 intended. Thus, the existence of discrimination or
9 interference may be inferred by the Board based upon its
10 experience in the labor management relations area. National
11 Labor Relations Board v. Erie Resistor Corp., 373, U.S. 221,
12 227, 83 S.Ct. 1139, 1144 (1963); Republic Aviation Corp. v.
13 National Labor Relations Board, 324 U.S. 793, 800 65 S.Ct.
14 982, 986 (1945).

15 The Board adopts the National Labor Relations Board's
16 interpretation of the analogous section of the National
17 Labor Relations Act:

18 . . . interference, restraint, and coercion under
19 Section 8(a)(1) of the Act does not turn on the em-
20 ployers motive or whether the coercion succeeded or
21 failed. The test is whether the employer engaged in
22 conduct, which may reasonably be said, tends to in-
23 terfere with the free exercise of employee rights
24 under the Act. American Freightway Company, 124
25 NLRB 146, 147, 44, LRRN 1302 (1959).

26 II

27 TOTALITY OF CIRCUMSTANCES HAD CHILLING 28 EFFECT.

29 The Board believes Mr. Sands essentially stated that
30 going to the Association was unprofessional. Because
31 "unprofessional conduct" is a basis for job termination under

1 statute, the reaction of the employees should have been
2 anticipated by Mr. Sands. Further, he persisted in his
3 intimidation and coercion by questioning TAC members as to who
4 was responsible for contacting the Association for remarks
5 made at the October meeting.

6 A reasonably foreseeable result of the statements and
7 behavior of Mr. Sands would be discouragement of involvement
8 and membership in the Association and discouragement of
9 processing this Complaint. It must then be presumed that Mr.
10 Sands intended the natural consequences of his action.

11 Witnesses from the two meetings called by both the
12 District and the Association recalled Mr. Sand's red face, his
13 anger and the tense atmosphere created by his statements. The
14 effect was immediate. One teacher, Shawnee Zanca, was so
15 concerned with being labeled "unprofessional" and potentially
16 losing her job, she sought assistance from the Association. A
17 second teacher, Sandra Donald, fearing reprisals for
18 contacting the Association, sought counsel from fellow
19 employees. The chairman of TAC, Doug Jacobs, fearing further
20 confrontation and involvement in this Complaint, resigned from
21 the committee. The evidence shows actual communicated threats
22 by Mr. Sands.

23 The evidence is sufficient to show the combination of
24 verbal and non-verbal communications by Mr. Sands in the TAC
25 meetings had a chilling effect on the exercise of rights by
26 employees of the District.

27 The Board is not convinced by District arguments that Mr.
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1 Sands remarks were merely misunderstood. The threats were
2 heard by several witnesses. Mr. Sands corroborated their
3 testimony with his own admission that he was angry while
4 making the statements and that he did try to find information
5 about the source of the Complaint.

6 The testimony of Mr. Sands in contradiction to the
7 witnesses is less credible. His denial of using the term
8 unprofessional and other threatening statements were simply
9 not believable.

10 III

11 EVIDENCE NOT SUFFICIENT TO FIND 12 PROHIBITED PRACTICE IN SECOND CAUSE OF ACTION.

13 When the Board analyzes totality of circumstances and the
14 reasonable foreseeable effects of the second cause of action
15 involving Dr. Carolyn Reedom, it does not find that she
16 committed a prohibited practice under NRS 288.270(1)(a).

17 The Board is not unmindful that Dr. Reedom's remarks in
18 September and October, 1988 were discouraging in nature and
19 perceived as threatening. Nonetheless, the honest and sincere
20 effort by Dr. Reedom to remedy Debbie Mayday's concern for a
21 fairer work assignment, the high regard Ms. Mayday gave Dr.
22 Reedom in testimony and the accommodation of the Association's
23 request for information all weigh against the alleged conduct.

24 Evidence by the District shows the meetings with Ms.
25 Mayday called by Dr. Reedom were legitimate attempts to find a
26 more favorable noon-duty assignment for Ms. Mayday and that no
27 adverse affect was established from the meetings. National
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1 Labor Relations Board v. Great Dane Trailers, 388 U.S. 26, 34;
2 87 S.Ct. 1792, 1798.

3 FINDINGS OF FACT

4 1. That the Complainant, Clark County Classroom Teachers
5 Association ("Association") is the recognized employee
6 organization engaged in the representation of the certificated
7 personnel including teachers employed by the Clark County
8 School District.

9 2. That the Respondent, Clark County School District
10 ("District") is a local government employer.

11 3. That Article 10 of the 1987-89 Collective Bargaining
12 Agreement provides for a Teacher Advisory Council ("TAC").
13 The TAC committee is established to serve as the official
14 representative of faculty in dealing with concerns, other than
15 grievances, at the particular building site.

16 4. That Timothy Sands is employed by the District in
17 the capacity of School Principal at Doris Hancock Elementary
18 School.

19 5. That on October 13, 1988, the TAC committee held a
20 regularly scheduled meeting at Hancock Elementary. Present at
21 the meeting were TAC members, teachers Shawnee Zanca, Linda
22 Ihnen, Bob Zaletel, Sandra Donald, Doug Jacobs, Mike Carrillo,
23 and Tokie Noricks and principal, Timothy Sands.

24 6. That during the course of the meeting, Mr. Sands
25 essentially stated it was unprofessional for teachers to
26 contact the Association for assistance in resolving problems.

27 7. That NRS 391.312(1)(c) provides that:
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1 1. A teacher may be suspended, dismissed or not
2 reemployed and an administrator may be demoted,
3 suspended, dismissed, or not reemployed for the
4 following reasons:

5 c. unprofessional conduct.

6 8. That TAC member, Shawnee Zanca contacted an
7 Association representative following the meeting and reported
8 Mr. Sand's remarks.

9 9. That on November 16, 1988, the Hancock Elementary
10 TAC committee held its next regularly scheduled meeting.
11 Present at the meeting were TAC members, teachers Shawnee
12 Zanca, Linda Ihnen, Sandra Donald, Doug Jacobs, Mike Carrillo,
13 Tokie Noricks and Sherri Knight and principal, Timothy Sands.

14 10. That during the course of the meeting, Mr. Sands
15 stated in an angry manner that he has seen a letter which
16 referred to the events of the previous TAC meeting and which
17 threatened an unfair labor practice. He additionally stated
18 that all the members of the TAC committee would suffer for it.

19 11. That Mr. Sands attempted to determine which member
20 of the TAC committee was responsible for the letter.

21 12. That Doug Jacobs resigned from the TAC committee
22 because of Mr. Sand's confrontation with the TAC committee on
23 November 16, 1988 and because of the threat of an E.M.R.B.
24 hearing on the matter.

25 13. That other teachers who heard Mr. Sand's remarks
26 regarding unprofessional conduct on October 13, 1988 were
27 restrained and coerced from seeking Association assistance.

28 14. That the statement of October 13 and the statement
 of November 16, 1988 caused teachers to be threatened for

1 reporting an alleged prohibited practice to the Association.

2 15. That the foreseeable consequences of Mr. Sand's
3 actions were to discourage membership in the Association, to
4 interfere in the administration of the Association and to
5 coerce employees from seeking assistance from the Association.

6 16. That NRS 288.270(1) provides that:

7 1. It is a prohibited practice for a local
8 government employer or its designated representative
9 wilfully to:

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

13 (c) Discriminate in regard to hiring, tenure or
14 any term or condition of employment to encourage or
15 discourage membership in any employee organization.

16 (d) Discharge or otherwise discriminate against
17 any employee because he has signed or filed an
18 affidavit, petition or complaint or give any
19 information or testimony under this Chapter, or
20 because he has formed, joined or chosen to be
21 represented by an employee organization.

22 17. That the conduct of Mr. Sands was in violation of NRS
23 288.270(1) and such conduct is a prohibited practice
24 thereunder.

25 18. That Carolyn Reedom is employed by the District in
26 the capacity of School Principal at Estes McDoniel Elementary
27 School.

28 19. That Debbie Mayday is employed by the District as a
teacher at Estes McDoniel Elementary School.

20 20. That on or about September 25, 1988 and on or about
21 October 5, 1988, Carolyn Reedom met with Debbie Mayday.

22 21. That Dr. Reedom and Ms. Mayday met for the purpose of
23 gaining information about Ms. Mayday's concern for a fairer
24 noon-duty assignment and to provide a more favorable
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1 assignment for her.

2 CONCLUSIONS OF LAW

3 1. The Local Government Employee-Management Relations
4 Board possesses original jurisdiction over the parties and
5 subject matter of this Complaint, as amended, pursuant to the
6 provisions of NRS 288.

7 2. That the Complainant, Clark County Classroom
8 Teachers Association, is a recognized employee organization
9 within the terms defined by NRS 288.040.

10 3. That the Respondent, Clark County School District is
11 a local government employer within the terms defined by NRS
12 288.060.

13 4. That the Association made a prima facie showing
14 supporting its contention that the conduct of Mr. Sands
15 resulted in coercion of employees when they sought assistance
16 from their union, in the interference of employees processing
17 a complaint and in foreseeable effect to discourage membership
18 in the Association.

19 5. That it is a prohibited practice for a local
20 government employer willfully to interfere or coerce an
21 employee in the right of association, to discriminate against
22 an employee for processing a complaint and to discourage
23 employee organization membership under NRS 288.270(1).

24 6. That Mr. Sand's conduct on October 13 and November
25 16, 1988, constituted a prohibited practice within the meaning
26 of NRS 288.270(1)(a), (b) and (d).

27 7. That the District's proffered legitimate explanation
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1 for Mr. Sand's conduct was a pretext to mask the foreseeable
2 interference in the lawful conduct of the employees and the
3 employee organization.

4 8. That the Association did not make a prima facie
5 showing in support of their contention that Carolyn Reedom's
6 conduct constituted a prohibited practice within the meaning
7 of NRS 288.270(1)(a).

8 DECISION AND ORDER

9 Upon decision rendered by the Board at its meeting on
10 October 27, 1989 it is hereby

11 ORDERED, ADJUDGED AND DECREED as follows:

12 1. That the Association Complaint, as amended, in the
13 First Cause of Action, be, and the same hereby is, upheld and
14 the District's determination in the First Cause of Action, be,
15 and the same is, reversed;

16 2. That the District refrain from action complained of
17 in the First Cause of Action;

18 3. That the Association's Complaint, as amended, in
19 the Second Cause of Action be, and the same hereby is,
20 dismissed with prejudice;

21 4. That the Association's Complaint, as amended, in
22 the Causes of Action stipulated for withdrawal be, and the
23 same hereby is, dismissed with prejudice; and

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

3 DATED this 13TH day of December, 1989.

4 LOCAL GOVERNMENT EMPLOYEE-
5 MANAGEMENT RELATIONS BOARD

6 By 
7 SALVATORE C. GUCINO, Chairman

8 By Tamara Barengo
9 TAMARA BARENGO, Vice Chairman

10 By 
11 HOWARD ECKER, Member
12