

STATE OF NEVADA  
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

CLARK COUNTY CLASSROOM TEACHERS  
ASSOCIATION,

Complainant,

-vs-

CLARK COUNTY SCHOOL DISTRICT and  
SUE BERNHEISEL,

Respondents.

ITEM NO. 277

CASE NO. A1-045493

DECISION

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

For the Respondents: Don Haight, Esq.  
CLARK COUNTY SCHOOL DISTRICT

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

STATEMENT OF THE CASE

In a pre-hearing conference held on August 23, 1991, the Complainant, CLARK COUNTY CLASSROOM TEACHERS ASSOCIATION ("Association"), and Respondents, CLARK COUNTY SCHOOL DISTRICT and SUE BERNHEISEL ("District"), narrowed the issues to the following:

1. Whether or not the subject of the instant Complaint is the subject of a pending grievance filed pursuant to the grievance and arbitration procedures of the labor agreement between the parties, and, if so, whether or not the Complaint should be dismissed for that reason.

2. Whether or not Sue Bernheisel made the statements she is alleged to have made, and, if so, whether or not said statements constitute interference, restraint or coercion of the employees in the exercise of rights guaranteed then under NRS Chapter 288, in violation of NRS

1 288.270.

2 3. Whether or not the actions of Sue  
3 Bernheisel were taken against Ms. Roy to harass  
4 her; discriminate against her; interfere with,  
5 restrain and/or coerce her, and, if so, whether  
6 said actions constitute violations of NRS  
7 288.270(1)(a), (c), (d) and/or (f).

8 Additionally, the parties stipulated to the following facts:

9 1. The CLARK COUNTY CLASSROOM TEACHER'S  
10 ASSOCIATION (hereinafter "CCCTA") is the  
11 recognized employee organization, as defined in  
12 NRS 288.160, representing the licensed personnel  
13 employed by the CLARK COUNTY SCHOOL DISTRICT.

14 2. Respondent, CLARK COUNTY SCHOOL DISTRICT  
15 (hereinafter referred to as the "DISTRICT"), is a  
16 local government employer as defined by NRS  
17 288.060. Respondent, SUE BERNHEISEL, is an  
18 administrative employee of the DISTRICT and is  
19 employed as the principal of Andrew Mitchell  
20 Elementary School.

21 3. On or about December 4, 1990, the  
22 Association on behalf of Phyllis Roy filed a  
23 grievance, denoted Grievance #90-91/X/020,  
24 concerning a CCF-21 Record of Personnel  
25 Notification Form signed by Vice Principal Jeff  
26 Lobel which had been given to Ms. Roy by Ms.  
27 Bernheisel. Ms. Roy is a teacher employed by the  
28 DISTRICT at Andrew Mitchell Elementary School and  
is a member of CCCTA. Ms. Roy had requested CCCTA  
to assist her in obtaining the removal of negative  
remarks in the CCF-21 which Ms. Roy believed to be  
untrue and unfair.

4. The grievance filed by CCCTA on behalf of  
Ms. Roy progressed to the second level of the  
grievance procedure. At the grievance hearing for  
the second level of the grievance process, CCCTA  
representative Ron Lopez extensively questioned  
and challenged Ms. Bernheisel while acting in his  
capacity as Ms. Roy's representative. On or about  
February 12, 1991, which was the Tuesday following  
the second level of the grievance hearing, Ms.  
Bernheisel gave Ms. Roy another CCF-21 Record of  
Personnel Notification Form.

5. Although no action was taken to file an  
unfair labor practice action following a February  
19, 1991 meeting between Ms. Bernheisel and Ms.  
Roy, Grievance #90-91/X/020 progressed through the

1 normal grievance process and the DISTRICT was  
2 notified that the grievance would be taken to  
3 arbitration, although the time lines for choosing  
4 an arbitrator would be waived. On or about March  
5 20, 1991, Ms. Bernheisel was informed by the  
6 DISTRICT that notification had been received that  
7 the grievance was being taken to arbitration.

8 6. On April 12, 1991, Ms. Bernheisel gave  
9 Ms. Roy her annual evaluation. The evaluation  
10 which was dated April 11, 1991 and signed on April  
11 12, 1991 was rated unsatisfactory and contained  
12 numerous negative remarks concerning Ms. Roy.

13 On September 27, 1991, the Local Government Employee-  
14 Management Relations Board ("EMRB" and "Board") conducted a  
15 hearing on the instant Complaint. The Board's Discussion,  
16 Findings of Fact, Conclusions of Law, Decision and Order are  
17 set forth below.

#### 18 DISCUSSION

19 From the facts stipulated to by the parties, the  
20 testimony of witnesses cross-examined at the Hearing and other  
21 evidence of record, the Board has determined that it has  
22 jurisdiction in the instant case, notwithstanding the pending  
23 grievance. The Complaint before the Board was filed prior to  
24 the filing of the grievance in question and the fact that said  
25 grievance arises from the same incident that produced the  
26 Complaint does not deprive the Board of jurisdiction over the  
27 matter. The Board has held that it has exclusive jurisdiction  
28 concerning unfair labor practices and/or the resolution of  
charges alleging prohibited practices. Nevada Classified  
School Employees Association, Chapter 1, Clark County vs.  
Clark County School District, EMRB Item No. 105, Case No.  
A1-045336 (November 21, 1980).

1 Under the "limited deferral doctrine" adopted by th  
2 Board (see I.A.F.F. #731 vs. City of Reno, EMRB Item No. 257,  
3 Case No. A1-045466, issued February 15, 1991) in order for the  
4 Board to consider a complaint involving an alleged contractual  
5 violation, the Complainant must establish, at least prima  
6 facie, that the alleged contractual violation constituted a  
7 prohibited practice (or failure to bargain in good faith)  
8 under NRS Chapter 288. Esmeralda County Classroom Teachers  
9 Association vs. Esmeralda County School District, The  
10 Esmeralda County of School Trustees and Harold Tokerud, EMRB  
11 Item No. 273, Case A1-045497 (September 23, 1991). In the  
12 instant case, the Board finds that the Association has met its  
13 requisite burden of proof.

14 Respondent Bernheisel testified to the effect that  
15 following Ms. Roy's filing of a grievance on or about December  
16 4, 1990, she (Ms. Bernheisel) assumed the direct supervision  
17 of Ms. Roy. In a meeting called by Ms. Roy on or about  
18 February 13, 1991, Ms. Bernheisel advised Ms. Roy that due to  
19 the grievance being filed everything she was doing was being  
20 documented and written up. Either in this meeting or on  
21 February 19, 1991, Ms. Bernheisel told Ms. Roy that something  
22 needed to be done to develop a level of trust and get a  
23 working relationship going again. She told Ms. Roy that it  
24 would be in her best interest to write her own response to any  
25 CCF-21 (Record of Personnel Notification) which she might be  
26 issued, and that responses authored by the union, vis-a-vis  
27 personally authored responses, would be viewed negatively by  
28



1 any supervisors or administrators who might see her file. Ms.  
2 Bernheisel testified to the effect that on or about March 20,  
3 1991, when she received the notice that Ms. Roy's grievance  
4 had been appealed to arbitration (albeit put on hold), she was  
5 "shocked" and "upset"; even though she was familiar with the  
6 appellate procedures of the labor agreement and knew that the  
7 union had the right to appeal the grievance to arbitration.  
8 She immediately went to Ms. Roy's classroom and confronted her  
9 with the notice of appeal, referring to same as "blackmail",  
10 because she thought the grievance had been settled.

11 From the totality of the testimony and evidence of  
12 record in the instant case the Board is persuaded that  
13 Principal Bernheisel did in fact advise Phyllis Roy that she  
14 would stop writing her up if she would "drop" her union  
15 assisted appeal of a grievance.

16 The Board recognizes that an employer is free to  
17 communicate to its employees regarding work, even to the  
18 extent of any general or specific views about unionism as long  
19 as such communication does not contain a threat of reprisal or  
20 a promise of benefit. See Ormsby County Teachers Association  
21 vs. Carson City School District, EMRB Item No. 114, Case No.  
22 A1-045339 (1981). Under Section 8(c) of the National Labor  
23 Relations Act, the expression of any view, argument, or  
24 opinion or dissemination thereof, whether in written, printed  
25 or graphic form, does not constitute evidence of an unfair  
26 labor practice if the expression contains no threat of  
27 reprisal or force or promise of benefit. See NLRB vs. Movie  
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1 Star, Inc., 361 F.2d 346 (5th Cir. 1966); Drummond Education  
2 Assoc. vs. Drummond Integrated School District, WERC Case No.  
3 22183 MP-794 (Wis. 1973), Pub. Employee Bargaining Rep. (CCH)  
4 at section 41, 276. In the instant case, however, the  
5 statements attributed to Principal Bernheisel clearly  
6 contained a threat of reprisal and a promise of benefit; i.e.,  
7 reprisal in the form of continued, unrelenting, super-  
8 intensive scrutiny and documentation of her job performance,  
9 and benefit in the form of relief from such intensive scrutiny  
10 and documentation. Said threat of reprisal and promise of  
11 benefit was clearly directed toward Ms. Roy because of her  
12 processing a grievance, an activity which is protected by NRS  
13 Chapter 288. NRS 288.270 provides in pertinent part:

14 1. It is a prohibited practice for a local  
15 government employer or its designated representa-  
16 tive willfully to:

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

18 . . .

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

21 Retaliation for such protected activity is an unfair  
22 labor practice. NLRB vs. Ford Motor Co., 683 F.2d 156, 110  
23 LRRM 3202 (CA 6 1982); American Steel Works, 263 NLRB 826, 111  
24 LRRM 1136 (1982) and Teamsters, Chauffeurs, Warehousemen &  
25 Helpers, and Professional, Clerical, Public and Miscellaneous  
26 Employees, Local Union No. 533 vs. Humboldt General Hospital,  
27 EMRB Item No. 246, Case Nos. A1-045459 and A1-045460 (June 11,  
28

1 1990).

2 FINDINGS OF FACT

3 The facts upon which these findings are based are as  
4 stipulated to by the parties (reproduced in the Board's  
5 Statement of the Case on pages 2 and 3 of this Decision) and  
6 as set forth below:

7 1. Respondent Bernheisel testified to the effect that  
8 following the filing of a grievance by Ms. Roy on or about  
9 December 4, 1990, she assumed direct supervision of Ms. Roy.

10 2. That on or about February 13, 1991, Ms. Bernheisel  
11 advised Ms. Roy that due to the grievance being filed  
12 everything she did would have to be documented and written up.

13 3. That either on February 13, 1991 or February 19,  
14 1991, Ms. Bernheisel told Ms. Roy that something needed to be  
15 done to develop a level of trust and a working relationship.  
16 She suggested to Ms. Roy that it would be in her best interest  
17 to write her responses to any CCF-21s (Record of Personnel  
18 Notification) which she may be issued, inasmuch as responses  
19 authored by the union were looked upon negatively by  
20 supervisors and administrators who might see her file.

21 4. That Ms. Bernheisel testified to the effect that on  
22 or about March 20, 1991, when she received the notice that Ms.  
23 Roy's grievance had been appealed to arbitration (albeit put  
24 on hold), she was "shocked" and "upset"; even though she was  
25 familiar with the appellate procedures of the labor agreement  
26 and knew that the union had the right to appeal the grievance  
27 to arbitration. She immediately went to Ms. Roy's classroom  
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1 and confronted her with the notice of appeal, referring t  
2 same as "blackmail", because she thought the grievance had  
3 been settled.

4 CONCLUSIONS OF LAW

5 1. That the Local Government Employee-Management  
6 Relations Board has jurisdiction over the parties and is  
7 authorized to assume jurisdiction over the subject matter of  
8 this Complaint, pursuant to the provisions of NRS Chapter 288.

9 2. That the Complainant, Clark County Classroom  
10 Teachers Association, is a recognized employee organization as  
11 defined by NRS 288.040.

12 3. That the Respondent, Clark County School District,  
13 is a recognized local government employer as defined by NRS  
14 288.060, and Principal Sue Bernheisel was acting as agent fo  
15 said local government employer.

16 4. That, although the Board under its deferral  
17 doctrine, will normally refuse to hear a pending grievance  
18 involving an unfair labor practice, the mere filing of a  
19 grievance between the parties will not preclude the Board from  
20 going forward with an action, as contemplated by NRS  
21 288.110(2), particularly where the matter involves an unfair  
22 labor practice occurring after the filing of the grievance.

23 5. That the District and its agent, Principal  
24 Bernheisel, committed an unfair labor practice under NRS  
25 288.270(1)(a) and (c) by interfering, restraining and coercing  
26 Ms. Roy in the exercise of protected rights.

27 / / /  
28

1 DECISION AND ORDER

2 Upon decision rendered by the Board at its meeting on  
3 November 5, 1991, it is hereby

4 ORDERED, ADJUDGED AND DECREED as follows:

5 1. That the Association's Complaint be, and the same  
6 hereby is, upheld;

7 2. That the District and its agent, Sue Bernheisel,  
8 shall cease and desist, and in the future, refrain from  
9 engaging in the prohibited practice set forth in this  
10 Complaint; and

11 3. That each party shall bear its own costs and  
12 attorney fees in this matter.

13 DATED this 15th day of November, 1991.

14 LOCAL GOVERNMENT EMPLOYEE-  
15 MANAGEMENT RELATIONS BOARD

16 By Howard Ecker  
HOWARD ECKER, Chairman

17 By Salvatore Gugin  
18 SALVATORE GUGINO, Vice Chairman

19 By Tamara Barengo  
20 TAMARA BARENGO, Member  
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