

1 STATE OF NEVADA
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD

4 CLARK COUNTY CLASSROOM TEACHERS) ITEM NO. 282
ASSOCIATION,)
5 Complainant,) CASE NO. A1-045487
6 -vs-) DECISION
7 CLARK COUNTY SCHOOL DISTRICT)
8 and BEVERLY DALY,)
9 Respondents.)

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

12 For the Respondents: Daniel S. Hussey, Esq.
13 CLARK COUNTY SCHOOL DISTRICT

14 For the EMRB: Howard Ecker, Chairman
15 Tamara Barengo, Member

16 STATEMENT OF THE CASE

17 In a prehearing conference held on October 29, 1991, the
18 Complainant, CLARK COUNTY CLASSROOM TEACHERS ASSOCIATION
19 ("Association"), and Respondents, CLARK COUNTY SCHOOL DISTRICT
20 and BEVERLY DALY ("District"), narrowed the issues to the
21 following:

22 1. Whether or not the subject of the
23 Complaint is the subject of pending grievances
24 filed pursuant to the grievance and arbitration
25 procedures of Article 4 of the labor agreement
26 between the parties, and, if so, whether or not
27 the Complaint should be dismissed.

28 2. Whether or not Beverly Daly made the
statements she is alleged to have made on December
11, 1990, and, if so, whether or not said
statements constitute interference, restraint or
coercion of the employee in the exercise of rights
guaranteed under NRS Chapter 288, in violation of
NRS 288.270(1)(a), (c) and/or (d).

1 The parties also jointly stipulated to the followin
2 facts:

3 1. The Clark County Classroom Teachers
4 Association (hereinafter "CCCTA") is the
5 recognized employee organization as defined in NRS
6 288.160 representing the certificated personnel
7 employed by the Clark County School District
8 (hereinafter the "District").

9 2. The District is a Local Government
10 Employer pursuant to NRS Chapter 288 and is party
11 to a Collective Bargaining Agreement with the
12 CCCTA.

13 3. Beverly Daly is employed by the Clark
14 County School District in the capacity of School
15 Principal at Harriet Treem Elementary School.

16 4. Doris Roberts is a probationary, first-
17 year, first-grade CSR teacher at Harriet Treem
18 Elementary School.

19 5. By a "Certificated Employee Appraisal
20 Report" dated November 28, 1990, and November 29,
21 1990, from Beverly Daly, her principal, Doris
22 Roberts received a "Not Satisfactory" evaluation
23 in her teaching position at Harriet Treem
24 Elementary School.

25 6. Shortly thereafter, Mr. Lopez contacted
26 Beverly Daly on Doris Roberts' behalf and followed
27 up with a letter dated December 7, 1990, which
28 addressed issues referenced in the evaluation
prepared by Beverly Daly.

 7. Beverly Daly and Doris Roberts had a
classroom conversation at 1:30 p.m. on December
11, 1990.

 Upon the Board's receipt of the instant Complaint, EMRB
Vice Chairman Salvatore C. Gugino submitted a voluntary
recusal from the case, based on the fact that Respondent
Beverly Daly is a personal acquaintance. The parties were
unable to agree upon a replacement for Mr. Gugino and
thereupon stipulated to going forward with the case with the
two remaining members of the Board to hear said case and

1 decide the issue(s) presented therein.

2 On November 5, 1991, the Local Government Employee-
3 Management Relations Board ("EMRB" and "Board") conducted a
4 hearing on the instant Complaint. The Board's Discussion,
5 Findings of Fact, Conclusions of Law, Decision and Order are
6 set forth below.

7 DISCUSSION

8 From the facts stipulated to by the parties, the
9 testimony of witnesses cross-examined at the Hearing and other
10 evidence of record, the Board has determined that it has
11 jurisdiction in the instant case, notwithstanding the five (5)
12 pending grievances alluded to in the District's Prehearing
13 Brief. The fact that said grievances are alleged to have
14 arisen from the same incident that produced the Complaint does
15 not deprive the Board of jurisdiction over the matter. The
16 Board has held that it has exclusive jurisdiction concerning
17 unfair labor practices and/or the resolution of charges
18 alleging prohibited practices. Nevada Classified School
19 Employees Association, Chapter 1, Clark County vs. Clark
20 County School District, EMRB Item No. 105, Case No. A1-045336
21 (November 21, 1980).

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

9 The testimony developed that on November 29, 1990,
10 Respondent Beverly Daly, the Principal at Harriet Treem
11 Elementary School, presented probationary teacher Doris
12 Roberts with an appraisal report rating her performance as
13 "not satisfactory". Mrs. Roberts did not agree with the
14 report and discussed the matter with her union representative
15 Mr. Ron Lopez, Deputy Executive Director of the Clark County
16 Classroom Teachers Association. Mr. Lopez then called
17 Principal Daly and discussed the matter, confirming his
18 conversation with Principal Daly in a letter dated December 7,
19 1990. On December 11, 1990, Principal Daly went into Mrs.
20 Roberts classroom, ostensibly to give her a "pep talk", closed
21 the door (Mrs. Roberts and Principal Daly were the only
22 persons present) and the two entered into a discussion. The
23 testimony of Mrs. Roberts and Principal Daly was in conflict
24 as to the contents of the discussion. Mrs. Roberts testified
25 that Principal Daly told her "off the record", that the union
26 would do her more harm than good; that going with Mrs. Sabino
27 to the union was not a good idea, and that if she (Mrs
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1 Roberts) wanted to go to the union, Principal Daly would make
2 sure that everything Mrs. Roberts did was documented and it
3 (the paperwork) would stay in Mrs. Roberts' file for three
4 years. Mrs. Roberts also testified that Principal Daly told
5 her that if she wanted a position in another school another
6 principal might not like seeing a bunch of paper in her file,
7 might consider her a bad risk and not hire her because
8 principals prefer little paperwork. Principal Daly
9 emphatically and unequivocally denied that she made the
10 aforementioned statements to Mrs. Roberts. She testified that
11 she told Mrs. Roberts she was improving. According to
12 Principal Daly's testimony Mrs. Roberts told her that she
13 would not meet with Principal Daly without the presence of Mr.
14 Lopez. (Mrs. Roberts denied having made said statement at
15 that time; i.e., on December 11, 1990.) Principal Daly also
16 testified that she told Mrs. Roberts that she wasn't
17 conducting an investigatory interview, but only wanted to talk
18 to her about her lessons.

19 Notwithstanding the above-described conflicting
20 testimony, from the totality of the testimony and evidence of
21 record the Board is persuaded that Principal Daly did in fact
22 discourage Mrs. Roberts from utilizing the union. Principal
23 Daly testified she was disappointed that Mrs. Roberts went to
24 the union and she thought it was "very unusual" that one of
25 her teachers couldn't talk directly to her. She testified to
26 the effect that she didn't like having to deal with the union
27 because of the time consuming phone calls concerning different
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1 aspects of grievances; the time it takes to provide
2 appropriate documentation and the time it takes to attend
3 meetings concerning grievances and that she considered the
4 grievances filed by the Association to be a form of
5 "harassment". She also testified that Ron Lopez, Mrs.
6 Roberts' union representative, continually threatened and
7 harassed her (Principal Daly). In the light of said
8 testimony, Principal Daly's testimony as to the conversation
9 which occurred with Mrs. Roberts in the latter's classroom,
10 behind closed doors, on December 11, 1990, simply cannot be
11 considered credible.

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

11 1. It is a prohibited practice for a local
12 government employer or its designated representa-
13 tive willfully to:

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

17 . . .

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

22 Retaliation for such protected activity is an unfair
23 labor practice. NLRB vs. Ford Motor Co., 683 F.2d 156, 110
24 LRRM 3202 (CA 6 1982); American Steel Works, 263 NLRB 826, 111
25 LRRM 1136 (1982) and Teamsters, Chauffeurs, Warehousemen &
26 Helpers, and Professional, Clerical, Public and Miscellaneous
27 Employees, Local Union No. 533 vs. Humboldt General Hospital,
28 EMRB Item No. 246, Case Nos. A1-045459 and A1-045460 (June 11,
1990).

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1 FINDINGS OF FACT

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

6 CONCLUSIONS OF LAW

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

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

14 3. That the Respondent, Clark County School District
15 is a recognized local government employer as defined by NRS
16 288.060, and Principal Beverly Daly was acting as agent for
17 said local government employer.

18 4. That, although the Board under its deferral
19 doctrine, will normally refuse to hear a pending grievance
20 involving an unfair labor practice, the mere filing of a
21 grievance between the parties will not preclude the Board from
22 going forward with an action, as contemplated by NRS
23 288.110(2), particularly where the matter involves an unfair
24 labor practice occurring after the filing of a grievance.

25 5. That the District and its agent, Principal Daly,
26 committed an unfair labor practice under NRS 288.270(1)(a) and
27 (c) by interfering, restraining and coercing Mrs. Roberts i
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the exercise of protected rights.

DECISION AND ORDER

Upon decision rendered by the Board at its meeting on December 10, 1991, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

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

2. That the District and its agent, Beverly Daly, shall cease and desist, and in the future, refrain from engaging in the prohibited practice set forth in this Complaint; and

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

DATED this 2nd day of January, 1992.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By Howard Ecker
HOWARD ECKER, Chairman

By Tamara Barengo
TAMARA BARENGO, Member