

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

ESMERALDA COUNTY CLASSROOM
TEACHERS ASSOCIATION,

Complainant,

-vs-

ESMERALDA COUNTY SCHOOL
DISTRICT, THE ESMERALDA COUNTY
BOARD OF SCHOOL TRUSTEES, and
HAROLD TOKERUD,

Respondents.

ITEM NO. 283

CASE NO. A1-045497

ORDER OF DISMISSAL

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

For the Respondents: C. Robert Cox, Esq.
WALTHER, KEY, MAUPIN, OATS,
COX, LEE & KLAICH

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

Complainant has filed a Motion For Clarification of the Decision (Item No. 273) rendered by the Board on September 23, 1991, in the instant case. Complainant alleges that during the course of the arbitration hearing on the grievance referred to in the Decision, the District, through their counsel, asserted to the arbitrator that this Board's Decision was deferred to the ruling of the arbitrator.

The Motion For Clarification makes no complaint that the relevant paragraph in the Board's Decision is affected by an injudicious choice of language rendering it incapable of being readily understood. Nor does the Motion of the Teacher's

1 association assert that any overlooked point of law makes the
2 relevant paragraph subject to multiple interpretations.

3 The Opposition to the Motion For Clarification filed by
4 the School District asserts that the Board is without
5 jurisdiction to resolve this matter because of an appeal of
6 the Decision pending in the District Court. The School
7 District has asked this Board to "deny" this Motion, which it
8 maintains the Board may not consider.

9 Without deciding the issue of whether this Board may
10 clarify its own orders after such orders have been appealed,
11 the Motion For Clarification is denied for the reasons
12 explained below.

13 On July 19, 1991, the School District filed an Answer to
14 the original Complaint lodged with this Board which had
15 alleged an unfair labor practice by the District in havin,
16 fired one of its elementary school teachers.

17 In that Answer, the District raised an affirmative
18 defense which asserted that the school teacher's initial
19 decision to pursue relief by filing a grievance against her
20 employer (which was pending resolution) deprived this quasi-
21 judicial agency of the ability to adjudicate the Complaint of
22 her labor organization against the School District and the
23 Board of School Trustees.

24 This theory was disposed of by the Board in paragraph 7
25 of its Conclusions of Law:

26 That the filing of a grievance under the
27 labor agreement in effect between the parties does
28 not preclude this Board from going forward with
this action, as contemplated by NRS 288.110(2),

1 pending resolution of the grievance through
2 binding arbitration.

3 The Board then resolved the Complaint, in its Order, by
4 directing that the dismissed school teacher "[B]e reinstated
5 to her position within the District forthwith . . ."

6 The Board is confident that its final Decision and Order
7 are sufficiently plain for any person of reasonable
8 understanding to comprehend the intent and purpose behind
9 them. The time for application, pursuant to NRS 233B.140(1),
10 for a stay of this Board's Order has passed. No stay was ever
11 applied for or granted. This Board is also confident that the
12 affected parties, their counsel, and any reviewing court may
13 easily perceive, without need for clarification, the plain
14 meaning of this final Decision and Order. (See NRS 233B.130
15 and 135; petitions for judicial review are only allowed on the
16 final decision of an agency.)

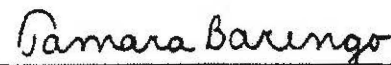
17 For these reasons, the Complainant's Motion For
18 Clarification is denied.

19 DATED this 31st day of December, 1991.

20 LOCAL GOVERNMENT EMPLOYEE-
21 MANAGEMENT RELATIONS BOARD

22 By 
23 HOWARD ECKER, Chairman

24 By 
25 SALVATORE C. GUCINO, Vice Chairman

26
27 By 
28 TAMARA BARENGO, Member