

STATE OF NEVADA  
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

ALLEN ASCH,

Complainant,

-vs-

CLARK COUNTY SCHOOL DISTRICT,  
THE BOARD OF TRUSTEES OF THE  
CLARK COUNTY SCHOOL DISTRICT,  
AND THE CLARK COUNTY CLASSROOM  
TEACHERS ASSOCIATION,

Respondents.

ITEM NO. 314

CASE NO. A1-045541

ORDER GRANTING  
MOTION TO DISMISS

For Complainant: Thomas J. Moore, Esq.

For Respondents CCSD: Donald H. Haight, Esq.  
and BOARD OF TRUSTEED: CLARK COUNTY SCHOOL DISTRICT

For Respondent CCCTA: Michael W. Dyer, Esq.  
DYER AND MCDONALD

On February 24, 1993, the Board received a Complaint from Allen Asch, alleging that his contract of employment with the School District was unilaterally amended by the School District (resulting in a salary reduction) after he had resigned as a member of the Association, and the School District began deducting the over payments from his pay. Mr. Asch alleges that he requested that the Association file a grievance regarding this dispute involving his contract of employment, but the Association refused to do so because he was no longer a member of the Association. Mr. Asch then filed a grievance himself and alleges that during the level one grievance proceeding he was told by the School District's representative that the unilateral action was taken against

1 Mr. Asch because of threats which the Association made against  
2 the District. The District then denied Mr. Asch's grievance  
3 and allegedly refused to proceed to arbitration or to allow  
4 review of the dispute by the Board of Trustees, as allegedly  
5 provided for in the Collective Bargaining Agreement. Mr.  
6 Asch's Complaint alleges that the School District and the  
7 Association are in violation of NRS 288.140(1) and (2); the  
8 District is in violation of NRS 288.270(1)(a), (c) and (f);  
9 and the Association is in violation of NRS 288.270(2)(a) and  
10 (c).

11 On March 29, 1993, the Association filed the above-  
12 captioned Motion to Dismiss on the grounds that "no violation  
13 of NRS Chapter 288 has occurred and, further, that no probable  
14 cause exists to support the Complainant's allegation that  
15 Respondent has committed a prohibited labor practice."

16 At its meeting of May 13, 1993, conducted pursuant to  
17 Nevada's Open Meeting Law, the Board determined after due  
18 deliberation that the Respondent Association's Motion to  
19 Dismiss should be granted. The Board's determination is based  
20 on the following:

21 **FIRST:** NRS 288.140(2) specifically grants an "employee  
22 who is not a member" of the recognized employee  
23 organization the right to act for himself with respect to  
24 any condition of his employment. The logical inference to  
25 be drawn from the language of NRS 288.140(2) is that the  
26 legislature did not intend to require employee  
27 organizations to process the grievances of non-members.  
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1 If the legislature had intended to require employee  
2 organization to process the grievances of non-members it  
3 appears that it would have specifically so provided.  
4 However, because the legislature did not specifically so  
5 provide, but rather provided that employees who are not  
6 members of a recognized employee organization have the  
7 right to act for themselves with respect to any condition  
8 of employment (consistent with the terms of an applicable  
9 negotiated agreement, if any), the legislature clearly  
10 intended that employee organizations retain discretion in  
11 the processing of grievances in behalf of non-members.

12 SECOND: In exercising the discretion bestowed upon it by  
13 the legislature pursuant to NRS 288.140, the employee  
14 organization's only representation-obligation to  
15 non-members is to exercise said discretion fairly and in  
16 good faith. Accordingly, a breach of an employee  
17 organization's statutory duty of fair representation to  
18 members of the bargaining unit occurs only when the  
19 union's conduct toward said members is arbitrary,  
20 discriminatory, or in bad faith. Vaca vs. Sipes, 386 U.S.  
21 at 191. A union's duty of fair representation does not  
22 require it to process every grievance brought to its  
23 attention. Tuma vs. American Can Co., 373 F.Supp. 218,  
24 224. Where a union makes a good faith determination that  
25 a grievance has not been filed in a timely manner or lacks  
26 merit, no breach of the duty to represent occurs. Orphan  
27 vs. Furnco Construction Corp., 325 F.Supp. 1220, 1222. In  
28

1 the instant case, the union reviewed Mr. Asch's grievance  
2 and determined that it was not only void of merit but also  
3 that it had not been filed in a timely manner. Under such  
4 circumstances, there is no basis for concluding that the  
5 union's refusal to process said grievance was arbitrary,  
6 capricious or an abuse of its statutory discretion.

7 **THIRD:** From a comprehensive review of the record before  
8 it, the Board concludes that the Complaint also fails to  
9 state a claim against Respondents Clark County School  
10 District and the Board of Trustees of the Clark County  
11 School District, upon which relief can be granted, and no  
12 probable cause exists for the Complaint.

13 For the reasons set forth in FIRST, SECOND and THIRD  
14 above,

15 IT IS HEREBY ORDERED, pursuant to NAC 288.210, that the  
16 Complaint filed in behalf of Allen Asch on February 24, 1993,  
17 (designated as EMRB Case No. A1-045541) be, and hereby is  
18 dismissed with prejudice, with each party to bear its own  
19 attorney's fees and costs.

20 DATED this 19th day of May, 1993.

21 LOCAL GOVERNMENT EMPLOYEE-  
22 MANAGEMENT RELATIONS BOARD

23 By   
24 SALVATORE C. GUINO, Chairman  
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