

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

4 CLARK COUNTY CLASSROOM TEACHERS) ITEM NO. 320
5 ASSOCIATION,)
6 Complainant,) CASE NO. A1-045539
7 -vs-)
8 TIMOTHY SANDS,)
9 Respondent.)
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For the Complainant: Michael W. Dyer, Esq.
DYER AND MCDONALD

For the Respondent: Dan R. Waite, Esq.
EDWARDS & KOLESAR, CHTD.

For the EMRB: Tamara Bargeno, Chairman
Susan L. Johnson, Vice Chairman
Salvatore C. Gugino, Member

16 STATEMENT OF THE CASE

17
18 The instant Complaint arose out of a letter dated February
19 1, 1993, from Attorney Dan R. Waite, representing Principal
20 Timothy Sands, to Jose Sandoval, Chairperson of the Teacher
21 Advisory Council (TAC) at Harvey Dondero Elementary School. The
22 letter states, in pertinent part, as follows:

23 Please be advised that this law firm represents Mr.
24 Timothy J. Sands, principal of Harvey Dondero Year-Round
25 School.

26 According to Article 10 of the Agreement between
27 the Clark County School District and the Clark County
28 Classroom Teacher's Association, 1991-1993, the purposes
and duties of TAC are as follows:

1. Improve the morale of the professional staff;

1 2. Apprise the principal of actual or potential
2 problems;

3 3. Secure the maximum productive and constructive
4 involvement of members of the professional staff in the
5 prime goal of the school, i.e., the education of
6 students enrolled therein;

7 4. Improve communications between the principal
8 and members of the professional staff; and

9 5. Provide input on the school's budget.

10 I am informed that TAC has failed to accomplish any
11 of the above listed duties on a consistent basis.
12 Furthermore, TAC has continued to pit teacher against
13 teacher in a manner which is highly unprofessional and
14 unproductive. Your own fellow TAC members have
15 frequently complained to the administration that they do
16 not understand or appreciate your intentions and
17 actions. In short, my client is very dissatisfied with
18 the performance of the TAC, generally, and your conduct,
19 specifically.

20 Finally, Mr. Sands is informed and believes that
21 you intend to discuss in public meetings matters which
22 are both false and derogatory of Mr. Sands and his
23 staff. Such a course of conduct by you could result in
24 Mr. Sands' reassignment to another school. Mr. Sands
25 does not want to transfer schools and will resist any
26 efforts to force him to do so. To that end, please be
27 advised that should you make any defamatory comments,
28 Mr. Sands fully intends to take whatever legal action is
necessary to protect his rights and to rehabilitate any
damage you may cause to his esteemed reputation. Govern
yourself accordingly.

 Please feel free to give me a call if you wish to
discuss this matter further or if you have any questions
or comments.

 The Complainant (hereafter referred to as "Association")
contends that this letter was an attempt to coerce and intimidate
Mr. Sandoval, and interfere with the exercise of his employee
rights under the collective bargaining agreement. The Association
specifically contends that Principal Sands' aforementioned conduct
is a prohibited practice under NRS 288.270 (1) (a) and (c), quoted
below:

. . .

1 1. It is prohibited practice for a local
2 government employer or its designated representative
willfully to:

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

5 (b) . . .

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

8 The Association also cites EMRB Case No. A1-045435 (Item No.
9 237) wherein the Board found that Principal Sands had attempted to
10 intimidate and discourage TAC participation at another school, and
11 asks the Board to consider said case in determining appropriate
12 penalties in the instant case.

13 Principal Sands contends he had reason to believe that Mr.
14 Sandoval planned to falsely accuse him of immoral conduct at a
15 public meeting of the Clark County School Board. He claims it was
16 this concern, and not anti-union animus, which motivated him to
17 retain an attorney to write a letter to Mr. Sandoval.

18 Principal Sands also contends (1) that the TAC, of which Mr.
19 Sandoval is Chairman, is not an "employee organization" as is
20 defined by NRS Chapter 288; (2) that his conduct is protected free
21 speech under the Constitutions of the United States and the State
22 of Nevada; (3) that the letter does not violate either NRS 288.270
23 (1) (a) or (c) because the letter cannot reasonably be interpreted
24 as interfering, coercing or restraining any employee rights, nor
25 does it discourage employee participation through discrimination
26 of employee Sandoval; and (4) that his conduct toward Mr. Sandoval
27 was not a "willful" violation of NRS 288.270 (1).
28 . . .

1 The Board's Discussion, Findings of Fact, Conclusions of Law,
2 Decision and Order are set forth below:

3 **DISCUSSION**

4
5 The Board found that the letter which forms the basis of this
6 Complaint is comprised of two separate subject matters. The first
7 is Principal Sands' general dissatisfaction with the performance
8 of the TAC at his school and with Mr. Sandoval's performance as
9 Chairman, specifically. The second is a warning to Mr. Sandoval
10 against making defamatory comments about Principal Sands in any
11 public meetings. We address these issues in reverse order.

12 I.

13 **PRINCIPAL SANDS' WARNING OF LEGAL ACTION**
14 **AGAINST MR. SANDOVAL IF HE MADE ANY DEFAMATORY COMMENTS**
15 **AT A PUBLIC MEETING CONSTITUTED FREE SPEECH**
16 **WHICH IS NOT RESTRICTED BY NRS CHAPTER 288**

17 This was clearly a situation of a school staff in conflict
18 over divided loyalties to the principal. Three witnesses
19 (Principal Sands and teachers Christina White and Laura Henley)
20 testified that widespread rumors had circulated among the staff
21 about alleged affairs between Principal Sands and certain staff
22 members. Mr. Sandoval's testimony that he was not aware of such
23 rumors was simply not credible given the climate of the school and
24 Mr. Sandoval's position as Chairman of the TAC.

25 Further, any apprehension about Mr. Sandoval's intended
26 comments before the School Board are the direct result of his own
27 refusal to be forthright and honest with other TAC members. When
28 asked by them if he was planning to speak to the School Board and
if so, about what subjects, he would only say that he "could"

1 speak if he wanted to and that he would tell "all the facts."
2 Even in his testimony before this Board, Mr. Sandoval was vague
3 and elusive as to these "facts." We find that Principal Sands had
4 a reasonable basis to believe that, given the conflict between
5 them and the rumors running rampant at the school, Mr. Sandoval's
6 coyness could be interpreted as a veiled threat to bring these
7 rumors to a public forum.

8 It is also clear that Principal Sand's fear that the mere
9 accusation of immoral conduct could result in his demotion or
10 transfer was well founded. Subsequent to the filing of this
11 Complaint against him, Principal Sands was demoted with a pay loss
12 of nearly \$16,000 per year. This action by the School District
13 appears to have been based solely on the allegations contained in
14 this Complaint, and prior to any determination by this Board as to
15 the merits of the charges against Sands.

16 Additionally, Article 27-5-3 of the Agreement between the
17 Clark County School District and the Clark County Association of
18 School Administrators, 1991-1993, provides that the mere
19 accusation of immorality is considered an "incident of a serious
20 nature" and subject to immediate discipline. We therefore find
21 that Principal Sands had a legitimate interest in preventing any
22 defamatory remarks concerning his alleged immoral conduct from
23 being aired at a public School Board meeting.

24 That portion of the letter drafted by Principal Sands'
25 attorney for this purpose is clear and unambiguous. The letter
26 warns against comments which are "both false and derogatory,"
27 "defamatory," and made in "public meetings." These terms have
28 . . .

1 clear legal definitions and are generally accepted as referring to
2 unprotected, tortious speech.

3 We do not credit the Association's contention that Mr.
4 Sandoval's exercise of his employee rights was in any way
5 restrained or threatened by virtue of an attorney warning him
6 against tortious conduct, especially where such conduct appeared
7 imminent. While this Board continues to reject any activity which
8 has a chilling effect upon public employees' free exercise of
9 their rights under NRS Chapter 288, no provision of Chapter 288
10 can reasonably be construed to offer protection to tortious
11 conduct between an employer and employee. Similarly, no provision
12 of Chapter 288 restricts either party's free speech rights to warn
13 the other against engaging in such tortious conduct.

14 For the reasons stated above, the Board finds that the
15 portion of the February 1, 1993, letter which warned Mr. Sandoval
16 against making defamatory remarks about Principal Sands in a
17 public meeting did not violate NRS 288.270(1)(a) or (c).

18 II.

19 **THE ACTION OF PRINCIPAL SANDS IN EXPRESSING**
20 **HIS DISSATISFACTION WITH TAC THROUGH A LETTER**
21 **FROM HIS ATTORNEY TO THE TAC CHAIRMAN WAS NOT A "WILLFUL"**
VIOLATION OF NRS 288.270(1)(a) or (c)

22 The first section of the February 1, 1993 letter which is the
23 subject of this Complaint addresses Principal Sands' displeasure
24 with the productiveness and administration of the TAC at Harvey
25 Dondero Elementary School. These are topics of legitimate
26 discussion between the Principal and his TAC Chairman. What this
27 Board finds unfortunate is that the dissatisfaction was
28 . . .

1 relayed not by the Principal directly, but rather by the
2 Principal's attorney.

3 Had the totality of the facts of this case been different,
4 this Board might be constrained to find a violation of NRS
5 288.270(1)(a) by virtue of the chilling influence of an attorney
6 relaying criticism from the principal about a purely operational
7 matter. However, before a violation can be found, we must
8 determine that it was "willful" under the terms of the statute.
9 This determination requires a closer analysis of the facts.

10 As previously referenced, Principal Sands was the subject of
11 a prohibited practice complaint in 1989, which arose out of his
12 dealings with a TAC at another school. This experience, coupled
13 with his immediate concern about the possible pending defamation
14 of his character and its effect upon his career, caused him to
15 proceed cautiously. He sought legal counsel to determine how to
16 appropriately deal with the issues confronting him and the TAC
17 Chairman.

18 Unfortunately for Principal Sands, his counsel apparently did
19 not recognize the danger of inserting himself into a critique of
20 TAC operations. This entire portion of the letter was gratuitous
21 and unrelated to the immediate legal concern at hand: the alleged
22 defamation. We are of the opinion that counsel should have
23 limited his written "warning" to only the defamation issue and
24 advised Principal Sands to deal directly with Mr. Sandoval about
25 the operational problems with the TAC. Not having done so,
26 however, we must decide whether Principal Sands can be found to
27 have "willfully" violated NRS 288.270(1)(a) or (c) as a result of
28 the actions and advice of counsel whom he employed.

1 The nature of an attorney-client relationship is one of trust
2 and dependence. The client trusts the attorney to represent him
3 appropriately and is dependent upon his attorney's knowledge and
4 familiarity with the legal subject matter. We would generally
5 applaud any employer or employee who, recognizing a potential
6 problem, seeks legal advice before taking action which could be
7 interpreted as a prohibited labor practice under NRS Chapter 288.

8 We recognize that in matters of civil and criminal
9 litigation, a client is generally bound by the actions of his
10 attorney and cannot readily avoid the consequences of his
11 attorney's actions. Cahn v. Fisher, 805 P.2nd 1040, 167 Ariz.
12 219, rev.en. (Ariz.App.1990); Alt v. Krueger, 663 P.2nd 1078, 4
13 Haw.App. 201 (1983). However, it is equally clear that where
14 fundamental rights of the client are involved, the actions of the
15 attorney will not be imputed to the client. Raguepaw v. State,
16 108 Nev.Adv.Op.159 (1992); Jones v. Barnes, 463 U.S. 745, 751
17 (1983).

18 In this case, the Board must conclusively determine whether
19 the client willfully violated a state statute, which requires a
20 fundamental determination of guilt. Under the specific
21 circumstances of this case, we cannot impute to Principal Sands
22 the ill-advised actions of his attorney for the purpose of making
23 such a finding. We are reluctant to conclude that he has
24 "willfully" committed a prohibited practice by taking reasonable
25 steps to consult with and rely upon counsel in an effort to avoid
26 just the sort of labor dispute which ultimately resulted in this
27 case.

28 . . .

1 For the reasons discussed above, we find that although the
2 portion of the attorney's letter criticizing the TAC may have
3 proven intimidating to Mr. Sandoval, Principal Sands did not act
4 in such a manner as to "willfully" cause such a result.

5 Lastly, we note that despite the letter in issue and the
6 apparent tension between the two men, Principal Sands nonetheless
7 gave Mr. Sandoval a "satisfactory" performance evaluation one
8 month after the incident in question. No other evidence was
9 presented to support a finding that Mr. Sandoval was in any way
10 discriminated against in his employment and we therefore find no
11 violation of NRS 288.170 (1)(c).

12 **III.**

13 **MEMBERS OF A TEACHERS ADVISORY COUNCIL (TAC)**
14 **ARE ENTITLED TO THE PROTECTIONS OF NRS CHAPTER 288**

15 This issue was raised in these proceedings and must be
16 addressed, although it was not dispositive of the instant case.

17 Principal Sands has asserted that the TAC is not an "employee
18 organization" under Chapter 288 and therefore is not endowed with
19 any rights which could be subject to violation. We disagree.

20 Article 10 of the Collective Bargaining Agreement between the
21 Clark County Classroom Teachers Association and the Clark County
22 School District provides for the formation of Teacher Advisory
23 Councils as official representatives of faculty in dealing with
24 concerns at each school. The primary purpose of these "TACs" is
25 to liaison between the Principal and the staff on operational
26 matters at the school. Principal Sands contends that because
27 Chapter 288 does not specifically protect rights derived from a
28 . . .

1 collective bargaining agreement, that his relationship with the
2 TAC is not governed by Chapter 288.

3 However, the members of each school's TAC are also members of
4 the more encompassing Clark County Classroom Teachers Association,
5 which is an "employee organization" under the statute. The
6 service they provide as TAC members is in furtherance of their
7 membership in the Association. It is the spirit and intent of NRS
8 Chapter 288 to protect employees engaged in the business of their
9 organization, and we reject a constrained statutory construction
10 which would limit those protections.

11 IV.

12 PRINCIPAL SAND'S INVOLVEMENT IN A PREVIOUS EMRB
13 PROCEEDING IS NOT RELEVANT TO THIS CASE

14 The Association's citation and reference to Clark County
15 Classroom Teachers Association vs. Clark County School District
16 and Timothy Sands, et al., EMRB Item No. 237, Case No. A1-045435
17 (December 1989) in support of its position in the instant case is
18 misplaced. The facts of the previous case bear no practical
19 similarity to the facts of this case and do not therefore justify
20 an inference of a pattern of conduct by Principal Sands. We take
21 notice of the previous case but give it no weight in our
22 determination.

23 FINDINGS OF FACT

24 1. The Complainant, Clark County Classroom Teachers
25 Association, is a local government employee organization.
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27 . . .

28 . . .

1 2. Timothy Sands is employed by, and is the designated
2 representative of Clark County School District, a local government
3 employer.

4 3. The Clark County Classroom Teachers Association is a
5 party to a collective bargaining agreement with the Clark County
6 School District.

7 4. On the date of the alleged violation, Timothy Sands was
8 employed by the Clark County School District as Principal of
9 Harvey Dondero Elementary School.

10 5. Article 10 of the 1991-1993 Collective Bargaining
11 Agreement provides for a Teachers Advisory Council, which is a
12 committee established to serve as the official representative of
13 faculty in dealing with concerns at a school.

14 6. Mr. Jose Sandoval was the Chairman of the Teacher
15 Advisory Council at Harvey Dondero Elementary School on the date
16 of the alleged violation.

17 7. Principal Sands had received complaints from teachers
18 about the poor performance of the TAC and the performance of Mr.
19 Sandoval as Chairman of TAC.

20 8. Principal Sands had a reasonable basis to believe that
21 Mr. Sandoval intended to discuss rumors of Principal Sands'
22 alleged affairs with staff members at a pending meeting of the
23 Clark County School Board.

24 9. Mr. Sandoval was elusive and intentionally vague about
25 whether he intended to voice these rumors at the School Board
26 meeting.

27 * * *

28 * * *

1 did not violate NRS 288.270(1)(a) because Principal Sands did not
2 act willfully; it did not violate NRS 288.270(1)(c) because the
3 Complainant made no prima facie showing that Mr. Sandoval was
4 discriminated against in his employment because of his membership
5 in the TAC.

6 5. The Teacher Advisory Councils (TAC's) are comprised of
7 members of the Association performing activities in furtherance of
8 Association interests and thus are entitled to the protections of
9 Chapter 288.

10 DECISION AND ORDER

11 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
12 Association's Complaint is denied, without prejudice, with each
13 side to bear its own costs and attorney's feese
14

15 DATED this 11th day of October, 1993.

16 LOCAL GOVERNMENT EMPLOYEE-
17 MANAGEMENT RELATIONS BOARD

18 By: Tamara Barenge
19 TAMARA BARENGO, Chairman

20
21 By: Susan L. Johnson
22 SUSAN L. JOHNSON, Vice Chairman

23 By: Salvatore C. Gugino
24 SALVATORE C. GUGINO, Member