

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

3 WATER EMPLOYEES ASSOCIATION,) ITEM NO. 326
4 Complainant,) CASE NO. A1-045538
-vs-)
5 LAS VEGAS VALLEY WATER DISTRICT,) DECISION
6 Respondent.)
7

8 For Complainant: Christopher G. Gellner, Esq.

9 For Respondent: Gregory E. Smith, Esq.
SMITH & KOTCHKA

10 For EMRB: Tamara Barengo, Chairman
11 Susan L. Johnson, Vice Chairman
Salvatore C. Gugino, Member

12 STATEMENT OF THE CASE

13 On or about July 9, 1992, the Las Vegas Valley Water
14 District ("Water District") wrote Ron Rivero ("Mr. Rivero"),
15 an employee of the Water District from September 1968 to July
16 1992, notifying him of his termination, effective July 15,
17 1992, for allegedly refusing to take either the necessary
18 steps within the federally mandated deadline to obtain a
19 Commercial Driver's License (CDL) or to show the Water
20 District that he could not medically qualify for such a
21 license.

22 During his employment with the Water District, Mr.
23 Rivero held various offices in the Water Employees Association
24 ("Association"), including President, Vice President and
25 Director; he served on various committees of the Association,
26 and he was on numerous negotiating committees leading to
27 contracts. Mr. Rivero was a vigorous advocate who was often
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1 aggressive and outspoken in his representation of the
2 Association.

3 The Association contends that the Water District's
4 disciplining and termination of Mr. Rivero were prohibited
5 practices under NRS 288.270(1)(a), (c), (d) and (f) because
6 said actions were willfully taken to silence Mr. Rivero and/or
7 coerce, interfere or restrain him in his aggressive and
8 outspoken advocacy of Association causes and rights. Said
9 actions were allegedly discriminatory in singling out Mr.
10 Rivero for termination, due to his work with the Association,
11 and/or personal animus of District management level employees
12 against him, which termination allegedly would not have been
13 imposed on other employees for the same alleged infractions.

14 The District contends that Mr. Rivero deliberately
15 refused to comply with reasonable management directives and
16 was repeatedly insubordinate; therefore, his termination was
17 justified for purely business reasons, with no regard to his
18 union activity.

19 DISCUSSION

20 I

21 **RON RIVERO WAS TERMINATED BY THE WATER**
22 **DISTRICT FOR LEGITIMATE BUSINESS REASONS,**
23 **NOT BECAUSE OF HIS UNION ACTIVITY OR**
24 **PERSONAL ANIMUS.**

25 While the record reflects that animus of a personal
26 nature was pervasive in the relationship between certain
27 members of the Water District's management and officers of the
28 Association (particularly between Mr. Rivero and management),
the Board finds that the evidence before it is insufficient to

1 establish that Mr. Rivero was terminated because of protected
2 activity.

3 The criteria this Board utilizes in determining whether
4 an individual has been improperly discharged from his or her
5 employment because of union activity were set forth in our
6 first decision (Laborers' International Union of North
7 America, Local Union No. 169 - For Reginald D.J. Becker - vs.
8 Washoe Medical Center, Case No. 1, Item #1) and reiterated in
9 subsequent decisions; e.g., Dave Leroy Davis vs. Bill
10 Harrison, et. al., Washoe County Fair and Recreation Board,
11 Case No. A1-00234, Item #15, dated July 12, 1974, and Marion
12 Kremer and Health, Professional and Technical Employees
13 Association, Local 707, Service Employees International Union
14 vs. Southern Nevada Memorial Hospital and Hyatt House Medical
15 Management, Inc., Case No. A1-045292, Item #53, dated May 9,
16 1976. The Becker decision stated that mere "suspicion" alone
17 is not enough to conclusively establish that union activity
18 was the sole reason, or the real reason, for discharge.
19 Secondly, even if an employee has extensively engaged in union
20 activity to the displeasure of the employer and is
21 subsequently discharged, there has been no prohibited practice
22 committed (and the employee has no right to be reinstated) if
23 the employer can show that the discharge was for any
24 legitimate reason other than union membership or activity.
25 Becker, supra.

26 In the instant case, it is clear from the testimony of
27 witnesses and other evidence of record that Mr. Rivero was
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1 terminated for refusing to comply with reasonable management
2 policies and directives, which the Board considers a
3 legitimate business reason for disciplining or terminating an
4 employee.

5 This case involves a fundamental principle regarding the
6 burden of proof. Complainant presented a prima facie case of
7 discrimination as a result of protected activity. The Water
8 District then rebutted that presumption by introducing
9 evidence that the discipline and termination assessed Mr.
10 Rivero were assessed for legitimate, nondiscriminatory
11 reasons. The Board, as trier of the facts, found the Water
12 District's evidence to be persuasive. The ultimate burden of
13 persuading the trier of facts that the Respondent
14 intentionally discriminated against the Complainant remains a'
15 all times with the Complainant. St. Mary's Honor Center, et.
16 al. vs. Melvin Hicks, No. 92-602, Supreme Court of the United
17 States, decided June 25, 1993. In the case before us, the
18 Board has concluded that although the Complainant has proven
19 the existence of personal animus, the Complainant has not
20 proven that Mr. Rivero was disciplined or terminated as a
21 result of said animus.

22 The Water District's evidence established that nearly
23 one (1) year before the federally mandated Commercial Driver's
24 License requirement went into effect, notice was given to all
25 affected Water District employees. At least nine (9) training
26 sessions were conducted between September 20, 1991 and March
27 16, 1992, to assist employees in the CDL licensing process
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1 Over ninety-five percent (95%) (approximately 80 employees) of
2 the affected employees completed their training, received
3 their medical certifications, and passed the CDL test well
4 before the deadline. Mr. Rivero did not attend any of the
5 training sessions. As the deadline approached, the Water
6 District management sent Mr. Rivero several memoranda, had
7 several meetings with him about the subject, and even
8 scheduled a special training class for him. He still did not
9 obtain his CDL by the April 1, 1992 deadline.

10 Notwithstanding the above, the Water District continued
11 to work with Mr. Rivero long after the deadline by encouraging
12 him to obtain the preliminary medical evaluation which is a
13 part of the CDL licensing process. The Water District finally
14 issued a termination notice on July 9, 1992, over three (3)
15 months after the deadline had passed. At that time, Mr.
16 Rivero had still not obtained his CDL and his medical
17 condition to qualify for same was still unclear.

18 Although Mr. Rivero and the Association have attributed
19 his failure to comply with the Water District's CDL licensing
20 process to his "confusion", "misunderstanding", "lack of
21 notice" and to obstacles and difficulties attributed to third
22 parties, the Board finds that the instances where Mr. Rivero
23 failed to cooperate with the directives of his supervisors in
24 this licensing process were simply too constant, too numerous
25 and too flagrant to be attributed to mere confusion or
26 misunderstanding. It appears that none of the other eighty
27 (80) or more employees were similarly confused. Additionally,
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Mr. Rivero clearly took no personal initiative to resolve any of the myriad of difficulties he allegedly encountered, but rather continued to justify his inaction with excuse after excuse. The totality of his behavior constituted insubordination.

This decision should not be construed to indicate that the Board considers the Water District's handling in this case to be above reproach. In the absence of such egregious behavior as that displayed by Mr. Rivero, the Board may have been disposed to reach a different conclusion. It is clear that a more proactive approach on the part of Mr. Rivero's supervisors might have resolved the questions surrounding Mr. Rivero's physical condition more efficiently and probably avoided some of the basis for his alleged confusion. Also the Board believes that the attitude of the Water District's management toward the Association has contributed toward the poor relationship between the parties. From the testimony and evidence of record, it does not appear that Water District management has taken any meaningful steps to address the conditions which have resulted in the overt, pervasive animosity between these parties. Accordingly, the Board urges both parties to make whatever changes are necessary to create a working relationship which will better serve the interests of both employees and management.

II

ALL OTHER ISSUES ARE MOOT.

Having found the Complaint to be without merit, the

1 Board has determined that the remaining issues previously
2 formulated by the parties have been rendered moot.
3 Accordingly, the Board finds that it is neither necessary nor
4 appropriate to address said issues.

5 FINDINGS OF FACT

6 1. The Complainant, Water Employees Association, is an
7 employee organization as defined by NRS 288.040 and is the
8 recognized bargaining representative for employees of the Las
9 Vegas Valley Water District who are in certain classifications
10 covered by its non-supervisory and front-line supervisory
11 bargaining units.

12 2. The Respondent, Las Vegas Valley Water District, is
13 a local government employer as defined by NRS 288.060 which is
14 governed by a Board of Directors which consists of the same
15 persons who are the members of the Clark County Board of
16 Commissioners.

17 3. Ron Rivero was an employee of the Las Vegas Valley
18 Water District from September 1968 to July 1992, was
19 classified as a Distribution Service Person III before his
20 termination on July 15, 1992, held various offices, including
21 President, Vice-President and Director, served on various
22 committees of the Complainant and was on numerous negotiating
23 committees leading to contracts with the District.

24 4. Effective July 15, 1992, Ron Rivero was terminated
25 for refusing to take the necessary steps within the mandated
26 deadline to obtain his federally mandated Commercial Driver's
27 License (CDL) or to show the District he could not medically
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1 qualify for such a license.

2 5. The Water District provided its employees ample
3 notice, training opportunities and assistance to meet the CDL
4 requirement, all of which Mr. Rivero ignored.

5 6. Mr. Rivero engaged in a pattern of conduct showing
6 open antagonism toward his supervisors and persistently
7 refusing to comply with reasonable Water District policies,
8 procedures and directives as they related to the CDL licensing
9 requirement.

10 CONCLUSIONS OF LAW

11 1. The Local Government Employee-Management Relations
12 Board has jurisdiction of the parties and the subject matter
13 of this Complaint, pursuant to the provisions of NRS Chapter
14 288.

15 2. The termination of Ron Rivero's employment with the
16 Water District did not violate NRS 288.270(1)(a), (c), (d) and
17 (f), or any other provision of NRS Chapter 288, inasmuch as
18 Mr. Rivero was not terminated as a result of his union
19 activities or personal animus.

20 3. The termination of Ron Rivero was for legitimate
21 business reasons (for refusing to take the necessary steps
22 within the mandated deadline to obtain a Commercial Driver's
23 License or to show he could not qualify for such a license),
24 and did not violate NRS 288.270(1)(a), (c), (d) and (f), or
25 any other provision of NRS Chapter 288.

26 DECISION AND ORDER

27 IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the
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Water Employees Association's Complaint is denied, with prejudice, with each side to bear its own costs and attorney's fees.

DATED this 22nd day of February, 1994.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By Tamara Barenco
TAMARA BARENGO, Chairman

By Susan L. Johnson
SUSAN L. JOHNSON, Vice Chairman

By Salvatore C. Gugno
SALVATORE C. GUGINO, Member