

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

3 **CLARK COUNTY ASSOCIATION OF**)
4 **SCHOOL ADMINISTRATORS,**)
 Complainant,)

ITEM NO. 394

5 **vs.**)

CASE NO. A1-045593

6 **CLARK COUNTY SCHOOL DISTRICT,**)
7 **Respondent,**)

DECISION

8 **For Complainant: Thomas D. Beatty, Esq.**

9 **For Respondent: C. W. Hoffman, Esq.**
 CLARK COUNTY SCHOOL DISTRICT

10
11 **STATEMENT OF THE CASE**

12 On December 19, 1995, the CLARK COUNTY ASSOCIATION OF SCHOOL
13 ADMINISTRATORS (hereinafter "CCASA") filed a Complaint and
14 Petition for Declaratory Relief against the BOARD OF SCHOOL
15 TRUSTEES OF THE CLARK COUNTY SCHOOL DISTRICT (hereinafter
16 "CCSD"), BRIAN CRAM, individually, and several others both as
17 administrators and individuals. The Complaint alleges that CCSD
18 and its representatives maintained positions and engaged in a
19 pattern of conduct with CCASA during negotiations for a successor
20 agreement to the 1993-1995 collective bargaining agreement, said
21 conduct constituting a prohibited practice under NRS 288.070.
22 More specifically, CCASA alleges that CCSD refused to submit to
23 arbitration after impasse was declared as required by NRS
24 288.217(2).

25 CCASA further alleges that during the negotiating period,
26 certain CCSD administrative perscnnel made hostile comments and
27 engaged in a pattern of conduct designed to circumvent and
28 interfere with the negotiating process in violation of NRS

1 288.270. The Complainant seeks both a Declaratory Order as to
2 the application of NRS 288.217 and for further relief. CCSF
3 denies that its conduct and positions taken during negotiation
4 constitute a prohibited practice and ask this Board to deny the
5 relief requested by the Complainant.

6 **DISCUSSIONS AND FINDINGS OF FACT**

7 **The application of NRS 288.217 to the subject dispute.**

8 As established through testimony by the parties, Respondent
9 CCSD is a local government employer as defined by NRS 288.060.
10 Complainant CCASA is an employee organization as defined by NRS
11 288.040, and pursuant to NRS 288.160, is the duly recognized
12 employee organization representing all the administrators
13 employed by the CCSD with the exception of such employees as are
14 excluded by NRS Chapter 288. The Local Government Employee-
15 Management Relations Board (hereinafter "Board") maintains
16 jurisdiction over this dispute pursuant to NRS 288.010 through
17 NRS 288.280 inclusive. Since the filing of the Complaint, the
18 parties have successfully negotiated the 1995-1997 Collective
19 Bargaining Agreement. However, as the issue concerning the
20 applicability of NRS 288.217 will admittedly arise at the
21 commencement of negotiations for a successor agreement to the
22 current collective bargaining agreement, the Board determined
23 that the issue of the applicability of NRS 288.217 to the
24 relationship between the CCSD and CCASA was properly before the
25 Board.

26 CCASA and CCSD are parties to a Collective Bargaining
27 Agreement entered into in accordance with the provisions of NRS
28 Chapter 288, effective July 1, 1993, to June 30, 1995, for the

1 1993-1995 school years. Prior to the expiration of the 1993-1995
2 Collective Bargaining Agreement, the parties noticed and
3 scheduled their first meeting to begin negotiations for the
4 successor collective bargaining agreement. During the previous
5 negotiations concerning the 1993-1995 collective bargaining
6 agreement, the parties had reached an impasse. In discussion to
7 resolve the impasse, the parties acted upon the fact and belief
8 that NRS 288.217 applied to any procedures required to resolve
9 and arbitrate a dispute. As established by testimony from
10 witnesses for both parties, neither the CCSD nor CCASA sought
11 legal advice as to the application of NRS 288.217. Upon reaching
12 the impasse and in accordance with NRS 288.217(2), the parties
13 contacted the American Arbitration Association (hereinafter
14 "AAA"), for a list of arbitrators to begin the process of
15 selecting an arbitrator. After receiving the list from AAA, an
16 after extensions and waivers, but before the selection process
17 was completed, the parties resolved the impasse and went forward
18 to successfully reach a collective bargaining agreement for the
19 1993-1995 school years.

20 The first meeting concerning negotiations for the 1995-1997
21 collective bargaining agreement was set for April 20, 1995. As
22 attested to at the hearing, numerous items were listed on the
23 Agenda for the April 20, 1995 meeting including the topic of
24 establishing timelines for arbitration in the event that
25 negotiations should come to impasse. As established by Allin
26 Chandler, Executive Director of CCASA, the parties agreed that
27 the timelines for arbitration as set forth in NRS 288.217 would
28 apply, and that in accordance therewith, after four sessions

1 either party could declare an impasse thereby activating the
2 arbitration provision of NRS 288.217. This position was
3 essentially supported by Dr. Edward Goldman, Assistant
4 Superintendent for Administrative Operations and bargaining
5 representative for the CCSD. Dr. Goldman further testified that
6 he had assumed that NRS 288.217 was legally binding upon the
7 parties and that CCSD came to the determination that NRS 288.217
8 did not apply to the arrangement between CCSD and CCASA only
9 after receiving advice from legal counsel, the same which did not
10 occur until after an impasse had been declared or sometime
11 thereabout. Upon determining that the provisions of NRS 288.217
12 did not apply to the relationship between CCSD and CCASA, the
13 Respondent CCSD notified the Complainant, CCASA that it would not
14 join in submitting the matter to arbitration. CCASA alleges that
15 CCSD's action in refusing to go to arbitration upon impasse
16 constitutes a violation of CCSD's statutory obligation to bargain
17 collectively in good faith [NRS 288.270(1)(e)]. Complainant is
18 seeking a Declaratory Order of this Board sustaining the
19 applicability of NRS 288.217 to the parties in all future
20 negotiations.

21 The determination as to NRS 288.217 application to the
22 relationship between CCASA and CCSD is a matter of first
23 impression before this Board. The Statute was added to Chapter
24 288 by the Nevada Legislature in 1991 and heretofore the Board
25 has not had the opportunity to consider the Statutes application
26 in any manner.

27 As set forth by both parties, the answer to this issue
28 centers on the definition of "teacher" as set forth in NRS

1 288.217(9)(b). Complainants' allege that CCASA administrators
2 (primarily principals and vice-principals) are teachers as
3 defined in NRS 288.217(10)(b) and therefore subject to the
4 provisions of NRS 288.217 generally. Respondents' argue that
5 historically CCASA personnel have been considered administrators,
6 not teachers, even though principals and vice-principals are
7 required to be licensed to teach in the State of Nevada in order
8 to hold such positions. Accordingly, if such administrators are
9 not teachers, then NRS 288.217 does not apply to the relationship
10 between CCASA and CCSD and consequently there has been no
11 violation of NRS 288.217(1)(e).

12 The relevant statutory provisions read as follows:

13 "288.217 Submission of dispute between school
14 district and employee organization to arbitrator;
15 hearing; determination of financial ability of school
16 district; negotiations and final offer; effect of
17 decision of arbitrator; content of decision.

18 1. The provisions of this section govern
19 negotiations between school districts and employee
20 organizations representing teachers and educational
21 support personnel.

22 2. If the parties to a negotiation pursuant to
23 this section have failed to reach an agreement after at
24 least four sessions of negotiation, either party may
25 declare the negotiations to be at an impasse and, after
26 5 days written notice is given to the other party,
27 submit the issues remaining in dispute to an
28 arbitrator. ..."

"....."

"10. As used in this section:

(a)

(b) Teacher means an employee of a school
district who is licensed to teach in the state and who
is represented by an employee organization."

29 In interpreting the term "teacher" as used in NRS
30 288.217(10)(b) and in applying the same to NRS 288.217 inclusive,
31 the Board is mindful that although the term has been defined in
32 other statutory provisions, and as a term of art, has developed
33 a distinct and traditional application, we must first and

1 foremost attempt to give effect and application to the term as
2 provided by the Legislature in a manner consistent, and not in
3 conflict with, the controlling statute. Both the traditional
4 application of a term within a profession and the inclusion or
5 definition of that term in other statutory provisions can and
6 should only be resorted to in instances where the legislature has
7 either failed to provide us with a definition or where the
8 definition so provided is ambiguous or vague. If the term is
9 clear and unambiguous the rules of statutory construction require
10 us to apply the term as defined in the statute.

11 As this Boards' authority arise from and are limited to
12 matters within Chapter 288 of the Nevada Revised Statutes we are
13 likewise controlled by the various provisions and terms contained
14 therein. The term "teacher" as set forth in NRS 288.217(10)(b),
15 though apparently broad in its application, is nonetheless very
16 clear and unambiguous on its face. As used in 288.217(1), the
17 provisions of NRS 288.217 apply to the Respondent CCSD's
18 relationship with both educational support personnel and
19 teachers. Accordingly, in applying the term "teacher" as defined
20 in NRS 288.217(10)(b), to NRS 288.217(1) and 288.217(2), the
21 obligation to submit all unresolved issues to arbitration upon
22 impasse would apply to all of those who are "employees of a
23 school district who is (are) licensed to teach in this state and
24 who is (are) represented by an employee organization". As
25 established during the hearing, CCASA members are required to be
26 "licensed to teach" in this state. Similarly, CCASA members are
27 represented by an "employee organization" as defined by NRS
28 288.040: "Employee organization" means an organization of any

1 kind having as one of its purposes improvement of the terms and
2 conditions of employment of local government employees."
3 Accordingly, a reasonable construction and application of the
4 term "teacher" as defined in NRS 288.217(10)(b) would encompass,
5 and thereby apply to, CCASA members.

6 In attempting to support its position that NRS 288.217 does
7 not apply to the Respondent's relationship with the Complainant,
8 CCSD proffered evidence from the legislative history of the
9 statute, to wit: the debates concerning the scope and application
10 of the statute. Upon reviewing the evidence submitted, the same
11 is at best inconclusive as to legislative intent. Assuming
12 arguendo that the legislature intended to exclude principals and
13 vice-principals from the application of NRS 288.217, absent
14 specific provisions regarding the same, such legislative intent
15 would only be instructive, hence not binding, as the term
16 "teacher", defined in NRS 288.217(10)(b), is neither vague nor
17 ambiguous. Accordingly, this Board finds that CCASA members are
18 "teachers" as reasonably defined by NRS 288.217(10)(b), is
19 neither vague nor ambiguous. Accordingly, this Board finds that
20 CCASA members are "teachers" as reasonably defined by NRS
21 288.217(10)(b) and therefore are subject to the provisions of NRS
22 288.217 inclusive.

23 Having determined that NRS 288.217 applies to the
24 relationship between CCSD and CCASA, and that CCASA members are
25 therefore included in the definition of "teachers" for purposes
26 of NRS 288.010 through NRS 288.280 inclusive, there is the
27 remaining issue as to whether CCSD should be estopped from
28 denying the applicability of NRS 288.217, and whether CCSD's

1 failure to submit the disputed issues to arbitration upon the
2 declaration of impasse constituted a violation of CCSD's duty to
3 negotiate in good faith per NRS 288.270(1)(a).

4 Complainants' argue that the parties reliance upon the
5 application of NRS 288.217 during the negotiations for the 1993-
6 1995 Collective Bargaining Agreement and the determination in
7 1995 that NRS 288.217 would apply to the resolution of any
8 impasse declared during the negotiations for the 1995-1997
9 Collective Bargaining Agreement, should operate as an estoppel
10 against CCSD, thereby prohibiting CCSD from denying the
11 applicability of NRS 288.217. CCASA further argues that pursuant
12 to the doctrine of estoppel, CCSD's post-agreement reliance upon
13 legal advice as a basis of its refusal to submit the impasse
14 issues to arbitration, and CCSD's declared position that it would
15 take the issue of the applicability of NRS 288.217 to court and
16 thereby "tie up" the negotiations, constituted an unfair labor
17 practice and was in violation of CCSD's obligation to negotiate
18 in good faith.

19 Regarding the issue of estoppel, as set forth by counsel for
20 CCASA, the concept of estoppel does apply to governmental
21 agencies and employers. Southern Nevada Memorial Hospital v.
22 State of Nevada, 101 Nev. 387, 390 (1985). As argued, each of
23 the four (4) elements of the doctrine as established by the
24 Nevada Supreme Court must be satisfied in order for a party to be
25 estopped. Although the conduct of the parties, their prior
26 conduct and negotiations, and apparent reliance on the
27 applicability of NRS 228.217 sustain the first three (3) (,
28 elements, the Board finds that the Complainant, CCASA, has failed

1 to satisfy the fourth element, that being "reliance to its
2 detriment on the conduct of the party to be estopped".

3 As established in the 1995 negotiations, CCSD notified CCASA
4 that it would not submit the impasse issues to arbitration only
5 after the time had already passed for CCSD to resort to the
6 provisions of NRS 288.190 (mediation). Had the parties not
7 successfully reached agreement for the 1995-1997 Collective
8 Bargaining Agreement, or had CCASA established that its inability
9 to access the provisions of NRS 288.190 had in fact worked a
10 detriment upon CCASA in the negotiations for the 1995-1997
11 Collective Bargaining Agreement, then the case for estoppel might
12 be compelling. However, CCASA has failed to meet its burden of
13 proof regarding the issue of estoppel.

14 In regards to the issue of bad faith, as noted, until the
15 impasse was declared concerning the 1995-1997 Collective
16 Bargaining Agreement, neither party sought legal advice
17 concerning the interpretation and application of NRS 288.217.
18 Despite the fact that the statute was enacted in 1991 and that
19 neither party had previously had the opportunity to consider its'
20 application to their relationship, at no time during the
21 negotiations for the 1993-1995 Collective Bargaining Agreement
22 did either side seek or request a legal opinion concerning the
23 same. Although the parties appeared to put some reliance upon
24 the arbitration provision of NRS 288.217 when impasse was
25 declared in 1993, the same was resolved without resorting to
26 arbitration. In 1995, having agreed again, (without seeking
27 legal advice), that NRS 288.217 applied, the parties proceeded to
28 negotiate their issues to impasse at which time CCSD informed

1 CCASA that upon legal advice, it was taking the position that NRS
2 288.217 did not apply to the relationship between the parties.s

3 In light of the Board's findings that CCSD was not estopped
4 to deny the applicability of NRS 288.217, and upon a review of
5 the documents submitted, the testimony of witnesses for both
6 parties, the fact that neither party had sought legal advice
7 regarding the interpretation of NRS 288.217, and the parties
8 reliance upon their own, respective "lay" interpretation of the
9 provision, the Board does not find CCSD's reliance upon legal
10 advice and refusing to submit the issues to arbitration in
11 accordance with NRS 288.217 to be in bad faith.

12 Allegations concerning unfair labor practices.

13 The Complainant, CCASA, as an additional cause of action
14 against the Respondent, CCSD, alleges that CCSD has both engaged
15 in a continuing patterns of conduct and has made various(
16 statements designed to interfere, intimidate or work a "chilling
17 effect" upon the Complainant during the period leading up to and
18 including negotiations for the 1995-1997 collective bargaining
19 agreement, all in violation of NRS 288.270.

20 As established through the testimony of Dr. Brian Cram,
21 Superintendent of Schools for the Clark County School District,
22 an opening meeting was held on August 8, 1995 at Cashman Field
23 involving all secondary administrators. During the meeting of
24 secondary administrators, the same composing of principals, vice-
25 principals, and deans, he made the following statements:

26 "Whatever you do, don't be the last in line"; and
27 "I used to be a negotiator; then I decided I didn't
28 want to be an assistant principal for the rest of my
life"e (

1 These statements constitute part of CCASA's claim against
2 CCSD as the Complainant interprets the statements as attempts to
3 intimidate CCASA members who serve as officers in the association
4 and/or on the negotiating team.

5 In addition to the above, Complainant, CCASA further alleges
6 that Dr. Cram engaged in prohibited conduct in violation of NRS
7 288.270 by contacting Western High School Principal, Lanny Lund
8 about budget information relevant to the 1995-1997 collective
9 bargaining agreement negotiations. As admitted by Dr. Cram, he
10 initiated the call to Mr. Lund knowing full well that he was not
11 on the negotiation team. Mr. Lund testified that he was
12 concerned about the call made by Dr. Cram as he was not on the
13 negotiating team and had no stake in the outcome as he was soon
14 to retire from teaching. Mr. Lund further testified that the
15 superintendent started off the conversation by making some casual
16 comments to him and then went on to state that the Board of
17 School Trustees was pretty mad at the administrative association
18 (CCASA)s Mr. Lund testified that Dr. Cram suggested that he, Mr.
19 Lund, might want to get a group of fellow principals together,
20 make a call to Mike Alastuey of the CCSD and make an appointment
21 to go out and review the budget with Mr. Alastuey because he (Mr.
22 Lund) would get a much different set of numbers from Mr. Alastuey
23 then what they were getting from CCASA's representative, Mr.
24 Chandler. Mr. Lund felt the request was improper as he was not
25 a member of CCASA nor a representative of the association. Upon
26 question, Mr. Lund felt that Dr. Cram might be trying to get him
27 to get some other principals together and maybe put some pressure
28 on the negotiating team to settle the contract.

1 In addition to the conduct of Dr. Cram regarding the
2 contacting of Mr. Lund, the Complainant alleges that CCSD,
3 through Dr. Goldman, also threatened to tie the 1995-1997
4 contract up in court, the same which Complainant alleges
5 constitutes a prohibited practice in violation of NRS 288.270 as
6 the statements act as a "chilling effect" or threat of reprisal
7 against CCASA members and as such, operate to interfere, restrain
8 or coerce such members in the exercise of their rights guaranteed
9 under NRS Chapter 288.

10 As established through testimony of the parties' witnesses,
11 several CCASA members felt threatened by the statements made by
12 Dr. Cram (one of the witnesses was a member of the negotiating
13 team). In contrast to what impact the statements might have had,
14 it was Dr. Cram's position that he made the statements in
15 friendship and in an attempt to provide friendly advice as a
16 coworker and that the statements were not intended to threaten or
17 coerce anyone.

18 Based upon the facts established at the hearing, the Board
19 is faced with the problem of impact versus intent. The Board has
20 no reason to doubt the testimony of CCASA's witnesses concerning
21 the impact of the statements. Similarly, nothing proffered by
22 the Complainant is sufficient to warrant a serious questioning of
23 Dr. Cram's credibility as a witness. His reputation speaks for
24 itself and absent sufficient proof, Dr. Cram's testimony
25 regarding his intent and the circumstances surrounding them is
26 compelling. Consequently, the Board is left with the decision as
27 to whether the words spoken and conduct engaged in by both Dr.
28 Cram and Dr. Goldman are sufficient to constitute a violation of

1 NRS 288.270. In doing so we must keep in mind the distinction
2 between speech and conduct, balancing the free speech rights of
3 both Dr. Cram and Dr. Goldman against the provisions of NRS
4 288.270.

5 As argued by counsel for CCSD, "the expression of any views
6 argument, or opinion shall not be evidence of an unfair labor
7 practice, so long as such expression contains no threat of
8 reprisal or force or promise of benefit". NLRB v. Gissel
9 Packaging Co., Inc., 395 U.S. 575, 619, 89 S.Ct. 1918, 1941-42
10 (1969). Consequently, in order to determine whether the
11 expression of Dr. Cram and Dr. Goldman contain a threat of
12 reprisal or force or promise of banefit we must look to the
13 circumstances of the statements made. Previously this Board has
14 held that in examining whether speech violates NRS 288.270, we
15 must use the "totality of circumstances" test and the "reasonably
16 foreseeable effect" approach to such problems. See Clark County
17 Classroom Teachers Association v. Carson City School District,
18 Case No. A1-045435, Item No. 237 (December 13, 1989), and Ormsby
19 County Teachers Association v. Carson City School District, Case
20 No. A1-045339, Item No. 114 (April 22, 1991).

21 Similarly, as set forth in International Union of Operating
22 Engineers v. County of Lyon, Case No. A1-045451, Item No. 240 at
23 4, this Board has recognized that the position of an employer may
24 be formidable in relations to the employees and any statements
25 made cannot be easily ignored by them. As stated in Ormsby, at
26 3:

27 The United States Supreme Court has expressly stated
28 that although an employer's intent or motive to
discriminate or to interfere with Union rights is a
necessary element of an unfair labor practice, specific

1 evidence of the employer's subjective intent is not
2 required when the employer's conduct inherently
encourages or discourages Union membership.

3 The governing statute NRS 288.270(1) states:

4 "It is a prohibited practice for a local
5 government employer or its designated representative
willfully to:

6 (a) interfere, restrain, or coerce any employee in the
exercise of any right guaranteed under this chapter.

7 (b)"

8 Taking into consideration both the free speech rights of Dr.
9 Cram and Dr. Goldman in conjunction with their positions as chief
10 administrators for the CCSD; the testimony of witnesses for both
11 CCASA and CCSD; and viewing the same in light of the totality of
12 the circumstances in which both the conduct and statements were
13 made, the Board finds that neither the statements nor conduct are
14 sufficient to constitute a violation of NRS 288.270. Despite
15 this conclusion, the Board finds that the statements, though
16 insufficient to constitute a violation of NRS 288.270, were
17 nonetheless highly improper.

18 CONCLUSION OF LAW

19 1. That the term "teacher" as it is stated in NRS
20 288.217(10) (b) (stated on page five of this document) applies to
21 CCASA members.

22 2. Accordingly, for the purpose of dealing with an
23 impasse, the terms and provisions of NRS 288.217(1) (stated on
24 page five of this document) applies to the CCASA/CCSD
25 relationship.

26 3. That statements made by CCSD administrative personnel
27 do not constitute a prohibited practice in violation of NRS
28 288.270.

DECISION AND ORDER

Upon decision rendered by the Board at its meeting on September 25, 1996, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. That NRS 288.217 applies to any and all negotiations between the CLARK COUNTY SCHOOL DISTRICT and the CLARK COUNTY ASSOCIATION OF SCHOOL ADMINISTRATORS and shall be binding upon the parties in all future collective bargaining negotiations;

2. That CLARK COUNTY SCHOOL DISTRICTS' failure to comply with the arbitration provision of NRS 288.217 did not constitute a bad faith, unfair labor practice;

3. That for the purposes of NRS 288.010 through NRS 288.280 inclusive, CCASA members fall within the definition of "teachers" as stated therein;

4. That the statements made and conduct engaged in by Dr. Cram and Dr. Goldman are insufficient to constitute an unfair labor practice in violation of NRS 288.270;

5. That despite the finding that the statements made and conduct engaged in by Dr. Cram and Dr. Goldman were insufficient to constitute a violation of NRS 288.270, the Board finds that the statements and conduct were highly improper and caution CCSD against making any similar statements or engaging in similar conduct in future collective bargaining negotiations or the resolutions of disputes related thereto;

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1 6. Attorney's fees and costs of suit are denied, both
2 parties to bear their own respective costs related hereto.

3 DATED this 24th day of October, 1996.

4 Local Government Employee-Management
5 Relations Board

6 By: *Christopher Voisin*
7 CHRISTOPHER VOISIN, Chairman

8 By: *Tamara E. Barengo*
9 TAMARA BARENGO, Vice-Chairman

10 By: *David Goldwater*
11 DAVID GOLDWATER, Board Member
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