

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

**CLARK COUNTY CLASSROOM
TEACHERS ASSOCIATION,**
Complainant,

vs.

**CLARK COUNTY SCHOOL DISTRICT;
BRIAN CRAM & EDWARD GOLDMAN,**
Respondents.

ITEM NO. 409-B

CASE NO. A1-045622

DECISION

For Complainant: Michael W. Dyer, Esq.
DYER, LAWRENCE, COONEY & PENROSE

For Respondents: C.W. Hoffman, Esq.

DISCUSSION

On March 18, 1998, the Clark County Classroom Teachers Association (hereinafter referred to as "CCCTA") filed a complaint against the Clark County School District (hereinafter referred to as the "District"). In its twelve (12) separate causes of action, CCCTA alleged that various bad faith and prohibited practices were committed against it by the District. CCCTA later withdrew two (2) of its causes of action which the Local Government Employee Management Relations Board ("Board") dismissed with prejudice.

On August 18, 1998, the District filed an Answer and Cross Complaint. The Cross Complaint alleged three (3) separate causes of action which included bad faith bargaining and interference with representation by the District.

To establish a violation under NRS chapter 288, the burden is on each respective complaining party to show by a preponderance of evidence that a violation has occurred. At the hearing on May 20, 1998, each party produced some evidence which supported their respective positions. However, neither party submitted a preponderance of evidence sufficient to show a violation of NRS Chapter 288 by the other party.

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FINDINGS OF FACT

1. Pursuant to NRS 288.260, CCCTA is recognized as the exclusive bargaining agent for the licensed non-administrative employees of the Clark County School District.

2. Respondent Brian Cram is the Superintendent of the District and is responsible for the implementation of all policies, procedures and practices of the Clark County Board of School Trustees. Respondent Edward Goldman is an Assistant Superintendent of the District and in his capacity as Assistant Superintendent is responsible for all policies, procedures and practices of the District's administrative operations and staff relations.

3. The District and CCCTA have, pursuant to NRS Chapter 288, engaged in collective bargaining since at least 1970. A series of collective bargaining agreements ("Agreement") have governed the working relationship of the parties during that time.

4. Pursuant to NRS Chapter 288, the parties have an obligation to deal with each other in good faith, but they do not have an obligation to agree. A preponderance of the evidence must be introduced by the complaining party to show that the opposing party acted in bad faith.

5. In August 1996, Robert H. Brunner, issued an Opinion and Award in an arbitration matter involving certain provisions of the Agreement relating to sick leave. The decision also addressed the District's request for an affidavit from the grievant and concluded that a provision which allowed the District to make "inquiries" did not authorize the use of affidavits when abuse of sick leave was suspected.

6. A subsequent ratified Agreement for the 1995-1997 school years changed the provisions governing what "inquiries" were permitted by the District when an abuse of sick leave was suspected. This change gave the District more discretion regarding what actions to take in these cases.

7. On October 28, 1996, Dr. Goldman made a request that a teacher, who had been on sick leave, provide information and an affidavit relating to his illness and whereabouts during that leave.

8. Twice in November 1997, and again in December of 1997, representatives from CCCTA met with Dr. Goldman to discuss certain unresolved grievances. These meetings were somewhat contentious and the parties expressed their disagreements regarding some of the issues. Letters were

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1 sent between the parties which stated the understandings of the parties, but these letters did not
2 contain the actual positions of the parties as to all the issues.

3 9. An arbitration proceeding scheduled to address a teacher dismissal was delayed by the
4 unavailability of certain information that had been requested by CCCTA. Comments regarding the
5 issue made by Dr. Goldman were later used as a basis for a newspaper editorial in the Review Journal.

6 10. On December 12, 1996, Mr. J. J. Smith, a CCCTA employee sent a letter to Carol
7 Threats, a District principal, regarding comments made by Ms. Threats to a CCCTA member.

8 11. Dr. Goldman later called Mr. Smith and expressed his displeasure with the letter.

9 12. On January 13, 1997, Kevin Nielsen, a CCCTA employee met with a CCCTA member
10 and District employees at Decker Elementary School. Thereafter, Mr. Nielsen and the CCCTA
11 member met to discuss certain issues.

12 13. On January 16, 1997, Dr. Goldman contacted Mr. Nielsen and discussed the meeting Mr.
13 Nielsen had with the member on January, 13, 1997.

14 14. On December 16, 1996, Dr. Goldman called John Watkins, a CCCTA employee, and
15 inquired about a letter sent by Mr. Watkins to Susan Brager, a member of the Clark County Board
16 of Trustees. The letter was a copy of a letter sent by Mr. Watkins to Allen Coles, a District principal,
17 and addressed an incident involving certain comments made to a teacher. Dr. Goldman called Mr.
18 Watkins and advised him that he did not mind if other administrators were sent a copy of the letter,
19 but that Mr. Watkins should not "get the Board involved."

20 15. Pursuant to a grievance filed by CCCTA, information requests were propounded on the
21 District. These requests asked that certain information relating to students be released to CCCTA.
22 The District relied upon its interpretation of the Family Educational Rights and Privacy Act (FERPA)
23 to deny the request for information. The Supreme Court's decision as to the validity of this refusal
24 is still pending.

25 16. At the beginning of the 1994-1995 school year, the District initiated block schedules at
26 Chaparral High School in Las Vegas. A block schedule takes the normal six-period school day,
27 doubles the length of each period and extends the six period over two days. During the 1996-97
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1 school year, the District implemented block scheduling at five more schools resulting in a total of
2 eight schools on this program.

3 17. During a traditional school day, each teacher is permitted one preparation period pursuant
4 to the Agreement, Block scheduling resulted in less teacher preparation time at eight different
5 schools. CCCTA thereafter filed a grievance against each of the principals of the affected schools.

6 18. On May 8, 1998, the matter of block scheduling was arbitrated. The arbitrator denied
7 all eight grievances on the grounds that CCCTA had missed the required time lines.

8 19. District policy requires that teachers returning from a leave of absence submit a
9 fingerprint sample.

10 20. Chris Giunchigliani is a teacher employed by the District. Ms. Giunchigliani is also an
11 elected member of the Nevada Assembly.

12 21. Prior to the 1995-96 school year, Ms. Giunchigliani was assigned to a nine-month school.
13 Beginning in 1995, Mr. Giunchigliani accepted work in a year-round school.

14 22. Prior to the start of the 1997 legislative session, Ms. Giunchigliani applied for political
15 leave pursuant to District Regulation 4357. Ms. Giunchigliani was told that she would need to
16 request leave for the remainder of the school year so as not to interrupt the educational program of
17 the school.

18 23. During her absence Mr. Giunchigliani's position was filled for the remainder of the 1995-
19 96 school year, precluding her return when the legislative session ended in August.

20 24. In 1996, the Board remanded Clark County Teachers Association v. Clark County School
21 District, Item No. 398-A, Case No. A1-045607, for resolution in accordance with grievance or
22 arbitration procedures agreed to by the parties in their Agreement. The parties have thus far failed
23 to pursue the remedies prescribed by the Board's Decision.

24 25. Barry Gunderson is the principal of Las Vegas High School and is employed by the
25 District.

26 26. Patricia Krajcech is a teacher employed at Las Vegas High School. Ms. Krajcech is the
27 secretary for the Teacher Advisory Council (TAC), and she is also a member of the CCCTA.

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1 27. On or about February 23, 1996, Ms. Krajcech discovered that an amended set of TAC
2 minutes had been provided to Mr. Gunderson. Based on her belief that certain individuals were
3 responsible for providing the minutes to Mr. Gunderson, Ms. Krajcech contacted the individuals and
4 asked to meet with them. Ms. Krajcech later initiated a complaint with CCCTA against one of the
5 individuals she believed was involved in releasing the minutes.

6 28. Peggy McElrath, a former District employee, filed a grievance regarding sick leave
7 payments. The dispute could not be resolved and Ms. McElrath wanted to pursue an arbitrated
8 settlement.

9 29. The Agreement requires that the cost of any arbitration be split equally between the
10 District and CCCTA.

11 30. CCCTA informed Ms. McElrath and the District that they would not be responsible for
12 half the cost of any future arbitration regarding the disputed issue.

13 31. On April 17, 1997, Mr. Steven Confer, an employee of CCCTA, met with CCCTA
14 members on District property. The Agreement provides that CCCTA visits to school facilities be
15 requested in advance of the visit.

16 32. CCCTA withdrew its second and fifth causes of action and the Board dismissed these
17 actions with prejudice.

18 CONCLUSIONS OF LAW

19 1. The local Government Employee-Relations Board has jurisdiction over the parties and the
20 subject matter of CCCTA's Complaint and the District's Cross-Complaint pursuant to the provision
21 of NRS Chapter 288.

22 2. The District is a local government employer as defined by NRS 288.060.

23 3. CCCTA is an employee organization as defined by NRS 288.040.

24 4. In its Third Cause of Action, CCCTA argues that the District is not permitted to require
25 affidavits from teachers who are suspected of abusing the sick leave provisions of the Agreement.
26 The primary issue is whether the word "inquiries" in the Agreement would permit the District to
27 propound affidavits to teachers suspected of sick leave abuse. CCCTA alleges that this conduct also
28 constitutes bad faith bargaining.

1 5. The allegations relating to this issue suggest, at most, that the District violated a
2 contractual provision relating to sick leave abuse by requesting an affidavit. Insufficient evidence was
3 offered by CCCTA to establish either a prohibited practice or bad faith bargaining.

4 6. In its Fourth Cause of Action, CCCTA contends that after agreements were reached
5 between itself and the District regarding a number of grievance issues, the District reversed its
6 positions because CCCTA refused to concede its position on one issue involving sick leave.

7 7. The facts established that the parties discussed a number of disputed issues, but that there
8 were no final agreements as to all particular issues. Good faith bargaining does not require that the
9 parties agree to any position, merely that they do not obstruct agreements in bad faith. Since there
10 was no evidence of anything other than disagreements among the parties, insufficient evidence was
11 introduced showing bad faith bargaining.

12 8. CCCTA's Sixth Cause of Action maintained that the District attempted to cast CCCTA
13 in an unfavorable light by releasing untrue information about it to the Review Journal.

14 9. CCCTA did not provide sufficient information relating to what information was actually
15 released to the Review Journal by Dr. Goldman or as to what Dr. Goldman's motives were in
16 releasing the information. CCCTA therefore did not meet their burden to establish that a prohibited
17 practice was committed by the District.

18 10. CCCTA's Seventh Cause of Action alleges that on three (3) separate occasions a District
19 representative, Dr. Goldman, contacted CCCTA members and thereby interfered with CCCTA's
20 representation of these members. The first allegation focused on discussions Mr. Goldman had with
21 Mr. Nielsen following an on campus visit between Mr. Nielsen and a CCCTA member. the second
22 allegation related to a conversation between Mr. Watkins and Dr. Goldman regarding a letter sent
23 by Mr. Watkins to a Board of Trustee Member. The third allegation addressed a conversation
24 between Dr. Goldman and a CCCTA employee, Mr. Smith.

25 11. In each of the conversations referred to in the preceding paragraph, there was evidence
26 offered that disagreements arose during conversations between the parties. However, there was
27 insufficient evidence offered to establish that the actions of Dr. Goldman constituted prohibited
28 interference with the CCCTA's representation of its member.

1 12. In its Eighth Cause of Action, CCCTA maintains that District refusals to provide
2 requested information regarding the grievance and arbitration proceedings of a teacher constitutes
3 bad faith.

4 13. While it is true that CCCTA is entitled to certain information from the District regarding
5 grieved complaints, it is also true that the District has an obligation under state and federal statutes
6 to protect certain privacy interests of its students. The District relied upon FERPA in refusing to
7 release the information, and its refusal to do so was not a bad faith attempt to interfere with
8 CCCTA's pursuit of its cases.

9 14. CCCTA's Ninth Cause of Action focused on a grievance proceeding related to a new
10 scheduling system initiated by the District which reduced the amount of preparation time allocated
11 to the District's teachers. After failing to resolve the matter informally, the parties participated in
12 preliminary grievance proceedings in October and November of 1996. This process was unsuccessful
13 and on May 8, 1998, the matter was arbitrated. On July 9, 1998, the arbitrator's decision found that
14 the grievances had not been filed in a timely manner.

15 15. The facts suggest that while there was a significant delay from the date when the District
16 initiated the block scheduling system to the date of the arbitrated decision, this delay was attributable
17 to both parties. CCCTA admits to having agreed to verbally waiving compliance with the
18 Agreement's provisions for the 1994-95 and 1995-96 school year. The District's position also
19 contributed to the delay. However, there is insufficient evidence to establish that the District took
20 this position in bad faith.

21 16. CCCTA's Tenth Cause of Action alleges two separate instances of bad faith on the part
22 of the District regarding its stance on fingerprinting and leave time. The Complaint alleges that Ms.
23 Giunchigliani was forced to submit to fingerprinting in an effort to intimidate her. Ms. Giunchigliani
24 was told that if she wished to take a leave of absence during the 1997 legislative session, she would
25 have to request leave for the remainder of that school year

26 17. The facts are clear that District policy does require teachers returning from a leave of
27 absence to submit to a new set of fingerprints even if previous samples are on file. While this may
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1 seem redundant, the District rules have been in place for some time and merely requiring Ms.
2 Giunchigliani to comply with those rules is not a prohibited practice.

3 18. Although the requirement that Ms. Giunchigliani request leave for the remainder of the
4 school year placed her in a difficult position of choosing to represent her constituents and maintaining
5 her job, the District also had interests to protect. The needs of the students, teachers and principals
6 of Ms. Giunchigliani school were important factors that the District considered when making its leave
7 decision and its reliance on them precludes any finding of bad faith here.

8 19. CCCTA's Eleventh Cause of Action relies upon the previous causes to establish a
9 pattern of "anti-union" animus. However, there has been insufficient evidence submitted by CCCTA
10 as to each claim and therefore no such pattern can be found to exist.

11 20. In Clark County Classroom Teachers Association v. Clark County School District, Item
12 No. 398-A, Case No. A1-045607 (1996), the Board remanded the case to the parties for either
13 grievance or arbitration proceedings. No further proceedings have taken place.

14 21. The Board has previously ruled that this matter be handled through grievance or
15 arbitration proceedings, and until such time as it is resolved at that level, the Board will take no
16 further action in this matter.

17 22. The District's First Cross-claim alleges that a CCCTA representative, Ms. Krajcech,
18 became "enraged" when she discovered an amended set of minutes had been passed on to a District
19 principal, Barry Gunderson. Mrs. Krajcech allegedly then sent a "threatening" letter to several
20 teachers who then complained to Mr. Gunderson.

21 23. The District's First Cross-claim was filed in an untimely manner, as the incident as
22 allegedly occurred more than six (6) months prior to the filing of the District's Cross Complaint.

23 24. The District's Second Cross-claim contends that the CCCTA has unilaterally expanded
24 the Agreement by allowing teachers to arbitrate grievances other than suspensions and dismissals
25 without CCCTA participation. this allegation arose out of a case involving a teacher who intended
26 to proceed to arbitrate a claim without CCCTA participation.

27 25. The District Second Cross-claim does not state a claim for relief under NRS Chapter 288.
28 Rather, at most, it alleges a violation of the Agreement, a contractual matter.

26. The District 's Third Cross Claim maintains that a CCCTA member's visit to a school without proper notification to the school's principal constituted bad faith bargaining.

27. The District's Third Cross-claim does not state a claim for relief under NRS Chapter 288. Rather, at most, it alleges a violation of the Agreement, a contractual matter.

DECISION AND ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, for the reasons set forth above, that the March 19, 1998 Complaint is dismissed, each party to bear its own costs and attorney fees.

DATED this 10th day of September, 1998c

**LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD**

By David Goldwater
DAVID GOLDWATER, Chairman

By Karen McKay
KAREN MCKAY, Vice-Chairman

By *James E. Wilkerson, Sr.*
JAMES E. WILKERSON, SR. Board Member