

1 STATE OF NEVADA
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD
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5 PEGGY McELRATH,
6 Complainant,
7 vs.
8 CLARK COUNTY SCHOOL DISTRICT,
9 Respondent.

ITEM NO. 423
CASE NO. A1-045634
ORDER OF DISMISSAL

10 For Complainant: Richard Segerblom, Esq.

11 For Respondent: L. Steven Demaree, Esq.
12

13 Pursuant to the Board's deliberations at its meeting of January 6, 1998, noticed in accordance
14 with Nevada's Open Meeting Law, regarding the Motion to Dismiss filed by respondent Clark County
15 School District ("District"), the Board decides and rules as follows:

16 On October 23, 1997, complainant Peggy McElrath ("McElrath") filed her Complaint with
17 the Board. In her Complaint, McElrath challenges the District's (1) retroactive denial of her
18 utilization of paid sick leave; and (2) refusal to arbitrate her February 20, 1997 grievance. The
19 District is entitled to the dismissal of both causes of action.

20 The District notified McElrath of its decision to deny her sick leave use on December 13,
21 1996. Motion, Exhibit H. The July 1997 credit was merely the result of that decision. The fact that
22 McElrath filed a grievance on February 20, 1997, challenging the District's decision establishes that
23 McElrath was aware she could contest it at that time. Complaint, Exhibit "2." Thus she had until
24 June 13, 1997, six months after she learned of the alleged prohibited practice, to file a complaint with
25 the Board challenging the District's decision. See NRS 288.110(4). Since McElrath did not file her
26 Complaint until October 23, 1997, her first cause of action is untimely.

27 Likewise, McElrath's second cause of action is untimely because her Complaint was not filed
28 within six months of receipt of the District's March 19, 1997 letter refusing to arbitrate her grievance.

1 Motion, Exhibit L. That letter expressed the District's policy of refusing to proceed with an
2 arbitration in which the individual employee, and not the Clark County Classroom Teachers
3 Association, will arbitrate the grievance. The Board will not rule on the lawfulness of the District's
4 policy in this action because of McElrath's Complaint thereto is untimely under NRS 288.110(4).

5 Finally, even if McElrath's Complaint was filed within six months of receipt of the March 19,
6 1997 letter, her second cause of action still could not proceed. At the time McElrath filed her
7 February 20, 1997 grievance, she had retired from the District. Thus, McElrath was not a local
8 government employee at that time or at the time of the March 19, 1997 refusal to arbitrate. Retirees
9 are not "employees" within the meaning of NRS Chapter 288. See NRS 288.050: Allied Chemical
10 & Alkali Workers v. Pittsburgh Plate & Glass Co., 404 U.S. 157, 172 (1971).

11 IT IS HEREBY ORDERED, ADJUDGED AND DECREED, for the reason set forth above,
12 that the District's Motion to Dismiss is granted and McElrath's Complaint is dismissed with
13 prejudice.

14 DATED this 12 day of February 1998.

15 LOCAL GOVERNMENT EMPLOYEE-
16 GOVERNMENT RELATIONS BOARD

17 By David Goldwater
18 DAVID GOLDWATER, Chairman

19 By Karen L. McKay
20 KAREN L. MCKAY, Vice-Chairperson

21 By James E. Wilkerson, Sr.
22 JAMES E. WILKERSON, SR., Member
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