

1 STATE OF NEVADA
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD
4

5 NEVADA SERVICE EMPLOYEES UNION,
6 SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 1107, AFL-CIO,

7 Complainant,

8 vs.

9 CLARK COUNTY,

10 Respondent.

ITEM NO. 540B

CASE NO. A1-045759

DECISION

11 For Complainant: Vicky Hedderman, President

12 For Respondent: Yolanda T. Givens, Esq.
13

14 STATEMENT OF THE CASE

15 On February 11, 2003, Complainant SERVICE EMPLOYEES INTERNATIONAL
16 UNION, LOCAL 1107, AFL-CIO ("SEIU") filed a Complaint with the LOCAL
17 GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD ("Board") alleging
18 that Respondent CLARK COUNTY violated NRS 288.270(1)(a) and (c) by reassigning
19 courtroom clerk/SEIU steward Connie Kalski. Clark County subsequently filed motions for
20 deferral, which the Board denied, and on December 29, 2003, Clark County filed its Answer.
21 The parties then filed pre-hearing statements, and the Board scheduled SEIU's Complaint for
22 hearing.

23 On November 3 and 4, 2004, the Board conducted the hearing, noticed in accordance
24 with Nevada's Open Meeting Laws. At the conclusion of the hearing, the Board ordered the
25 parties to file post-hearing briefs, which the parties filed on December 3, 2004. On January 5,
26 2005, the Board conducted deliberations, noticed in accordance with Nevada's Open Meeting
27 Laws. On February 11, 2005, and prior to entry of a final decision, SEIU filed a request for
28 dismissal without prejudice. On February 22, 2005, Clark County filed an opposition to the

1 request for dismissal and a counter-motion for attorney's fees and costs. On March 18, 2005,
2 SEIU filed a request for withdrawal of the dismissal, stating that its request for dismissal had
3 been mistakenly filed. Because we grant SEIU's withdrawal request, issues relating to its request
4 for dismissal are moot, and this matter is now ripe for final decision.

5 Having deliberated and considered the testimony of the witnesses, as well as their
6 physical and verbal reactions while testifying, and having reviewed all evidence in the record
7 and the parties' post-hearing briefs, we find and conclude that Clark County's reassignment of
8 Kalski did not violate NRS 288.270(1)(a) or (c).

9 DISCUSSION

10 Factual Background

11 The evidence presented during the hearing demonstrates that SEIU and Clark County
12 have an ongoing collective bargaining relationship and are parties to a collective bargaining
13 agreement ("CBA"), which has been in effect since December 18, 1998. Since 1999, Shirley
14 Parraguirre has served as the elected Clark County Clerk. There are approximately 270 positions
15 in the Clerk's Office, including nearly 90 courtroom-clerk positions. Those positions are
16 assigned to one of two primary divisions, either the Civil-Criminal Division, which is located in
17 downtown Las Vegas, or the Family Division, which is located at Pecos and Bonanza Roads in
18 Las Vegas. Parraguirre's personal office space is located within the Civil-Criminal Division.

19 At the time of the hearing in this matter, Connie Kalski had been employed by the Clark
20 County Clerk's Office as a courtroom clerk for approximately six and one-half years. After
21 completing a probationary period, she joined SEIU. During the time period relevant here, Kalski
22 served SEIU's members as a steward, a bargaining-team member, and a member of SEIU's
23 Committee on Political Action. During Kalski's tenure with the Clerk's Office, she was assigned
24 to the Civil-Criminal Division as a relief courtroom clerk, then a chambers courtroom clerk, then
25 a relief courtroom clerk again until Parraguirre approved her request for assignment to the
26 chambers of District Court Judge Donald Mosley. By all accounts, Kalski has always performed
27 extremely well as a courtroom clerk and was a valued member of Mosley's chambers.
28

1 Nonetheless, on January 15, 2003, after Kalski had been assigned to Mosley's chambers for two
2 years, Parraguirre notified Kalski that she would be reassigned to the Family Division.

3 Analysis

4 SEIU claims that Clark County's reassignment of Kalski was motivated by hostility
5 toward SEIU and/or discriminatory animus based on Kalski's protected activities as a SEIU
6 steward or on behalf of SEIU members. As the Complainant, SEIU has the burden of
7 establishing by a preponderance of the evidence that Kalski's protected conduct was a substantial
8 or motivating factor in the City's decision to reassign her. Thereafter the burden shifts to Clark
9 County to prove by a preponderance of the evidence that it would have reached the same
10 decision even in absence of the protected conduct. Teamsters, Chauffeurs, Warehousemen &
11 Helpers, and Professional Clerical, Public and Misc. Employees, Local Union No. 533 v.
12 Humboldt Gen. Hosp., Item No. 246, EMRB Case No's. A1-045459, A1-045460, at 5 (1990).
13 See also NLRB v. Interstate Builders, Inc., 351 F.3d 1020, 1026-27 (10th Cir. 2003); NLRB v.
14 Transportation Management Corp., 462 U.S. 393, 398-404, 103 S. Ct. 2469, 2473-75 (1983),
15 modified on other grounds by Director, Office of Workers' Comp. Programs v. Greenwich
16 Collieries, 512 U.S. 267, 114 S. Ct. 2251 (1994); see also Wright Line, 251 NLRB 1083, 1089
17 (1980).

18 SEIU filed its Complaint in this matter on February 11, 2003. Notice of Kalski's
19 reassignment was given to her on January 15, 2003. Thus, SEIU's claims related to the
20 reassignment are timely. See NRS 288.110(4) ("The Board may not consider any complaint or
21 appeal filed more than 6 months after the occurrence which is the subject of the complaint or
22 appeal."). We will only consider evidence of any conduct occurring before the six-month period,
23 i.e., before August 11, 2002, as background evidence to evaluate subsequent conduct that is
24 within the six-month statute of limitations period. See Fraley v. City of Henderson and
25 Henderson Police Officer's Ass'n, Item No. 547, EMRB Case No. A1-045756, at 23 (2004); see
26 also Local Lodge No. 1424 v. NLRB, 362 U.S. 411, 416-17, 80 S. Ct. 822, 826-27 (1960)
27 (recognizing same rule applies in proceedings before NLRB); News Printing Co., Inc., 116
28 NLRB 210, 212, 1956 WL 13970 (1956) (same). "[W]hile evidence of events occurring more

1 than six months before the filing of a charge may be used to 'shed light' upon events taking place
2 within the six-month period, the evidence of a violation drawn from within that period must be
3 reasonably substantial in its own right." NLRB v. MacMillan Ring-Free Oil Co., Inc., 394 F.2d
4 26, 33 (9th Cir. 1968). We now turn to discuss the evidence presented by the parties at the
5 hearing on this matter.

6 **Evidence pertaining directly to the reassignment decision**

7 On January 15, 2003, Parraguirre informed Kalski by memorandum that she was to be
8 reassigned to the Family Division. Parraguirre informed Kalski that the reasons for the
9 reassignment were: (1) Kalski's perception of hostility from management and various coworkers
10 at the Civil-Criminal Division; and (2) the Family Division's need for additional courtroom clerk
11 support.

12 According to Parraguirre's testimony, prior to the reassignment decision, she had been
13 informed of a confrontation between Noretta Caldwell, a Clerk's Office supervisor, and Kalski,
14 and of Kalski's claim that she was in a hostile work environment. During a management retreat,
15 Parraguirre made the decision to reassign Kalski mainly because of Kalski's repeated allegations
16 of a hostile work environment and Parraguirre's concerns that some of Kalski's peers also felt
17 that there was hostility in the workplace due to the way that Kalski handled situations. Also, the
18 Family Division needed additional courtroom clerk support because two of the clerks assigned to
19 that division were on leave pursuant to the Family and Medical Leave Act. When Parraguirre
20 reassigned Kalski, there was not an official "vacancy" at the Family Division, as that term is
21 defined by Clark County Policy. Nevertheless, in Clark County Policy and the CBA, Clark
22 County reserved the right to make non-disciplinary reassignments to meet its operational needs.
23 Shortly after Kalski's reassignment, another courtroom clerk was having problems with the
24 judges in the Family Division, so Parraguirre also reassigned that clerk to the Civil-Criminal
25 Division. Parraguirre believed that because Kalski had always been an excellent clerk, she
26 would make an easy transition into the Family Division.

27 At the time of Kalski's reassignment, Parraguirre had been working on a plan to reduce,
28 from two per court, the number of courtroom clerks in all court departments, by replacing them

1 with legal assistants. In the Civil-Criminal Division, only two departments still have two clerks.
2 The Family Division is currently operating at about one and one-half courtroom clerks per court.

3 Vicky Hedderman, who has been President of SEIU Local 1107 for almost seven years,
4 testified that she believes that Parraguirre reassigned Kalski because Parraguirre was very angry
5 that Kalski was a good union steward, who challenged Parraguirre on CBA violations, : 1
6 because Parraguirre did not want "to look at [Kalski] on a daily basis." The evidence d es
7 demonstrate that the physical layout of the Civil-Criminal Division put Kalski in the same area
8 as Parraguirre on a daily basis; however, the Family Division is approximately a twenty-minute
9 drive from Parraguirre's personal office.

10 District Court Judge Donald Mosley testified that Kalski worked for him for
11 approximately two years before the reassignment. He never had a better clerk, and Kalski
12 worked with his other staff exceptionally well. When Parraguirre first indicated to him that
13 Kalski would be reassigned, Parraguirre stated that she wanted to reduce his number of cl ks
14 from two to one and that he would have a backup clerk, if necessary. Mosley needed two clerks,
15 however, because he has the busiest courtroom in Nevada. Mosley protested Parraguirre's
16 decision, and then Parraguirre, "kind of came clean" and stated, "I just can't have her working in
17 the office up there because it is disruptive. She's involved in union activities." Then Parraguirre
18 said the issue was basically a "personality thing." After this meeting, Parraguirre sent to Mosley
19 an email dated January 15, 2003, stating, in part:

20 Judge, thank you for taking the time to meeting with me concerning our
21 reassignment of one of your courtroom clerks to a position in Family Court. My
22 purpose in asking to see you was to give you a courtesy notification in advance
23 that we have deemed it necessary to reassign one of your courtroom clerks,
24 Connie Kalski. I did ask that our conversation be held in confidence and that the
25 matter not be discussed with the clerk until such time as we had notified her of the
26 reassignment. I explained to you the most recent allegation of hostility which
27 Connie perceives management and coworkers in this office have against her,
28 coupled with the fact that we are two courtroom clerks short in Family Court due
to medical conditions, and those are the business needs which are being addressed
by this reassignment.

As requested by you, we waited to do any formal notification of this reassignment
until you could give it some thought. However, I feel that it is necessary that this
reassignment be done right away and it will be effective as of Tuesday, January
21st. By our not acting on this immediately, it has already come to my attention
that the union has become somewhat involved in this issue already which is what
I wanted to prevent. . . .

1 Mosley characterized the email as Parraguirre's attempt to put her spin on her earlier
2 conversation with him. Mosley did not recall Parraguirre telling him, when they met, about any
3 hostility between Kalski and her coworkers. Also, it was obvious to Mosley that there had been
4 dissension between Kalski and Parraguirre, and Mosley could not see any apparent reason, apart
5 from vindictiveness, for the reassignment. In response to Parraguirre's email, Mosley ordered
6 Parraguirre to "cease any further attempt" to reduce the number of clerks in his court until further
7 discussion could be had by the judges of the district. When the matter went before these judges,
8 they determined that they should not preclude an elected official like Parraguirre from adjusting
9 her personnel. Subsequent to the reassignment of Kalski, but within a short amount of time,
10 Mosley's chambers was given an additional clerk and Mosley currently has two clerks.

11 Parraguirre admits that Mosley was very upset and objected to the reassignment.
12 However, she claims that she did tell him in their meeting that Kalski was having problems with
13 her peers and with a supervisor. She claims that she never would have told him that her decision
14 was based on any union activity, but she might have mentioned that Kalski was a union steward
15 and that some of her peers were not "happy with the way she might be handling some things."
16 Parraguirre also testified that her reference in the January 15, 2003 email to Mosley regarding the
17 union's knowledge of the reassignment had only to do with her desire to inform Kalski of the
18 reassignment before she heard it through other channels. Parraguirre did not want to prevent
19 SEIU from knowing of the reassignment, but she wanted to prevent SEIU from accusing Clark
20 County of incorrectly handling the matter by not telling Kalski about the reassignment first.

21 Kalski complains that she had to be retrained for the Family Court, starting over once
22 again like a "new employee." Kalski also claims that the reassignment affected her performance
23 as a steward because it is difficult for her to get downtown, if she is needed there. Additionally,
24 there is no longer a steward assigned to the Civil-Criminal Division, and SEIU membership has
25 declined. Judge Mosley testified that the Family Division is considered "Siberia," and people do
26 not want to go there. However, other evidence shows that employees in need of help can still
27 contact Kalski, and she does not claim to have been denied SEIU-related leave requests since the
28 reassignment. Clerk's Office Family Division Administrative Services Manager Louis

1 Kozlowski testified that there is no overwhelming or significant viewpoint that one type of clerk,
2 i.e., Civil-Criminal Division or Family Division clerk, is of lower status than the other. The
3 evidence also shows that Kalski's reassignment did not result in any probation or qualifying
4 period, diminution in salary or benefits, or change in classification or hours of work.

5 Further evidence pertaining to Parronirre's stated reasons for the reassignment

6 Conflicts between Kalski and her coworkers

7 The evidence generally shows that Kalski consistently (and somewhat uniquely, as
8 compared with other SEIU stewards) provided strong advocacy on behalf of SEIU members and
9 that her stewardship was greatly valued by SEIU officers. Both parties presented evidence
10 showing that, while assigned to the Civil-Criminal Division, Kalski brought numerous
11 complaints to Clark County regarding incidents between coworkers or between Kalski and
12 coworkers. For instance, SEIU showed that Kalski had complained to Lynda Foresta, a
13 supervisor of courtroom clerks, about a July 24, 2001 email that Foresta sent to all courtroom
14 clerks. Kalski testified that other clerks complained to her that this email inappropriately blamed
15 all clerks for certain clerks' failures to respond to telephone messages. On or about August
16 2001, Kalski sent to Foresta a memorandum on SEIU letterhead, lodging a complaint on behalf
17 of the clerks and requesting a voice-mail system. Kalski testified that a co-clerk, Penny Wis
18 came to Kalski the next day with the memorandum in hand, yelling at Kalski and so angry that
19 she was spitting. Wisner complained that Kalski had no right to speak for her. Kalski admitted
20 that several clerks disagreed with her response to Foresta's email. Kalski complained to Clerk's
21 Office Management Analyst Edward May about Wisner's confrontation of her, and May
22 indicated that he would investigate.

23 May's investigative record was also admitted into evidence. This record, along with
24 May's credible testimony shows that on August 6, 2001, Kalski wrote to him, stating, "I have
25 fully decided to file anything, so I would ask that you not brief her (Lynda [Foresta]) at this
26 point." On August 7, 2001, May received a letter from Kalski stating that due to the Wisner
27 confrontation, Kalski was becoming increasingly concerned with her own safety and physical
28 wellbeing. According to May, he met with Kalski on that same date, and she provided the names

1 of witnesses to the earlier alleged confrontation. During May's investigation, he interviewed
2 each of these witnesses, and he determined that he could not substantiate any incident of
3 workplace violence. Specifically, none of the witnesses observed any use of physical force or
4 harm and all of the witnesses indicated that they did not perceive Wisner's actions as any type of
5 act, threat, intimidation, or effort to cause fear or harm. May shared his findings with Kalski and
6 SEIU Field Representative Bill Freeman on August 10, 2001. Kalski expressed her
7 dissatisfaction with May's findings, but when May asked if she wanted the matter investigated or
8 pursued further, she "promptly declined."

9 Prior to the above-described August 10, 2001 meeting, May had also received new
10 complaints from Kalski indicating that she was being abused by coworkers Wisner, Carol Green
11 and Billie Jo Craig and that another coworker, Becky Foster, was rude to her and treated her
12 poorly. At the August 10 meeting, Kalski also declined to have these matters investigated.
13 Although Kalski disputes whether she declined further investigation into these matters, she
14 admitted that she did not follow the procedures for reporting workplace violence that are set
15 forth in Clark County Policy.

16 In another instance, Kalski, acting as a steward, complained to Lynda Foresta that a co-
17 clerk, Carol Green, had been insubordinate when declining to cover a courtroom at the request of
18 her supervisor, Denise Trujillo. Foresta responded on November 12, 2002, stating that the
19 allegation was unsubstantiated and that Trujillo had only been asking for volunteers. On yet
20 another occasion, Kalski lodged a complaint on behalf of co-clerk Carole D'Aloia, related to a
21 dispute between D'Aloia and Carol Green. As a result of the investigation into this complaint,
22 was determined that both parties were at fault for displaying unprofessional conduct. Kalski,
23 however, stated that she did not want to see the matter drop and that she wanted progressive
24 discipline meted out to Green. The testimony of Denise Trujillo, along with her notes dated
25 November 15, 2002, shows that Kalski met with Trujillo, insisted that Trujillo not let the
26 Green/D'Aloia incident drop, and accused Trujillo of lying about the above-noted alleged
27 insubordination of Green. During this meeting, Kalski threatened to file a grievance against
28

1 Trujillo, Trujillo's co-supervisor, Cindy Horton, Ed May, Foresta and Parraguirre for promoting
2 a hostile work environment. Trujillo reported this threat to May and Foresta.

3 Trujillo was very credible as a witness and by her testimony shed helpful light on the
4 dynamics within the Clerk's Office. She had been Kalski's supervisor while Kalski was assigned
5 to both the Civil-Criminal and Family Divisions. Trujillo had no conflicts with Kalski as a union
6 steward but was aware that other employees did. Trujillo was sympathetic toward Kalski, and
7 did not think the conflicts were necessarily Kalski's fault, though Kalski takes a "strong position"
8 for whomever she is defending. Trujillo testified that there were many conflicts among
9 employees in the Clerk's Office, and most of these stemmed from "one person," but not Kalski.
10 Trujillo testified that Kalski could not have done anything right in the eyes of Carol Green,
11 Penny Wisner, Billie Jo Craig and Becky Foster. Trujillo also testified that since Kalski left the
12 Civil-Criminal Division, the workplace environment there is "much, much better."

13 Kalski also testified regarding the incident involving Noretta Caldwell, upon which
14 Parraguirre also relied for the reassignment decision here. Kalski explained that she was
15 instructed through Clerk's Office meeting minutes that SEIU flyers were to be placed only in the
16 employees' break room. Therefore, on August 23, 2002, Kalski requested that Denise Trujillo
17 instruct the staff not to throw away SEIU flyers left in the break room. Kalski received no
18 response to this request. However, presumably, at some point, this policy was changed because
19 the evidence also showed that on December 27, 2002, Kalski had been distributing SEIU
20 bulletins, and some of these she placed on the employees' side of the front legal counters. As a
21 result, Supervisor Noretta Caldwell confronted Kalski, and according to Kalski, yelled at her and
22 said that she could not place bulletins on the public counter.

23 Both Caldwell and Kalski complained to May. Caldwell denied yelling at Kalski, and
24 claimed that Kalski yelled at her. May determined that Caldwell misunderstood the new
25 literature policy but that her judgment as to whether SEIU literature could be placed on the
26 public side of the counter was accurate. According to May's report, on December 27, 2002, he
27 met with Kalski, and Chief SEIU Steward Pat Black regarding this incident. Kalski and Black
28 informed him that Kalski was being unfairly targeted by certain management, supervisors and

1 staff. When leaving this meeting, Kalski and Black told May that they would be documenting
2 any future incidents of hostile treatment toward Kalski, and Kalski threatened to file a complaint
3 with this Board. May also testified that the problems between Kalski and her coworkers have
4 ceased since her move. He also has not seen her bring as many issues forth as a union steward,
5 even though he works at the Family Division two days a week and is still the primary point of
6 contact for SEIU.

7 Clark County also presented evidence of the opinion of Billie Jo Craig, Kalski's coworker
8 and a former SEIU steward, that Kalski was an unapproachable bully, who is argumentative and
9 vindictive toward fellow employees and Parraguirre, and does not abide by office rules.
10 However, SEIU President Hedderman described Craig as having been an inactive steward, and
11 Hedderman suggested that Craig might have viewed Kalski as a threat.

12 Clark County presented additional testimony and a letter from Josephine Kelley, who
13 previously served as a SEIU steward and was a data entry clerk for the Clerk's Office assigned to
14 the Family Division until she retired in November 2001. Kelley described Parraguirre as having
15 an open-door policy and a great deal of respect for people representing SEIU. Kelley resigned
16 from SEIU in October 2001, and she felt that SEIU was trying to cause problems and never gave
17 Parraguirre a chance. Kelley never observed Kalski as a steward.

18 Juanita Fulbright, a Clerk's Office legal assistant, testified that she was SEIU steward
19 from 2001 to 2003. Pat Black once told her that she and Co-steward Valerie Riggs should be
20 "gung ho," like Kalski. Fulbright stated that when employees brought problems to her, she was
21 typically able to resolve them amicably. Fulbright opined that Kalski had a vendetta against
22 Parraguirre and that Kalski felt that she was, as a steward, equal to Parraguirre. Fulbright viewed
23 the position of steward as on the same level as the employee and not the department head.

24 Cindy Horton testified that, some years earlier, she had reassigned Kalski from a position
25 as a chambers clerk because of differences between Kalski and co-clerk, Nora Pena. When
26 Horton informed Kalski of this reassignment, Kalski was upset and yelling. When Kalski yelled
27 at Pena, Kalski was "coming up over the table." Horton stated that she filed with Clark County
28 forms alleging workplace violence by Kalski, but County Risk Management sent the forms back

1 and told her it was her problem and to deal with it. According to Horton, when Kalski
2 represented a SEIU member she was always yelling, and the yelling was directed at Parraguirre
3 and not to help the employee. Horton claimed that Kalski had few friends and that most of
4 Kalski's coworkers were intimidated by her.

5 Clark County's Deputy Director of Human Resources Raymond Visconti testified that in
6 his opinion, Kalski's problems at the Clerk's Office were due to personality conflicts, versus
7 union-steward issues. Visconti testified that since the reassignment of Kalski, he had received no
8 complaints about Kalski. For this reason, Visconti would say the Civil-Criminal Division
9 employees were having problems with Kalski versus the other way around. Similarly,
10 Kozlowski testified that Kalski appears to fit into the environment in the Family Division.

11 Operational needs of the Family Division

12 In addition to Parraguirre's testimony regarding the operational needs of the Clerk's
13 Office, Clark County presented persuasive testimony from Kozlowski, who was also involved in
14 the decision to reassign Kalski. At the time of that decision, the Family Division required
15 augmentation of courtroom clerk support because two current clerks in that division were
16 occupying positions but were on leave and not working. (Some time later, one of these clerks
17 died and one medically retired, and these clerks' positions were cut or traded out of the Family
18 Division.) Kozlowski could not go through normal personnel actions to fill a vacancy because
19 he did not have an actual "vacancy." Kozlowski also understood that Kalski was having
20 problems with the Civil-Criminal Division not being a good fit or being a hostile environment.
21 However, Kalski's status as a SEIU steward did not come up in the discussions regarding her
22 reassignment.

23 Evidence pertaining to the history of Parraguirre's relationship with SEIU, in general, and
24 evidence presented by SEIU to show improper motive

25 Parraguirre's relationship with SEIU, in general

26 SEIU attempted to show that Parraguirre had a poor relationship with SEIU and with
27 Kalski as a steward. Hedderman testified that she met Parraguirre when Parraguirre was first
28 campaigning for County Clerk and seeking the endorsement of the Central Labor Council.

1 Parraguirre obtained the endorsement, but Hedderman asked that both Parraguirre and her
2 opponent speak to SEIU's members and executive board. According to Hedderman, SEIU was
3 the only union that made Parraguirre come before it, and Parraguirre held a grudge over this.

4 Hedderman further testified that when Kalski was appointed as a steward, Hedderman
5 submitted the usual letter of appointment to Clark County officials. Hedderman received a
6 response letter from Parraguirre indicating that Parraguirre thought it was *her* right, not SEIU's,
7 to appoint a steward. Hedderman's efforts to improve the "bad" relationship between SEIU and
8 Parraguirre were unsuccessful.

9 Kalski testified that Parraguirre is a "bad boss. She has . . . little or no respect for the
10 employees, little or no respect for what it is we were trying to accomplish for the County. She
11 likes to meet [sic] out discipline. That discipline is usually unnecessarily harsh." Kalski claims
12 that, as a steward, she stood her ground with Parraguirre as to labor-management issues, but as
13 an employee, Kalski was polite and cordial, even though Parraguirre would "bark" at her. Along
14 a similar vein, Linda Trujillo testified that her own habit of fighting for employees or standing up
15 for one employee was not always welcomed. Although Parraguirre never discussed SEIU with
16 Trujillo, Parraguirre told Trujillo many times that she was "too nice or too union to be a good
17 supervisor."

18 Pursuant to the CBA, as the Department Head, Parraguirre is the person with authority to
19 decide step one of the grievance procedure for Clerk's Office employees. Hedderman testified
20 that she met with Parraguirre over one such grievance and "[i]t was, basically, just a no go.
21 [Parraguirre] pretty much just said that she was the boss; she could do what she wanted."
22 Hedderman felt that she could not work with Parraguirre, and she asked SEIU's Executive
23 Director, Thomas Beatty, to intervene. However, according to Hedderman, Beatty's efforts with
24 Parraguirre also left him with no hope for a better relationship between Parraguirre and SEIU.

25 When Parraguirre ran for reelection, SEIU would not endorse her and actively
26 campaigned in support of her political opponent. Parraguirre admitted in her own testimony that
27 she was aware that Kalski was involved in SEIU's campaign efforts. SEIU also presented
28 evidence that it was involved in bringing public attention to the fact that until July 2002,

1 Parraguirre had failed to track medical malpractice cases as required by Nevada Statutes.
2 According to Kalski, as a result of SEIU's publicizing of the issue, Parraguirre lost some
3 endorsements.

4 Finally, in his testimony, Raymond Visconti described Kalski's union-steward
5 relationship with Parraguirre as a "problem relationship." Visconti testified that outside the
6 formal process, he thought that "Parraguirre was having an issue trying to figure out when
7 Connie was a union steward and when she was not."

8 **Parraguirre's comments related to Article 21 of the CBA**

9 The evidence demonstrates that the Clerk's Office conducts regular staff meetings
10 attended by its supervisors and managers. Notes from these meetings are then distributed to all
11 Clerk's Office employees. Further, in 2001, the parties had reopened negotiations on Article 21
12 of the CBA, which had allowed for merit salary increases of zero to six percent. After the new
13 negotiations, merit increases were to be based on a pass/fail determination, resulting in either a
14 zero-percent, or a four-percent, increase. Hedderman testified that SEIU did not want to prohibit
15 Clark County from giving more than a four-percent adjustment, it only wanted to make sure that
16 any adjustments were at least at the four-percent level. Under the former system, anything less
17 than a two-percent adjustment was subject to the grievance procedure, and Clark County used
18 this as a budget tool, typically giving salary adjustments just above two percent.

19 The Clerk's Office meeting notes from a June 28, 2001 meeting reflect as follows:

20 Shirley [Parraguirre] announced that the County and union have come to an
21 agreement on Article 21, and departments are now locked in at 4% for merit
22 increases effective July 1, 2001. . . . Shirley wants employees to know that
23 management of this department strongly opposes this agreement, even though we
24 are bound by it. County HR has advised that there is no way at this time for
employees to receive more than the 4%. Management has been advised that the
union, prior to the vote on this issue, told union membership that they would still
be able to receive more than the 4% if approved by the department head. That is
simply not true.

25 Supervisors should continue to tell employees what their increase would have
26 been on the 0 - 6% policy based on their point score.

27 Parraguirre testified that she only told supervisors that they *could* (versus *should*) tell
28 employees what their raise under the old system would have been. She claims that she made this

1 statement because she hoped to implement a program to reward exceptional employees. SEIU
2 argues, however, that Parraguirre's comments are indicative of her desire to turn employees away
3 from union membership.

4 In any case, on August 10, 2001, SEIU officers and stewards sent a letter to Parraguirre
5 objecting to her attempts to erode member confidence in SEIU, and disagreeing with her
6 interpretation of Article 21 as a SEIU-won prohibition on higher salary increases.

7 **The settlement of grievances over discipline for internet use**

8 SEIU presented evidence showing that sometime in 2001, more than a dozen Clerk's
9 Office employees were disciplined for inappropriate use of the Clark County email or internet
10 system. Most of these employees were given written reprimands, for which, under the parties
11 CBA, relief may only be sought through step one of the grievance procedure. Some employees
12 were suspended, however, and were entitled to pursue further relief under the CBA. Kalski and
13 Field Representative Freeman filed a class-action grievance on behalf of the employees. At step
14 one of the grievance procedure, Parraguirre and other county representatives met with Kalski and
15 Freeman. According to Kalski's testimony, during the meeting, Parraguirre pounded on her desk
16 and called Kalski difficult. Parraguirre upheld the discipline, and the suspensions proceeded to
17 step two of the grievance procedure, an appeal to the Clark County Human Resources Director.
18 Kalski and Freeman met with Raymond Visconti, who confirmed in his own testimony that after
19 meeting with SEIU representatives, he spoke with Parraguirre and informed her that Clark
20 County had a new, more liberal internet policy coming into place. He asked if Parraguirre would
21 consider reversing the reprimands and suspensions. Ultimately, Clark County settled with SEIU,
22 the disciplinary decisions were reversed and all employees were started with the new Clark
23 County internet policy.

24 According to Parraguirre's testimony, she agreed to reverse the disciplinary actions
25 because she learned that Clark County was relaxing its email or internet policy. She could not
26 remember if Visconti actually rescinded the disciplinary decisions, but she personally decided to
27 rescind the discipline imposed after speaking with Visconti. She testified, "It had nothing to do
28 at all with the union." In contrast, Visconti testified that his discussion with SEIU

1 representatives at step two of the grievance process led to the agreement to settle the grievances.
2 He made the recommendation to settle, and he could not say whether Parraguirre would have
3 settled the grievances if he had not been involved.

4 **The SEIU "victory report" flyer and related meeting**

5 On or about January 10, 2002, SEIU distributed throughout Clark County a flyer with a
6 special victory report, attributed to Kalski, on the settlement of the grievances over the internet-
7 use discipline. On January 14, 2002, Kalski and Beatty went to meet with Parraguirre in an
8 effort to improve relationships. When Kalski and Beatty entered Parraguirre's office, Beatty
9 asked how Parraguirre was doing. Parraguirre brought out a copy of the victory report flyer, and
10 that she was doing fine until she had to look at it, and threw the flyer down on her desk. Beatty
11 tried to explain that when SEIU obtains a decision that disciplinary action was incorrect, SEIU is
12 going to let people know of the victory. Parraguirre said that she was disgusted by it and that it
13 was all lies. Beatty then said that it was apparent there would be no cooperation between
14 Parraguirre and SEIU, and he and Kalski left. SEIU Steward Valerie Riggs stayed behind in
15 Parraguirre's office, apparently because another steward, Juanita Fulbright, had not yet arrived
16 for the meeting.

17 Parraguirre testified that she held the above-described meeting with Beatty and Kalski
18 because Clark County Human Resources had requested her to consider working with Beatty on
19 issues involving Kalski. Parraguirre admitted that she "reacted" to SEIU's flyer at the meeting,
20 and that she normally raises her voice a little bit when she reacts. However, Parraguirre claimed
21 that Beatty also raised his voice.

22 According to Kalski's testimony, after the meeting with Parraguirre, the courtroom clerks
23 were called into the Clerk's Office break rooms. Parraguirre informed them that she had decided
24 not to proceed with the discipline and that Clark County was coming out with a new internet
25 policy. Among other statements, Parraguirre told employees that now they could "all go online
26 shopping at Sears."

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1 On January 15, 2002, Parraguirre sent an email to SEIU Stewards Fulbright and Riggs,
2 which Parraguirre copied to Kalski. In this email, Parraguirre informed Fulbright and Riggs that
3 Beatty and Kalski had mistreated them at the meeting. The email states:

4 Juanita [Fulbright], I would like to extend my apologies to you for starting the
5 meeting yesterday before you arrived. Valerie [Riggs] had indicated to me that
6 you were on your flex day, but that she was quite sure you were coming to the
7 meeting. Knowing that, I feel we should have waited a few minutes for you to
8 arrive. When Thom and Connie walked in and Thom asked me how things were
9 going, I answered him immediately about the newsletter article not showing any
10 spirit of cooperation and it went from there.

11 Valerie, I also felt very badly for you as nothing was said to you by Thom and
12 Connie when they exited the meeting and as a union steward, the same as Connie,
13 I don't believe you deserved that treatment. You were then left sitting with
14 management, but were here when Juanita arrived so that you could assist in letting
15 her know what transpired at the meeting. . . i

16 On the same date, Parraguirre drafted a letter to Beatty. In this letter, Parraguirre
17 expressed her disappointment that the meeting was so abruptly terminated. Parraguirre also
18 noted that Kalski had earlier raised employees' concerns about the Clerk's Office staff meeting
19 notes. Parraguirre then informed Beatty that a survey had been conducted showing that Clerk's
20 Office employees appreciated the meeting notes, and that Kalski's contrary perception might be
21 wrong.

22 In response, Beatty wrote to Parraguirre, stating in part:

23 These survey results are not enough to discredit the critiques offered by Union
24 Steward Connie Kalski. In fact, that you would again try to discredit Ms. Kalski
25 by presenting a contrary opinion only indicates that you are not committed to
26 working with the Union to resolve issues.

27 [Y]our continued defensiveness when it comes to issues raised by Union Steward
28 Connie Kalski clearly shows your inability to work with her. Your response, an
employee survey that is meant only to discredit Ms. Kalski, is unacceptable.

29 Miscellaneous incidents of alleged mistreatment of Kalski

30 SEIU also presented evidence that on August 23, 2002, Parraguirre denied a leave request
31 by Kalski, which Kalski made pursuant to the CBA's provisions allowing stewards time off for
32 SEIU business. Article 8, section 2 of the CBA provides that a properly submitted request for
33 leave for union business by a steward shall be granted "unless operational demands prohibit
34 granting the request." Parraguirre's denial cites the reason of the "current operational needs" of

1 the Clerk's Office. The evidence also showed that at the time of this denial, Parraguirre was
2 facing the SEIU-endorsed challenger in a primary election and that Kalski was working on the
3 challenger's campaign. On this point, however, Parraguirre credibly testified that Kalski's
4 supervisor informed Parraguirre that Kalski already had vacation scheduled and approved for the
5 period before or after the requested time off, and that the supervisor felt that additional time off
6 for Kalski would create a problem in handling the support of the court departments. Kalski did
7 not present any evidence refuting this testimony.

8 Kalski also testified that after passing out one union flyer at work, she heard that
9 Parraguirre was "really mad" and that she was going to "get it." Therefore, SEIU's Beatty sent a
10 letter to Raymond Visconti. In the letter, Beatty informed Visconti that "certain individuals"
11 overheard Parraguirre make a threat to the effect that she "intended to get" Kalski for distributing
12 union leaflets critical of Parraguirre. He asked that Visconti intervene in the matter. According
13 to Visconti's testimony, he checked with Parraguirre, who denied SEIU's allegations, and
14 Visconti contacted Beatty and told him the matter had been handled. Beatty seemed comfortable
15 with Visconti's response.

16 Summary

17 Based on all of the evidence here, we conclude that SEIU established that Parraguirre had
18 a strained relationship with the SEIU and with Kalski, and that Kalski's protected conduct was a
19 factor in the decision to reassign her, but it was not a substantial or motivating factor. Instead,
20 we are convinced that the County's decision, and more specifically, Parraguirre's decision, to
21 reassign Kalski was motivated by a legitimate desire to protect all employees in the workplace,
22 including Kalski, who repeatedly stated her belief that she was the target of hostility from her
23 coworkers, and to forestall any future claims of hostile work environment by either Kalski or her
24 coworkers. Further, the reliable evidence demonstrates that the heated exchanges and conflicts
25 between Kalski and her coworkers stemmed from animosity of a purely personal nature and that
26 Kalski's role as a union steward was merely incidental to, and a convenient excuse for, any
27 exchange of animosity between Kalski and her coworkers. Additionally, the testimony of
28 Parraguirre and Kozlowski sufficiently demonstrates the legitimacy of the secondary reason for

1 the reassignment, the urgent need for additional courtroom clerk support in the Family Division
2 due to two clerks occupying positions but not performing any duties. We note that Kalski can
3 still perform her duties as a union steward from the Family Division. Furthermore, we are
4 persuaded that Clark County and Parraguirre would have made the same decision to reassign
5 Kalski, even in the absence of Kalski's protected conduct on behalf of SEIU and its members.

6 Nonetheless, this Board questions whether Parraguirre has a proper comprehension and
7 respect for the role of employee organizations and their stewards. Our concerns stem, in part,
8 from Parraguirre's assertion to Hedderman that Parraguirre believed it was her right to appoint
9 SEIU stewards. See NRS 288.270(1)(b) (prohibiting an employer from dominating, assisting in
10 or interfering in the administration of an employee organization). Also, Parraguirre's testimony
11 before this Board indicated an inability to acknowledge SEIU's role in the decision to overturn
12 the discipline imposed upon employees for use of the internet, when even Raymond Visconti
13 acknowledged that SEIU's involvement at step two of the grievance procedure led to his
14 recommendation to Parraguirre to overturn the discipline, which she had already refused to
15 overturn at step one.

16 Of further concern are the comments attributed to Parraguirre in the meeting notes of
17 June 28, 2001, and Parraguirre's January 15, 2002 email to SEIU stewards. In particular, by
18 unnecessarily commenting at the June 28, 2001 meeting on whether SEIU had misled its
19 members before the vote on the change to the CBA's Article 21, and by indicating that
20 supervisors should (or could) continue to inform employees on what raises would have been
21 under the former system, Parraguirre arguably ran afoul of NRS Chapter 288's demands for good
22 faith bargaining and respect for employee organizations' rights to operate without interference by
23 an employer. Parraguirre also arguably intended to interfere with the administration of SEIU
24 when she expressed to Stewards Fulbright and Riggs that she perceived them to have been
25 mistreated by their Executive Director, Beatty, and by fellow steward Kalski. Each of these
26 offensive comments occurred before the six month-statute of limitations period began, and none
27 are before us as an independent prohibited-labor-practice claim. See NRS 288.110(4). Still, the
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1 evidence of these comments suggests that Parraguirre may lack any genuine appreciation for the
2 protected role of an employee organization under NRS Chapter 288.

3 Laws granting employees the rights to organize and collectively bargain with their
4 employers, such as NRS Chapter 288, are intended to promote peace in labor relations. See
5 Truckee Meadows Fire Protection Dist. v. International Ass'n of Firefighters, Local 2487, 109
6 Nev. 367, 376-77, 849 P.2d 343, 350 (1993). Moreover, through NRS 288.270(1), an employee
7 organization is protected from actions which would undercut its ability to fulfill its statutory role
8 as exclusive bargaining agent and defender of collective bargaining agreements. Parraguirre's
9 above-noted comments violate the spirit, if not the letter, of NRS Chapter 288. We have
10 considered the comments in question as background evidence; however, even having done so,
11 we are unable to conclude that the decision to transfer Kalski was motivated by any prohibited
12 animus. Even so, we express here our sincere hope that in the future Parraguirre will
13 scrupulously honor the dictates and goals our Legislature has expressed by enacting NRS
14 Chapter 288.

15 FINDINGS OF FACT

16 1. SEIU is an "employee organization" as defined by NRS 288.040.

17 2. Clark County is a "local government employer" as defined by NRS 288.060, and
18 its employees are "local government employee[s]" as defined by NRS 288.050.

19 3. At the time of the allegations at issue herein, Clark County and SEIU were parties
20 to a CBA in effect since 1998.

21 4. Shirley Parraguirre has served as the elected Clark County Clerk since 1999.

22 5. Connie Kalski is a courtroom clerk employed by the Clerk's Office, and is and has
23 been a SEIU steward at all times relevant to SEIU's complaint.

24 6. Parraguirre had a strained relationship with the SEIU and with Kalski.

25 7. Kalski was a dedicated steward and valued by SEIU; however, she also had
26 conflicts with several of her coworkers in the Civil-Criminal Division of the Clerk's Office, and
27 these conflicts stemmed from animosity of a purely personal nature on the part of Kalski and/or
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1 her coworkers, with any SEIU activity by Kalski being only incidental to, or a convenient excuse
2 for, such conflicts.

3 8. On January 15, 2003, Parraguirre gave Kalski notice that she was to be reassigned
4 from the Civil-Criminal Division to the Family Division of the Clerk's Office.

5 9. This reassignment involved a change in physical locations but did not involve any
6 change in classification, pay grade, benefits or hours of work.

7 10. Kalski's ability to perform her duties as a SEIU steward has not been curtailed by
8 the reassignment.

9 11. Kalski's protected conduct was a factor in the decision to reassign her, but it was
10 not a substantial or motivating factor, because it was only incidental to the personal conflicts
11 between Kalski and her coworkers.

12 12. Clark County presented sufficient evidence to persuade this Board that Kalski's
13 reassignment was within Clark County Management's prerogative and was done for legitimate
14 reasons including to promote a positive work environment by physically separating Kalski and
15 her coworkers and thereby protecting them from possible instances of hostility in the workplace,
16 and to meet an immediate need for courtroom clerk support in the Family Division.

17 13. Clark County presented sufficient evidence to persuade this Board that it would
18 have reassigned Kalski even in the absence of Kalski's protected conduct.

19 14. Neither Parraguirre nor any other representative of Clark County reassigned
20 Kalski to punish her for protected activity on behalf of SEIU or its members, or to interfere with
21 or affect the operation or activities of SEIU or Kalski's stewardship.

22 15. As discussed in the above in the Summary Section of this Decision, the evidence
23 reasonably raises the question of whether Parraguirre has a genuine appreciation for the
24 protected role of an employee organization under NRS Chapter 288; however, such evidence
25 relates to events outside the statute of limitations period under NRS 288.110(4).

26 16. Even considering the evidence from outside the statute of limitations period, we
27 cannot conclude that Clark County or Parraguirre violated NRS 288.270(1)(a) or (c) by
28 reassigning Kalski to the Family Division of the Clerk's Office.

1 17. To the extent that any factual determination in the preceding discussion section of
2 this Decision is not separately set forth in this section, it is hereby incorporated as a finding of
3 fact.

4 18. To the extent that any of these findings of fact might be more properly stated as
5 conclusions of law, they should be considered as such.

6 **CONCLUSIONS OF LAW**

7 1. Good cause exists to grant SEIU's request to withdraw its February 2005 request
8 for a dismissal with prejudice.

9 2. The Board has jurisdiction over the parties and the subject matter addressed by
10 this Decision, pursuant to the provisions of NRS Chapter 288.

11 3. The evidence presented by the parties shows that neither Clark County nor any of
12 its representatives, including Parraguirre, violated NRS 288.270(1)(a) or (c) by reassigning
13 Kalski.

14 4. To the extent that any legal conclusion in the preceding discussion section of this
15 Decision is not separately set forth in this section, it is hereby incorporated as a conclusion of
16 law.

17 5. To the extent that any of these conclusions of law might be more properly stated
18 as findings of fact, they should be considered as such.

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1 **ORDER**

2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that SEIU's request to
3 withdraw its February 11, 2005 Request for a Dismissal without Prejudice is hereby GRANTED.

4 IT IS FURTHER ORDERED that Clark County is entitled to judgment in its favor.

5 IT IS FURTHER ORDERED that, for the benefit of employee-management relations,
6 Clark County shall post copies of this Decision at conspicuous locations, which are accessible to
7 Clark County's employees for a period of thirty (30) days.

8 IT IS FURTHER ORDERED that each party shall bear its own attorney's fees and costs
9 in this matter.

10 DATED this 20th day of April, 2005.

11 LOCAL GOVERNMENT EMPLOYEE-
12 MANAGEMENT RELATIONS BOARD

13 BY: 
14 JANET TROST, ESQ., Chairman

15
16 BY: 
17 TAMARA E. BARENGO, Vice-Chairman

18 BY: 
19 JOHN E. DICKS, ESQ., Board Member
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