

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,

Complainant,

vs.

CLARK COUNTY SCHOOL DISTRICT,
FRAN JUHASZ, JUAREEN CASTILLO,
ALIVE FAVELLA, KATIE BARMETTLER
& LLEEANN LOVE,

Respondents.

ITEM NO. 568B

CASE NO. A1-045782

DECISION

For Complainant: Michael W. Dyer, Esq.
Dyer, Lawrence, Penrose, Flaherty & Donaldson

For Respondent: Jon M. Okazaki, Esq.
Clark County School District

Case History

On December 26, 2003, Complainant, the Education Support Employees Association ("ESEA"), commenced this proceeding against Respondents Clark County School District ("CCSD") and various administrators thereof by filing a Verified Complaint with the Local Government Employee-Management Relations Board ("Board"). Respondent CCSD answered and counterclaimed against ESEA as well as certain ESEA representatives. Subsequently, Complainant obtained leave from the Board to amend its complaint.

The Verified Amended Complaint herein alleges two claims against CCSD and its named administrators: (1) Violation of Weingarten Rights (5 counts) and (2) Unilateral Alteration of Past Practice.¹

The Amended Answer and Counterclaim contains a two-count claim of failure to bargain in good faith, pursuant to NRS 288.270(2)(b) and case law.

¹ ESEA withdrew the second claim at hearing.

1 The Board conducted a hearing on April 21 and 22, 2005, noticed in accordance with
2 Nevada's Open Meeting Law. The Board heard testimony from sixteen witnesses. CCSD filed
3 their Post-Hearing Brief on July 8, 2005 and ESEA filed its Post-Hearing Brief on July 11, 2005

4 The Board held deliberations on July 21, 2005 and September 9, 2005, noticed in
5 accordance with Nevada's Open Meeting Law.

6 **Evidence at Hearing**

7 **Investigatory Meetings with Rose Paez (now known as Aguayo)**

8 ***Rose Paez's Testimony***

9 Ms. Paez was an employee with the district for ten years, her final position being a
10 Secretary II in the fall of 2003. She testified to two investigatory meetings involving her, her
11 supervisor, Respondent Katie Barmettler, ESEA's Sam Johnson, and another administrator from
12 CCSD (Annie Amoia).

13 Ms. Paez testified that at the first meeting Ms. Barmettler, her supervisor, questioned Ms.
14 Paez, as to Ms. Paez's signing of Ms. Barmettler's name to office request forms. Mr. Johnson,
15 who was representing Ms. Paez on behalf of the Association, asked Ms. Barmettler whether she
16 had told Ms. Paez not to sign her name. The question was to draw attention to the practice
17 claimed by Ms. Paez that her previous supervisors had allowed her to sign their names to request
18 forms.

19 Ms. Paez said that Ms. Barmettler declined to answer Mr. Johnson's question put to her
20 and insisted thereafter that any questions Mr. Johnson had must be asked through Ms. Paez.
21 (This continued after Barmettler called CCSD Legal at Johnson's suggestion.) Mr. Johnson
22 responded that because he could only ask questions through Ms. Paez he could not properly
23 represent her at the meeting and that the meeting should end. Barmettler said the meeting was
24 not over. Ms. Paez left. As a result, Ms. Paez subsequently received a suspension.

25 Ms. Paez testified that a second investigatory meeting was held with her, Barmettler,
26 Johnson, and Amoia. At the outset of this meeting, Johnson asked Barmettler whether Johnson
27 was going to be allowed to represent the employee. Barmettler responded by addressing Ms.
28 Paez, stating that she was conducting the meeting. Johnson said once again that he could not

1 properly represent Ms. Paez under those conditions, and that he and Ms. Paez should leave.
2 Barnettler told Paez that if she left, she would be considered insubordinate. Paez left with
3 Johnson, testifying she would be intimidated without him.

4 Ms. Paez stated that during the meetings, voices were raised but in still normal tones--no
5 screaming or yelling. Barnettler said Johnson couldn't ask questions but that Paez could confer
6 with him. Barnettler told Paez at both meetings that she had the right to not answer questions.
7 Barnettler ignored Johnson at that second meeting.

8 One of the allegations in the Notice of Intent to Dismiss was insubordination. Ms. Paez
9 thought it was based on her leaving the meeting.

10 Paez had a previous, uneventful investigatory conference with Barnettler. She was
11 represented at that conference by a different representative from ESEA.

12 *Sam Johnson's testimony*

13 Sam Johnson is an employee of the Nevada State Educational Association, assigned to
14 Education Support Employees Association (ESEA) as Uniserve Director, representing ESEA
15 members at Investigatory Meetings, Evidentiary Hearings, Appeals Hearings, and Arbitrations.
16 Ms. Paez contacted Johnson about representing her concerning misconduct at the workplace.

17 At the first meeting, Barnettler asked Paez about her signing Barnettler's name. Paez
18 had said that prior supervisors had given her the power to do so. Barnettler, asked whether she
19 had given Paez permission.

20 Johnson testified he asked Barnettler if she had told Paez not to sign. Barnettler
21 responded "This is my meeting," and refused to answer the question.

22 Johnson testified that he asked the question because delegation was not uncommon. He
23 felt it was a clarification question. He did not want to ask questions through Paez because it was
24 awkward and he felt Ms. Paez would be intimidated. He had never before been required to ask
25 questions through the person he represented. At the second meeting, Barnettler stated he had no
26 right to speak.

27 Johnson did not recall telling Ms. Barnettler that he had a right to investigate at the
28 meeting.

1 ***Katie Barmettler's testimony***

2 Ms. Barmettler has been the Coordinator for the Safe and Drug Free Schools program
3 since June 24, 2003. When she came on board, Rose Paez (now Aguayo) was her secretary.
4 Barmettler became concerned about Paez signing her name to two graphics arts request forms.

5 At the first investigatory conference, Barmettler asked Paez if she signed Barmettler's
6 names to the forms. Paez said she had. Barmettler then asked if she had given Paez permission.
7 Johnson then asked Barmettler whether she had told Paez not to.

8 Barmettler testified that she took Johnson's questions as an interrogation, responding that
9 it was she who would ask the questions. She stated that Johnson responded that he "can
10 investigate and ask questions also." Barmettler called CCSD's legal department when Johnson
11 threatened to end the conference if he could not ask questions. The legal department advised her
12 to direct questions to Paez and then to end the conference if it continued in the same manner.

13 As to the tone of the meeting, Barmettler testified she refused to answer questions
14 because of his tone. She noted that Johnson slammed his binder shut when he left with Paez.
15 Barmettler said she did not object to Johnson's tone.

16 Barmettler had a prior investigatory conference with Paez and another representative,
17 which went with out incident. That conference was about Paez's cell phone use, absences, and
18 assigned duties.

19 Barmettler gave Paez a ten day suspension after the second conference from which she
20 walked out. Part of the reason for the suspension was Paez's insubordination by leaving the
21 conference.²

22 ***Elizabeth Ann Amoia's testimony***

23 Elizabeth Ann Amoia is the district's Coordinator of Innovative Literacy Programs. She
24 was asked to attend the meeting with Barmettler and Paez the investigatory conference to take
25 notes. She described Johnson's tone in asking the question as aggressive. He leaned forward.
26
27
28

² The District states in its written closing argument that Paez never served the suspension, which was reduced from ten to three days by the arbitrator.

1 Amoia feels it was the manner of Johnson's question that changed the tone of the conference.
2 Barmettler kept saying "this is my investigatory conference."

3 *Other Evidence*

4 Apparently, Ms. Paez' employment was terminated by the District for subsequent
5 absences without leave. Some testimony suggested Ms. Paez' absence was due to the stress
6 caused by the course of the investigatory conferences. An arbitrator later found Ms. Paez was
7 terminated for cause.

8 Investigatory Meeting with Jeff Rubin

9 *Sam Johnson's testimony*

10 When Johnson learned of the investigatory conference for Jeff Rubin scheduled for
11 December 19, 2003, he called to ask Rubin's regional supervisor, Guier, to reschedule.
12 According to Johnson, Guier told Johnson that the meeting would be put over to the new year.
13 Johnson got a call from Rubin on his cell on the 19th of December, 2003, while traveling through
14 California, that the meeting was going forward as originally scheduled.

15 *Jeff Rubin's testimony*

16 Jeff Rubin was a custodian at Vo Tech High School. He now works at Thurman Dwight
17 Middle School. Sam Johnson told Rubin that the December 19, 2003, meeting was cancelled. It
18 happened anyway. The meeting was attended by Rubin, without union representation, and three
19 representatives of CCSD: Rubin's Regional Supervisor Guier, Assistant Principal Springer, and
20 Acting Head Custodian Jeff Branson. Rubin was told by Guier that if he didn't answer, it would
21 only hurt him. Rubin had been told by Johnson not to answer if questioned without
22 representation present.

23 The Board observed Mr. Rubin appears to be cognitively less sophisticated. This fact
24 exacerbates the District's intimidation of him outnumbering the employee three to one with
25 authoritative management.

26 *Kirk Guier's testimony*

27 Kirk Guier is the custodial supervisor agent, East Region, CCSD. He supervises 60
28 schools. The purpose of the Rubin meeting was to deal with verbal threats he had made to other

1 staff on-site. He testified that he did not have an agreement with Johnson re: postponing the
2 Rubin meeting (although there were several conversations). Rubin attended the meeting, stating
3 his representative couldn't make it. Rubin chose not to answer the questions. Guier doesn't
4 recall Rubin being instructed to answer questions by the administrator in spite of being shown a
5 disciplinary document to the contrary issued as a result of the meeting with Rubin.

6 Investigatory Meeting with Shawn Hand

7 *Shawn Hand's testimony*

8 In July of 2003, Hand was Head Custodian III at Western High School. He had nine
9 years experience. On July 29, 2003, he received a notice of an investigatory conference. His
10 Uniserve Director, Shelton, couldn't be there. When Hand told Mrs. Castillo, she said "too bad,"
11 and that the meeting was going forward. No other union representatives were available, due to
12 an out of town meeting.

13 Present at the hearing with Hand were district management Juareen Castillo, Alice
14 Favella, Pearl Morgan and Dolley Maestas. Hand had been advised by his union representative to
15 invoke his Weingarten rights, which he did, apparently angering supervisor Favella, who
16 directed supervisor Castillo to proceed with questions anyway. Hand answered each question
17 "Weingarten Rights."

18 Hand testified that the principal Pearl Morgan had told his union representative prior to
19 the meeting that it would not be concerning disciplinary issues.

20 *Thom Shelton's testimony*

21 Thom Shelton is an employee of the Nevada State Education Association ("NSEA")
22 assigned to the ESEA. He accompanies employees to investigatory conferences. Hand called
23 Shelton about a meeting on July 29, 2003, unsure whether it was investigatory. Shelton was
24 unable to make it, and he contacted the administration about his unavailability. He testified
25 either Ms. Morgan or Ms. Castillo told him that the meeting would not be investigatory.

26 *Juareen Castillo's testimony*

27 Juareen Castillo was the assistant principal of Western High School in 2003 and
28 supervised Shawn Hand in that job. Initially, she declined to tell Hand what was the purpose of

1 the July 29 meeting, stating only that it could result in discipline; she then provided him with a
2 memo that the meeting concerned inappropriateness or harassment of a fellow employee.
3 Castillo refused to reschedule the meeting despite Hand's request (made on the basis of Shelton's
4 inability to make it to the meeting.) Castillo's initial reluctance to disclose the purpose of the
5 meeting was based on concern about how Hand might react.

6 The principal, Pearl Morgan, was present at the meeting. The union representative failed
7 to show. At the meeting, Hand asserted his *Weingarten* rights. The allegations against Hand
8 were read to him in the form of questions. Although Castillo claimed her purpose in reading the
9 allegations was not to elicit his responses, she also stated she wanted to give Hand a chance to
10 answer. It was Principal Morgan's decision that there would be numerous people at the meeting.

11 Castillo handed Hand his dismissal papers August 13, 2003. The dismissal was not based
12 on him not answering questions, but was based on Hand's conduct with another employee—
13 hitting, kicking, pouring water--and on inadequate performance.

14 *Alice Favella's testimony*

15 Alice Favella is the Director of Operations for CCSD. She and Maestas attended the
16 meeting with Hand because of the seriousness of the charges. Favella testified that Hand was
17 asked questions about allegations after he invoked *Weingarten*, to both inform him of the
18 allegations and in case he changed his mind. Any answers could be used against him. Hand was
19 not free to leave once he invoked *Weingarten*.

20 Investigatory Meetings with O'Neil Williams

21 *O'Neil Williams' testimony*

22 O'Neil Williams was a custodian at Red Rock Elementary School. (He has since been
23 transferred).

24 Williams went to a meeting on January 13, 2004 thinking he would just be signing
25 documents (as he had been advised by Thom Shelton, his UniServe Director). At the meeting
26 were his principal, Lisa Primas, Williams' supervisor, Toby Peck, and Assistant Principal (Ms.)
27 Kratky. When Williams realized he would be questioned, he indicated he wanted representation.
28

1 He was told that he should have arranged that, that he had sufficient notice to have somebody
2 present.

3 Williams was questioned and refused to answer the question. Principal Primas threatened
4 Williams with discipline if he didn't answer. Williams felt pushed by her tone to answer and did
5 answer a question about vomit on the floor.

6 There were allegations about theft in the document Williams was asked to sign. This
7 erroneous allegation angered Williams.

8 A second meeting was noticed for January 15, 2004. In the notice for that meeting, one
9 of the subjects was to be Williams refusal to answer at the previous meeting. When Williams
10 notified Shelton of the notice, Shelton called to reschedule. A meeting was then scheduled for
11 January 20, 2004, and when Shelton didn't show, it was rescheduled for January 22, 2004.
12 Shelton didn't show for the January 22 meeting. At that meeting, Primas referred to the
13 unprofessionalism of the union.

14 At the January 22 meeting, Primas asked Williams questions about Room 11. Williams
15 invoked Weingarten.

16 *Thom Shelton's testimony*

17 When Shelton contacted the school about rescheduling Williams' January 15 conference,
18 there was no "appetite" for that. Shelton attempted but was unsuccessful at getting the
19 conference rescheduled. He unsuccessfully attempted to secure someone else for the meeting—
20 other UniServe Directors or experienced shop stewards—and advised the administration of that
21 lack of success. He was not consulted before the rescheduled date was sent. He noted a
22 willingness to waive the 20-day rule to accommodate rescheduling. Shelton denied any
23 unwillingness to show up for the meetings.

24 *Toby Peck's testimony*

25 Toby Peck is the Custodial Supervisor for the Southwest Region, Clark County School
26 District, and he supervises O'Neil Williams. Peck was present at the January 13 meeting, which
27 was set to discuss the vacuum schedule and Room 11.
28

1 Williams got up in the middle of the meeting and insisted on signing the disciplinary
2 document before Primas finished reading the one day suspension to Williams. Primas stated
3 Williams was being insubordinate and that there would be further disciplinary action.

4 Peck testified that the only question put to Williams at the first meeting was whether he
5 knew what the purpose of the meeting was. No question was put to him about the vacuuming
6 schedule other than in the context of questioning why the meeting was held.

7 After invoking Weingarten at the second meeting, Williams got up and left. Primas said
8 someone is circumventing the process. Peck called Williams' conduct in leaving insubordination.

9 Note: on February 9, Williams was given a notice of recommendation of a five day
10 suspension. The excuse given for the delay was William's frequent absence.

11 *Lisandra ("Lisa") Primas' testimony*

12 Lisa Primas is the principal at Red Rock Elementary School. Williams was the night
13 custodian at Red Rock.

14 Prima asked Williams if he had received notice and knew why he was there. Williams
15 said he was not answering any questions. He just was there to sign the document. Primas
16 proceeded to read the disciplinary document, because it had directives in it. Williams got up and
17 proceeded to the door behind the witness. Primas said he was insubordinate and had to sign the
18 document. Then Williams said he was calling in sick.

19 Primas then issued Williams another notice. Added to the notice was Williams' conduct
20 in leaving the meeting. Primas left voice mails for Thom Shelton after she received Williams'
21 note that Shelton would not be there. Shelton called back and spoke to the Vice Principal on the
22 21,st wanting to reschedule. The VP had told Shelton that the meeting would go forward--there
23 would be no rescheduling. Shelton called on the 22nd and spoke with the witnesses' office
24 manager. He was told the meeting was still on. Primas unilaterally selected the 22nd as the date
25 of the meeting; she was not aware that Shelton later called with alternate dates.

26 Primas' statement remonstrating against "circumventing" was made because nine
27 working days had passed after the vomit on carpet incident without her receiving an explanation.

1 Primas made a five day suspension recommendation not based on Williams' invoking
2 *Weingarten* but on the fact that she had set up three meetings in which she had tried to meet with
3 him, and that his attitude was bad, as complained of by office staff. The five day suspension
4 issued after 20 business days, but Williams had been sick a lot, stopping the time period.

5 Primas said she didn't base her February 9 suspension on Williams' walking out of the
6 earlier meeting. Her problem was with Williams' general demeanor.

7 Investigatory Meeting with Frank Martinez

8 *Frank Martinez's testimony*

9 Frank Martinez was a probationary Transportation Aide I with CCSD. On October 21,
10 2003, he was directed to meet with LeeAnn Love, his supervisor, about punishment for his
11 absences. He called Jheri Moran, his bus driver, also a union steward. Moran went to the
12 meeting but did not go in the office. She was not allowed in because the district maintained
13 Martinez, as a probationary employee, was not entitled to representation.

14 Love asked Martinez about his problem with absences; Martinez stated his absences were
15 due to incarceration for five days. He had testified that his previous absences were to go to court
16 and his supervisor had him fill out sick leave forms.

17 Love handed Martinez a paper, Joint Exhibit F, which he signed. The paper concerned
18 dismissal. The school district first found out about Martinez's incarceration when he informed
19 Love in the meeting. Love did not inform Martinez that he was just there to sign papers. She
20 asked questions.

21 *Jheri Moran testimony*

22 Jheri Moran is a union steward and bus driver. She was told by supervision she was not
23 allowed into the meeting between Frank Martinez and Supervisor Love because Martinez was on
24 probation. The meeting lasted 7-10 minutes.

25 General Discussion

26 The Board forcefully asserts its recognition of local government employees' *Weingarten*
27 rights, further described below. In the instances brought before the Board in this matter, CCSD
28 has seemed to regard *Weingarten* rights with disdain. The Board finds that unacceptable.

1 Further, ESEA needs to accord more importance to its role by making staff more readily
2 available to attend investigatory interviews. None of the investigatory conferences constituted
3 an emergency requiring immediate action or quickly held meetings. Scheduling needs to
4 accommodate both parties so representation of employees is accomplished. Any course of
5 conduct by either party which leaves the employee without representation in an investigatory
6 conference which could lead to discipline is unacceptable.

7 **Findings of Fact**

8 The Board finds the following facts from the above testimony and other evidence
9 received at the hearing. Evidence not supportive of the findings not cited herein was found not
10 credible by the Board.

11 1. **Paez**

12 The Board finds that the ESEA representative, Johnson, asked his question of the CCSD
13 supervisor Barnettler, with the intent to clarify the fact Ms. Paez was only following her
14 previous supervisors directive which Barnettler had not rescinded. Barnettler, after consulting
15 with CCSD's legal department, responded inappropriately by indicating that Johnson could not
16 ask any questions whatsoever, except through Paez. This direction defeats the purpose of
17 *Weingarten*. The impasse that resulted was therefore principally the fault of the supervisor.
18 Barnettler's threat of discipline based on Paez's departure with Johnson was therefore
19 retributive.

20 Paez's response to the ten day suspension that resulted from her underlying conduct as
21 well as in part from her departure from the meeting was to go missing without contacting her
22 supervisor.

23 In a binding arbitration concluded earlier this year, the Arbitrator determined that Paez
24 was dismissed for good cause, because of her absence without leave (not because of her
25 *Weingarten* rights).

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28 ///

1 2. Hand

2 The investigatory conference with Hand was unbalanced and clearly intimidating, with
3 four CCSD employees arrayed against the one employee, who despite properly invoking his
4 *Weingarten* rights, was nevertheless questioned.

5 Hand did not provide any information in response to the allegations that were read to
6 him, and there was no showing that his invoking *Weingarten* or his being questioned without
7 requested representation was a cause of his termination.

8 In a binding arbitration, Hand's dismissal was upheld for cause.

9 3. Rubin

10 The CCSD presence at Rubin's meeting was unnecessarily large, and therefore
11 intimidating, especially given Rubin's cognitive lack of sophistication. The conference could
12 have been delayed to afford Rubin representation, as evidenced by the fact that it took a month
13 for the disciplinary documents to issue. Rubin was threatened with punishment for invoking
14 *Weingarten*, and, this Board finds on the evidence presented, his suspension of five days was
15 partly punishment for his assertion of his *Weingarten* rights.

16 4. Williams

17 Both ESEA and CCSD bear the responsibility for the failure of Williams to have an
18 interview. Each bears responsibility to keep open communications with the other and to act in
19 good faith to arrange meetings so that members of ESEA may have proper representation at
20 investigatory interviews. As evidenced in Williams' circumstances and those of other employees
21 in the subject proceedings, CCSD needs to impress upon its supervisors the importance of the
22 employees' right to representation.

- 23 a. In the first instance, CCSD failed to make it unambiguous in its notice to Williams
24 that the initial interview might have disciplinary consequences, to alert Williams to
25 the possible need for such representation;
- 26 b. Although the supervisor to be conducting the interview was aware that the employee
27 potentially subject to discipline had a representative lined up, she unilaterally set
28 dates, without any apparent attempt to coordinate them with the union representative.

1 By the same token, ESEA has apparently failed to marshal sufficient staffing levels to
2 enable its employees to have representation on one-day's notice. The Board views *Weingarten*
3 representation as a substantive component of the employee organizations' duty of fair
4 representation.

5 The Board finds that CCSD threatened Williams with discipline for invoking his
6 *Weingarten* rights. The Board does not consider the explanation for the insubordination finding
7 that it was for Williams apparently surly demeanor at the meeting, which was apparently
8 engendered by the inadvertent inclusion of a clearly erroneous allegation of theft in the
9 disciplinary paper read to Williams.

10 The Board also finds that CCSD supervisor Castillo criticized ESEA as "unprofessional"
11 to an ESEA member, Mr. Williams. Such conduct can be interpreted as the employer's attempt
12 to undermine the association in the eyes of its membership, in violation of NRS 288.270(1).

13 5. Martinez

14 No contrary testimony having been presented, the Board finds that Martinez was denied
15 *Weingarten* representation because he was a probationary employee, not because he was at the
16 meeting solely to sign a disciplinary document. Martinez had a representative ~~present~~ with him
17 when he showed up for the meeting. The employer should err on the side of accommodating
18 representation. Additionally, the supervisor apparently did seek and obtain additional
19 information at the meeting.

20 On the other hand, the Board does not believe that, given Martinez's clear admission of
21 what amounts to cause and the fact of his probation status, that any *Weingarten* violation was a
22 substantial factor in his dismissal.

23 Conclusions of Law

24 1. The Local Government Employee-Management Relations Board has jurisdiction
25 over the parties and the subject matters of the complaint on file herein pursuant to the provisions
26 of NRS Chapter 288.

27 2. CCSD is a local government employer as defined in NRS 288.060.

28 3. ESEA is an employee organization as defined by NRS 288.040.

1 4. Sam Johnson and Thom Shelton are employees of the Nevada State Education
2 Association on assignment to ESEA and as such designated agents of ESEA for purposes of
3 NRS 288.270(2).

4 5. A local government employee who is represented by an employee organization
5 has *Weingarten* rights, including the right on request to have a representative of said organization
6 present at an investigatory interview that he reasonably believes may lead to discipline or a
7 which the employer seeks information to enable it to impose discipline. See *Teamsters v*
8 *Humboldt General Hospital*, Item No. 246. Any waiver of said right must be voluntarily made
9 and clearly expressed.

10 6. A representative of an employee organization present at an investigatory
11 interview may take an active role in assisting the employee, such as suggesting possible sources
12 of information, asking clarifying questions or providing explanations justifying conduct. As with
13 any advocate, the representative must be mindful that his/her demeanor can affect the quality of
14 the employee's representation.

15 7. In the event an employer refuses to allow an employee to have a representative
16 present or declines the representative's reasonable participation, the employer must not ask the
17 employee any questions or otherwise seek to elicit information from the employee concerning
18 the subject of the interview. Any attempt by the employer to force the employee to answer
19 questions or intimidate the employee will taint the session, in the absence of full participation by
20 association representative.

21 8. Employee organizations have a duty to their members to make representatives
22 reasonably available for investigatory interviews in which the member reasonably believes that
23 he will be exposed to disciplinary action.

24 9. An employee is not entitled to insist upon a representative of his or her choice at
25 an investigatory interview if that representative is not available. Rather any competent
26 association representative available will suffice. On the other hand, if there are no
27 representatives available, the employer must make all reasonable efforts to accommodate the
28 scheduling conflict.

1 10. An employee may not be disciplined for the good faith exercise of his/her
2 *Weingarten* rights.

3 11. The principal remedy for violation of *Weingarten* rights is for the employee to be
4 made whole, by restoring to the employee rights lost or other damage for which the *Weingarten*
5 violation was a legal cause. If the employer had just cause for implementing discipline, it is
6 presumed that the *Weingarten* violation was not a legal cause of the discipline, and the discipline
7 should not be set aside. If, on the other hand, the employee can show that, but for the *Weingarten*
8 violation, he or she would have been able to bring to light information that would have shown
9 lack of just cause or mitigated the cause, the employee should be restored for the loss
10 proximately caused.

11 12. Paez's *Weingarten* rights were violated when her supervisor stated a blanket
12 refusal to allow the representative to ask questions at the interview and when the supervisor
13 threatened her with discipline and thereafter disciplined her by suspension for her leaving with
14 her representative.

15 13. The Board defers to the decision of the arbitrator that the termination of Paez was
16 not legally caused by the violation of her *Weingarten* rights.

17 14. ESEA agent Johnson's aggressive question put to Barmettler was a proper
18 exercise of an employee's *Weingarten* rights.

19 15. Hand's *Weingarten* rights were violated when he was questioned without his
20 representative and after invoking his rights. The Board defers to the decision of the arbitrator
21 that his dismissal was for good cause, as the violation of his *Weingarten* rights was not a legal
22 cause of his discipline.

23 16. Rubin's *Weingarten* rights were violated when he was threatened after invoking
24 his rights. The violation of his *Weingarten* rights was a cause of his discipline.

25 17. Williams' *Weingarten* rights were violated when he was questioned without his
26 representative, after invoking his rights. The violation of his *Weingarten* rights was a partial
27 cause of his discipline.
28

1 18. Despite being a probationary employee, Martinez's *Weingarten* rights were
2 violated when he was questioned without his representative; management refused to allow the
3 representative in the meeting. The violation was not a legal cause of his discipline.

4 19. Criticism of ESEA as "unprofessional" by a CCSD supervisor, made to an ESEA
5 member, amounts to a prohibited practice under NRS 288.270(1)(a).

6 **Decision and Order**

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that for the above-stated
8 reasons, ESEA is entitled to judgment in its favor.

9 IT IS FURTHER ORDERED that Paez's ten day suspension be reduced to two and that
10 she shall be made whole for any additional days actually served.

11 IT IS FURTHER ORDERED that Rubin's five day suspension be reduced to one and that
12 he shall be made whole for any additional days actually served.

13 IT IS FURTHER ORDERED that Williams shall be made whole for any of the five-day
14 suspension he actually served.

15 IT IS FURTHER ORDERED that the termination of Hand not be disturbed.

16 IT IS FURTHER ORDERED that Martinez's termination not be disturbed.

17 IT IS FURTHER ORDERED that for the benefit of employee-management relations,
18 Complainant Association and Respondent School District shall post a jointly prepared notice
19 alerting Complainant's supervisory personnel and employees and Respondent Association's
20 officials and members of the rights of said employees to *Weingarten* representation and the duty
21 of Complainant to afford such representation. Such notice shall be submitted to the
22 Commissioner of the Board for approval, and after such approval, shall be posted at locations
23 that are accessible to their respective supervisory personnel, officials and employees at offices at
24 ESEA, CCSD administration, and at each of the schools involved herein, for a period of thirty
25 (30) days. At the close of such posting, Complainant and Respondent School District shall each
26 provide written certification to the Board of compliance with the foregoing.

27 IT IS FURTHER ORDERED that Complainant and Respondent CCSD forward a copy of
28 this decision to each of their respective employees involved herein either as designated agents of

1 Complainant or supervisors of Respondent, as the case may be, and that Complainant and
2 Respondent CCSD provide proof to the Board of their doing so (e.g., by obtaining a written
3 acknowledgment of receipt) within twenty (20) days.

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

6 DATED this 11th day of October, 2005.

7 LOCAL GOVERNMENT EMPLOYEE-
8 MANAGEMENT RELATIONS BOARD

9 BY: 
10 TAMARA E. BARENGO, Chairman

11 BY: 
12 JOHN E. DICKS, ESQ., Vice-Chairman

13 BY: 
14 JANET TROST, ESQ., Board Member
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