

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

5 EDUCATION SUPPORT EMPLOYEES
6 ASSOCIATION,

7 Complainant and Petitioner,

8) ITEM NO. 607A

9) CASE NO. A1-045820

10) DECISION

11 For Complainant: Sandra G. Lawrence, Esq.
12 Dyer, Lawrence, Penrose, Flaherty & Donaldson

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

15 STATEMENT OF CASE

16 Education Support Employees Association ("Complainant" or "ESEA") initiated the
17 subject proceeding by filing a Complaint and Petition for Declaratory Ruling on December
18 2004, complaining that Clark County School District ("Respondent" or "the District") engaged
19 in prohibited practices in violation of NRS 288.270(1)(a), (b), (c), (d), and/or (f), inter alia,
20 refusing to grieve or arbitrate certain disputes and in failing to provide information, a
21 petitioning for a ruling on certain legal issues, paraphrased as follows: (1) whether enforcement
22 of an agreement is an extension of the negotiations process; (2) whether the duty to provide
23 information terminates with the signing of the agreement; (3) the duty of the employer to furnish
24 information to employee organization as part of a bargaining relationship; (4) whether employee
25 organization has right to request information from employer regarding members for any reasons
26 reasonably related to representation.

27 Respondent filed a motion to dismiss on February 7, 2005, which Complainant opposed
28 on April 5, 2005. The Employee-Management Relations Board ("the Board") denied the motion
on May 10, 2005.

1 Respondent filed its answer to the Complaint and Petition on May 27, 2005. Respondent
2 filed a Pre-Hearing Statement on June 20, 2005, and Complainant filed its Pre-Hearing
3 Statement on June 24, 2005. On August 2, 2005, the Board issued a Notice of Hearing on the
4 Complaint. Hearing was held on September 8, 2005, at which six witnesses testified: Andrew
5 Brown and Odalis Dominguez, employees of Respondent and members of Complainant; Rose
6 Brennan and Thom Shelton, Uniserve Directors ("UDs") employed by Complainant; Joseph
7 Furtado, Executive Director of Complainant; and Fran Juhasz, Director of Employee
8 Management Relations of Respondent.

9 **SUMMARY OF EVIDENCE**

10 1. Testimony of Andrew Brown

11 Andrew Brown is a bus driver for Respondent. In May, 2004, he met with Thom Shelton
12 of Respondent, because some written warnings on his employment record were more than three
13 years and a day old (entitling him to have them removed from his record). RT 12, L 18 to 13, L
14 10. Brown signed an authorization for representation for ESEA to represent him, to access his
15 personnel files. RT 14, L 22 to 15, L 18. Brown had attempted on his own to get the negative
16 items removed, without success. RT 18, L 7-16. After Thom Shelton wrote a letter dated May
17 13, 2004 requesting a copy of Brown's file, Brown never heard anything from Respondent until
18 the following Christmas break, at which time he received a call that the warnings would be
19 removed. RT 16, L 20 to RT 17, L 8. This occurred after a grievance was filed on Brown's
20 behalf. RT 17, L 9-20.

21 Brown had himself reviewed his file on occasions previous to his meeting with Shelton.
22 RT 19, L 2-24. Brown attributes the denial of his request made on his own to have the warnings
23 removed was due to favoritism. RT 20, L 18-25. When Brown looked at the file, he orally
24 requested copies but was denied. RT 21, L 21, to RT 22, L 20.

25 Brown and Shelton went together to view Brown's file at the District's central personnel
26 office, but the warnings in question were not there. RT 25, L 5 to RT 26, line 24. Shelton never
27 went with Brown to view Brown's worksite file; Shelton only wrote the letter referred to above.
28 RT 26, L 25 to RT 28, L 3.

1 2. **Testimony of Odalis Dominguez**

2 Odalis Dominguez is an employee at Canyon Elementary School in North Las
3 Ms. Dominguez met with Rose Brennan concerning a possible grievance against
4 Dominguez's principal, Dr. Jackson. RT 41, L1 9-25. Her issues with Dr. Jackson concerned
5 Jackson's threat to start dismissal proceedings against her and an extension of Ms. Domin
6 probation time.

7 When she saw Rose Brennan, Ms. Dominguez had not had the opportunity to vie
8 personnel file. Ms. Brennan and she wanted to look at the file. RT 42, L 10 to RT L 2
9 Dominguez signed an Authorization for Representation on June 14, 2004. RT 44, L 16,
10 45, L 11. As part of the request letter sent on Ms. Dominguez behalf, an extension of the ti
11 respond to her evaluation was obtained. RT 46, L1 13-22.

12 Ms. Dominguez learned from Rose Brennan that she had the right to look at her file
13 Ms. Jackson let Ms. Dominguez look at her worksite file. RT 48, L 18 to RT 49, L 4. "A l
14 documents that Jackson had Dominguez sign were not in her worksite file. RT 49, L1
15 Dominguez sensed hesitancy on the part of Dr. Jackson in letting her look at her worksit
16 and had to ask her twice. Dr. Jackson had copies made for Dominguez. RT 54, L1 1
17 Dominguez does not believe she told Brennan about obtaining the copy of the worksite file
18 55, L1 12-14.

19 No grievance was ever filed on behalf of Ms. Dominguez. RT 46, 10-12.

20 3. **Testimony of Rose Brennan**

21 Rose Brennan joined ESEA as a Uniserve Director in June 2004. As a Uniserve Dire
22 she is a field representative for ESEA members, representing them in meetings, doing pro
23 solving, and handling grievances. RT 57, L1 16-22. She is assigned to over one hundred sit
24 Clark County School District and to approximately 1700-1800 members. RT 57, L 23 to R
25 L 5.

26 Brennan met with Dominguez on June 14, 2004 concerning an evaluation Domin
27 considered unfair. Dominguez also had concerns regarding intimidation by her administr
28 RT 59, L 25 to RT 61, L 8. Dominguez signed an authorization form for Brennan to rec

1 Dominguez's central and worksite files, which Brennan requested by letter dated June 15, 2004
2 to Fran Juhasz, of CCSD's Employee Management Relations Board. RT 62, L1 2-24. The letter
3 referred to Article 35-1 of the collective bargaining agreement, concerning the right to request
4 information. RT 63, L 25 to RT 64, L 26. In the letter, Brennan also requested an extension of
5 time for Dominguez to object to her evaluation. RT 65, L1 1-13.

6 Juhasz granted the extension regarding the evaluation over the telephone. A response to
7 Brennan's request for the files, denying the request, came from Dean Kiernan, Juhasz's assistant,
8 on August 31, 2004, two and a half months later. Brennan never received either files for
9 Dominguez. RT 65, L 21 to RT 67, L 8.

10 Brennan's reason for requesting Dominguez's files was to find out if there was any
11 information that should not be in the file. RT 67, L 25, to RT 68, L 11. The denial letter from
12 Kiernan indicates Article 35-1 does not require Employee Management Relations office to make
13 records available, noting that Dominguez did not have a pending employment matter, but also
14 noting that Dominguez could herself obtain records and give them to ESEA. RT 69, L1 6-23.

15 Brennan wanted the official record for Dominguez so that Dominguez's administrator
16 "couldn't pull something out of her drawer." RT 70, L1 4-16. She wanted to know if
17 Dominguez's files held anything that could be held against her. RT 77, L 20 to RT 78, L 12.
18 Brennan requests files on other occasions, such as for members who are illiterate. RT 70, L 20
19 to RT 71, L 7.

20 Brennan recalls other file requests, by her predecessor, Dwight Blake, that were honored
21 even though there was no pending matter. RT 72, L5 to RT 77, L 19.

22 When no files were received, Brennan had her secretary follow up on the file request. RT 7
23 84, L. 24 to RT 85, L 1.

24 Brennan was referred at hearing to the terms of Articles 35 and 24. RT 86 to RT 92.

25 Ms. Brennan does not know why sometimes Article 24 was cited and other times Article
26 35 was cited. RT 101, L1 5-23.

1 4. Testimony of Thom Shelton

2 Shelton is a Nevada State Education Association Employee assigned to ESEA, employed
3 as a UD and Organizational Development Specialist. RT 108, L 25 to RT 109, L 3.

4 *Re: Carmen Shoop*

5 Shelton met with ESEA member Carmen Shoop in October 2004. She was a post-
6 probationary employee who was on promotional probation (meaning she had been promoted but
7 had not served six months in the promoted position). It appeared that she was going to be
8 demoted from Secretary 3 a total of nine pay ranges to an Office Specialist 2. RT 110, L1 7-21.
9 Ms. Shoop was demoted on September 27, 2004.

10 The grievance letter for Ms. Shoop referred to articles 24, 31, and 32 of the
11 Bargaining Agreement in their entirety—to be narrowed at the Step 1 hearing. RT
12 RT 113, L 23.

13 Article 31-7 of the Collective Bargaining Agreement provides that work n
14 and procedures are to be interpreted and applied uniformly. RT 114, L1 5-10. W
15 cited Article 32, he had in mind Article 32-1, which provides that continued empl
16 regular status employee is contingent upon proper performance and personal fitn that
17 regular status employees may be suspended, demoted, or dismissed for just cause. He may also
18 have had in mind Article 32-2. RT 114, L 16 to RT 115, L 1.

19 Shelton felt that Shoop had been demoted (as opposed to failing to satisfactorily com ete
20 probation) based on the extraordinary circumstances involved. She had just received a “n eets
21 standards” evaluation within the previous two to three weeks. Her supervision was reassigned
22 and her duties were changed. Shelton had also been contacted by an assistant regional
23 superintendent (whose name Shelton doesn’t recall), who didn’t believe Shoop’s case had een
24 fairly handled. RT 115, L 2 to RT 116, L 1. RT 152 to RT 157; RT 168-9.

25 The response to the grievance, in a letter from Fran Juhasz dated November 1, 2004, as
26 that Ms. Shoop was not demoted as a form of discipline giving rise to a right to a grievance. RT
27 116, L10to RThl 17, L 17.

1 Shelton views Ms. Shoop as a regular status employee within the meaning of Section 9
2 and is therefore covered by the Collective Bargaining Agreement. RT 119, L1 1-13.

3 Shelton responded to Juhasz's letter, demanding arbitration, to which Ms. Jul z
4 responded that the dispute was not subject to arbitration. RT 120, L 24 to RT 121, L 11.

5 On previous occasions, "promotional probationary" employees have by way of settler t
6 agreed to a return to their prior positions. Other than that, such employees do not lose t^{ier}
7 regular status when they are promoted. RT 122, L1, 4-22.

8 Shelton felt that a dispute as to whether a matter is subject to arbitration should e
9 decided by an arbitrator. Section 4-7 states that an arbitrator has no authority to rule on a disp e
10 between the parties other than one which qualifies as a grievance under Section 4.1. RT 123, 1 8
11 to RT 124, L 22.

12 Shoop was apparently seen as insubordinate to new staff members after her "me s
13 standards" evaluation. Based on that, Shelton views the action against her as a "demotion." 1 T
14 159, L 10, RT 162, L 12.

15 As a result of the District's declining ESEA's request for arbitration, ESEA has fileu a
16 Petition in District to Compel Arbitration. RT 125, L1 8-16.

17 *Re: Andrew Brown*

18 Shelton requested Andrew Brown's central and worksite files by letter referring t^o
19 Section 24-2 of the Collective Bargaining Agreement. That section gives ESEA the ability t^o
20 access personnel files as long as it has a written release from the employee. RT 125, L 21 to R' I
21 126, 13; RT 140, L 23 to RT, L 13. Shelton also has relied on Sections 24-1 and 35-1 of th e
22 Collective Bargaining Agreement. RT 142, L 17 to RT 143, L. 11.

23 Until 18 to 24 months ago, the District was providing such information pursuant to th e
24 request. The District denied Brown's request in keeping with a policy derived since that time,
25 whereby ESEA's request concerning an employee without an active employment matter was R' I
26 126, L 17 to RT 127, L 5. The matter in which the new practice first arose concerned Donn a
27 Sweat. RT 137, L 4 to RT 138, L 8.

1 Shelton became aware of the restrictive interpretation concerning employee records when
2 he had requested records of employees concerning a pattern of questionable administrative
3 practices by a principal. RT 127, L 21 to RT 128, L 16.

4 Kiernan's response to Shelton's May 13, 2004 request for Brown's records, was itself
5 dated August 31, 2004. RT 129, L 12-21. The District's refusal to provide information
6 compromises ESEA's ability to represent a member fully and constitutes a unilateral alteration of
7 terms and conditions. RT 131, L 1 to RT 132, L 20.

8 Shelton is not aware whether Brown's records issue was grieved. RT 144, 15-21.

9 *Re: Margaret Woody*

10 Shelton also submitted a request for ESEA employee Woody, denied for similar reasons.
11 In this case a grievance was filed. RT 133, L 5 to RT 136, L 3. It is awaiting arbitration. RT
12 144, L 12-14.

13 5. Joseph Furtado

14 Joseph Furtado is the Executive Director of ESEA.

15 Furtado states that the preamble of the Collective Bargaining Agreement provides that the
16 District's policies have to be consistent with the CBA. RT 181, L 7-23.

17 Based on the definition of "collective bargaining," Furtado believes that Article 35-1
18 applies to requests for information. RT 184, L 10 to RT 186, L 1.

19 There is nothing in the CBA that provides for an employee to lose permanent status after
20 he has passed the probationary period. RT 187, L 16-25.

21 Furtado considers it a matter for the arbiter to determine whether something is a
22 grievance under the CBA. RT 191, L 22 to RT 193, L 8.

23 Fran Juhasz declined Furtado's request for arbitration. RT 193, L 21 to RT 194, L 21.

24 Furtado stated that the requests for information at issue related to requests to reopen the
25 CBA or to the ongoing process of collective bargaining. RT 207, L 23 to RT 209, L 8. Furtado
26 contends that under the CBA, ESEA is entitled to make reasonable requests for information, such
27 as to enable it to decide whether to file a grievance. RT 209, L 9-23.

1 Furtado testified that grievances that are filed under the District's rules and regulations
2 have very seldom been scheduled for hearing by the Board of Trustees. RT 182, L 13 to RT 183,
3 L 10.

4 6. Testimony of Fran Juhasz

5 Ms. Juhasz has been the Director of Employee Management Relations for the
6 County School District for two years. Her office is responsible for contract disputes and
7 dispute resolution, concerning the CBA, policies and regulations. All appeals and grievance
8 through her office. From 1990 to 2001, she worked for ESEA, six of which years
9 Executive Director. RT 224, L 23 to RT 226, L 12.

10 Shoop's and Woody's grievances were the first that Ms. Juhasz had received concerning
11 promotional probationary employees being returned to their previous status. RT 227, L 16-25
12 Ms. Shoop and Ms. Woody still retain their status as regular status employees. RT 229, L 2-8.

13 Employee Management Relations processes information requests from the union,
14 receiving 339 such requests in the course of the 04-05 school year, 180 of which came from
15 ESEA, which requests related to pending employment matters. RT 229, L 24 to RT 230, L 2
16 Juhasz's office responds to requests where there is no formal grievance. She listed an example
17 of the union rep calling in to seek the information in advance of an investigatory conference.
18 There was no record in Juhasz's log that Brown or Dominguez had a pending matter. RT 231, L
19 5-17.

20 Ms. Juhasz has no problem honoring requests for information by telephone where the
21 stated purpose is to avoid a grievance. RT 232, L 5-18.

22 Ms. Juhasz logs every single thing that comes into her office and checks her log and
23 phone log when she gets a request for information. RT 234, L 9-20.

24 Individual employees may request to review their files any time. CT 231, L 24 to CT
25 232, L 4. Requests by individuals to review their files do not go through Juhasz's office. CT
26 236, L 7-14.

27 The names referred to by Ms. Brennan as prior information requests where there was a
28 pending matter actually had pending matters on Ms. Juhasz's logs. CT 239, L 18-21.

1 There are 32,000 school district employees, and Ms. Juhasz is concerned about the
2 potential of their filing requests through her office. CT 242, Ll 23-25.

3 **FINDINGS OF FACT**

4 1. Complainant is an employee organization as defined by NRS 288.040 and is the
5 exclusive representative and bargaining agent of the education support staff employees of
6 Respondent.

7 2. Respondent is a local government employer as defined by NRS 288.060.

8 3. Complainant and Respondent are parties to a Collective Bargaining Agreement
9 ("the CBA") effective from July 1, 2003 to June 30, 2007.

10 **FAILURE TO GRIEVE REINSTATEMENTS TO PRE-PROMOTION POSITIONS**

11 *Margaret Woody*

12 4. Margaret Woody was hired by Respondent on August 14, 1998, finished
13 probationary status six months later and became a regular status employee working as an Office
14 Specialist II. On or about February 2004, she was promoted from Office Specialist I
15 Secretary II. Four months later, Respondent determined Ms. Woody's performance in
16 promoted position to be unsatisfactory, and she was returned to the position from which she was
17 promoted, i.e., Office Specialist II.

18 5. Two grievances were filed by Complainant on behalf of Ms. Woody: (1)
19 Demotion in violation of the CBA "and without evaluation or direction for change" (Grievance
20 #03-04/C/13/65) and (2) Demotion in violation of CCSD Policy and Regulations "and without
21 evaluation or direction for change" (Grievance #03-04/C/13/66).

22 6. Ms. Woody's grievances concerning her return to Office Specialist II were
23 rejected by Respondent based on its contention that she had no right to grieve said return because
24 she was on probationary status with respect to the position to which she was promoted and
25 therefore had no appeal rights.

26 *Carmen Shoop*

27 7. Carmen Shoop was hired on November 6, 1991, as a teacher's aide/instruction
28 assistant and thereafter acquired regular status. In 1998, she acquired regular status as an Office

1 Specialist II. On June 8, 2004, she was promoted to Secretary III. On or about September 24,
2 Respondent determined Ms. Shoop's performance to be unsatisfactory in the promoted position
3 and returned her to the Office Specialist II position.

4 8. Complainant thereafter filed a "Statement of Grievance and Terms of Provisions
5 of Master Agreement, School, Policy or Administrative Regulation Allegedly Violated," citing
6 several articles of the CBA and to "(a)ny and all other applicable articles, policies, rules,
7 regulations and other related matters." (04-05/C/03/16)

8 9. Ms. Shoop's grievance was rejected by Respondent based on its contention that
9 she had no right to grieve said return because she was on probationary status with respect to the
10 position to which she was promoted and therefore had no appeal rights.

11 *CBA and Other Provisions Related to Ms. Woody and Ms. Shoop*

12 10. In the CBA it is stated that "(t)he parties hereby recognize the existence of
13 policies and administrative regulations of the School District to which the Employees covered by
14 this agreement are bound, and which are subject to change by the School Trustees of the School
15 District." Article 4-1 of the CBA.

16 11. District Regulation 4323(III) states as follows:

17 A regular-status employee who is promoted shall also serve a required
18 probationary period of six (6) months in the position to which promoted. If the
19 employee's performance in the higher classification is unsatisfactory, the
20 employee shall be reinstated to an available position at a lower classification for
which the employee is qualified and/or has previously demonstrated satisfactory
work performance.

21 12. In the CBA, a "regular-status employee" means "an education support Employee
22 who has successfully completed his or her initial six (6) month probationary period and any
23 extensions thereof." Article 1-9.

24 13. "Demotion" is not defined in the CBA.

25 14. The CBA imposes certain limits on demotion of a regular-status employee, to wit:
26 It may only be for just cause, after specified notice is given. Article 32.

27 15. Under the CBA, a regular status employee covered thereunder or the Association
28 (Complainant) may file a grievance. A "grievance" is "any dispute which arises regarding a

1 interpretation, application, or alleged violation of any of the provisions of' the CBA. Article 4

2 1.

3 FAILURES TO PROVIDE INFORMATION

4 *Andrew Brown*

5 16. Pursuant to Article 24-2 of the CBA, Complainant requested from Respondent
6 Andrew Brown's personnel and worksite files by letter dated May 13, 2004. The letter purports
7 to enclose a release from Mr. Brown.

8 17. Article 24-2 provides in pertinent part that

9 "... Upon request, an Employee shall be provided, at the prevailing rate per page,
10 a reproduction of any material, excluding any pre-employment documents, in the
11 Employee's file. Unless requested by the Association, such a request may not be
made more than one time per year."

12 18. Respondent answered by letter dated August 31, 2004 that Article 24-2 did not
13 apply since there was no pending employment matter with Mr. Brown.

14 19. Article 24-1, not cited by Respondent in its August 31, 2004 letter but cited in its
15 Pre-hearing statement, provides in pertinent part as follows:

16 "...If any Employee is involved in a grievance regarding matters in the personnel
17 file which may be material, an Association officer or other Association
18 Representative with the written approval of the Employee may also be granted
19 access to the Employee's personnel file at reasonable times where such access is
authorized in advance by the Employee. The District shall provide copies of all
legally permissible information pertinent to the grievance."

20 20. Complainant did not seek to grieve denial of the Brown request.

21 *Odalis Dominguez*

22 21. By letter dated June 15, 2004, Complainant requested that Respondent provide i
23 with a copy of Odalis Dominguez' personnel and worksite files pursuant to Article 35-1 of th
24 CBA. The letter purports to enclose a release from Ms. Dominguez.

25 22. Article 35 of the CBA provides that

26 35-1 "The parties to this Agreement shall make all relevant information
27 available to each other within a reasonable time of its request. If the party
has documents containing the information requested, these will be
provided. In the event that documents containing the requested
28 information are not available, reasonable access to files containing the
needed information shall be permitted. Both parties agree to pay
reasonable costs for collecting information."

1 35-2 "Requests for information shall be made in accordance with NRS
2 288.180."

3 23. Respondent, by letter dated August 31, 2004, refused the request on the ground
4 that Article 35 only applies to negotiations, noting that while Article 24 would apply to
5 individual records requests, as Dominguez had no pending grievance, Article 24 did not apply.

6 24. Complainant did not seek to grieve denial of the Dominguez request.

7 *Linford Winget*

8 25. Complainant stated that it requested and grieved the failure of Respondent to
9 request a tape of an evidentiary hearing concerning the dismissal of Mr. Winget.

10 26. Respondent acknowledged receiving the request but asserts that the request was
11 received after Mr. Winget's right to appeal had expired, and therefore the request was untimely.

12 27. At the hearing, ESEA withdrew the portion of the Complaint concerning the
13 member. RT 136, Ll 6-11.

14 CONCLUSIONS OF LAW

15 1. The Employee Management Relations Board ("the Board") has jurisdiction over
16 this matter, as the dispute is between a local government employer and an employee organization
17 and alleges prohibited practices under NRS 288.270 and seeks a declaratory order pursuant to
18 NAC 288.380 regarding the applicability or interpretation of NRS Chapter 288 concerning good
19 faith enforcement of an agreement and the duty to provide information outside the negotiation
20 process.

21 2. The duty to provide information under NRS 288.180 is limited to information
22 requested in the negotiations process.

23 3. While it is not the jurisdiction of the Board to enforce collective bargaining
24 agreements, under NRS 288.270(1)(e) and NRS 288.033, the parties to a collective bargaining
25 agreement must act in good faith with respect to implementation of the collective bargaining
26 agreement.

1 4. A right under NRS 288.270 or any other provision of Chapter 288 may be waived
2 or narrowed, in a collective bargaining agreement or elsewhere, but such waiver or narrowing
3 must be clear and unmistakable.

4 5. The CBA at issue herein is ambiguous as to whether an employee who has passed
5 the initial probation and is subsequently promoted is without rights to grieve involuntary return
6 to the prior position, especially in the case of Ms. Shoop, whose return occurred under
7 circumstances that may be a demotion. Complainant properly requested arbitration.
8 Respondent's refusal to grieve the issue of arbitrability is bad faith negotiation. Respondent
9 should have submitted the matter to arbitration, including the threshold issue of arbitrability.

10 6. The CBA at issue, Section 24-2, entitles Claimant to request employee files and
11 does not limit such requests to when there is a pending employment matter. That Respondent's
12 refusal to comply with such records requests was in bad faith is shown by the protracted delay in
13 issuing a response. The stated reason for refusal, the administrative workload of the office
14 charged with complying with such requests, was not substantiated to the satisfaction of the
15 Board. The time necessary for the Respondent's Employee Management Relations office to
16 check their records for the existence of a pending matter before complying with such requests
17 could be better used in complying with the requests themselves. Neither of the requests for
18 records raised in the present matter constitute an abuse of the record request procedure under
19 Section 24-2. If there is an abuse in the future by Complainant, Respondent would be within its
20 rights to raise that as a prohibited labor practice.

21 7. It appears that the records requests of Brown and Dominguez have been mooted.

22 DECISION AND ORDER

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that

24 1. Respondent committed a prohibited labor practice in failing to submit the issue of
25 arbitrability of the return of promotional-probationary employees to an arbitrator pursuant to the
26 Collective Bargaining Agreement. The parties are ordered to notify the Commissioner of the
27 status of compliance with the arbitration provision with respect to the employees in question
28 within ninety days of this decision.

