

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

5 UNITED WE STAND CLASSIFIED
6 EMPLOYEES/AFT; DAVID SUTTLE;
7 HECTOR MIRELES; LYNDA RHODES; and
8 ANTONIO THOMAS,

9 Complainants,

10 vs.

11 WASHOE COUNTY SCHOOL DISTRICT,

12 Respondent,

13 WASHOE EDUCATION SUPPORT
14 PROFESSIONALS,

15 Intervener,

16 And Other Related Counterclaims and Third
17 Party Actions.

ITEM NO. 641B

CASE NO. A1-045888

FINDINGS OF FACT, CONCLUSIONS
OF LAW & ORDER

18 For Complainants: Michael E. Langton, Esq.
19 For Respondent: Rick R. Hsu, Esq.
20 Maupin, Cox & LeGoy
21 For Intervenor: Sandra G. Lawrence, Esq.
22 Dyer, Lawrence, Penrose, Flaherty & Donaldson

23 This matter came on for discussion and deliberations by the Local Government
24 Employee-Management Relations Board ("Board") on September 20, 2007, noticed pursuant to
25 NRS and NAC chapters 288, NRS chapter 233B, and Nevada's open meeting laws; and the
26 Board finds, concludes, and orders as follows:

27 Statement of Case

28 On June 16, 2006, the Complainants above named filed a complaint with the Board,
29 requesting that the Board find (a) that the Washoe County School District ("School District")
30 committed prohibited labor practices by discriminating against individuals based upon their

1 membership with United We Stand Classified Employees/AFT ("United We Stand"), (b) that the
2 School District unlawfully denied individuals their rights to be represented by a person of their
3 choice, (c) that the School District "has unlawfully encouraged membership in an employee
4 organization," (d) that the School District has unlawfully interfered with, restrained, and/or
5 coerced certain individuals in the exercise of their rights guaranteed by NRS chapter 288, (e) that
6 the School District has "attempted to unlawfully interfere with the formation or administration"
7 of a competing employee organization, and (f) for fees and costs incurred. This complaint was
8 subsequently amended on July 13, 2007.

9 On August 10, 2006, the Washoe Education Support Professionals ("Association") filed a
10 motion seeking permission to intervene in this matter as the incumbent employee organization.
11 Additionally, the School District filed its answer to the amended complaint and filed a counter-
12 Petition for Declaratory Ruling. The Complainants, the School District, and the Association
13 filed their respective prehearing statements; and the matter was scheduled for hearing.

14 The administrative hearing was held on May 1 and 2, 2007. Thereafter, on June 20,
15 2007, the School District filed its Post-Hearing Brief. On June 21, 2007, the Association filed its
16 "Post Hearing Brief" and on June 21, 2007, Complainants filed their "Post-Hearing Brief."
17 Because issues not succinctly addressed were raised, the Board ordered that the parties provide
18 additional information for the Board's consideration. Responses were filed by the parties.

19 The following is a discussion of the testimony provided at the administrative hearing in
20 this matter as well as a discussion of the exhibits produced.

21 Statement of Facts/Discussion of Testimony Presented at Hearing

22 Five witnesses testified at the hearing, namely: Richard Gitthens, Jr., Lynda Rhodes,
23 Hector Mireles, David Suttle, and Christopher Reich.

24 Richard Gitthens, Jr. ("Gitthens") is employed with the School District and is also the
25 President of United We Stand. Transcript of May 1, 2007 hearing ("Tr."), p. 30-1. Gitthens
26 testified that United We Stand does have a constitution and bylaws. Tr., p. 31. However, it is not
27 incorporated with the Nevada Secretary of State's Office. Tr., p. 42. He also stated that he is not

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1 aware of United We Stand filing documents with the Board pursuant to by NRS chapter 288.
2 Tr., p. 43.

3 Gitthens testified that he was prohibited from entering School District property for United
4 We Stand matters. Tr., p. 33. He admitted that neither Hector Mireles nor Dave Suttle are
5 employees of the School District. Tr., p. 35. He also admitted that United We Stand is not a
6 recognized bargaining agent for the classified employees. Id. Gitthens also stated that
7 School District letter of May 3, 2006 (Hearing Exhibit 15) notified him that the limited access to
8 School District property that United We Stand had obtained was revoked, with that access
9 including prior permission to enter the premises, by appointment, during break time-lunch
10 before/after work. Tr., p. 38. He did not feel that this letter meant that he could not represent
11 employees. Tr., p. 43.

12 Lynda Rhodes testified next. She is currently employed with the School District. Tr., p.
13 46. She stated she received notice that she would be disciplined, and she wished Dave Suttle
14 to represent her. Tr., p. 47. He represented her during the first discipline, but not during the second
15 one. Tr., p. 47-8. Hector Mireles was also not allowed to represent her during the second
16 discipline. Tr., p. 48. Attorney Michael Langton then "came in" the room and represented her
17 Tr., p. 49. As a matter of fact, she stated that they "all came over together" for the disciplinary
18 meeting, including Mr. Langton. Tr., p. 78. She did not ask the incumbent organization to
19 represent her as she did not "feel that they have ever been successful" on her behalf. Tr., p. 50.
20 She further stated that she is a personal friend of Suttle but not Mireles. Tr., p. 52-3. She also
21 indicated that she had to inform the School District that Mireles was representing her "as an
22 individual" because Mr. Reich had already informed her that she could not "have anyone from
23 the other union affiliated or representing me as a union." Tr., p. 58. She testified that at the time
24 of the disciplinary proceedings, she did not yet belong to United We Stand, nor had she begun
25 paying dues. Tr., p. 60. She further stated that she did not pay Mr. Langton for representing her
26 and does not know who paid him. Tr., p. 61.

27 Ms. Rhodes stated that she is "not a party [to the instant matter] but I do agree with it."
Tr., p. 62. Upon cross-examination, she stated that she allowed the use of her "facts" for this

1 case. Tr., p. 64. She further admitted that she did not compose the May 10, 2006, letter, that she
2 told United We Stand "how I feel, what I was thinking, what I wanted, and they helped compose
3 the letter, yes." Tr., p. 68. She stated she did not know what the "EMRB" was or "the statutes.
4 They [United We Stand] put that in" the May 10th letter. Tr., p. 69. She also admitted that
5 Suttle was not allowed to represent her "because he is part of United We Stand/American
6 Federation of Teachers Labor Organization . . . h." Tr., p. 70.

7 Hector Mireles was the next witness and he testified that he is currently employed by the
8 American Federation of Teachers as a field representative. Tr., p. 87. He claims that at the
9 Rhodes disciplinary meeting, he did not introduce himself as being with United We Stand, nor
10 did he wear any United We Stand "symbols, tattoos, hats, pins or memorabilia of" that
11 organization. Tr., p. 89. He claims he stated he was there only in his individual capacity. Tr., p.
12 90. He stated that Mr. Langton then appeared to represent Ms. Rhodes, and he [Mireles] was not
13 "allowed" to remain in the room. Tr., p. 91.

14 Mireles stated he also attempted to represent Antonio Thomas in a School District matter,
15 but neither he nor Suttle were allowed to do so. Tr., p. 92. He also testified that he tried to meet
16 with School District employees before and after work, or during their breaks or lunch times, but
17 was unable to do so. Tr., p. 93.

18 Mireles admitted that United We Stand has never provided a membership list to the
19 School District. Tr., p. 94. Mireles did state that he had attended a previous Board meeting
20 during which Suttle engaged in conversation with the Board during the public comment section.
21 Tr., p. 97. He testified that pursuant to the comments, he understood that School District
22 employees "had a right to choose" him to represent them in his individual capacity. Transcript of
23 May 2, 2007 hearing ("Tr. II"), p. 11. He believes the collective bargaining agreement also
24 allows a choice in representation. Tr. II, p. 12. Admittedly, he was not a "close friend" or
25 "confidante of Ms. Rhodes" prior to his attempt to represent her. Tr. II, p. 17. He did not receive
26 any money from Ms. Rhodes but was paid a "salary" by "AFT" and was "on the clock,
27 essentially under AFT" during his attempted representation of Rhodes. Tr. II, p. 18. On cross
28 examination, Mireles stated that he cannot "recall" if a grievance had already been filed upo

1 which he sought to represent Rhodes. Tr. II, p. 21. Mireles also claimed that Rhodes was
2 "incorrect," in that Langton, Mireles, and Rhodes had not driven together to the meeting. Tr. II,
3 p. 22. As for why Mr. Langton just happened to be in the School District facility, Mireles stated
4 that "[m]aybe he wanted a cup of coffee out of the cafeteria" Tr. II, p. 23. He "can't recall"
5 whether he had arranged for Mr. Langton to be present at the Rhodes meeting. Tr. II, p. 26.

6 Mireles admitted that he is not a School District employee, but is a named party in this
7 matter. Tr. II, p. 26, 35. He believes Rhodes filed approximately 3 grievances with the School
8 District, but he could not answer whether the Association had represented her in the grievances.
9 Tr. II, p. 28-9. He does "believe the Organization of American Federation of Teachers was
10 discriminated against by the school district." Tr. II, p. 51. He further admitted that Ms. Rhodes
11 was still a "dues paying member" of the Association when she approached United We Stand for
12 representation. Tr. II, p. 52. He further answered to the Board that United We Stand paid
13 Attorney Langton for the services rendered to Rhodes on May 25th. Tr. II, p. 5. In response to
14 another Board question, Mireles stated that Rhodes became a United We Stand member "after all
15 the hearing processes were done," i.e., after "all the grievances." Tr. II, p. 57.

16 The Board further questioned Mireles as follows: "Now, that says to me that you didn't
17 have a right under this letter [for] AFT to be there representing Ms. Rhodes [b]ecause she was
18 not a member of" United We Stand. Tr. II, p. 58. Mireles further answered "yes" to the Board's
19 question of whether his instructions from AFT were to "represent any one in this group that
20 requests your representation." Tr. II, p. 60. He also responded to the Board that he does not
21 "remove" himself from AFT payroll when he represents the School District employees (or
22 attempts to do so). Tr. II, p. 61. He was further questioned whether he was "there as an AFT
23 employee," to which he replied "[i]n your eyes," i.e., in the eyes of the Board. Tr. II, p. 62. He
24 did offer, however, that he would be "more than happy to represent" Rhodes after removing
25 himself from the AFT payroll. Tr. II, p. 63.

26 David Suttle was the third witness. He is employed with the American Federation of
27 Teachers and is currently the national representative. Tr. II, p. 66. He stated he "was assigned by
AFT to help the Nevada Classified School Employees Association specifically in relationship to

1 [sic] at that time Chapter Two was attempting to disaffiliate from the NCSEA." Tr. II
2 That Chapter Two is now the intervening Association in this matter. Tr. II, p. 68. He sta
3 he has represented at least 4 to 5 employees at "various levels" of their complaints. Id. H d
4 no longer represent School District employees after spring 2006. Tr. II, p. 69, 83. He b s
5 he was told this because he "was not affiliated with a recognized [employee]-organizatio—
6 More specifically, he stated:

7 Well, I met with the superintendent and basically the conversation settled
8 around our being able to represent our members and to communicate with our
9 members who worked at various work sites, because as an organization we have
10 certain legal obligations to meet, even though we are [sic] the bargaining agent,
11 we certainly still have those obligations to the members to ensure that if they have
12 issues that they have problems at the work site and so forth that we are there to
13 help them. And an agreement was agreed to that under certain conditions we
14 would be allowed to visit work sites under specific conditions.

15 Tr. II, p. 70. The School District subsequently notified him (Hearing Exhibit 8) that he/ ed
16 We Stand had violated the terms and conditions for coming onto the
17 School District property. Tr. II, p. 72. He further stated that a membership list was not prc d
18 to the School District "[b]ecause there was a real genuine fear that our members wou e
19 retaliated against by administrators who were members" of the Association. Tr. II, p. 74
20 stated that United We Stand did not charge any employee any fees when they aske r
21 representation. Tr. II, p. 75.

22 Suttle stated that he attempted to represent Antonio Thomas, but was asked to leav e
23 meeting. Tr. II, p. 77. He, thus, believes his organization has been "discriminated against.
24 II, p. 78. He stated it "was a dual fear of retaliation," i.e., retaliation by administrators o
25 belong to the Association as well as the School District officials. Tr. II, p. 84.

26 On cross-examination, he admitted that the School District informed him that he wa t
27 "allowed to solicit new membership." Tr. II, p. 85. Suttle also stated that it would n e
28 "unreasonable" for the School District to request a list of members to determine whether U d
29 We Stand was meeting with current members or attempting to solicit new membership. 1
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1 85-6. Suttle admitted that he was "on the clock" for United We Stand when he attempted to
2 represent Thomas. Tr. II, p. 86. He is not a close friend, or confidante, of Thomas. Tr. II, p.

3 As for the meeting between Thomas and the School District, Suttle brought Lang n
4 along "[w]ith the expectation that I would not be allowed to represent Mr. Antonio Thomas n
5 that hearing." Tr. II, p. 94. He admitted that he is not an employee of the School District. Tr. II
6 p. 98. He also admitted to representing Lynda Rhodes in one instance. Tr. II, p. 102-3.

7 Upon questioning by the Board concerning him (Suttle) being a named complainant,
8 Suttle stated:

9 Well, I am not an uninterested party, I do not see myself as an uninterested
10 party, because I have both as an employee of a union but some obligation to
11 ensure credible and competent representation of a member of this bargaining unit
12 who has asked me or as an agent to represent them and the only that I can say it's
my interpretation of 288 affords me - -

13 Tr. II, p. 107. He further feels he has standing to bring this complaint:

14 Because I was not allowed to comply with an employee's wishes for me to
15 represent them. Me as an individual was not allowed to represent them where
16 other individuals were allowed to represent them either in the capacity as an
employee representative or as an individual.

17 Tr. II, p. 108. He further answered a Board question by stating that it was not only him who has
18 been discriminated against, but also his organization "is being denied [the right] to represent
19 individuals . . . as well as our right to communication with members on the work site" Tr.
20 II, p. 112. At the time of the Thomas hearing, Suttle could not say whether Thomas was a
21 member of the Association or United We Stand. Tr. II, p. 114. He assumes that Thomas became
22 a member of United We Stand by the time the arbitration hearing was held. Id.

23 Christopher Reich was the next witness. Reich is employed with the School District, first
24 as its Labor Relations Manager and now as its General Counsel. Tr. II, p. 133, 161. He stated
25 when he began his employment with the School District:

26 I guess the best way to describe it for the board is that it was chaotic at
27 best, there was no consistency with representation. There was a void. And soon
after coming I learned that the, well, . . . I learned that the classified employees
association was disaffiliating the local from the state. As a result of that

1 disaffiliation and the process and going to court on that there was very unclear
2 about the status of representation for classified employees. The state affiliate
3 NCSEA was still representing some employees with some issues whether they
4 were during possible disciplinary type interviews, grievances or other matters and
5 the local who would change their name from Washoe Chapter Two to . . . dWashoe
6 Education Support Professionals, were also representing employees. The district
7 as I understood it had still recognized the local entity, but was walking a very fine
8 line on not infringing rights of any entity or employees.

9 Tr. II, p. 133-34. Reich also stated that at some point in time, the Association began complaining
10 of United We Stand representing School District employees. Tr. II, p. 136. See also Hearing
11 Exhibit 19, the Association's grievance form complaining of United We Stand. Tr. II, p. 136-3
12 Reich testified that beginning December 22, 2005, the School District took the position "that
13 representation would be by the recognized bargaining agent." Tr. II, p. 140. Because of the
14 representation confusion, the School District sought a declaratory ruling from the Board in
15 another case. Tr. II, p. 143. See Hearing Exhibit 18 for Board's prior decision.

16 Reich stated that United We Stand was informed "[i]n no uncertain terms . . . that they
17 are not to be soliciting [members]." Tr. II, p. 146. He also offered that Mr. Suttle was one of the
18 individuals who were soliciting membership by "handing out trinkets, handing out flyers,
19 stopping individuals at the gates, and they were admonished saying don't do that, it's disruptive."
20 Id. As a matter of fact, Reich stated that United We Stand violated the terms and conditions by
21 entering School District property:

22 I had, and these are independent phone calls, my office receives
23 complaints from pretty much everywhere, either coming from employees or
24 administrators or district central administration. But I had several different calls
25 about Mr. Mireles and Mr. Suttle approaching let's say a school building principal
26 at Matthews, I talked to Mr. Deery, and they would approach him and say we
27 would like to come on and talk to one of your custodians tonight, which Mr.
28 Deery said you can't just come in and talk to my custodians because at this time
administrators were aware there were issues going on with United We Stand and
[the Association] and they would hold up my letter which was whatever joint
exhibit we were looking at, is that three?

Tr. II, p. 150. He further stated:

Like I said the north yard mentioned Mr. Schomberg, they did the same
thing, holding up the letter saying we have permission. And then I also talked to
Mr. Gil Folk who was at that time the acting or interim transportation director for

1 the district who said that he clearly was at central yard and these individuals, I
2 think it was both Mr. Mireles and Mr. Suttle at that time trying to set up a table at
3 the transportation department to meet employees as they come in and out of the
4 break room. So after talking with these individuals and hearing these complaints
coming from different areas independently, I believed they were not upholding
their end of the limited site visit conditions.

5 Tr. II, p. 151. Based upon these examples, and the failure to provide a membership list, the
6 School District revoked United We Stand's privilege of coming onto School District property.

7 He further stated that he believes that the prior Board ruling allows "only representative^{es}
8 of the current recognized bargaining agent to represent a classified employee" without violating
9 NRS 288.140 and NRS 288.270. Tr. II, p. 153. It was based on that Board ruling and the terms
10 of the collective bargaining agreement that the School District prevented Mireles and Suttle from
11 representing Rhodes and Thomas. Tr. II, p. 154. Furthermore, if the School District allowed
12 Mireles and Suttle to represent employees, such would violate the settlement agreement entered
13 into between it and the Association, which resolved the grievance filed by the Association. Tr. II,
p. 155. That settlement agreement specifically states:

15 The parties agree that under article 7.2.2 of the agreement, an employee
16 who chooses not to be represented by the association in the enforcement process
17 may represent himself or herself and may be represented or assisted by another
18 person who is not a member, employee, representative, officer or director of a
nonrecognized labor organization and may be represented by privately retained
legal counsel.

19 Tr. II, p. 168. In Reich's opinion, the above settlement agreement does not conflict with Article
20 7.2.2 which allows an employee to be represented by a person of his/her choosing during the
21 grievance process. Id. He claimed the settlement agreement actually clarifies Article 7.2.2 of
22 the collective bargaining agreement. Id.

23 He further stated that the School District is not concerned with payments to an attorney
24 representing an employee, and that is why it did not have a problem with Attorney Langton
25 representing the employees. Id. However, the Association disagreed with that position and filed
26 a grievance. Tr. II, p. 156. See Hearing Exhibits 23, 24, and 25. The Arbitrator in the matter
27 denied the grievance, allowing Mr. Langton to represent the employees. Tr. II, 159.

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1 Upon cross-examination, Reich stated that Mireles and Suttle are "part and parcel of a
2 non-recognized labor organization that is currently trying to become the recognized labor
3 organization and they to that end are attached with the . . . rival labor organization [and] are not
4 members of the recognized labor organization . . . d." Tr. II, p. 162. Reich also stated that
5 employees are complaining that they are getting unwanted mailings from United We Stand
6 through the "school mail." Tr. II, p. 189.

7 In its post-hearing brief, the School District cited NRS 288.110(2) regarding complaints
8 the Board may hear from "any local government employer, local government employee or
9 employee organization." Post-hearing Brief, p. 6. The School District argues that Suttle and
10 Mireles do not fit within the categories of parties allowed to file complaints with the Board. The
11 School District also argues that to allow NRS 288.270's prohibition against discrimination to
12 extend to Mireles and Suttle would be to expand that statute beyond the legislative intent. *Id.* at
13 p. 7. Additionally, the School District claimed that the complainants herein did not meet their
14 burden of proof as to the allegations raised. It further requested that the Board clarify its
15 previous order concerning the exclusion of persons known to belong to rival organizations from
16 representing employees.

17 The Association argued similarly in its post-hearing brief but also included arguments
18 concerning the Cone case and prior Board rulings.

19 The Complainants' arguments in their post-hearing brief included, but are not limited to,
20 that United We Stand has "standing" to file the complaint as it is an employee organization and
21 that Mireles and Suttle have standing as the "agents and representatives" of United We Stand.
22 Post Hearing Brief, p. 4. As for Mireles and Suttle representing Thomas and Rhodes, the
23 Complainants state that the School District is "discriminating against its employees who have
24 chosen not to be members of or represented by" the recognized bargaining agent. *Id.* at 7.

25 On July 13, 2007, the Board entered its order that the parties were to advise whether
26 Rhodes and Thomas were members of the incumbent union at all relevant times and when
27 exactly did Rhodes and Thomas first contact Suttle and/or Mireles.
28

The Complainants assert that Rhodes and Thomas "were members of the incumbent union when they contacted" Suttle and/or Mireles, and "at all times relevant to the complaint, i.e., when Suttle and Mireles attempted to represent them." They further state that Rhodes contacted Suttle in February, 2005, and Thomas contacted United We Stand in January, 2006. According to the Association, Rhodes joined the Association on December 10, 1997, and dropped her membership on July 12, 2006. Thomas joined the Association on July 28, 2005, and remained a member until his termination was upheld by the Arbitrator in February, 2007.

Findings of Fact

1. Rhodes and Thomas were employees of the School District.
2. Mireles and Suttle were not employees of the School District and were in fact employees of United We Stand.
3. The current recognized employee organization is the Association.
4. That at all times relevant Rhodes and Thomas were members of the recognized employee organization.
5. Mireles and Suttle are not proper complainants in this matter pursuant to NRS 288.110(2).
6. That United We Stand is a proper complainant in this matter pursuant to NRS 288.110(2) as it is an employee organization.
7. Rhodes and Thomas are proper complainants in this matter pursuant to NRS 288.110(2).
8. If an employee belongs to the Association (i.e., the incumbent employee organization), then such employee is committed to have the incumbent employee organization represent him/her.
9. If an employee does not belong to the incumbent employee organization, then such employee is allowed to have a representative of his/her own choosing. (NRS 288.140(2) ("... does not preclude any local government employee who is not a member of that employee organization from acting for himself. ...").) This would include the unfettered right to appoint someone to represent him/her.

10. Should any finding be better construed as a conclusion of law, may it be so deemed.

Conclusions of Law

1. This Board has jurisdiction over the parties and the subject matters of the complaint on file herein pursuant to the provisions of NRS Chapter 288.

2. The School District is a local government employer as defined in NRS 288.060.

3. The Association is an employee organization as defined by NRS 288.040.

4. Rhodes and Thomas are employees of a local governmental employer as defined by NRS 288.050.

5. That prohibited labor practices are defined in NRS 288.270; and interference with an employee's rights guaranteed by this chapter is a prohibited labor practice. That right includes the formation of a competing employee organization and discrimination.

6. The Board concludes that the School District did not commit a prohibited practice.

7. A declaratory ruling as requested by the School District is not necessary as the above should respond to all inquiries.

8. Should any conclusion be more properly construed as a finding of fact, may it be so deemed.

Order

BASED UPON the above, it is hereby ordered that complainants have not met their burden of proof evidencing prohibited labor practices as found and concluded above; and therefore the Board finds in favor of the School District. Each party shall bear their own fees

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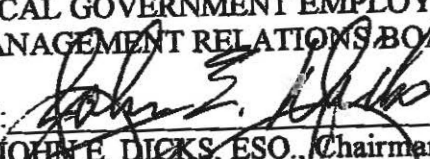
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1 and costs incurred herein.

2 DATED this 20th day of September, 2007.

3 LOCAL GOVERNMENT EMPLOYEE-
4 MANAGEMENT RELATIONS BOARD

5 BY:

6 
JOHN E. DICKS, ESQ., Chairman

7 BY:

8 
JANET FROST, ESQ., Vice-Chairman

9 BY:

10 
JAMES E. WILKERSON, SR., Board Member