

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

5 NEVADA CLASSIFIED SCHOOL  
6 EMPLOYEES ASSOCIATION, AFT/PSRP,  
7 LOCAL 6181, AFL-CIO,

8 Complainant,

9 vs.

10 TRUCKEE-CARSON IRRIGATION  
11 DISTRICT,

12 Respondent.

) ITEM NO. 647B

) CASE NO. A1-045895

) **FINDINGS OF FACT. CONCLUSIONS**

) **OF LAW & ORDER**

13 For Complainant: Michael E. Langton, Esq.

14 For Respondent: Robert L. Zaletel, Esq. of Littler Mendelson  
Michael J. Van Zandt, Esq. of Hanson Bridgett, LLP

15 On the 14th day of May, 2009, this matter came before the Local Government Employee-  
16 Management Relations Board ("Board") for deliberations, discussions, and final decision. This  
17 matter was noticed pursuant to NRS and NAC chapters 288, NRS chapter 233B, and Nevada's  
18 Open Meeting laws.

19 **A. Procedural History.**

20 On the November 29, 2006, the Nevada Classified School Employees Association,  
21 AFT/PSRP, Local 6181, AFL-CIO ("Association") filed a complaint with the Board against the  
22 Truckee-Carson Irrigation District ("District"), alleging prohibited labor practices. The District  
23 filed a motion to dismiss, and the Association filed a motion for permission to conduct  
24 discovery. These motions were opposed; and the Board entered its order on March 13, 2007. An  
25 Answer was filed to the complaint, and the parties filed their respective prehearing statements.  
26 The District filed a motion for summary judgment, which was opposed. The Board entered its  
27 order regarding the same on December 18, 2007; and this case proceeded to hearing. The parties  
28 were allowed to file post hearing briefs as well as reply post hearing briefs.

1 This decision is based upon the exhibits offered at the hearing, the testimony presented,  
2 and post hearing briefs of counsel; and a discussion of the same is warranted to support this  
3 decision.

4 B. Summary of Testimony Presented/Evidence Submitted at Administrative Hearing.

5 On November 13, 2007, the hearing commenced, at which time the Truckee Carson  
6 Irrigation District Employees Association ("TCIDEA") indicated it became affiliated with the  
7 complainant in 2003.

8 Steve Simmons was the first witness. Transcript of Hearing on 11-13-07 ("Tr."), p. 30.  
9 He testified he was the Association's President. He indicated he received a letter from Mike  
10 Adams "concerning disaffiliation" with the Association. Tr. P. 34. He indicated 11 employees  
11 out of approximately 30 total employees pay dues to the Association. Tr. P. 35-6. When the  
12 District ceased deducting the dues, the employees paid the Association directly in cash or check.

13 Chuck Richards testified that he was a ditch rider for the District and is President of the  
14 TCIDEA. Tr. P. 46. He indicated he knew Mike Adams, and that Adams dropped his  
15 membership with TCIDEA when it affiliated with the Association. Tr. P. 51. He and his  
16 members did not participate in the vote concerning affiliation and disaffiliation with the  
17 Association. Tr. P. 52. He indicated that Mike Adams closed TCIDEA's bank account and took  
18 the dues money therein. Tr. P. 53. The money was apparently used by Adams to form another  
19 employee organization ("TCIDEA II"), whose membership included Adams, W. C. Cecil, and  
20 Debbie Sherman. Tr. P. 57. More specifically, in June 2006, Adams presented the District with  
21 notice that the employees were disaffiliating from the Association, creating TCIDEA II. Tr. P.  
22 85. Those employees were not current members of TCIDEA. Adams became president of  
23 TCIDEA II; W. C. Cecil was the vice president; and Debbie Sherman was the secretary. Tr. P.  
24 87. Without objection of the parties, the Board indicated it would use the date of June 15, 2006,  
25 as the date TCIDEA II came into existence. Tr. P. 110. At all times, the mail for TCIDEA was  
26 sent to the District's office; and Mike Adams' wife, Ida, would receive it. Tr. P. 116. Hetals O  
27 indicated that the TCIDEA mail would be opened, and he is not aware of anyone giving  
28 authorization to the District's employees to open the same. Id.

1 Richards also offered that prior to the employees affiliating with the Association, they  
2 would receive cost of living raises annually; however, after 2004, they received only one such  
3 raise in July 2007. Tr. P. 60. On cross-examination, he was questioned whether the employees  
4 received a raise in October 2006; and he indicated that “[t]here could have been.” Tr. P. 92.

5 Richards also explained “water season” which typically begins in March and continues  
6 through November 15 of each year. Tr. P. 60-1. It is during this time period that he would be a  
7 ditch rider. Typically, after November 15, he would be reassigned to operations and  
8 maintenance (“O & M”). Tr. P. 61. However, he indicated he was transferred to O & M either in  
9 September or October, 2006. Arguments were made that such an early transfer was due to anti-  
10 union/employee association animus. Tr. P. 62. Richards testified that when he was transferred  
11 to O & M in 2006, prior to the end of the water season, a “non-union member” employee with  
12 only six months of experience replaced him as a ditch rider to finish out the season. Tr. P. 175.

13 The duties of a ditch rider were described as:

14 The water comes from Lake Lahontan, and it’s distributed out through the  
15 valley to a series of laterals and canals to farmers’ head gates that have water rights.

16 You pick up a water order, you schedule this guy to get water. And you  
17 deliver the water down a canal. (Tr. P. 63.) . . .

18 You do clean the weeds out when they get into the head gate so it won’t get  
19 plugged up. (Tr. P. 64.) . . .

20 [S]ome runs are three days or four days, and you have to schedule the  
21 water when the person is going to be done. Then you move it onto the next user  
22 down the canal. (Tr. P. 67.) . . .

23 Right. Right, it’s a 24-hour operation. It never stops. The water never  
24 stops. Tr. P. 67.

25 Richards indicated there were 16 ditch riders in 2006. Tr. P. 65. He also indicated that  
26 when the ditch riders are sent to O & M, they “[p]our concrete, shovel. Labor work basically.”  
27 Tr. P. 68. As a ditch rider, he is on call 24 hours a day, “25 days a month” and he is required to  
28 live in company provided housing. Id. He indicated that it was necessary that he place plastic on  
the window(s) of the housing to “keep out the cold from blowing” in. Tr. P. 69. The District  
provides the plastic film, and other ditch riders have also used the plastic. He has not been  
disciplined for using plastic on the windows. He further indicated that only Lenny Lynch’s  
house had mold and that Lynch was told to remove the plastic from the windows. Tr. P. 9  
Richards testified that the company housing is not well built and is typically “very old and not

1 insulated.” Tr. P. 145-6. He claims he uses a wood stove to warm his house, and the District  
2 does not provide the wood.

3 He indicated one farmer would turn off the water himself; yet Lynch was fired because of  
4 it. Tr. P. 73-4. He indicated that he, Lynch, Mike Story, Mike Landry, W. C. Cecil, Jeff  
5 Herringshaw, Tom Kenney, and “one or two others” sued the District for unpaid overtime wages  
6 in 2005. Tr. P. 74. The case was settled. Richards also testified that, in his belief, the District  
7 did not negotiate in good faith with the Association.

8 In response to the Board’s question, he indicated that the employees did not advise the  
9 District to cease deducting the dues from the wages, and that a memo was sent by the District  
10 that it would simply, and unilaterally, cease doing the same. Tr. P. 143.

11 Richards confirmed that at Lynch’s termination hearing he (Richards) testified that he  
12 had told Lynch to turn the water off. Tr. P. 650. Richards was also questioned about a break-in  
13 at the Lahontan Reservoir control tower, but denied involvement in the same. Tr. P. 672.

14 Don Watson was the next witness. He is a carpenter employed by the District. Tr. P.  
15 194. He was previously an excavator “operator/driver” but no one from the District told him he  
16 was being reassigned. Tr. P. 195. He indicated he is a member of TCIDEA, and was formerly  
17 the treasurer. He did not participate in any vote to disaffiliate with the Association. Tr. P. 198-  
18 99. He indicated that Wells Fargo gave TCIDEA’s money to Mike Adams and Debbie Sherman,  
19 without his authorization. Tr. P. 201-02. Prior to Adams receiving the money from the bank,  
20 Watson claims Sherman demanded the account twice, which he (Adams) refused. Tr. P. 202-03.  
21 He also testified that he did not authorize anyone to open the TCIDEA mail. Id.

22 Upon cross-examination, he indicated he did request his foreman to return to his prior  
23 “operator/driver” position, but the District refused. No grievance was filed by Watson regarding  
24 any reassignment of his classification. He further testified that dues ceased being deducted from  
25 his wages, and that he did not request the same. Tr. P. 229.

26 Paul Boswell was called as the next witness and testified that he has been a carpenter for  
27 the District for 16 years. Tr. P. 237-38. He also indicated that he belonged to the TCIDEA since

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1 he was first hired. He stated that he was secretary for TCIDEA as well as treasurer, vice  
2 president, and president. When TCIDEA II formed he was serving as secretary for TCIDEA  
3 saw no petition circulated for employees to sign. Furthermore, he stated that he was aware of  
4 vote to disaffiliate from NCSEA. Tr. P. 239-41.

5 When asked whether he had conversations with Debbie Sherman about money  
6 TCIDEA's account, he stated that he had and that Sherman had approached him the day  
7 TCIDEA II formed and wanted the checkbook and all account information. Tr. P. 241. Bos  
8 went on to state that W.C. Cecil approached him before TCIDEA II was to have their vot  
9 become a union explaining to him that he could "get four percent if they would drop the u  
10 and go to [TCIDEA II]." Tr. P. 242. Boswell stated that Cecil was not a member of TCIL  
11 but that he "considered W.C. a pretty good believable source." Tr. P. 242. Boswell indic  
12 that Cecil had family in management and that his father-in-law was a District board member.  
13 stated that Cecil indicated that the District wanted TCIDEA out of there and that they would  
14 through whatever it took to get them out of there." Tr. P. 243. Boswell and Cecil spoke al  
15 tentative agreements that had been made between the District and TCIDEA, and that the Dis  
16 management did not approve of the tentative agreements and wanted to exclude them from  
17 contract. Tr. P. 244.

18 Mike Story was called as the next witness and stated that he was employed by  
19 District, assisting in operations and maintenance ("O & M"). His job title, however, was a c  
20 rider and he had held that position for approximately eleven years. On or about October  
21 2006 he was transferred out of the districts that he served as a ditch rider and placed in O &  
22 Tr. P. 268-71. He stated that during the middle of negotiations between the District and  
23 TCIDEA, he was training a new ditch rider and was under the impression that the District  
24 hired approximately 16 new ditch riders, thus refusing to negotiate with TCIDEA. Tr. P. 273

25 Story also had heard that a petition was being circulated around June of 2006  
26 TCIDEA II seeking to get rid of the Association, but he had never seen it or voted on it. It  
27 during this time that he was training a new ditch rider. When asked if he had ever  
28 disciplined for mistakes he made as a ditch rider, Story noted that he had been written up b

1 District for an altercation with a farmer. Tr. P. 275-77. Story acknowledged that the District and  
2 TCIDEA were unable to reach a tentative agreement on the subjects of wages and insurance. Tr.  
3 P. 281-86.

4 Lenny Lynch was called as the next witness. He was formally employed by the District  
5 as a ditch rider and acted as President of TCIDEA during their affiliation with the Association.  
6 Tr. P. 312-16. During his time as a ditch rider for the District, Lynch was instructed to place  
7 plastic over the windows of his District assigned house to keep the cold out. Because of a mold  
8 problem, Lynch was instructed to remove the plastic from the windows, which he did. However,  
9 he later replaced the plastic over a few of the windows. Tr. P. 314-17. Lynch was further  
10 accused of letting water run too long on a water user's property. These incidents along with a  
11 derogatory religious statement he made about the O & M crew and shop employees were used as  
12 charges by the District committee to fire him. Tr. P. 318-19. Lynch testified that he felt the real  
13 reason he was fired was because of his support of TCIDEA and that he had filed a complaint  
14 with the federal government alleging fraud by the District. Tr. P. 319. Additionally, he stated  
15 that District management knew about previous complaints he had filed with OSHA concerning  
16 ditch operations and that the District told him "they won't put up with it." Tr. P. 321.

17 Lynch testified that in November or December of 2005, his relationship with District  
18 President, Mr. Schank, was compromised after he (Lynch) confronted him (Schank) about a  
19 news article that Schank wrote in the local paper about how easy it was to be a ditch rider. Tr. P.  
20 322. Lynch went on to say that his job security with the District went downhill from that point  
21 on. Lynch also filed a complaint with the district attorney's office alleging that the District was  
22 not filing the proper documents regarding their monthly expenditures as required by Nevada law.  
23 Lynch also testified that he received a mysterious letter that he claims was a death threat during  
24 the end of TCIDEA's negotiation process with the District. He stated that the letter was not  
25 postmarked but contained the address of the "ditch house" where he was living at the time.

26 The text of the letter was neither written nor typed. rather the text of the message  
27 contained cut outs of letters that were "put together as words . . . like Zodiac murder letters."  
28 Lynch stated that he did not have a copy of the letter as it was in the possession of a "federal

1 agent of the government.” Tr. P. 324-38. He also admitted that he made an error in  
2 communication with a farmer resulting in an overflow. Tr. P. 365. Lynch also could not specify  
3 anyone besides John Baker who knew that he had made a fraud complaint with the federal  
4 government. Tr. P. 370-71. When asked about the OSHA complaints that he filed for unsafe  
5 conditions, Lynch testified that OSHA did not write up a report or follow up very effectively  
6 with his several complaints. Tr. P. 388-93. He also gave a long dialogue of the unsafe  
7 conditions which served as a basis for his complaints. Tr. P. 394-407.

8 The next witness was Lyman McConnell. Tr. P. 502. McConnell stated that he is  
9 currently the District’s legal counsel. He had worked as a project manager for the District from  
10 November of 1984 to March of 2006. Tr. P. 503. McConnell stated that he was appointed as the  
11 chief negotiator for the District during negotiations with TCIDEA. He stated that TCIDEA had  
12 formed sometime around 1978 or 1979. Over the years as a project manager and negotiator for  
13 the District, McConnell said that the District always recognized TCIDEA as the recognized  
14 employee organization for bargaining purposes. Tr. P. 506.

15 McConnell stated that the District approved a cost of living raise for employees in January  
16 2004, which was requested by TCIDEA. Tr. P. 508. When asked about his understanding about  
17 TCIDEA’s affiliation with the Association, McConnell responded that the Association was going  
18 to handle the bargaining representation for TCIDEA but not completely override the TCIDEA.  
19 Tr. P. 509. During the course of negotiations, it was McConnell’s understanding that the  
20 tentative agreements reached between TCIDEA and the District would be “conditioned on a  
21 whole package.” Tr. P. 512. McConnell testified that that shortly after a tentative agreement was  
22 reached between the District and TCIDEA, a lawsuit emerged in June or July, 2005. Tr. P. 516-  
23 17. About 10 to 14 ditch riders were named as plaintiffs in the lawsuit concerning nonpayment  
24 of overtime wages. He stated the District wanted to settle that case rather than spend a million  
25 dollars defending it. Tr. P. 520-521. The settlement amount was \$150,000.

26 McConnell stated that in 2005, and prior to being served with the lawsuit, the District  
27 made a cost of living offer of five percent to TCIDEA. This agreement was conditioned upon  
28 TCIDEA accepting the District’s new system operations involving the combining of certain

1 water districts and other controls on the amount of overtime that would be required. TCIDEA  
2 rejected the offer. Tr. P. 524-25. McConnel stated that in February 2006, Michael Langton  
3 became the chief negotiator for TCIDEA. McConnel spoke about a counter offer that was made  
4 and communicated to Mr. Langton through a letter. He stated that the offer would give District  
5 employees a 5.4 percent cost of living raise. This offer was not accepted by TCIDEA and the  
6 two parties continued to correspond through letters with counter proposals. Tr. P. 526-29.

7 McConnel was presented with a letter dated June 15, 2006, addressed to the District.  
8 Attached to the letter was a petition containing signatures from several individuals who wanted  
9 to negotiate with the District independent of TCIDEA or the Association. Tr. P. 530. There  
10 were 17 signatures on the petition, and McConnel stated that the District had approximately 30  
11 total employees at the time. Tr. P. 530. He stated that the District did not have any role in  
12 circulating the petition from TCIDEA II members. Moreover, he had no knowledge that the  
13 petitions were even being circulated. McConnel said neither he, nor any other management  
14 personnel, promised that a raise would be given to TCIDEA II members if they dropped  
15 TCIDEA. He also testified that the District confirmed that a majority of bargaining unit  
16 employees had signed the petition. McConnel also verified that as of June 21, 2006, TCIDEA  
17 had eleven dues paying members. Correspondence indicated that TCIDEA II had an  
18 organization meeting on June 21, 2006 and voted in Adams as president, Cecil as vice-president,  
19 and Sherman as secretary-treasurer. The correspondence also indicated that notification would  
20 be given to the Association and TCIDEA about the new arrangements. Correspondence dated  
21 June 30, 2006, notified the District of TCIDEA II and that its officers would act as the  
22 negotiation team on behalf of TCIDEA II members. McConnel also testified that he sent an  
23 email to Mike Langton asking him if he had talked to TCIDEA members about whether they  
24 would conduct a secret ballot. Tr. P. 527-35. McConnel said that he asked Langton this  
25 question because the District had copies of Langton's letters to Adams that indicated that  
26 TCIDEA II could not remove Langton as chief negotiator and take over negotiations on behalf of  
27 TCIDEA members. Tr. P. 536. Langton's email indicated that TCIDEA was the lawfully-  
28 recognized bargaining agent. Tr. P. 536. Langton's email to McConnel also addressed the



1 District's unilateral decision to change its operations without negotiation and that because of  
2 that, Langton felt that a complaint needed to be filed with the EMRB.

3 McConnell stated that no negotiations between the District and TCIDEA II took place  
4 between June and September, 2006. McConnell stated, in October 2006, the District and  
5 TCIDEA II began negotiations and signed an agreement on October 9, 2006. McConnell  
6 confirmed that after March 21, 2009, the District and TCIDEA never negotiated again. Tr. P.  
7 1254.

8 Upon being asked about Lynch, McConnell stated that he did not consider Lynch to be a  
9 good employee. Tr. P. 540. McConnell made a recommendation to the District that Lynch be  
10 terminated. The District's employee relations committee instead gave Lynch a 60-day suspension  
11 and required him to pay rent on the house. Tr. P. 541. McConnell stated that the first allegation  
12 against Lynch was dismissed by the committee because there was conflicting evidence as to  
13 whether Lynch did threaten the District president. Tr. P. 542.

14 McConnell testified as to his knowledge about the various OSHA complaints. He said  
15 that the OSHA officer did not disclose who filed the complaint. The officer found no violations.  
16 Approximately one or two months later, another OSHA officer came to the District. This time,  
17 the OSHA officer found some violations and wrote a formal report finding the District in  
18 violation and assessed a fine of \$2,500. McConnell got the fine reduced to \$500. Tr. P. 543-44.

19 McConnell said that Ida Adams (wife of Mike Adams) is another District secretary who  
20 retrieves the District's mail at the post office. McConnell also testified that he never participated  
21 in any discussions with District management about transferring ditch riders who had TCIDEA  
22 membership to the O & M crew. He also claimed that he did not tell TCIDEA II officers that  
23 they would receive a raise if they agreed to negotiate directly with the District without the  
24 influence of TCIDEA or the Association.

25 McConnell testified that he signed the formal agreement on behalf of the District which  
26 grants TCIDEA formal recognition as the sole bargaining agent that the District would work  
27 with. Tr. P. 547. McConnell indicated that the District's ground rules require that the District  
28 negotiate in good faith with whoever TCIDEA designated as its chief negotiators. Tr. P. 554.

1 McConnell testified, that to his knowledge, the petition he received from TCIDEA II members to  
2 establish itself as the recognized union contained no dues paying members of the Association  
3 Tr. P. 564. He also conceded that in order for a person to vote on something that affects an  
4 organization, that person has to be a member of that organization.

5 He indicated that the existence of the overtime lawsuit impeded negotiations with  
6 TCIDEA. Tr. P. 565-68. After the settlement agreement was reached regarding the lawsuit filed  
7 by the ditch riders in April of 2006, TCIDEA's counter-proposals dated June of 2006 were not  
8 accepted by the District. By the time McConnell was able to make arrangements for a discussion  
9 on TCIDEA's counter-proposal, Adams had provided him with notice that TCIDEA II had  
10 formed.

11 The next witness was David Overvold. Tr. P. 705. Overvold indicated his position was  
12 project manager for the district. Tr. P. 706. Prior to 2006, he was employed as the District's  
13 engineer from May of 1998 to March of 2006. When Overvold became the project manager, he  
14 did not assume any role as a negotiator for the District, however, he did attend negotiation  
15 sessions. Tr. P. 707. He claims to have never told Adams, Cecil, or Sherman that the District  
16 would give them a wage increase if they dropped the Association and negotiated with the District  
17 directly. Overvold was presented with a termination letter that he signed recommending that  
18 Lynch be fired. Tr. P. 707-08. Overvold denied that any employee organization/union activity  
19 or membership affected his recommendation to terminate Lynch. Tr. P. 709.

20 Overvold recalled two negotiation sessions he had with TCIDEA II representatives. Tr.  
21 P. 716. After the negotiation sessions, Overvold indicated that Adams had told him that the  
22 collective bargaining agreement was ratified by TCIDEA II. Tr. P. 717.

23 He confirmed his involvement in the transfer of some ditch riders to the O & M  
24 department in October of 2006. Tr. P. 718. He testified that union involvement was not  
25 considered when deciding which ditch riders would be transferred to O & M. Tr. P. 718-20. He  
26 had no knowledge that Lynch filed OSHA complaints. Tr. P. 722.

27 Overvold indicated that he was familiar with the break-in at the Lahontan reservoir  
28 control tower. Tr. P. 724. He described the control tower and indicated that all ditch riders have

1 a key to the gate protecting the tower. He did not see any damage to the lock when he looked at  
2 it. Tr. P. 726. He testified regarding the broken window, missing logbook, and the standard  
3 operating procedures that controlled how the dam is operated. Tr. P. 728. He indicated that the  
4 District would not benefit from the missing items taken from the control tower. Tr. P. 730.

5 The next witness called to testify was Michael Adams. Adams stated that he began his  
6 employment with the District in March of 1999. His current position is lead mechanic and he  
7 indicated that he was a member of TCIDEA from 1999 to 2003 and then from June of 2006 to  
8 the present, he has been a member of TCIDEA II. Tr. P. 1112-14. He was elected as president  
9 of TCIDEA II in June, 2006. Adams also indicated that he was never advised of a particular  
10 method by which TCIDEA could “de-affiliate” with the Association. He also was never  
11 approached by Lyman McConnel or anyone from the District with a promise of cost of living  
12 increases if he could terminate affiliation with the Association and negotiate directly with the  
13 District. Id.

14 Adams stated that his letter of June 15, 2006 and the petition were products of frustrated  
15 TCIDEA members who were dissatisfied with the pace of negotiations and unhappy with the  
16 Association’s inability to reach an agreement with the District. Tr. P. 1114-15. Adams testified  
17 that he had no arrangements with the District encouraging him to circulate the petition, and that  
18 no incentives were promised by the District for doing so. Tr. P. 1116-17. Adams indicated that  
19 Cecil and Jack Norcutt helped circulate the petition for disaffiliation. Tr. P. 1116-17.

20 Adams testified that Chuck Richards made a threatening phone call to him and warned  
21 him about “union busting” and that there would be “real recourse.” Tr. P. 1117. Concerning the  
22 first formal TCIDEA II meeting, Adams stated that a secret ballot election was conducted and  
23 that he was voted in as president. Adams also indicated that prior to the election he posted notice  
24 of the meeting “in the shop department, the O & M department, the bulletin board in the main  
25 office, and the bulletin board in the water department. Tr. P. 1118-19.

26 Regarding the TCIDEA’s Wells Fargo Bank account, Adams indicated that the account  
27 money came from multiple sources including money as dues from TCIDEA members, donations  
28 made to TCIDEA, and raffles conducted by TCIDEA members to raise money. Tr. P. 1186-37.

1 Adams admitted that after he became president of TCIDEA II, he tried to get control of the Wells  
2 Fargo account. After Adams became President he began receiving all mail addressed to  
3 TCIDEA. Adams had Cecil, Sherman, and some other TCIDEA II members with him when he  
4 went to Wells Fargo to try to get control of the account. None of the mail that Adams received  
5 as TCIDEA II President had Richards name on it. Adams opened up a new bank account for  
6 TCIDEA II after its formation and charged members \$5 per year in dues. Tr. P. 1149-51.

7 Upon cross examination, Adams said that he was never in favor of TCIDEA's affiliation  
8 with the Association. Tr. P. 1155. Adams withdrew his membership from TCIDEA in the  
9 summer of 2003, and then organized TCIDEA II in 2006. Tr. P. 1156-57. In TCIDEA II's  
10 agreement with the District, Adams indicated that the five percent increase in living allowances  
11 were justified because the Association failed to negotiate cost of living increases for a two year  
12 period. Tr. P. 1163. Adams admitted that he had not paid any dues to either the Association or  
13 TCIDEA from the summer of 2003 to October, 2006. Tr. P. 1171. Adams admitted that he and  
14 Sherman had check writing authority for TCIDEA II. He also admitted that he closed the old  
15 TCIDEA Wells Fargo bank account. Adams indicated that he received a check and deposited it  
16 in the new bank account for TCIDEA II. Tr. P. 1172-73. Adams reviewed bank statements from  
17 the old TCIDEA bank account with the help of Sherman. Adams stated that he used the dues  
18 paid from the June 21st organizational meeting to open a new bank account for TCIDEA II.

19 Regarding a letter addressed to Chuck Richards accompanied by a check, Adams  
20 deposited it into TCIDEA II's bank account and notified Richards that the TCIDEA's bank  
21 account had been closed. Tr. 1183-84.

22 When asked about pay raises, Adams indicated he received a merit increase in March,  
23 2008. Before that, he received a cost of living increase in July 2007, March 2007, and October  
24 2006, when the TCIDEA II's agreement with the District was executed. Tr. P. 1192.

25 Jack Norcutt was the next witness. Tr. P. 1307. Norcutt confirmed that he was currently  
26 employed by the District. He holds the position of equipment operator and has been employed  
27 by the District for 17 years. Tr. P. 1307-1308. He indicated he was involved in circulating the  
28 petition to disaffiliate from the Association and form TCIDEA II. Tr. P. 1308. To his

1 knowledge, no one at the District knew about the petition being circulated and no benefits or  
2 incentives were offered or promised by management if he withdrew from TCIDEA or dropped  
3 affiliation with the Association. Tr. P. 1308-09. Prior to signing the petition for TCIDEA II,  
4 Norcutt dropped his membership with the Association. Norcutt further indicated that he felt the  
5 Association and TCIDEA were favoring the ditch riders in their proposals to the District.  
6 Norcutt, not being a ditch rider, felt he was not being represented and therefore stopped paying  
7 dues to the Association. Norcutt was never told by the Association that disaffiliation from the  
8 Association had to be carried out by some particular method. Tr. P. 1311. Norcutt stated that he  
9 was not aware that the contract he voted on for TCIDEA II did not contain a provision for future  
10 raises. Tr. P. 1323-27.

11 The next witness was W.C. Cecil. He is employed by the District as both a ditch rider and  
12 a meter tech. He has been employed by the District for nearly 12 years. Tr. P. 1340-41. He is  
13 currently the President of TCIDEA II. Tr. P. 1341. Cecil served as president of TCIDEA from  
14 2003 to 2005. During that time, Cecil indicated the District did not retaliate against him for  
15 belonging to TCIDEA. Tr. P. 1341-42. It was also never explained to him that disaffiliation  
16 could only occur during certain times of the year and by some particular vote or method. Tr. P.  
17 1343. Cecil also testified that he was never encouraged by the District to disaffiliate with the  
18 Association.

19 Cecil also indicated that his brother Kelly Cecil was employed by the District and a  
20 member of the bargaining unit before being promoted to the hydro plant foreman position. Cecil  
21 denied alleged conversations with District employees about incentives for dropping affiliation  
22 with the Association and forming TCIDEA II. Cecil indicated he dropped out of TCIDEA in  
23 February 2006. Tr. P. 1359-60.

24 The next witness was David Watkins. Tr. P. 1399. Watkins indicated that he was  
25 employed as a water meter technician for the District, and has been employed by the District for  
26 25 years. Tr. P. 1399-1400. Watkins signed the petition to disaffiliate with the Association in  
27 June 2006. Watkins indicated that no threats or promises of wage increase were offered by any  
28 District if he agreed to disaffiliate from the Association. Tr. P. 1400-01. Watkins was unaware

1 of any bylaws or provisions governing the process of disaffiliation. Tr. P. 1402. Watkins  
2 recalled a discussion with Mike Story about a pending law suit filed by the ditch riders employed  
3 by the District, and that Story said that he was going to “get three million [dollars] and that he  
4 was going to destroy [the District].” Tr. P. 1402-03. Watkins also remembered Lynch making  
5 negative comments about the LDS church. Watkins recalled other disparaging statements made  
6 by Lynch about Mormons and Watkins talked to him about it at one point, but Lynch continued  
7 to make statements critical to the LDS church. Tr. P. Tr. P. 1405-1406.

8 Upon cross examination, Watkins indicated that he was never a member of the  
9 Association. Watkins never voted to elect Lynch as president of TCIDEA, and he was never  
10 informed that Lynch was elected as president of TCIDEA. Tr. P. 1414

11 The next witness was Lester Debraga, chairman of the District’s Board of Employee  
12 Relations Committee (“Committee”). Tr. P. 1417-18. Debraga indicated that the Committee’s  
13 role was to essentially be an intermediary between management and the employees for “any  
14 problems that may arise.” He also stated that the Committee has the authority to disagree with  
15 the project manager’s recommendation to terminate someone. Tr. P. 1419-20. He recalled  
16 project manger McConnel recommending to the Committee that Lynch be terminated in  
17 December 2005. Tr. P. 1419. However, he recalled that the Board insisted that he be suspended  
18 rather than terminated. Tr. P. 1420. Debraga indicated that his vote to suspend Lynch was not  
19 influenced by Lynch’s union membership. Tr. P. 1421.

20 Ted Renfroe testified next. Tr. P. 1451. Renfroe indicated that he was employed by the  
21 District and that his current position was shop foreman and purchasing agent. Overall, Renfroe  
22 has been with the District a total of 31 years. Tr. P. 1452. His duties included taking care of the  
23 ditch rider’s houses and maintaining vehicles. Tr. P. 1452. Renfroe indicated that on April 18,  
24 2005, he inspected Lynch’s ditch house and upon noticing mold, he contacted a mold company.  
25 His instructions from the mold company were to remove the plastic from the windows. Tr. P.  
26 1453-55. Lynch indicated to Renfroe that he would comply with the order but subsequently the  
27 District learned that he still had plastic on his windows. McConnel instructed Renfroe to take  
28 pictures of the house to evidence whether Lynch complied with the order to remove the plastic.

1 Tr. P. 1456-58. Renfroe stated that the District never refused to repair Lynch's ditch ho e  
2 because of Lynch's employee association/union activity. Tr. P. 1465. Renfroe could not rec l  
3 any negative comments made by District management regarding Lynch's employ e  
4 association/union membership. Tr. P. 1467.

5 Renfroe indicated that he inspected the truck that Lynch allegedly damaged. He  
6 indicated that the truck ran out of coolant. Tr. P. 1468-69. Renfroe stated that Lynch wou d  
7 have had notice of the problem and that he could have prevented the engine failure. Tr. P. 147

8 The next witness was Walt Winder. Tr. P. 1487. Winder's current position with e  
9 District was O & M foreman. Tr. P. 1489. He reports regularly to Overvold and has be n  
10 employed by the District since 1979. Tr. P. 1489. Winder indicated that he was involved in e  
11 decision to transfer some individuals from the water department to the O & M department n  
12 2006. Winder explained the difference between the ditch rider shifts in 2006 from those of pr r  
13 years. The difference, as he explained it required the ditch riders to be on a shift of 12 hours a d  
14 then 12 hours off. At the end of the water season, the ditch riders would transfer over to the O &  
15 M department. Tr. P. 1489. Winder also indicated that the District adopted both a night an a  
16 day ditch riding crew and rotated each shift. Beginning in 2006, this increased the number f  
17 ditch riders that the District needed for the water season. Tr. P. 1489-90.

18 The individuals in charge of making the decision to transfer ditch riders to the O & M  
19 department at the end of the season were Winder, Overvold, and the water masters. Tr. P. 1493.  
20 No change in pay or benefits were incurred by those individuals transferred from the water  
21 district to O & M. Tr. P. 1493-94. When asked why Mike Story was transferred to O & M,  
22 Winder responded that Mike had shown a reluctance to work in the expanded water district an a  
23 assigned to him. Employee associaton/union activity had no bearing on the District's decision o  
24 transfer Story to O & M. Tr. P. 1494-95. Other individuals besides Story and Richards we e  
25 transferred to O & M in November 2006. Those individuals included Sharlene Haddox, Gary  
26 Barenchea, and Scott Heath. Tr. P. 1495-96. These individuals, however, were tempora y  
27 employees. Tr. P. 1496. The District considered ditch rider transfers to O & M to be tempora y  
28 and those who were transferred were reassigned to the water district when the next water season

1 began. Tr. P. 1497. On cross examination, Winder also indicated that a ditch rider who s  
2 transferred from the water district to O & M received less hours at O & M. Tr. P. 1513-14.

3 Winder indicated that at three different times he acted as president of TCIDEA. He ne r  
4 saw any bylaws or constitution for the Association, nor was he ever asked to vote on any byla s  
5 or rules for the Association. Tr. P. 1504.

6 The next witness was Wesley John Baker. Tr. P. 1541. At the time of the hearing, Ba r  
7 was retired from the District. The last position he held at the District was that of water mas  
8 Tr. P. 1542. Baker began his employment with the District in 1976. Baker was question d  
9 about a written warning given to Lynch in June 2006 regarding water user Allen Smith. Tr  
10 1543. Smith had called Baker on the phone indicating that "he didn't have nearly the wáter t t  
11 he had ordered." Tr. P. 1543. Baker indicated that at the time of Smith's complaint, Lynch v s  
12 still on shift. Tr. P. 1543. Baker indicated that Lynch should have been checking on  
13 Smith's water and should have caught the error. Tr. P. 1544.

14 Regarding the transfer of Story and Brian Hyde to O & M in the fall of 2006, Ba r  
15 indicated that employee organization/union activity had nothing to do with the transfer. Tr  
16 1544-45. Baker did not feel Story could make the adjustments required to take on additic l  
17 districts and that he was a good candidate for transfer to O & M. Tr. P. 1545-46. Baker recal d  
18 various comments that Lynch had made about the Mormon religion and the complaints he d  
19 received regarding those comments. Baker verified documents that he gave Lynch a ver l  
20 warning for anti-Mormon comments in November 2006. Tr. P. 1554-55.

21 On cross examination Baker indicated that Story was not the only senior ditch rider v o  
22 had complained about the additional areas he had to cover. Tr. P. 1582. Baker a o  
23 acknowledged that he himself had made some disparaging remarks about Catholics, but s  
24 using that as a comparison when counseling Lynch about his negative remarks about Morm  
25 Tr. P. 1584. Baker acknowledged that the increased number of ditch riders was due to e  
26 District's effort to decrease overtime hours reported by the ditch riders. Tr. P. 1593.

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1 A video of the deposition of Shelby Cecil was shown to the Board, and such concluded  
2 the administrative hearing. Tr. P. 1607. The parties agreed to submit post hearing briefs rather  
3 than offer closing arguments.

4 **FINDINGS OF FACT**

5 1. This Board finds that the Complainant in this matter is an employee organization as  
6 defined in NRS 288.040.

7 2. This Board finds that the Respondent in this matter is a local government employer as  
8 defined in NRS 288.060; and the witnesses who testified at the hearing that they were employed  
9 by Respondent are local government employees as defined in NRS 288.050.

10 3. This Board finds that NRS 288.270(1)(a) provides, in part, that it is a prohibited labor  
11 practice for a local governmental employer to interfere, restrain or coerce any employee in the  
12 exercise of any right guaranteed under NRS chapter 288. NRS 288.270(1)(b) states that it is a  
13 prohibited labor practice for a local government employer to dominate, interfere, or assist in the  
14 formation or administration of any employee organization. NRS 288.270(1)(c) and (d) discuss  
15 discrimination and/or discharge for various situations.

16 4. This Board finds that credible testimony was provided that TCIDEA II was formed  
17 without the knowledge and consent of TCIDEA; and that the employees who got to vote in  
18 TCIDEA II were not members of TCIDEA.

19 5. This Board finds that credible testimony was provided that members of TCIDEA were  
20 not informed of the creation and/or vote to create TCIDEA II.

21 6. This Board finds that certain individuals, including but not limited to Mike Adams,  
22 improperly closed the Wells Fargo Bank account belonging to TCIDEA and improperly used  
23 that money, and refund monies from the Association, to establish a bank account for TCIDEA II.

24 7. This Board finds that District employees, who were aligned with District management,  
25 including but not limited to Ida Adams, wife of Mike Adams, would improperly open mail  
26 specifically addressed to the TCIDEA and improperly provide the same to TCIDEA II. This  
27 mail would include, but is not limited to, bank statements. The Board finds credible testimony

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1 was offered that authorization was not provided by TCIDEA to District employees to so open  
2 and re-route TCIDEA's mail.

3 8. This Board finds, however, that the transfer of ditch rider/employees to O & M was  
4 not for improper purposes.

5 9. This Board finds that the company provided housing was offered to ditch riders and  
6 no evidence of improper motive or anti-union/employee organization animus can be seen  
7 regarding the assignment of and/or condition of the housing, e.g., mold, having to use plastic to  
8 cover windows, and wood-burning stoves for heaters.

9 10. This Board finds that the District unilaterally and improperly ceased deducting dues  
10 from the members of TCIDEA and thereby "interfered or assist(ed)" in the formation or  
11 administration of the TCIDEA and TCIDEA II as prohibited by NRS 288.270(1)(b).

12 11. This Board finds credible testimony that certain bargaining unit employees were  
13 unaware of a petition for the creation of TCIDEA II, did not see any such petition, and were  
14 thereby restrained in signing or not signing any such petition as prohibited by NRS  
15 288.270(1)(a).

16 12. The Board finds that shortly after the District's acknowledgement of TCIDEA II,  
17 negotiations commenced resulting in an agreement of October 9, 2006. This agreement provided  
18 employees with a cost of living raise. The Board is unable to determine if this raise was the  
19 effectuation of a District management promise or not.

20 13. The Board finds that complaints were made to Nevada OSHA regarding the  
21 conditions of the District property, and such complaints were filed by bargaining unit employees.  
22 One complaint resulted in a confirmed violation and an assessment made against the District.  
23 The Board is unable to resolve whether District Management retaliated against bargaining unit  
24 employees because of the Nevada OSHA complaint.

25 14. The Board finds that the District, through the testimony of McConnel, formally  
26 acknowledged TCIDEA as the exclusive bargaining agent for the District's employees at issue in  
27 this matter. The Board also finds that the District did not formally withdraw its recognition of  
28 TCIDEA pursuant to the provisions of NRS and NAC chapters 288.





- 1 3. That the District immediately cease and desist in its actions violative of NRS and NAC  
2 chapters 288.
- 3 4. That the District post a notice of its prohibited labor practices for a period of ninety (90)  
4 days; that such notice be prepared by the Commissioner; posting shall be accomplished in  
5 all public locations, visible to all District employees used for communication to District  
6 employees; and that the Board's Commissioner is hereby instructed to visit the District's  
7 property to determine if the posting was indeed accomplished, if possible, at his earliest  
8 convenience.
- 9 5. That the District immediately resume its recognition of TCIDEA as the recognized  
10 bargaining agent for the employees at issue in this matter; and immediately cease its  
11 recognition of TCIDEA II. All funds erroneously obtained from TCIDEA shall be  
12 immediately returned from TCIDEA II to TCIDEA.

13 DATED this 14th day of May, 2009.

14 LOCAL GOVERNMENT EMPLOYEE-  
15 MANAGEMENT RELATIONS BOARD

16 BY:   
17 JANET TROST, ESQ., Chairman

18 BY:   
19 JOHN E. BICKS, ESQ., Vice-Chairman

20 BY:   
21 JAMES E. WILKERSON, SR., Board Member  
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