

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

5 RONALD G. TAYLOR,

6 Complainant,

7 vs.

8 CLARK COUNTY SCHOOL DISTRICT and
9 FRAN JUHASZ, EMPLOYMENT
10 MANAGEMENT RELATIONS,

11 Respondents.

ITEM NO. 648A

CASE NO. A1-045896

ORDER

12 For Complainant: Ronald G. Taylor, In Proper Person

13 For Respondents: C. W. Hoffman, Jr., Esq.
Clark County School District

14 This matter having come on before the State of Nevada Local Government Employee-
15 Management Relations Board ("Board") on September 20, 2007, for deliberations and decision,
16 noticed pursuant to NRS and NAC Chapters 288, NRS Chapter 233B, as well as Nevada's Open
17 Meeting Laws, and finds, concludes, and orders as follows:

18 Statement of Board Filings/Discussion of Testimony

19 On December 22, 2006, a complaint was filed with the Board by Ronald G. Taylor
20 ("Taylor"). The complaint sought (a) a cease and desist order, ordering the Clark County School
21 District and Fran Juhasz (collectively, the "School District") from interfering in his efforts to
22 form a competing union, (b) a cease and desist order, ordering the School District to remain
23 neutral, (c) for an order compelling the School District to comply with NRS chapter 288, and (d)
24 that the "board take suitable action against [the School District] so as to insure that a prohibited
25 practice not be tolerated in any organizing effort" by Taylor.

26 The School District filed its pre-hearing statement on February 5, 2007, along with its
27 Answer. On February 14, 2007, Taylor filed his Motion seeking permission from the Board to
late file his Pre-hearing Statement. The Board entered an Order on March 13, 2007, allowing

1 Taylor's late filed Pre-hearing Statement; and Taylor filed the same on March 26, 2007. A pre-
2 hearing conference was held on May 17, 2007; and the matter proceeded to an administrative
3 hearing on May 31, 2007, noticed for hearing pursuant to NRS and NAC chapters 288, NRS
4 chapter 233B, and Nevada's open meeting laws.

5 The following witnesses testified at the hearing: Mary Ella Holloway, Kenneth Zelasko,
6 Edward John Jasonek, Daniel Wray, and John Okazaki. The following is a discussion of the
7 testimony presented and arguments presented by the parties. More specifically, Taylor stated
8 that by the end of the hearing, he would "show that there was clearly interference conducted by
9 the Clark County School District." Transcript ("Tr."), p. 54. The School District counsel offered
10 the following as clarification of the administrative action:

11 Here's what the -- here's the set-up. The Clark County School District
12 maintains a website called the "C.C.S.D. Dot Net," and that website has lots of
13 different pieces of information. It has forms and files and procedures and district
14 regulations and policies. All of that kind of stuff is there.

15 And all of the District employees are allowed to use that website for
16 professional purposes, for purposes -- educational purposes, that they need. All
17 employees, when they use a website like that, it's very common. All employees
18 sign and agree to be bound by what's called the "Acceptable Use Policy," the
19 A.U.P.

20 And I think this is typical for all such websites. You have employees who
21 have access to the resources, but the condition of using those resources is to agree
22 to comply with certain terms, and those terms are set forth in the A.U.P.,
23 Acceptable Use Policy. . . .

24 One of the assets that's on the website is called the "Teacher's Lounge."
25 And as its name implies, it's a place where teachers can come in and talk about, in
26 sort of a chat fashion although it's not a chat room, but they can post questions
27 about educational issues about concerns that they have, and it's there, and it's
28 actually open after school hours so that it doesn't interfere with what's happening
while they're teaching or while they're on prep period, and its open after school
hours and it's there and teachers can post certain things on this website. . . .

And Mr. Taylor, in order to manifest his displeasure with how the
C.C.E.A. was operating, would go to the Teacher's Lounge, that part of the
District's website that's to be used for educational purposes, and to allow teachers
to communicate.

He would go to the Teacher's Lounge and make criticizing remarks about
the C.C.E.A. He would also -- he was advertising that he was establishing a new
union called "Teachers4Change." And, in fact, he established another website
outside of the District, and his website was Teachers4Change. . . .

The C.C.E.A. came to the District and complained about that and said,
"you are allowing the use of public resources to pay for that Teacher's Lounge
which is part of the website. You're allowing public resources to be used to
interfere with the C.C.E.A."

So you've got a very interesting problem on one hand, you have the
[i]ncumbent union, the C.C.E.A., that says, "we have the right to not be interfered

1 with by the District, and by allowing these resources to be used in this way, your
interfering."

2 So the District finds itself between two bodies, not unusual for the District,
and we find ourselves in a situation where we have to balance it.

3 We have the interest of Mr. Taylor on one hand to organize and do what
4 he wants to try to oust the [i]ncumbent C.C.E.A. and the C.C.E.A., on the other
hand, saying, "we are the [i]ncumbent and you can't use your resources to
challenge us."

5 And that's what this case is about. That's all this case is about. The part
6 about whether or not you tape-record it or not. That's noise. Mr. Taylor was not
disciplined in any fashion. There's no piece of paper. There's no[t] any sanction
7 at all to Mr. Taylor except the guidance to follow the Acceptable Use Policy.
Don't use District resources to interfere with the C.C.E.A.

8 Tr., p. 55-60.

9 Mary Ella Holloway testified she is the current President of the C.C.E.A. Tr. p. 66. She
10 stated that she did not talk to the School District about Taylor (Tr., p. 66) and that she was not
11 involved in Taylor being expelled from C.C.E.A. Tr., p. 70.

12 Kenneth Zelasko was the second witness. He is an English teacher at the High Desert
13 State Prison in Indian Springs, Nevada. Tr., p. 76. He stated he was the "first Teachers' Lounge
14 moderator." Id. He was a moderator for "eight to nine years." Tr., p. 79. He was told "by Judy
15 Steele and Bruce Daley that the Teacher's Lounge on Interact was to be a place where teachers
16 could go to vent, to ask questions, to get information regarding their educational and non-
17 educational activities in the School District." Tr., p. 76-7. He described the Interact website as a
18 "bulletin board service" for teachers, e.g., the "mail handler for the Clark County School
19 District." Tr., p. 77.

20 Zelasko admitted that he participated in an investigatory meeting on December 12, 2006
21 (Tr., p. 79); and that Fran Juhasz contacted him regarding this meeting. Tr., p. 80. He was not
22 disciplined as a result of this meeting, but was provided "guidance" concerning the use of the
23 Teacher's Lounge. Tr., p. 104. He thought that was unusual because Dr. Lee "is the director of
24 Interact" He was told that "some non-curricular issues were being investigated, and [he]
25 was told to bring in evidence of the messages that [he] had posted on Interact." Tr., p. 80-1. He
26 stated he was not allowed to tape record this meeting. Tr., p. 81. He further indicated that he did
27 not think his postings were inappropriate. Tr., p. 83. Additionally, he has not had his Interact
privileges revoked since being with the School District. Tr., p. 88. He believes Taylor's Interact

1 privileges were revoked because he "questioned C.C.E.A. and their dealings and also some of the
2 things that the Clark County School District had done." Tr., p. 89. He is aware of a letter
3 "posted by the C.C.E.A. called 'Setting the Record Straight'" about "two angry prison teachers."
4 Tr., p. 92. The posting identified the two teachers as Taylor and Zelasko (Tr., p. 93) and was
5 authored in November, 2006 (Tr., p. 95). He claims that he has not received anything in writing
6 concerning the conclusion of the Interact investigation and believes the matter is still pending.
7 Tr., p. 96.

8 On cross-examination, Zelasko admitted that Teachers4Change website usually contains
9 unfavorable comments about C.C.E.A. Tr., p. 97. As a moderator, Zelasko admitted he was
10 "required to enforce the acceptable use policy." Tr., p. 99. Zelasko was also questioned about
11 the specific policy language that it "is prohibited to sell and purchase goods and services without
12 prior approval of the appropriate administrator." Tr., p. 101-02. He believes, however, that
13 initially the site could be used for requesting babysitters and things of that nature. Tr., p. 106.
14 Zelasko further testified that he is not aware of Taylor posting any harassing messages on the
15 site. Tr. p. 109. Thereafter, an exchange occurred concerning various postings on the site and
16 whether such postings could be considered harassment. The Board also questioned Zelasko quite
17 extensively concerning the postings for Taylor, the December meeting, him being the moderator
18 for the Teachers' Lounge, and the alleged "investigation" of him and Mr. Taylor. Tr. p. 123-37,
19 142-71. In response to the Board's questioning, Zelasko stated that the School District was not
20 obligated to provide the Teachers' Lounge site and that they did have the right to create rules
21 concerning that site's use. Tr., p. 158-59. Zelasko also stated that he knew he would not be
22 allowed to tape record the meeting pursuant to a School District publication. Tr., p. 162.

23 At the conclusion of Zelasko's testimony, Taylor's case in chief, the School District
24 verbally motioned for dismissal of this matter. The Board denied the motion on several grounds,
25 which included that the hearing had "disclose[d] that the District ha[d] engaged in some actions
26 towards [Taylor]; and, therefore, without more, could be construed as possibly prohibited under
27 [NRS chapter] 288." Tr., p. 193.

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1 Edward John Jasonek was the next witness. Mr. Jasonek is the Executive Director of
2 C.C.E.A. Tr., p. 195. Jasonek was the Association officer who complained of Taylor's postings
3 concerning the creation of a competing union. Tr., p. 198-99. He stated he was also concerned
4 about Taylor obtaining photographs of teachers and students for use on his Teachers4Change
5 website, as well as the improper use of teachers' prep time. Tr., p. 206-7.

6 Daniel Wray was the next witness. Mr. Wray is director of Technical Resources for the
7 School District. Tr., p. 239. Wray described Teachers' Lounge as a conferencing system "for
8 teachers to collaborate regarding curriculum and instructional matters." Tr., p. 240-41. He
9 stated that the system is monitored by the School District to "ensure that the messages . . . follow
10 the acceptable use policy and/or follow the District's policies and regulations." Tr., p. 241. He
11 stated that the system moderator informed him that Taylor was posting improper messages, that
12 the messages were pulled, but Taylor continued to post the same types of messages. Tr., p. 246.
13 Taylor's use of the system was then limited. Tr., p. 247. That limitation was subsequently lifted.
14 Tr., p. 248. He claimed that Taylor, then, used Zelasko to post improper messages for him. Tr.,
15 p. 250. Wray also stated that an "IP block" was initiated to prevent teachers from visiting
16 Teachers4Change website during their workday. Tr. p. 255-56.

17 Wray also testified that certain messages entered into evidence were not pulled as
18 violating the acceptable use policy. Tr., p. 284. Wray also testified regarding the mission of the
19 Interact system, namely:

20 The use of these electronic resources shall be consistent with the purpose,
21 mission, and goals of the Clark County School District and used for professional
22 or educational purposes. The purpose in providing these services is to facilitate
access to information and resources, promote educational excellence, and enhance
communication between schools and the community.

23 Tr., p. 293-94. The emails posted by Taylor were allegedly not pursuant to the above-stated
24 goals, purposes, and mission.

25 The next witness was John Okazaki, current Assistant General Counsel to the School
26 District. Tr., p. 319. He stated it is not uncommon for him to sit in the investigative meetings
27 with teachers, such as the one held with Taylor in December. Tr., p. 321. The School District
was represented in this meeting by three upper management individuals. He stated that a legal

1 issue immediately arose concerning Taylor recording the meeting. Tr., p. 323. He recalls part of
2 the conversation at the meeting being that Taylor could organize another union, but that he could
3 not use the Interact system to do so. Tr., p. 325-26. Okazaki then identified several rights or
4 privileges that an incumbent employee organization would enjoy that a rival, raiding, union
5 would not because of the parties' collective bargaining agreement. Tr., p. 327, 345. Taylor
6 simply did not "agree" with that line of conversation. Tr., p. 328. He further stated that it was
7 his impression that they informed Taylor of what he can or cannot do with the Interact system
8 and that resolved the issue. Tr., p. 330-31. He also explained that because Taylor was involved
9 in the situation, Taylor could not serve as Zelasko's representative, and that Zelasko had the right
10 to use a union representative as Taylor did in his meeting. Tr., p. 332-33.

11 Okazaki testified that he was not initially aware that Taylor was organizing another union
12 at the time of the December meeting. Tr., p. 351. He does recall Ms. Juhasz simply stating that
13 Taylor has certain rights, however, he had to follow the rules as to the use of the Teachers'
14 Lounge. Tr., p. 352. As for some type of a follow-up document after the investigative meeting,
15 Okazaki stated that the individuals are not typically provided with written documentation of the
16 results. Tr., p. 353-54.

17 At the close of the hearing, the Board determined which exhibits should be admitted, and
18 the parties provided closing arguments. The parties also requested post hearing briefs. The
19 School District filed its post-hearing brief on July 12, 2007 and Taylor filed his post-hearing
20 brief on July 9, 2007.

21 FINDINGS OF FACT

22 1. That Taylor was a member of the C.C.E.A., the exclusive bargaining agent for certain
23 School District employees; and that a collective bargaining agreement was in place between the
24 C.C.E.A. and the School District.

25 2. That Taylor was employed by the School District as a teacher.

26 3. The School District provides a service called Interact, with a site identified as the
27 Teachers' Lounge; which site was created to provide teachers with a means of communications

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1 which further the goals, missions, and purposes of the School District. The School District is not
2 obligated to provide this Interact site but does it to help its employees to fulfill the School
3 District's goals, missions, and purposes.

4 4. That a moderator reviews the postings on the site and can pull them from the site if the
5 posting does not conform to the School District's goals, missions, and purposes.

6 5. In order to use the Interact site, teachers must sign an agreement to comply with the
7 terms and conditions for its use, i.e., the Acceptable Use Policy ("AUP").

8 6. That an issue arose concerning Taylor's posting on the Interact site.

9 7. It was determined that certain postings by Taylor did not conform to policy and were
10 pulled. Evidence presented during the hearing also indicated that certain other messages from
11 Taylor were not pulled from the site. The alleged improper postings continued, and a meeting
12 was scheduled for December 12, 2006 between Taylor and School District officials.

13 8. In the present matter, testimony and exhibits were offered that Taylor continued the
14 use of the Interact site with similar messages, although cautioned about the postings' contents
15 (see for example, Wray's testimony and Okazaki's testimony), which ultimately led to his use of
16 the site being limited and Mr. Zelasko posting messages for Taylor on the site.

17 9. Neither Taylor nor Zelasko were disciplined for the contents of the messages on the
18 Interact site.

19 10. Testimony was provided that a request was made to tape record the December 12,
20 2006 meeting, but the request was denied.

21 11. Based upon the testimony provided and the evidence produced at the hearing, the
22 refusal to tape-record the meeting does not appear to be a prohibited labor practice for which any
23 cease and desist order of this Board should be entered nor does it appear that such was an effort
24 to interfere with the organization of a competing union.

25 12. Based upon the testimony provided and the lack of evidence presented at the hearing,
26 Taylor failed to meet his burden of proof that the School District interfered in his competing
27 union-organizing efforts in violation of NRS chapter 288 by restricting his use of a computer
system known as Interact and/or the Teachers' Lounge.

1 13. Based upon the credible testimony offered by the witnesses and the exhibits offered
2 at the hearing, at the most, the School District was merely seeking compliance with its rules and
3 regulations pertaining to the use of its computer system known as the Interact system with the
4 Teachers' Lounge site. See testimony regarding "Acceptable Use Policy."

5 14. Caution is issued to the employer in this matter as the attendance in an investigative
6 or disciplinary-type meeting with numerous employer representatives or upper management may
7 raise the potential of intimidation of the employee and creates a concern for this Board that the
8 employee may be intimidated from exercising a guaranteed right under NRS chapter 288. With
9 that being said, the Board does not find that the numerous or upper management's participation
10 did not rise to a prohibited practice in this matter as no disciplinary action was taken against
11 Taylor or Zelasko and the employer did not violate Taylor's NRS chapter 288 rights in
12 compelling him to comply with the A.U.P. with the use of the Interact site.

13 15. Should any finding of fact be more properly construed as a conclusion of law, may it
14 be so deemed.

15 CONCLUSIONS OF LAW

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

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

19 3. The C.C.E.A. is an employee organization as defined by NRS 288.040.

20 4. Taylor is an employee of a local governmental employer as defined by NRS 288.050.

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

24 6. That the refusal of the School District to allow the taping of a meeting with an
25 employee in this specific matter does not rise to the level of interference with an employee's right
26 guaranteed by NRS chapter 288, as Taylor failed to meet his burden of proof that such refusal
27 was a NRS 288.270(1) prohibited practice interference.

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1 7. That the actions taken concerning Taylor's use of the system known as the Teachers'
2 Lounge in this instant matter did not rise to the level of interference with an employee's right
3 guaranteed by NRS chapter 288, as Taylor failed to meet his burden of proof that any such
4 actions taken against him were to interfere with his rights to form a competing union. NRS
5 288.270(1).

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

8 **DECISION AND ORDER**

9 Based upon the above, the Board hereby orders as follows:

10 1. IT IS HEREBY ORDERED that the Board finds in favor of the School District and
11 against Taylor.

12 2. IT IS FURTHER ORDERED that each party shall bear their own fees and costs
13 associated with this action.

14 DATED this 20th day of September, 2007.

15 LOCAL GOVERNMENT EMPLOYEE-
16 MANAGEMENT RELATIONS BOARD

17 BY: 

18 JOHN E. DICKS, ESQ., Vice Chairman

19 BY: 

20 JANET TROST, ESQ., Board Member

21 BY: 

22 JAMES E. WILKERSON, SR., Board Member
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