

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

5 WADE J. McAFEE,)
6 Complainant,) ITEM NO. 697
7 vs.) CASE NO. A1-045938
8 CLARK COUNTY EDUCATION)
9 ASSOCIATION,) DECISION
10 Respondent.)
11

12 For Complainant: Wade J. McAfee, In Proper Person
13 For Respondent: Sandra G. Lawrence, Esq.
14 Dyer, Lawrence, Penrose, Flaherty & Donaldson

15 This matter having come on for hearing before the State of Nevada Local Government
16 Employee-Management Relations Board ("Board") on February 9, 2009, noticed pursuant to
17 NRS and NAC chapters 288, NRS chapter 233B, as well as Nevada's Open Meeting Laws, finds,
18 concludes, and orders as follows:

19 **STATEMENT OF THE CASE**

20 Complainant filed his prohibited practices complaint ("the Complaint") on August 12,
21 2008, contending that Respondent violated its duty of fair representation by not bringing a
22 grievance on behalf of Complainant. Respondent filed an answer to the Complaint on September
23 8, 2008. The Hearing on this matter was scheduled for February 9 and 10, 2009. On January 14,
24 2009, Respondent filed two motions: (1) a Motion for Summary Judgment and (2) A Motion for
25 Continuance. Complainant has not responded to the motions.

26 **FINDINGS OF FACT**

- 27 1. Complainant, the subject of an unsatisfactory evaluation, requested the assistance of
28 Respondent in grieving the evaluation.

- 1 2. Respondent reviewed the evaluation, investigated whether the employer followed
2 procedures, determined that there was no violation of the collective bargaining
3 agreement, and outlined for Complainant remedies or options he could pursue on his
4 own, including bringing a grievance himself. Respondent conducted its investigation and
5 advised Complainant before the time expired for Complainant to initiate a grievance on
6 his own.
- 7 3. Respondent did not initiate a grievance proceeding pursuant to the collective bargaining
8 agreement concerning Complainant's unsatisfactory evaluation.

9 CONCLUSIONS OF LAW

- 10 1. Complainant is a local government employee and Respondent is an employee
11 organization within the meaning of NRS chapter 288. Respondent has served as the
12 exclusive bargaining agent for certain employees of the Clark County School District
13 such as Complainant.
- 14 2. Respondent owes a duty of fair representation to its represented employees.
- 15 3. The duty of fair representation is violated by an employee organization if it acts
16 arbitrarily, discriminatorily, or in bad faith.
- 17 4. Respondent responded reasonably under the circumstances to Complainant's request that
18 it grieve the matter.
- 19 5. Under NRS 288.110(5), this Board may decide without a hearing a contested matter:
20 (a) In which all of the legal issues have been previously decided by the Board, if it adopts
21 its previous decision or decisions as precedent; or
22 (b) Upon agreement of all the parties.
- 23 6. NAC 288.140(6) provides that:
24 If a party fails to file and serve his written opposition to a motion, that failure to respond may
25 be construed as an admission that the motion is meritorious and is a consent to granting the
26 motion.

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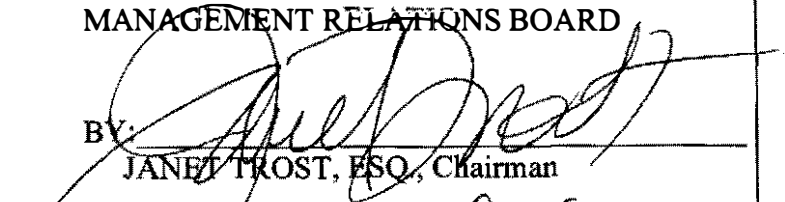
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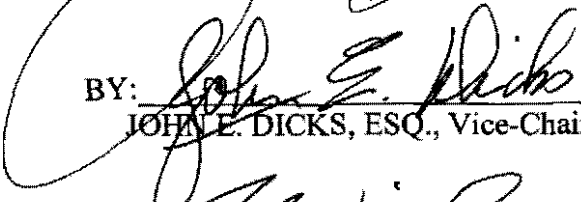
DECISION


IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Respondent's Motion for Summary Judgment is hereby granted, and, in light thereof, the Motion for Continuance is denied as moot. Each party shall bear that party's own costs and attorneys' fees.

DATED this 9th day of February, 2009.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: 
JANET TROST, ESQ., Chairman

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

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