

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

5 JERRY MANN,

6 Complainant,

7 vs.

8 CLARK COUNTY SCHOOL DISTRICT;  
9 CLARK COUNTY EDUCATION  
10 ASSOCIATION; NEVADA STATE  
11 EDUCATION ASSOCIATION; DOES I-V,  
12 inclusive; and ROE CORPORATIONS I-V,  
13 inclusive,

14 Respondent.

ITEM NO. 721

CASE NO. A1-045969

**ORDER**

15 For Complainant:

Amberlea Davis, Esq.

16 For Respondents:

C.W. Hoffman, Jr., Esq.  
Clark County School District

Sandra G. Lawrence, Esq.  
Dyer, Lawrence, Penrose, Flaherty, Donaldson, & Prunty  
For Clark County Education Association and Nevada State  
Education Association

17  
18 On the 17th day of February, 2010, this matter came on before the State of Nevada, Local  
19 Government Employee-Management Relations Board ("Board"), for consideration and decision  
20 pursuant to the provisions of NRS and NAC chapters 288, NRS chapter 233B, and was properly  
21 noticed pursuant to Nevada's open meeting laws.

22 Complainant Jerry Mann filed his prohibited practices complaint with this Board on  
23 December 1, 2009. After filing the complaint, Respondent Clark County School District  
24 ("District") filed a motion to dismiss the complaint.

25 The District asserts that the claims against it should be dismissed because they are  
26 untimely under NRS 288.110(4) which states that "[t]he Board may not consider any complaint  
27 or appeal filed more than 6 months after the occurrence which is the subject of the complaint or  
28 appeal." Complainant's claim against the District asserts a violation of NRS 288.270(1) alleging

1 that the District interfered with Mann's statutory right to union representation. Mann alleges that  
2 the District denied him union representation during a meeting with school officials. The  
3 Complaint alleges that this meeting took place on September 11, 2008, and that Mann made  
4 multiple requests for union representation at that meeting. (Complaint ¶ 17). The Complaint then  
5 alleges that at a subsequent meeting on September 20, 2008, Mann again met with school  
6 officials, this time with a representative of the Clark County Education Association present.  
7 (Complaint ¶ 22).

8 Mann has opposed the District's motion to dismiss, arguing that the 6-months limitations  
9 period of NRS 288.110(4) should be tolled while his dispute with the District was pending in  
10 arbitration. Mann's argues that the limitations period should be tolled when a Complainant  
11 follows the grievance process specified in the collective bargaining agreement, and relies upon  
12 *Galindo v. Stoodly Co.*, 793 F.2d 1502 (9th Cir. 1986) as support for this argument.

13 However, as the District points out in its Reply, the grievance before the arbitrator did not  
14 include a claim that the District failed to allow for union representation at the September 11,  
15 2008 meeting. The District included, as Exhibit 1, a copy of the arbitrator's decision dismissing  
16 Mann's claims against the District. The arbitrator's decision makes no reference to any claim for  
17 interference with Mann's right to representation.

18 When considering the limitations period of NRS 288.110(4), the Board first looks to  
19 decisions from the Nevada Supreme Court for guidance. However, neither party has presented  
20 such authority as to whether or not NRS 288.110(4) is tolled while the grievance process is  
21 pending. The Nevada Supreme Court, however, has recognized that the Employee Management  
22 Relations Act is patterned after the National Labor Relations Act, and that it is appropriate to  
23 look to the National Labor Relations Board for guidance when construing NRS Chapter 288.  
24 *Weiner v. Beatty*, 121 Nev. 243, 116 P.3d 829 (2005); *City of Reno v. Reno Police Protective*  
25 *Association*, 118 Nev. 889, 59 P.3d 1212 (2002).

26 Under this standard, the limitations period for claims which are not the subject of the  
27 grievance are not tolled during the grievance process. *Int'l Union of Electrical Radio and*  
28 *Machine Workers v. Robbins & Meyers, Inc.*, 429 U.S. 229 (1976); *Galindo* at 1510, n. 5

1 (grievance procedures do not toll limitations period where grievances do not address the claims  
2 raised in subsequent lawsuit). Thus, even if the federal tolling rule applies to claims under  
3 Chapter 288, it still would not revive the untimely claims in this case because Mann's claims  
4 were not part of the grievance process.

5 The District presented substantial evidence that Mann did not grieve or arbitrate his claim  
6 that the District denied him representation. The District presented a copy of the arbitrator's  
7 decision which addresses, and dismisses, Mann's claims. (Exhibit 1). The decision does not  
8 include the allegation that Mann is now asserting before this Board. Thus, the six-month  
9 limitation period of NRS 288.110(4) cannot be tolled in this case. As a result, Mann's complaint  
10 against the District is barred by NRS 288.110(4).

11 Because Mann did not grieve the alleged denial of union representation with the  
12 arbitrator, that claim cannot be tolled, and it was therefore filed beyond the six month limitations  
13 period of NRS 288.110(4).

14 Having considered the above, the Board makes the following findings of fact and  
15 conclusions of law:

16 **FINDINGS OF THE FACTS**

- 17 1. Mann knew, or should have known, of the occurrence which forms the basis of his  
18 complaint against the District on September 11, 2008 when Mann admits that he met with  
19 District officials and demanded union representation. (Complaint ¶ 17).
- 20 2. Mann's Complaint was filed on December 1, 2009.
- 21 3. Mann arbitrated his claims for dismissal against the District before Arbitrator Geraldine  
22 Randall, who issued a decision in the arbitration on May 20, 2009. Mann's claims that the  
23 District denied him union representation were not presented to Arbitrator Randall.  
24 (Exhibit 1).
- 25 4. If any of the foregoing findings is more appropriately construed a conclusion of law, it  
26 may be so construed.

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1 **CONCLUSIONS OF LAW**

- 2 1. The EMRB has exclusive jurisdiction over claims for unfair labor practices arising under  
3 NRS Chapter 288.
- 4 2. NRS 288.110(4) contains a six-month statute of limitations. By this statute, the Board  
5 may not decide claims which are filed outside of this statute of limitations.
- 6 3. Mann's complaint against the District was filed more than six months after the  
7 occurrence of the alleged prohibited labor practice.
- 8 4. The tolling doctrine will not toll the limitations period for claims which are not made part  
9 of the grievance process, which included the arbitration in this case.
- 10 5. Because Mann did not make his claims for denial of representation part of the grievance  
11 process, the tolling doctrine cannot apply to Mann's claims against the District.
- 12 6. Mann's claims against the district are time-barred pursuant to NRS 288.110(4).
- 13 7. If any of the foregoing conclusions is more appropriately construed a finding of fact, it  
14 may be so construed.

15 **ORDER**

16 It is hereby ordered that Respondent Clark County School District's Motion to Dismiss is  
17 hereby Granted.

18 It is further ordered that order applies only to Mann's claims against the Clark County  
19 School District.

20 DATED this 24th day of February, 2010.

21 LOCAL GOVERNMENT EMPLOYEE-  
22 MANAGEMENT RELATIONS BOARD

23 BY:   
24 SEATON J. CURRAN, ESQ., Chairman

25 BY:   
26 JAMES E. WILKERSON, SR., Vice-Chairman

27 BY:   
28 SANDRA MASTERS, Board Member

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11 EDUCATION ASSOCIATION; DOES I-V,  
inclusive; and ROE CORPORATIONS I-V,  
inclusive,

Respondent.

CASE NO. A1-045969

**NOTICE OF ENTRY OF ORDER**

12 To: Amberlea Davis, Esq.

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

14 To: Sandra G. Lawrence, Esq.  
15 Dyer, Lawrence, Penrose, Flaherty, Donaldson, & Prunty  
16 For Clark County Education Association and Nevada State  
Education Association

17 PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on  
18 February 24, 2010.

19 A copy of said order is attached hereto.

20 DATED this 24th day of February, 2010.

21 LOCAL GOVERNMENT EMPLOYEE-  
22 MANAGEMENT RELATIONS BOARD

23  
24 BY   
JOYCE HOLTZ, Board Secretary

25  
26  
27  
28

1 **CERTIFICATE OF MAILING**

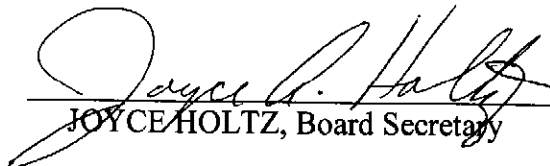
2 I hereby certify that I am an employee of the Local Government Employee-Management  
3 Relations Board, and that on the 24th day of February, 2010, I served a copy of the foregoing  
4 ORDER by mailing a copy thereof, postage prepaid to:

5 Amberlea Davis, Esq.  
6 Law Offices of Amberlea Davis  
7 8275 S. Eastern Ave. Ste. 104  
8 Las Vegas, NV 89123

9 C.W. Hoffman, Jr., Esq.  
10 General Counsel  
11 Clark County School District  
12 5100 West Sahara Avenue  
13 Las Vegas, NV 89146

14 Sandra G. Lawrence, Esq.  
15 Dyer, Lawrence, Penrose, Flaherty, Donaldson, & Prunty  
16 2805 Mountain Street  
17 Carson City, NV 89703

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JOYCE HOLTZ, Board Secretary