

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

5 TAMI BYBEE AND ALEATHEA GINGELL,  
6 jointly and severally,

7 Complainant,

8 vs.

9 THE WHITE PINE COUNTY SCHOOL  
10 DISTRICT, a political subdivision of the State  
11 of Nevada, NEVADA STATE EDUCATION  
12 ASSOCIATION AND WHITE PINE  
ASSOCIATION OF CLASSROOM  
TEACHERS, jointly and severally,

Respondents.

ITEM NO. 724

CASE NO. A1-045972

**ORDER**

13 For Complainant: Tami Bybee and Aleathea Gingell, and their attorney  
14 Gary D. Fairman, Esq.

15 For Respondents: The White Pine County School District, and their attorney Rebecca  
16 Brunch, Esq.

17 Nevada State Education Association and White Pine Association of  
18 Classroom Teaches, and their attorney Francis C. Flaherty, Esq.

19 On the 22nd day of April, 2010, this matter came on before the State of Nevada, Local  
20 Government Employee-Management Relations Board ("Board"), for consideration and decision  
21 pursuant to the provisions of NRS and NAC chapters 288, NRS chapter 233B, and was properly  
22 noticed pursuant to Nevada's open meeting laws.

23 Respondents Nevada State Education Association and White Pine Association of  
24 Classroom Teachers (collectively the "Association"), ask this Board to dismiss the complaint  
25 filed by Tami Bybee and Aleathea Gingell ("Complainants"). The Association has proffered four  
26 bases upon which it asserts dismissal is proper: the complaint was served four days later than is  
27 permitted under NAC 288.080(5); that the complaint was filed with the Board more than six  
28 months later than the occurrence which gives rise to the complaint; that the Association did not

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1 interfere with Complainants rights to self-representation; and that the Board has no jurisdiction  
2 over the common-law tort claims alleged in the second and third causes of action.

3 Respondent White Pine County School District filed a joinder to the Association's  
4 motion to dismiss on March 22, 2010 which adopts by reference the facts and law argued in the  
5 Association's motion. As set forth below, the motion to dismiss is granted in part and denied in  
6 part.

#### 7 Failure to Timely Serve the Complaint

8 The Association argues that the complaint was not timely served and should be  
9 dismissed. The complaint was filed with the Board on February 5, 2010, and the complaint was  
10 mailed to the Association on February 16, 2010, according to the postmark.

11 The Complainants do not dispute the mailing dates proffered by the Association, but  
12 argue that dismissal is not warranted because the complaint before the Board followed dismissal  
13 of a civil suit before the Seventh Judicial District Court which asserted the same claims, and  
14 because of that suit the same parties were already on notice of the claims being asserted before  
15 the Board and no prejudice results from the late service.

16 NAC 288.080 governs the issuance and service of process before the Board and provides  
17 that a complaint must be served upon a respondent within 5 days of the filing. NAC 288.080(5).  
18 However, the Board may overlook any defects to the pleadings which not affect substantial  
19 rights of the parties. NAC 288.235(2).

20 In this case the same parties were already made aware of the substance of the claims due  
21 to the civil suit that was filed before the District Court, and the Board determines that no  
22 prejudice results from the late service. Because there was no prejudice and the substantial rights  
23 of the parties were not affected, the Board declines to dismiss the case on these grounds.

#### 24 Six Month Statute of Limitations

25 The next argument advanced by the Association is that the complaint was untimely under  
26 the statute of limitations. NRS 288.110(4) states that "[t]he Board may not consider any  
27 complaint or appeal filed more than 6 months after the occurrence which is the subject of the  
28 complaint or appeal." The statute of limitations in NRS 288.110(4) "is triggered when the

1 complainant has reason to believe that an unfair labor practice has actually occurred.” *Cone v.*  
2 *Nevada Service Employees Union*, 116 Nev. 473, 477, 998 P.2d 1178, n.2 (2000). The burden of  
3 showing that the charging party was on notice of their claim for a prohibited labor practice rests  
4 on the respondent. *A&L Underground and Plumbers Local # 8*, 302 N.L.R.B. 467, 469 (1991).

5 The Association argues that the six-month period began to run at some point between  
6 May 13 and May 27 of 2009, during which time-frame the Complainants were sent an email by  
7 the Association requesting authorization to act on Complainant’s behalf in a grievance that had  
8 been filed in the wake of a reduction in force implemented by the District. The Board was not  
9 provided with a copy of this email. Based upon the evidence submitted in support of the motion,  
10 the Board has insufficient facts to determine, at this stage, when the Complainants had reason to  
11 believe that an unfair labor practice had occurred. The Board therefore denies the motion to  
12 dismiss as to the statute of limitations argument.

13 Failure to State a Claim

14 The Association argues that the complaint fails to state a claim because it does not assert  
15 that the Associations’ actions were “arbitrary, discriminatory or taken in bad faith.” The  
16 Association is correct that Complainants must demonstrate arbitrariness, discriminatory conduct  
17 or bad faith in order to prevail on a claim for breach of the duty of fair representation, see *Weiner*  
18 *v. Beatty*, 121 Nev. 243, 249, 116 P.3d 829, 833 (2005) (quoting *Vaca v. Sipes*, 386 U.S. 171,  
19 190 (1967)), however there is no regulation which requires the use of these specific words in a  
20 complaint. Rather, this Board is prone to give a liberal construction to the pleadings. NAC  
21 288.235.

22 Turning to the complaint, the Board believes that a claim for a breach of the duty of fair  
23 representation is discernable from the allegations and those allegations can be construed as  
24 asserting a claim for a breach of the duty of fair representation.

25 Thus, the Board denies the motion to dismiss as it relates to the sufficiency of the  
26 complaint.

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1 Intentional Torts

2 The Association is correct to argue that the Board has no jurisdiction over tortuous claims  
3 such as Interference with a Contract or Interference with a Prospective Economic Advantage.  
4 Therefore the Board grants the motion as it relates to the claims for intentional torts.

5 Based upon the foregoing, and good cause appearing therefore,

6 IT IS HEREBY ORDERED that Respondents' motion to dismiss is Granted in part and  
7 Denied in part as set forth herein.

8 DATED this 23rd day of April, 2010.

9 LOCAL GOVERNMENT EMPLOYEE-  
10 MANAGEMENT RELATIONS BOARD

11 BY:   
12 SEATON J. CURRAN, ESQ., Chairman

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CASE NO. A1-045972

**NOTICE OF ENTRY OF ORDER**

13 TO: Tami Bybee and Aleathea Gingell, and their attorney Gary D. Fairman, Esq.

14 TO: The White Pine County School District, and their attorney Rebecca Brunch, Esq.

15 Nevada State Education Association and White Pine Association of Classroom Teaches,  
16 and their attorney Francis C. Flaherty, Esq.

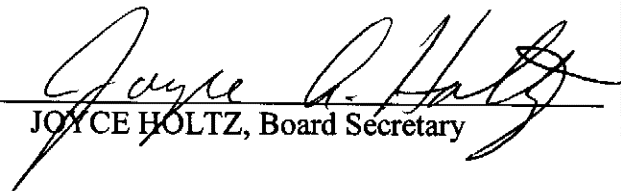
17 PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on  
18 April 23, 2010;

19 A copy of said order is attached hereto.

20 DATED this 26th day of April, 2010.

21 LOCAL GOVERNMENT EMPLOYEE-  
22 MANAGEMENT RELATIONS BOARD

23 BY

  
24 JOYCE HOLTZ, Board Secretary  
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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 26th day of April, 2010, I served a copy of the foregoing  
4 ORDER by mailing a copy thereof, postage prepaid to:

5 Gary D. Fairman, Esq.  
6 PO Box 151105  
7 Ely, NV 89315

8 Rebecca Bruch, Esq.  
9 Erickson, Thorpe, & Swainston  
10 99 West Arroyo  
11 Reno, NV 89509

12 Francis C. Flaherty, Esq.  
13 Dyer, Lawrence, Penrose, Flaherty, Donaldson, & Prunty  
14 2805 Mountain Street  
15 Carson City, NV 89703

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JOYCE HOLTZ, Board Secretary