STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

TAMI BYBEE and ALEATHA GINGELL, Complainants, vs. THE WHITE PINE COUNTY SCHOOL DISTRICT; NEVADA STATE EDUCATION ASSOCIATION and THE WHITE PINE ASSOCIATION OF CLASSROOM TEACHERS, Respondents.	ITEM NO.: 724B CASE NO. A1-045972 **ORDER**

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

TO: White Pine County School District and their attorney Rebecca Bruch, Esq.

Nevada State Education Association and The White Pine Association of Classroom Teacher and their attorney Francis C. Flaherty, Esq.

This matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board"), on July 21, 2010 for consideration and decision pursuant to the provisions of the Local Government Employee-Management Relations Act ("the Act"); NAC Chapter 288, NRS chapter 233B, and was properly noticed pursuant to Nevada's open meeting laws.

The Board conducted a hearing in this case on September 27 and 28, 2010 in Ely, Nevada. In lieu of closing arguments, the parties agreed to submit post-hearing briefs to the Board. The post-hearing briefs were submitted by all parties to the Board on December 6, 2010. The Board deliberated on this case on January 11 and 13, 2011.

This case originated when Respondent White Pine County School District attempted to conduct a reduction-in-force layoff ('RIF") in May of 2009. The District and the White Pine Association of Classroom Teachers are parties to a collective bargaining agreement ("CBA") that specifies the procedures for such a reduction in force. The School District selected 23 teachers

who would be laid-off. However, the District did not ensure that timely notice was provided to all 23 teachers as required by the deadline in NRS 391.3196 and 3197. 17 of the 23 notices were delivered prior to May 15, 2009, including the notices provided to Complainants Tami Bybee and Aleathea Gingell. The 6 remaining notices were delivered to teachers after the May 15, 2009 deadline.[1]

As a result, teachers with greater seniority were laid off, including Complainants Tami Bybee and Aleathea Gingell, while teachers with less seniority were retained for the upcoming school year.

After the layoffs were made, the White Pine Association of Classroom Teachers ("WPACT") filed a "class action" grievance on behalf of all 23 teachers. WPACT was assisted in this grievance by Respondent Nevada State Education Association ("NSEA"). The grievance asserted that District finances did not require a layoff at all. For purposes of this Order, we refer to this grievance as the "budget RIF grievance."

After this grievance had been filed on behalf of all 23 teachers, the Associations amended the grievance to include an additional grievance on behalf of the 6 teachers who had not received a RIF notice by May 15, 2009. For purposes of this Order, we refer to this claim as the "late notice" grievance.

Throughout the summer of 2009, the Associations and District attempted to resolve these grievances. Evidence was presented to show that on August 13, 2009, the Associations confirmed a resolution to the late notice grievance that required all teachers who had not received timely notice to return to work with the District. On August 19, 2009, Tami Bybee and Aleathea Gingell learned that these late-noticed teachers would remain as employees of the District, including two teachers with less seniority than Ms. Bybee and Ms. Gingell.

On August 25, 2009 Ms. Bybee and Ms. Gingell, acting through legal counsel, filed their own grievance with the District, alleging that the District had breached the CBA by departing from the seniority rules that governed a reduction in force. The District denied this grievance,

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[1] NRS 391.3196 and 3197 state that May 1 is the deadline to notify teachers that they would not be employed for the upcoming school year, however Assembly Bill 542 altered the deadline in 2009 to May 15. 2009 Nev. Stat. 34-35.

stating that it could not deal directly with Ms. Bybee and Ms. Gingell and could only deal with the unions.

Ms. Bybee and Ms. Gingell then filed a civil complaint with the Seventh Judicial District Court on December 7, 2009. Pursuant to stipulation between the parties, that Complaint was dismissed and re-filed with this Board on February 5, 2009.

District's Motion for Summary Judgment

On August 18, 2010, the School District filed a motion for summary judgment with the Board. We consider such a motion as a motion to dismiss under NAC 288.375. Prior to the hearing the Board considered the motion but deferred ruling on the motion until the close of testimony. Having considered the testimony, the Board now denies the motion. The School District has not established an accord and satisfaction because it has not demonstrated the requisite meeting of the minds.

Timeliness of Claims Against WPACT and NSEA

Before turning to the merits of Complainants' claims we first address the affirmative defense raised and argued by WPACT and NSEA that Complainants' claims are barred by the six-month statute of limitations. NRS 288.110(4). WPACT and NSEA argue that the six-month period should be calculated back from February 5, 2010, the date that the complaint was filed with this Board. Under this calculation, any claims accruing prior to August 5, 2009 would be time-barred.

However, prior to filing their complaint with this Board, Complainants had filed a civil lawsuit alleging many of the same claims in the Seventh Judicial District Court. The complaint before the District Court was filed on December 7, 2009. After filing with the District Court, the parties stipulated to dismiss the case pending before the District Court so that Complainants could re-file their complaint with this Board. The District Court accepted the stipulation to dismiss on February 5, 2010 – the same date that the complaint was filed with this Board.

The doctrine of equitable tolling may toll the limitations period when a party timely asserts their rights but files in a forum that does not have exclusive jurisdiction. e.g. Valenzuela v. Kraft, Inc., 801 F.2d 1170 (9th Cir. 1986). Such tolling is proper in this case, especially in

light of the stipulation before the District Court to allow Complainants the opportunity to re-file their complaint before this Board. Complainants immediately acted to file their complaint with this Board once the stipulation was filed with the District Court. There appears no evidence of any prejudice to Respondents as a result of the dismissal and refilling. Therefore the doctrine of equitable tolling applies in this case and we calculate the six-month limitations period by looking to the date that Complainants' filed their complaint with the District Court – December 7, 2009. Six months prior to December 7, 2009 is June 7, 2009. Thus, any claims which accrued on or after June 7, 2009, or which are not otherwise tolled, are therefore timely. We believe this is also the correct result in light of NRS 11.500.

Turning to the complaints against the Associations, the Board finds these complaints to be timely. A claim will accrue under NRS 288.110(4) when an aggrieved employee has reason to believe that an unfair labor practice has occurred. Cone v. Nevada Service Employees Union, 116 Nev. 473, 477, 998 P.2d 1178, 1181 n. 2 (2000). Complainants allege that the Associations breached the duty of fair representation when it resolved the late notice grievance without also returning Ms. Bybee and Ms. Gingell to their position as teachers. Substantial evidence indicates that the Associations could not have resolved that issue any sooner than 11:00 a.m. on June 9, 2009. The Board looked to Exhibit 9, a letter from the School District to the Associations confirming that a level three hearing on the late notice grievance occurred at that time on June 9, 2009. Because this date falls within the six-month limitation period, we conclude that Complainants complaint against the Associations are timely. Complainants remaining allegations against the Associations are likewise based on occurrences that transpired after June 7, 2009, or which Complainants discovered after June 7, 2009. Therefore we conclude that the complaints against the Associations are timely.

We now turn to the merits of the claims against the Associations.

Breach of the Duty of Fair Representation

NSEA as a Bargaining Agent

"The duty of fair representation is inferred from a union's exclusive authority . . . to represent all employees in a bargaining unit." Chauffeurs, Teamsters and Helpers, Local No. 391

v. Terry, 494 U.S. 558, 563 (1990). In this case WPACT, and not NSEA, is the recognized bargaining agent. Substantial evidence was presented by the Associations at the hearing to demonstrate that WPACT is affiliated with NSEA, but that WPACT remains a separate entity. Complainants did not present evidence to negate this, nor did Complainants present substantial evidence to show that NSEA assumed the mantle of the bargaining agent in this case. Thus, the duty of fair representation lies only with WPACT and we conclude that there cannot be any breach of the duty of fair representation by NSEA

Claim Against WPACT

"The duty of fair representation requires that when the union represents or negotiates on behalf of a union member, it must conduct itself in a manner that is not 'arbitrary, discriminatory, or in bad faith.'" Weiner v. Beatty, 121 Nev. 243, 249, 116 P.3d 829, 833 (2005) (internal citations omitted). A claim for the breach of the duty of fair representation is the exclusive remedy for an employee complaining of conduct that occurs when a union is acting to represent the employee. Id. at 249, 116 P.3d at 832-833. The duty of fair representation is typically construed narrowly in order to allow a union the discretion to act in what it perceives to be the best interests of those whom it represents. Galindo v. Stoody Co., 793 F.2d 1502, 1514 (9th Cir.1986).

While WPACT, as the bargaining agent, undertook the representation of Complainants on the class action budget RIF grievance and did owe a duty of fair representation, Complainants have not presented substantial evidence to show that WPACT's actions rose to the level of arbitrariness.

A union's actions are arbitrary only if the union's conduct can be fairly characterized as so far outside a "wide range of reasonableness that it is wholly 'irrational' or 'arbitrary.'" Marquez v. Screen Actors Guild, Inc., 525 U.S. 33, 45 (1998).

Complainants assert that WPACT breached the duty of fair representation by informing the District that WPACT represented them when Complainants had not consented to the representation. Complainants were not aware of this representation until after they had retained legal counsel in August of 2009. After the layoff notices were delivered to all 23 teachers

WPACT immediately filed a "class action" grievance over the layoffs and notified the District that it represented all laid-off teachers, including Ms. Bybee and Ms. Gingell. Ex. 5. At that time, the scope of the grievance concerned only the question of whether the finances of the District necessitated a layoff or not. WPACT argued that the District had sufficient funds, and that none of the layoffs were necessary. Ex. 8.

Substantial evidences indicates that neither Ms. Bybee nor Ms. Gingell were members of WPACT. WPACT did not obtain Ms. Bybee or Ms. Gingell's consent to represent them before filing the budget RIF grievance or before sending the representation letters admitted as Exhibit 5, however we do not consider this action to be arbitrary. At the hearing, WPACT explained that it took immediate action on behalf of all affected teachers in order to preserve the time lines for requesting a dismissal hearing under the provisions of NRS Chapter 391. In this regard, the WPACT's actions served only to benefit Ms. Bybee and Ms. Gingell, and we cannot conclude that this conduct is "wholly irrational." Complainants also confirmed at the hearing that the WPACT's representation was acceptable to them, at least as to the budget RIF grievance.

Complainants assert that a statement within the representation letters stating that Ms. Bybee and Ms. Gingell were members of WPACT was false. While it is true that Ms. Bybee and Ms. Gingell were not members of WPACT, it is not significant in our view as there was no evidence that WPACT perpetuated this inaccuracy and as Exhibit 5 appears to be a form letter that was sent on behalf of each teacher to protect her statutory rights to a hearing. This inaccuracy was later corrected by Complainants when they filed their own grievance with the District on August 25, 2009. At most, this shows merely an inaccuracy in a form letter. More is required to demonstrate a breach of the duty of fair representation. e.g. Galindo at 1514 (even negligent conduct does not necessarily breach the duty of fair representation). We do not find that WPACT's initial representation of the Complainants and statements that Complainants were union members constitutes a prohibited labor practice.

Next, Ms. Bybee and Ms. Gingell claim that WPACT failed to keep them informed regarding the status of the grievance and never informed them that the grievance had been amended to also include the issue raised in the late notice grievance. The testimony before the

Board indicated that Complainants, Tami Bybee in particular, made repeated inquiries to WPACT about the status of the grievance without obtaining the desired information. However, the Board heard testimony that WPACT conducted periodic informational meetings for the laid-off teachers, and during the course of those meetings did discuss the status of the grievance with Ms. Bybee. Substantial evidence indicated that WPACT held at least two of these meetings on May 27, 2009 and June 25, 2009. Thus, WPACT controlled the flow of information to the affected employees, but did not wholly deprive them of information relating to the grievance. In this particular case, we do not see substantial evidence that WPACT's release of information to Complainants was so far outside range of reasonableness to be irrational. Further, neither Ms. Bybee nor Ms. Gingell were grievants under the late notice grievance. As they were not grievants we conclude WPACT was not obligated to keep them informed regarding the late notice grievance.

Complainants also argue that it was incumbent upon WPACT to inform the District that it did not represent Complainants on the late notice grievance. However, neither Ms. Bybee nor Ms. Gingell received a late RIF notices, and would, by that fact alone, be excluded from the class of persons that WPACT represented on the late notice grievance. We see no need to require a union to inform an employer that it does not represent persons who fall outside the scope of a grievance. Thus, WPACT's actions were not arbitrary.

We next look to determine if WPACT discriminated against Complainants. In order to prove discriminatory actions, a complainant must "adduce substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives." Amalgamated Ass'n of St., Elec. Ry. and Motor Coach Emp. of America v. Lockridge, 403 U.S. 274, 301 (1971). In this case, WPACT's actions equally affected both members and non-members, and the agreements that it reached with the School District did not show any evidence of discrimination.

Finally, we find that there was no bad faith on the part of WPACT. In order to show "bad faith," a complainant must present "substantial evidence of fraud, deceitful action or dishonest conduct." Id at 299. There was no other evidence presented at the hearing tending to show deceit or dishonest conduct on the part of WPACT. WPACT's initial statement that Ms. Bybee and Ms.

Gingell were union members does not rise to this level, as it appears to be a simple oversight and not an indication of dishonesty. Thus we conclude there was no breach of the duty of fair representation.

Interference with Protected Rights

Complainants also assert that the actions of the Associations interfered with a protected statutory right – namely the right to act for themselves with respect to any term or condition of employment that is set forth in NRS 288.140(2).

As discussed below, Complainants are correct in stating that they had a right to act for themselves with respect to the terms of their employment. Our concern at this stage of the analysis is whether there is evidence to indicate that either Association interfered with that right. As noted above, the Associations immediately notified the District that it represented all 23 teachers, including Ms. Bybee and Ms. Gingell. However, this action preserved a statutory deadline that otherwise would not have been met. While the Associations did inaccurately state that Ms. Bybee and Ms. Gingell were union members, this is not sufficient evidence to show that the Association ever obstructed Ms. Bybee and Ms. Gingell's ability to take control over the grievance that had been filed or file an additional grievance. Indeed, Ms. Bybee and Ms. Gingell testified that they never objected to the Association's representation on the budget RIF grievance. This is true even after Ms. Bybee and Ms. Gingell obtained counsel and the Associations continued to work to resolve the budget RIF grievance.

Ms. Bybee and Ms. Gingell did exercise their right to act on their own behalf by filing their own grievance with the District on August 25, 2009. However, there was not substantial evidence produced at the hearing to show that the Associations played any part in interfering with that grievance.

Finally, Complainants allege that at a School Board meeting on June 30, 2009, WPACT President Donna Gubler interfered with their rights to act for themselves by telling Tami Bybee to "be quiet" and that she "wasn't helping" by participating in the public comment portion of a School District board meeting. We only consider this conduct as it relates to a possible violation

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of the Act. We do not see this particular conduct as rising to the level of an interference under NRS 288.270(2)(a).

Given the allegations asserted against the Associations, and the evidence presented at the hearing, the Board does not find that either NSEA or WPACT committed a prohibited labor practice in this case.

Claims Against White Pine County School District

Complainants also assert claims against Respondent White Pine County School District, alleging that the District departed from the bargained-for layoff procedure by laying off more senior positions and retaining the less senior positions that had received the late RIF notices. Complainants also assert that the District refused to process the grievance that they filed over this same subject in August of 2009. As discussed below, we agree with Complainants that the actions of the District do constitute prohibited labor practices.

Unilateral Change

We take complainants allegations that the District departed from the bargained-for layoff procedure as a claim for unilateral change. Under the unilateral change theory, an employer commits a prohibited labor practice when it changes the terms and conditions of employment which fall under the subjects of mandatory bargaining listed in NRS 288.150 without first bargaining in good faith with the recognized bargaining agent. City of Reno v. Reno Police Protective Ass'n, 118 Nev. 889, 59 P.3d 1212 (2002). The procedure for conducting a reduction in workforce is a mandatory subject of bargaining. NRS 288.150(2)(v).

Generally, a Complainant can demonstrate a unilateral change by establishing what the established terms of employment were before the alleged change, then establishing what the terms of employment were after the alleged change, and then comparing the two to determine if a change has in fact taken place. Golden Stevedoring Co. 335 NLRB 410, 435 (2001); Service Empl. Int'l Union, Local 1107 v. Clark County, Item No. 713A, EMRB Case No. A1-045965 (2010).

In this case, there is no doubt as to the bargained-for layoff procedure prior to the alleged change. It is clearly spelled out in the CBA. Ex. 1, Art. 13. This article states that layoffs are to

be conducted with the least senior employees to be laid off first. Additionally, laid off teachers are to be recalled in order of seniority. The District departed from this procedure in this case.

When the District conducted the layoffs, it did not lay off two teachers who were less senior than Ms. Bybee and Ms. Gingell – Janine Gamberg and Pax Halsem. See NRS 391.3196 and 3197. The District did not provide timely notice to all teachers and thus the layoff was not done according to the inverse seniority requirements of the collective bargaining agreement. This unilateral change occurred on May 15, 2009, however Ms. Bybee and Ms. Gingell were not aware of that fact until August 19, 2009, per their credible testimony presented at the hearing.

An employer must bargain for a change to any of the mandatory subjects of bargaining prior to making the change. Illiana Transit Warehouse Corp., 323 NLRB 111, 122 (1997). There was no evidence that the District bargained for a change to Article 13 of the CBA prior to May 15, 2009 when it committed the offense. Because good faith bargaining is a pre-requisite to any change to reduction in force procedures, a majority of this Board finds that it is proper to look to the date of the employer's change – May 15, 2009 – and determine whether there was any bargaining over the term prior to that date. The majority sees none. Thus, a majority of the Board concludes that the District did not bargain for the change with the bargaining agent prior to committing the offense and therefore the May 15, 2009 change to Article 13 by laying off teachers out of order of inverse seniority was in fact a unilateral change.

The Associations reached a grievance settlement with the District well after this change had occurred. Because this occurred after the change, rather than before, the majority of the Board does not conclude this is relevant to show whether the unilateral change was committed in May. Further, Ms. Bybee and Ms. Gingell were not grievants on the issue of the late-notice RIFs and as we have decided above, Ms. Bybee and Ms. Gingell are not bound by any accord and satisfaction. Rather, it appears to us as though the grievance settlement which returned Gamberg and Halsem to work was merely recognition of the fact that these late notice teachers were never actually laid off by operation of NRS 391.3196 and 3197.

WPACT's budget RIF grievance addressed budget issues, but it did not address the issues of seniority raised by Ms. Bybee and Ms. Gingell in their own grievance. The settlement of the

budget RIF grievance to resolve "all issues" related to WPACT's grievances occurred on April 12, 2010 – after Complainants had acted on their own behalf to file a grievance over the breach of the seniority provisions of Article 13 and after Complainants had filed their claim with this Board against the District raising the unilateral change allegations.

Thus, there was no prior bargained-for change between the District and WPACT and Complainants have established a unilateral change on the part of the District.

Interference With Protected Rights

Complainants also assert that the District interfered with their protected right to act for themselves. NRS 288.140(2). An employer interferes with an employee's protected rights when its conduct reasonably tends to interfere with the employees' exercise of their rights. N.L.R.B. v. Hitchiner Mfg. Co., 634 F.2d 1110 (8th Cir. 1980).

After becoming aware that less senior teachers would continue to be employed by the District while they, as more senior employees, would not, Complainants initiated their own grievance over the District's breach of Article 13 of the CBA.

The District's response to this grievance was to refuse the grievance, informing Complainants that they could only be represented by the union. An employer's refusal to process a grievance is a recognized prohibited labor practice and an interference with protected rights. e.g. Pease Co., 251 NLRB 540, 550 (1980). Further, the District's statements that only the union could represent Ms. Bybee and Ms. Gingell in their grievance were not accurate and the Board finds that this action does reasonably tend to interfere with Complainants' right to act for themselves under NRS 288.140(2). Thus, we also find that the District committed a prohibited labor practice when it denied Complainants' grievance by stating that Complainants must be represented by the union.

Remedies

Having found that the District committed prohibited labor practices as set forth above, we turn to the issue of redress for those violations of the Act. This Board is empowered to "restore to the party aggrieved any benefit of which the party has been deprived by that action." NRS 288.110(4). Each Complainant is addressed in turn.

Tami Bybee

The evidence presented at the hearing by Tami Bybee established that as a result of the District's unilateral change and interference with her right to file and process her own grievance, she was denied employment with the School District for the 2009-2010 school year. It is the intention of this Board to restore to her the full benefits of which she was deprived including salary, benefits and seniority with the District. Credible testimony at the hearing established that Tami Bybee was deprived of $44,073.42, and we will order Ms. Bybee to be restored this amount from the District. Additionally, Ms. Bybee should be given her full seniority with the District based upon her original hire date, rather than upon any date in which she was reinstated.

Aleathea Gingell

But for the District's unilateral change and interference, Aleathea Gingell would still have been subject to the layoff, but would have been on top of the recall list. According to testimony at the hearing, a position opened up with the School District in January of 2010. That position would have been given to Ms. Gingell had she been on top of the recall list. Thus, Ms. Gingell was deprived of employment for approximately ½ of the 2009-2010 school year. It is also the intention of this Board to restore to Ms. Gingell the full salary and benefits of which she was deprived. Substantial evidence at the hearing indicated that Ms. Gingell was deprived of a total of $12,123.90 in lost wages and benefits. The Board will order the District to restore this amount to her.

Additionally, the Board is authorized to award a complainant her costs and attorneys fees if she is a prevailing party. NRS 288.110(6). This case merits an award of fees and costs to Complainants Tami Bybee and Aleathea Gingell. Consistent with prior board practice the Board instructs counsel for Complainants to submit a memorandum detailing the costs and fees incurred in this matter.

Based upon the forgoing, the Board makes the following findings of fact and conclusions of law.

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FINDINGS OF FACT

1. WPACT and White Pine County School District are parties to a collective bargaining agreement governing employment for the bargaining unit of school teachers employed by the District.

2. Tami Bybee and Aleathea Gingell are employees in the bargaining unit governed by the collective bargaining agreement identified above.

3. In May of 2009, the District attempted to lay off 23 teachers. The District did not bargain with WPACT to amend the provisions of Article 13 of the CBA prior to conducting layoffs.

4. 17 of the layoff notices were delivered to teachers prior to May 15, 2009, including notices delivered to Tami Bybee and Aleathea Gingell.

5. 6 of the layoff notices were delivered to teachers after May 15, 2009, including notices delivered to Janine Gamberg and Pax Halsem.

6. Tami Bybee and Aleathea Gingell each had greater seniority with the District than both Janine Gamberg and Pax Halsem.

7. On May 27, 2009, WPACT and NSEA sent form letters to the District advising that they represented Tami Bybee and Aleathea Gingell, and that Ms. Bybee and Ms. Gingell were members of each Association. Exhibit 5.

8. Tami Bybee and Aleathea Gingell are not, and at no time relevant to this complaint were, members of either WPACT or NSEA.

9. On May 27, 2009 WPACT and NSEA filed a grievance with the District. The scope of this grievance concerned budget issues with the District and argued that the District did have sufficient funds to avoid any layoff. The grievance was filed on behalf of all 23 teachers that received layoff notices, including Tami Bybee and Aleathea Gingell.

10. Tami Bybee and Aleathea Gingell did not consent to representation by WPACT prior to the grievance. After the grievance was filed Tami Bybee and Aleathea Gingell accepted WPACT's representation on the budget issues only.

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11. After the initial grievance had been filed, WPACT and NSEA amended the grievance to include an additional grievance on behalf of the 6 teachers that had not received a timely RIF notice. Neither Tami Bybee nor Aleathea Gingell were grievants under this amended portion of the grievance. WPACT and NSEA did not inform either Tami Bybee or Aleathea Gingell of the amendment to the grievance.

12. WPACT held meetings with the grievants to discuss and inform them about the status of the grievances on May 27, 2009 and on June 25, 2009.

13. Tami Bybee participated in the public comment item at a meeting of the White Pine County School Board on June 30, 2009. Following Ms. Bybee's public comment, WPACT President Donna Gubler told Ms. Bybee to "be quiet" and that Ms. Bybee "wasn't helping."

14. On August 13, 2009, WPACT and NSEA reached an agreement to resolve the late notice grievance which required that all teachers who had not received a timely RIF notice be returned to work, including Janine Gamberg and Pax Halsem.

15. On August 19, 2009 Tami Bybee and Aleathea Gingell first had reason to believe that a prohibited labor practice may have occurred when they learned that less senior teachers would remain employed with the District.

16. On August 25, 2009, Tami Bybee and Aleathea Gingell acted for themselves and filed their own grievance with the District, asserting that the District had breached the seniority provision of Article 13 of the CBA. The District refused this grievance on the basis that Ms. Bybee and Ms. Gingell must be represented by the union.

17. Tami Bybee and Aleathea Gingell filed a civil complaint with the Seventh Judicial District Court on December 7, 2009, asserting the same claims raised in the complaint that Ms. Bybee and Ms. Gingell filed with this Board. The complaint was re-filed with this Board on February 5, 2010.

18. On April 12, 2010 Respondent White Pine County School District and Respondent WPACT entered into a settlement agreement to resolve "all issues" relating to the grievances filed by WPACT.

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19. If any of the foregoing findings is more appropriately construed a conclusion of law, it may be so construed.

CONCLUSIONS OF LAW

1. The Board is authorized to hear and determine complaints arising under the Local Government Employee-Management Relations Act.

2. The Board has exclusive jurisdiction over the parties and the subject matters of the Complaint on file herein pursuant to the provisions of NRS Chapter 288.

3. Under the doctrine of equitable tolling, a statute of limitations may be tolled when a complainant has filed a complaint in an incorrect venue. The doctrine of equitable tolling is applicable in this case as the parties stipulated to a dismissal of Complainant's District Court complaint in order to re-file the same with this Board, Complainants acted diligently to re-file their complaint with this Board, and Respondents are not prejudiced by the re-filing.

4. All claims raised by Tami Bybee and Aleathea Gingell against WPACT, NSEA and White Pine County School District accrued after June 7, 2009.

5. The claims presented to the Board at the hearing are timely under NRS 288.110(4).

6. WPACT owed a duty of fair representation to Ms. Bybee and Ms. Gingell when it undertook to represent them in the budget RIF grievance. NSEA did not owe a duty of fair representation to Ms. Bybee or Ms. Gingell because it is a separate entity and did not assume the role of the bargaining agent.

7. WPACT's actions were not arbitrary, as discussed within this order.

8. WPACT's actions were not discriminatory as discussed within this order.

9. WPACT's actions were not in bad faith as discussed within this order.

10. As non-members of WPACT, Tami Bybee and Aleathea Gingell were entitled to act for themselves with respect to any condition of their employment, consistent with the terms of the CBA. NRS 288.140(2).

11. WPACT and NSEA's actions did not rise to the level of an interference with Complainants' right to act for themselves.

12. White Pine County School District unilaterally changed the terms of Article 13 of the CBA when it laid off teachers out of order of inverse seniority as specified in the CBA.

13. White Pine County School District refusal of Tami Bybee and Aleathea Gingell's grievance and its actions of informing Ms. Bybee and Ms. Gingell that they must be represented by the union reasonably tends to interfere with Complainant's rights to act for themselves, and is thus a violation of NRS 288.270(1)(a).

14. As a result of White Pine County School District's prohibited labor practices, Tami Bybee was deprived of the benefit of continued employment with White Pine County School District and employment during the 2009-2010 school year, including all salary, benefits and seniority to which she would have been entitled had she remained employed with the District.

15. As a result of White Pine County School District's prohibited labor practices, Aleathea Gingell was deprived of the benefit of being placed at the top of the recall list for the 2009-2010 school year and employment with White Pine County School District and being recalled to employment in January, 2010 including all salary and benefits to which she would have been entitled had she been recalled to employment in January, 2010.

16. Tami Bybee and Aleathea Gingell are prevailing parties and entitled to an award of costs from the School District pursuant to NRS 288.110(6).

17. If any of the foregoing conclusions is more appropriately construed a finding of fact, it may be so construed.

ORDER

It is hereby ordered the Board finds in favor of Respondents White Pine Association of Classroom Teachers and Nevada State Education on all claims asserted against it. WPACT and NSEA shall bear their own fees and costs incurred in this matter.

It is further ordered that Respondent White Pine County School District shall restore to Tami Bybee the amount of $44,073.42 for her lost salary and benefits for the 2009-2010 school year. The White Pine County School District shall also ensure that Tami Bybee's seniority be

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fully restored and shall henceforth be calculated on her original hire date with the School District.

It is further ordered that Respondent White Pine County School District shall restore to Aleathea Gingell the amount of $12,123.90 for her lost salary and benefits for approximately ½ of the 2009-2010 school year.

It is further ordered that, pursuant to NRS 288.110(6), White Pine County School District shall reimburse Complainants a reasonable amount of costs, including attorneys fees, incurred in bringing this claim before the Board. Complainants shall file with the Board a memorandum detailing the fees and costs incurred in this matter. The memorandum shall be filed within thirty (30) days of the date of this order. The School District shall thereafter have the opportunity to oppose the fees and costs claimed by Complainants.

DATED this 9th day of February, 2011.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: _____
SEATON J. CURRAN, ESQ., Chairman

BY: _____
SANDRA MASTERS, Vice-Chairman

BY: _____
PHILIP E. LARSON, Board Member

STATEMENT OF DISSENT

I dissent from the portion of the Board's decision which finds that the District committed a unilateral change. I would find that the grievances relating to the layoffs that were filed by the Associations and negotiated with the District are substantial evidence that the District was negotiating with the recognized bargaining agent and came to an agreement that related to the layoff process under Article 13 of the agreement. In my judgment this does not constitute a unilateral change.

BY: _____

SEATON J. CURRAN, ESQ., Chairman

STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

TAMI BYBEE and ALEATHA GINGELL, Complainants, vs. THE WHITE PINE COUNTY SCHOOL DISTRICT; NEVADA STATE EDUCATION ASSOCIATION and THE WHITE PINE ASSOCIATION OF CLASSROOM TEACHERS, Respondents.	CASE NO. A1-045972 **NOTICE OF ENTRY OF ORDER**

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

TO: White Pine County School District and their attorney Rebecca Bruch, Esq.

Nevada State Education Association and The White Pine Association of Classroom Teacher and their attorney Francis C. Flaherty, Esq.

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on February 9, 2011.

A copy of said order is attached hereto.

DATED this 9th day of February, 2011.

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

BY Joyce A. Holtz

JOYCE A. HOLTZ, Executive Assistant

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 9th day of February, 2011, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

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482 Fifth St., P.O. Box 151105
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JOYCE A. HOLTZ, Executive Assistant