

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

5 BRIAN HEITZINGER,)
6 Complainant,) ITEM NO. 728
7 vs.) CASE NO. A1-045977
8 LAS VEGAS-CLARK COUNTY LIBRARY)
9 DISTRICT; TEAMSTERS LOCAL 14; and) **ORDER**
10 AMANDA LIVELY,)
Respondents.)

11 For Complainant: Amberlea Davis, Esq.
12 Law Offices of Amberlea Davis
13 For Respondent Las Vegas-
14 Clark County Library Dist.: Scott M. Abbott, Esq.
Kamer Zuker Abbott
15 For Respondent
16 Teamsters Local 14: Amanda Lively, Esq.
Wohlner Kaplon Phillips Young and Cutler

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

21 Respondents Las Vegas-Clark County Library District ("District") and Teamsters Local
22 14 ("Teamsters") have each filed a Motion to Dismiss asserting that there is no probable cause to
23 maintain the separate claims asserted against them in the Complaint. Complainant Brian
24 Heitzinger filed an opposition to each motion. As discussed herein, the motions are granted in
25 part and denied in part.

26 **The District's Motion**

27 The first cause of action asserted against the District claims a violation of Heitzinger's
28 Weingarten rights. The District asks that this claim be dismissed because Heitzinger's Complaint

1 identifies an instance in which he was questioned by District personnel and the subject matter of
2 that questioning is identified as "his personal life, including marital status, health and life style."
3 The District asserts that under these circumstances an employee would not reasonably believe
4 that the interview would result in disciplinary action, and that therefore his Weingarten rights
5 could not be violated.

6 Under Weingarten, a fact-finder should consider "all the circumstances of the case."
7 N.L.R.B. v. J. Weingarten, Inc. 420 U.S. 251, 257 n. 5 (1975). At this time, the Board lacks
8 sufficient evidence to evaluate all the circumstances or determine if in fact an employee would
9 reasonably believe that Heitzinger's interview could result in discipline. On the first cause of
10 action, the District's motion will be denied.

11 The District asserts that the third and fourth causes of action should be dismissed as well
12 as they are internally inconsistent. The third cause of action claims that the District interfered
13 with union membership when the District instructed Heitzinger to contact the union; and when
14 union members and District administrators traveled to Laughlin in the same vehicle. Heitzinger
15 does, of course, have the right to join, or to refrain from joining any union as he so chooses, and
16 an interference with that right would be a prohibited labor practice. NRS 288.140; NRS
17 288.270(1)(a). But Heitzinger's third cause of action amounts to an allegation that an employer
18 interferes with that right when it advises its employees to contact the bargaining agent when the
19 employer is contemplating discipline. We are not aware of any situation, nor has any been
20 pointed out to us by the parties, where such an action amounts to a prohibited labor practice.
21 Thus, there is no probable cause to believe that this action was improper or constituted an
22 interference with union membership.

23 Similarly, the fourth cause of action claims interference with union administration based
24 upon the same facts. In essence, the allegation claims that influencing the union to represent
25 Heitzinger interferes with union administration. For the same reasons stated above, there is no
26 probable cause to support this allegation. When an employer advises the bargaining agent of
27 disciplinary action against a member of the bargaining unit it does not commit a prohibited labor
28 practice. Thus, the third and fourth cause of action will be dismissed.

1 Heitzingers's seventh cause of action asserts a breach of the collective bargaining
2 agreement by the District, and the eighth cause of action asserts a conspiracy to breach the
3 collective bargaining agreement. This Board's authority is limited to hear and determine cases
4 arising "out of the interpretation of, or performance under" the Local Government Employee-
5 Management Relations Act. NRS 288.110(2). Thus, the Board will not hear claims that assert
6 only contractual disputes and do not assert a violation of the Act. Clark County Classroom
7 Teachers Ass'n v. Clark County School Dist., EMRB Case No. A1-045280, Item No. 44 (Aug.
8 19, 1975). Because these claims assert only contractual claims, which are beyond the authority
9 of this Board, we will dismiss the seventh and eighth causes of action as well.

10 We cannot say that there is no probable cause on Heitzinger's remaining claims against
11 the District- the second, fifth, and sixth causes of action. Therefore we do not dismiss those
12 causes of action against the District at this time.

13 The Teamster's Motion

14 The Teamsters have also filed a motion to dismiss, asking the Board to dismiss causes of
15 action eight through twelve, which assert allegations against the Teamsters.

16 The eighth cause of action asserts the conspiracy to breach the collective bargaining
17 agreement, and the twelfth cause of action asserts that the Teamsters breached the collective
18 bargaining agreement. As noted above, this Board does not hear purely contractual disputes, and
19 for that reason the eighth and twelfth causes of action will be dismissed.

20 However, the remaining causes of action- nine, ten, and eleven- are sufficient to state a
21 claim against the Teamsters, and we cannot say that these claims lack probable cause. Thus, the
22 motion to dismiss will be denied as to those claims.

23 Claims Asserted Against Amanda Lively

24 We also dismiss all claims against Amanda Lively in her individual capacity. Lively is
25 not a local government employee organization and a complaint against her personally is not
26 proper under the Act. See Rosequist v. International Ass'n of Firefighters Local 1908 118 Nev.
27 444, 448, 49 P.3d 651, 653 - 654 (2002).

28 Having considered the above, the Board unanimously finds as follows:

- 1 1. Pursuant to NRS 288.110(2) and NRS 288.280, the Board has jurisdiction over
2 violations of NRS Chapter 288.
- 3 2. Pursuant to NAC 288.375(1) a claim against a Respondent may be dismissed if
4 the claim lacks probable cause
- 5 3. Heitzinger's third and fourth causes of action against the District lack probable
6 cause.
- 7 4. Hetzinger's seventh, eighth and twelfth causes of action do not assert a violation
8 of NRS Chapter 288 against either the District or the Teamsters.
- 9 5. Amanda Lively, in an individual capacity, is not subject to NRS Chapter 288.

10 Based upon the foregoing, and good cause appearing therefore:

11 IT IS HEREBY ORDERED that the District's Motion to Dismiss is granted in part and
12 denied in part as set forth herein;

13 IT IS FURTHER ORDERED that the Teamster's Motion to Dismiss is granted in part
14 and denied in part as set forth herein;

15 IT IS FURTHER ORDERED that Heitzingers third, fourth, seventh, eighth and twelfth
16 causes of action are dismissed;

17 IT IS FURTHER ORDERD that all claims against Amanda Lively in her individual
18 capacity are dismissed.

19 DATED this 30th day of June, 2010.

20 LOCAL GOVERNMENT EMPLOYEE-
21 MANAGEMENT RELATIONS BOARD

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

1 STATE OF NEVADA
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD
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6 Complainant,
7 vs.

CASE NO. A1-045977

8 LAS VEGAS-CLARK COUNTY LIBRARY
9 DISTRICT; TEAMSTERS LOCAL 14; and
10 AMANDA LIVELY,
11 Respondents.

NOTICE OF ENTRY OF ORDER

12 To: Amberlea Davis, Esq.
Law Offices of Amberlea Davis

13 To: Scott M. Abbott, Esq.
amer Zuker Abbott

14 To: Amanda Lively, Esq.
15 Wohlner Kaplon Phillips Young and Cutler

16 PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on
17 June 30th, 2010.

18 A copy of said order is attached hereto.

19 DATED this 30th day of June, 2010.

20 LOCAL GOVERNMENT EMPLOYEE-
21 MANAGEMENT RELATIONS BOARD

22 BY 
23 _____

24 ANDY ANDERSON, Commissioner
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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 30th day of June, 2010, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

Amberlea Davis, Esq.
Law Office of Amberlea Davis
8275 S. Eastern Ave., Ste. 256
Las Vegas, NV 89123

Scott M. Abbott, Esq.
3000 W. Charleston Blvd., Ste. 3
Las Vegas, NV 89102

Amanda Lively, Esq.
Wohlner Kaplon Phillips Young & Cutler
15456 Ventura Blvd., Ste. 500
Sherman Oaks, CA 91403



ANDY ANDERSON, Commissioner