

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

TERESA DANIEL, IDA SIERRA,
MARQUIS LEWIS, AARON LEE,
ANDREW D. GASCA, KEVIN
CERVANTES, LUTHER J. SOTO,
BEVERLY ABRAM, LATRICE BANKS,
DENISE MAYFIELD, LINDA
KORSCHINOWSKI, CHARLEEN DAVIS-
SHAW, DAVID M. SHAW, ARGRETTA O.
HUTSON, ET AL.

Complainant,

vs.

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,

Respondents,

CASE NO. A1-046028

ITEM: 767

ORDER

For Complainant: Teresa Daniel, Ida Sierra, Marquis Lewis, Aaron Lee, Andrew D. Gasca, Kevin Cervantes, Luther J. Soto, Beverly Abram, Latrice Banks, Denise Mayfield, Linda Korschinowski, Charleen Davis-Shaw, David M. Shaw, Argretta O. Hutson, et al., In Proper Person

For Respondent: Education Support Employees Association and their attorney James W. Penrose, Esq.

On the 12th day of October, 2011, this matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board"), for consideration and decision pursuant to the provisions of NRS and NAC chapters 288, NRS chapter 233B, and was properly noticed pursuant to Nevada's open meeting laws.

Complainants in this matter are a collection of local government employees employed by the Clark County School District. The complaint in this matter alleges that Respondent Education Support Employees Association ("ESEA") has denied Complainants' request to withdraw from union membership. ESEA now requests that this matter be dismissed pursuant to NAC 288.375(1) due to a lack of probable cause. As is discussed herein, the Board grants ESEA's motion to dismiss.

1 Upon review of the pleadings, including the motion and the opposition, as well as the
2 evidence and affidavits attached to the pleadings, the Board finds two separate bases supporting
3 dismissal of this matter.

4 NAC 288.200(1) requires that complaints before this Board contain "clear and concise
5 statement of the facts constituting the alleged practice sufficient to raise a justiciable controversy
6 under chapter 288 of NRS, including the time and place of the occurrence of the particular acts
7 and the names of persons involved." The complaint at issue in this case does not satisfy these
8 requirements.

9 The complaint was filed with this Board on July 19, 2011, but also identifies a window of
10 time in which withdrawal from the union may be requested as from July 1 to July 15. Thus the
11 complaint was filed four days following the close of the withdrawal window and approximately
12 8 days following the request to withdraw submitted on July 11, 2011. Given the rapid succession
13 between the members' request to withdraw and the filing of the complaint with the Board calls
14 into question whether or not the ESEA did in fact deny the request to withdraw.

15 Subsequent evidence presented to the Board asserts that the ESEA has in fact processed
16 the members' requests to withdraw and that Complainants are no longer members of ESEA as
17 they had requested. The Board looks to the affidavit of Brian Christensen which was submitted
18 as evidence to support the motion to dismiss. The opposition does not refute or contest the facts
19 stated in Mr. Christensen's affidavit. The Board finds this to be substantial evidence that ESEA
20 has complied with Complainants' requests and allowed their resignations from ESEA.

21 The Board, having duly considered the pleadings filed herein, and having fully
22 considered the law and being fully advised in the premises makes its Findings of Fact,
23 Conclusions of Law and Order as follows:

24 **FINDINGS OF FACT**

- 25 1. Complainants Teresa Daniel, Ida Sierra, Marquis J. Lewis, Aaron Lee Andrew D. Gasca,
26 Argetta O. Huston, Luther J. Soto, Beverlyn Abram, Latrice Banks, Denise Mayfield,
27 Linda Korshinowski, Charleen Davis-Shaw and David Mr. Shaw (collectively
28 "Complainants") filed the complaint in this matter on July 19, 2011.

- 1 2. The complaint in this matter does not state the time and place of any prohibited labor
- 2 practice, nor does the complaint identify the names of the particular persons involved.
- 3 3. On or about July 11, 2011 Complainants submitted a request to withdraw their
- 4 membership in ESEA to ESEA.
- 5 4. As established by the affidavit of Brian Christensen, ESEA has allowed Complainants'
- 6 resignations under the terms of the ESEA membership agreement.
- 7 5. Complainants have not disputed the facts contained in the affidavit of Brian Christensen.
- 8 6. If any of the foregoing findings is more appropriately construed a conclusion of law, it
- 9 may be so construed.

10 **CONCLUSIONS OF LAW**

- 11 1. NAC 288.200(1) states that a complaint must contain facts sufficient to state a justiciable
- 12 controversy under NRS Chapter 288.
- 13 2. The complaint filed in this matter does not comply with the requirements of NAC
- 14 288.200(1).
- 15 3. As the complaint does not comply with NAC 288.200(1) dismissal without prejudice is
- 16 proper pursuant to NAC 288.375(1).
- 17 4. Additionally, the complaint is not supported by probable cause pursuant to NAC
- 18 288.375(1) because substantial evidence indicates that ESEA complied with
- 19 Complainants' request and allowed Complainants to withdraw membership in ESEA.
- 20 5. As this matter will be dismissed, all other notices and pleadings are rendered moot.
- 21 6. If any of the foregoing conclusions is more appropriately construed a finding of fact, it
- 22 may be so construed.

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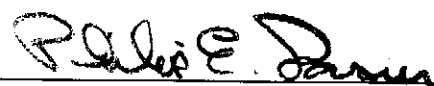
ORDER

IT IS HEREBY ORDERED that this action is dismissed in its entirety without prejudice.

DATED this 31st day of October, 2011.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: 
SEATON J. CURRAN, ESQ., Chairman

BY: 
PHILIP E. LARSON, Vice-Chairman

BY: 
SANDRA MASTERS, Board Member

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

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14 Complainant,

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16 ASSOCIATION,

17 Respondents,

CASE NO. A1-046028

NOTICE OF ENTRY OF ORDER

18 To: Teresa Daniel, Ida Sierra, Marquis Lewis, Aaron Lee, Andrew D. Gasca, Kevin
19 Cervantes, Luther J. Soto, Beverly Abram, Latrice Banks, Denise Mayfield, Linda
20 Korschinoski, Charleen Davis-Shaw, David M. Shaw, Argretta O. Hutson, et al., In
21 Proper Person

22 To: Education Support Employees Association and their attorney James W. Penrose, Esq.
23 PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on
24 October 31, 2011.

25 A copy of said order is attached hereto.

26 DATED this 31st day of October, 2011.

27 LOCAL GOVERNMENT EMPLOYEE-
28 MANAGEMENT RELATIONS BOARD

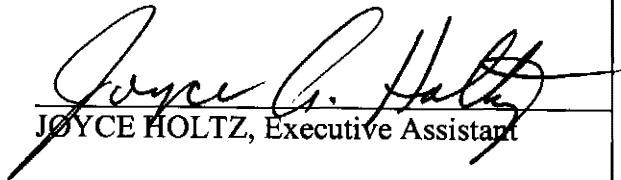
BY 
JOYCE A. HOLTZ, Executive Assistant

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 31st day of October, 2011, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

Teresa Daniel and Members etal.
PO Box 531634
Henderson, NV 89053

James W. Penrose, Esq.
Dyer, Lawrence, Penrose, Flaherty, Donaldson, & Prunty
2805 Mountain Street
Carson City, NV 89703


JOYCE HOLTZ, Executive Assistant

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