

OCT 20 2016

STATE OF NEVADA
E.M.R.B.STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

LYON COUNTY EDUCATION ASSOCIATION,

Case No. 2016-011

Complainants,

ORDER ON PETITION FOR
DECLARATORY RULING

v.

LYON COUNTY SCHOOL DISTRICT,

ITEM NO. 817

Respondents.

On October 3, 2016, and October 4, 2016, this matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board") for deliberation 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 and Administrative Procedures Act. This order is issued pursuant to NAC 288.401 and NRS 233B.120.

Petitioner Lyon County Education Association ("LCEA") is the bargaining agent for non-administrative licensed employees (referred to as "certified" staff and commonly referred to as the "teachers") employed by Respondent Lyon County School District (the "District").

On August 18, 2016, LCEA filed the subject Petition for Declaratory Ruling.¹ The Board finds that granting declaratory relief is appropriate in this case as follows. NAC 288.410(2)(c).

On or about October 26, 2015, Summer Kay (a teacher employed by the District and President of LCEA) was advised that Elizabeth Clausen (Dayton High School ("DHS") teacher) wanted to use a non-LCEA representative at a future meeting related to her employment. Ms. Clausen is not a member of LCEA. The District submitted evidence indicating that it was not aware that the person chosen by Ms. Clausen was affiliated with a different union. Ms. Kay subsequently emailed Tim Logan (the District's Director of Human Resources) and Steve Henderson (Principal at DHS) stating "that LCEA is

¹ LCEA initially filed an unfair labor practices complaint with the Board; however, the parties subsequently stipulated to convert said complaint into the subject Petition.

1 the exclusive bargaining agent for certified staff and no other organization is allowed to provide”
2 representation. According to the LCEA, on October 27, 2015, at the District’s Board of School
3 Trustees’ meeting, Ms. Kay had a conversation with Mr. Logan where she asked Mr. Logan if she could
4 come to the subject meeting, if it was even to take place, to represent the interests of LCEA. On or
5 about November 11, 2015, Ms. Kay sent a follow-up email to Mr. Logan regarding the outcome of
6 “representation notification to the teacher”. On the same day, Mr. Logan responded that the teacher
7 had used Sharon Nelson, who was subsequently identified by LCEA as the Director of Legal Services of
8 the Association of American Educators (“AAE”). On or about November 12, 2015, Ms. Kay responded
9 that “[b]y allowing her to provide representation in Lyon County you have violated the negotiated
10 agreement and NRS statutes that grant LCEA exclusive bargaining rights in Lyon County.”

11 Preliminarily, the Board notes that that the District “does not dispute that the LCEA is the
12 exclusive bargaining unit which includes teachers.” The District’s Response to Petitioner’s Brief in
13 Support of Petition for Declaratory Order (“District’s Response”), at 2-3. The Board also notes that
14 “LCSD does not dispute that as the local government employer, it should not *knowingly* allow
15 representation by a rival employee organization in a grievance proceeding (as broadly defined by the
16 LCEA) with a non-union member employee.” District’s Response, at 3 (*emphasis* in original).
17 Furthermore, the District “is also willing to notify the LCEA in the future of grievance meetings
18 involving teachers who are not members of LCEA so that the LCEA may have a representative
19 present.” *Id.*, at 2-3. As such, these matters are not in dispute before the Board; however, the Board
20 notes that LCEA is the exclusive representative of all members of the subject bargaining unit as further
21 detailed below. *See also* NRS 288.027, 288.160(2).

22 In its Petition, LCEA additionally requested the Board to determine that: (1) where a bargaining
23 unit employee is not a member of the exclusive employee organization, said employee has “no right to a
24 representative being present except as may be allowed by the employer after the employer makes an
25 inquiry similar to that set forth in Item C below to determine if the representative is an agent, employee,
26 or attorney of another employee organization in which case the representative is not to be allowed”; and
27 (2) the employer’s obligation “to make an inquiry” regarding “(a) the status of the employee as a
28 member or non-member of the employee organization serving as recognized bargaining agent for the

1 unit; (b) the nature of the relationship between the employee and his representation ...; and (c) the
2 employment or affiliation of the representative.” LCEA’s Petition, at 6-7. LCEA argues that these
3 “determinations requested comport with the interpretations that have been previously applied to NRS
4 288.140(2) by the Order on Petition for Judicial Review in *Washoe Education Support Professionals vs.*
5 *State of Nevada, Local Government Employee-Management Relations Board Et. Al.*, Case No. 09 OC
6 000861B (January 29, 2010)” LCEA’s Petition, at 6-7. As such, LCEA requests that the Board
7 adopt the rationale and ruling as stated in that Order. LCEA’s Petition, at 8.

8 NAC 288.380 states that any recognized employee organization or local government employer
9 may petition the Board for a declaratory order regarding the applicability of any statutory provision or of
10 any regulation or decision of the Board. The following declaratory order is regarding the applicability
11 of NRS 288.140 based on the facts of this case. NRS 288.140 states, in pertinent part:

- 12 (1) It is the right of every local government employee ... to refrain from joining
13 any employee organization
14 (2) The recognition of an employee organization for negotiation ... does not
15 preclude any local government employee who is not a member of that
16 employee organization from acting for himself or herself with respect to any
17 condition of his or her employment, but any action taken on a request or in
18 adjustment of a grievance shall be consistent with the terms of an applicable
19 negotiated agreement, if any.

20 The Board notes that it finds the District Court Order in the matter of *Washoe Ed. Support*
21 *Professionals v. State of Nevada, Local Gov’t Employee-Mgmt. Rel. Bd.*, Case No. 09 OC 00086 1B
22 (Jan. 29, 2010) (“District Court Order”), attached as LCEA’s Ex. “5”, as persuasive and thus follows
23 said decision as stated in this Declaratory Ruling. However, the Board notes that by following the
24 decision it does not agree that it is bound by the decision as LCEA claims. The District Court Order
25 concluded:

26 Where, as here, an employee organization has been recognized as the bargaining
27 agent for a bargaining unit, the bargaining agent’s representative status is
28 *exclusive* and no rival employee organization may purport to ‘represent’ any
employee in the unit in any grievance proceeding or in any other aspect of
collective bargaining. Any ‘representation’ of this nature is fundamentally
inconsistent with the status and function of the recognized bargaining agent.

A local government employer who knowingly allows ‘representation’ of this kind

1 or knowingly participates in a grievance proceeding with an agent or employee of
2 a rival employee organization, *acting as such*, there by fails to bargain in good
3 faith with the recognized bargaining agent and commits a prohibit practice within
4 the meaning of NRS 288.270(1)(e).

5 *Id.* at, 2-3 (*emphasis in original*) (internal citations omitted). The District Court Order further stated:

6 Where, however, a unit employee is *not a member* of the employee organization
7 serving as recognized bargaining agent, NRS 288.140(2) provides that the
8 employee may 'act for himself' in any grievance proceeding – i.e., on his own
9 behalf and without a representative.

10 In addition, the Board has ruled that such an employee may be represented by
11 'counsel', a term that the Board apparently interprets to include a friend, relative
12 or co-worker, or an attorney retained by the employee. With the exception noted
13 below, WESP likewise has not challenged this aspect of the Board's ruling.

14 In any matter involving a non-member employee, NRS 288.140(2) provides that
15 'any action taken on a request or in adjustment of a grievance shall be consistent
16 with the terms of an applicable negotiated agreement, if any.' Accordingly, in any
17 such case, the Board has ruled that the recognized bargaining agent is also entitled
18 to be present '[t]o monitor ... compliance with the applicable [negotiated
19 agreement] and the provisions of NRS chapter 288'. Again, this aspect of the
20 Board's ruling has not been challenged.

21 In any grievance proceeding, it follows from the foregoing that the representative
22 of the local government employer have the right, and indeed the obligation, to
23 make inquiry of the employee and any person appearing as the employee's
24 representative concerning: (a) the status of the employee as a member or non-
25 member of the employee organization serving as recognized bargaining agent for
26 the unit; (b) the nature of the relationship between the employee and his
27 representative (e.g. whether the representative is an attorney, friend, relative or co-
28 worker of the employer); and (c) the employment or affiliation of the
representative. Contrary to the decision of the Board in this matter, a local
government employer does not act unlawfully in making this inquiry; the inquiry
is necessary to ensure that the status of the recognized bargaining agent is
respected, that the employer does not commit a prohibited practice, and that a
representative of the recognized bargaining agent is present in every case where
the presence of such a representative is permitted or required.

29 *Id.* at 4-5 (*emphasis in original*) (internal citations omitted). The District Court Order also held:

30 Accordingly, in any grievance proceeding involving an employee representative
31 who is also an agent or employee of a rival employee organization, the
32 representative cannot function as such – and hence cannot participate in the
33 proceeding - where the employer knows or reasonably believes that the
34 representative is serving *to any extent* in his 'union' capacity, on behalf of the
35 rival organization. Where, however, the employer knows or reasonably believes

1 that the representative is serving *entirely independently* of the rival organization
2 as (for example) a friend, relative or co-worker of the employee, the
representative's participation is permissible.

3 *Id.* at 6 (*emphasis* in original). The Board finds the District Court's rationale above
4 persuasive. As such, the Board expressly adopts this rationale as stated above. *See also*
5 NRS 288.027, 288.028, 288.067, 288.140, 288.150(1) and 288.160(2); *Cone v. Nevada*
6 *Serv. Employees Union*, 116 Nev. 473, 478, 998 P.2d 1178 (2000); *UMC Physicians'*
7 *Bargaining Unit v. Nevada Serv. Employees Union*, 124 Nev. 84, 93, 178 P.3d 709, 715.

8 Based on the facts in this case and the issues presented, the Board declines to
9 award cost and fees in this matter.

10 DATED this 20 day of October, 2016.

11
12 LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

13
14 By: 
PHILIP LARSON, Chairman

15
16 By: 
BRENT ECKERSLEY, ESQ., Vice-Chairman

17
18 By: 
19 SANDRA MASTERS, Board Member

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

LYON COUNTY EDUCATION ASSOCIATION,

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Respondents.

NOTICE OF ENTRY OF ORDER

To: Lyon County Education Association and their attorneys Sandra Lawrence, Esq. and Dyer,
Lawrence, Flaherty, Donaldson & Prunty;

To: Lyon County School District and their attorneys Donald A. Lattin, Esq. and Carolyn K. Renner, Esq., and Maupin, Cox & LeGoy.

PLEASE TAKE NOTICE that the **ORDER ON PETITION FOR DECLARATORY RULING** was entered in the above-entitled matter on October 20, 2016.

A copy of said order is attached hereto.

DATED this 21 day of October 2016.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY

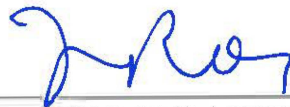
MARISU ROMUALDEZ ABELLAR
Executive Assistant

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 21 day of October 2016, I served a copy of the foregoing **ORDER ON**
4 **PETITION FOR DECLARATORY RULING** by mailing a copy thereof, postage prepaid to:

5 Sandra Lawrence, Esq.
6 Dyer, Lawrence, Flaherty, Donaldson & Prunty
7 2805 Mountain Street
8 Carson City, NV 89703

9 Donald A. Lattin, Esq.
10 Carolyn K. Renner, Esq.
11 Maupin, Cox & LeGoy
12 4785 Caughlin Parkway
13 Reno, NV 89519

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15 MARISU ROMUALDEZ ABELLAR
16 Executive Assistant
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