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FILED
September 23, 2024
State of Nevada
E.M.R.B.
4:57 p.m.

7 Before the State of Nevada
8 Government Employee-Management
9 Relations Board
10

11 EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,

12 Complainant,

13 v.

14 CLARK COUNTY SCHOOL DISTRICT,

15 Respondent.
16

CASE NO.: 2024-032

**EDUCATION SUPPORT EMPLOYEES
ASSOCIATION'S PROHIBITED
PRACTICE COMPLAINT AGAINST
CLARK COUNTY SCHOOL DISTRICT**

17 **INTRODUCTION**

18 This is a prohibited practice complaint pursuant to Nevada Revised Statutes ("NRS")
19 288.270(1)(a), (c)-(d) based on Clark County School District's ("Respondent" or "CCSD")
20 interference with the rights of an employee to engage in protected activity under the Employee-
21 Management Relations Act (the "EMRA" or the "Act"). The Education Support Employees
22 Association ("Union," "Complainant," or "ESEA") asserts that CCSD targeted and retaliated
23 against Zachary Salazar, a Union member who sought assistance from the Union, for exercising

1 his rights under law and for filing grievances concerning working conditions. Furthermore, CCSD
2 violated Salazar's *Weingarten* rights by misleading him concerning the disciplinary nature of an
3 investigatory meeting, and for subjecting him to disparate treatment through the maintenance of
4 a "black book" by management as a result of his having exercised his rights under law and the
5 CBA. Complainant, by and through its undersigned counsel, respectfully submits this Complaint
6 and complains and alleges as follows:

7 **JURISDICTION AND PARTIES**

8 1. At all times relevant herein, Complainant ESEA was and is an "employee
9 organization" pursuant to NRS 288.040 and/or a "labor organization." Complainant's current
10 mailing address is P.O. Box 13447, Las Vegas, NV 89121.

11 2. At all times relevant herein, Respondent CCSD is and was a "Government
12 Employer" pursuant to NRS 288.060. Respondent's current mailing address is 5100 West Sahara
13 Avenue, Las Vegas, NV 89146.

14 3. The Board has jurisdiction of this matter pursuant to NRS 288.110 to hear and
15 determine "any controversy concerning prohibited practices."

16 4. NRS 288.270 provides in relevant part:

17 It is a prohibited practice for a local government employer or its
18 designated representative willfully to:

19 (a) Interfere, restrain, or coerce any employee in the exercise of any
20 right guaranteed under this chapter.

21 ...

22 (c) Discriminate in regard to hiring, tenure or any term or condition
23 of employment to encourage or discourage membership in any employee
24 organization.

25 (d) Discharge or otherwise discriminate against any employee
26 because the employee has signed or filed an affidavit, petition or complaint
or given any information or testimony under this chapter, or because the
employee has formed, joined or chosen to be represented by any employee
organization.

1 15. During this interrogation, Mr. Salazar felt intimidated by Mr. Diaz’s demeanor in
2 the meeting and felt he was potentially being disciplined for filing a grievance under the CBA.

3 16. A grievance is a member’s right by virtue of being an employee covered by the
4 CBA and for whom the Union will file a grievance.

5 17. The grievance to which management was referring was requested by Salazar
6 related to work performed on August 25th and management knew of the requested correct pay for
7 the work performed and was clearly referring to that in the August 26th and August 27th meetings
8 with Salazar.

9 18. Immediately following the August 26th meeting, Mr. Diaz informed Mr. Salazar
10 that disciplinary action may be taken against him, which directly contradicted the prior assurance
11 that the meeting would not lead to discipline.

12 19. This misleading conduct by CCSD management violated Mr.
13 Salazar’s *Weingarten* rights, which are protected under the Employee-Management Relations Act
14 and applicable legal precedent.

15 20. Under *NLRB v. J Weingarten, Inc.*, 420 U.S. 251 (1975), an employee has the right
16 to union representation during any interview that may reasonably lead to disciplinary action.

17 21. By falsely indicating that the August 26th meeting would not be disciplinary in
18 nature, CCSD deprived Mr. Salazar of his right to adequate union representation.

19 22. The EMRB has long recognized that *Weingarten* applies under the Nevada EMRA.
20 *See Teamsters Chauffeurs Warehousemen & Helpers and Professional Clerical Public and
21 Municipal Employees Local Union No. 533 v. Humboldt General Hospital*, Item No. 246 EMRB,
22 Case Nos. AI-045459 and AI-045460 (1990)

23 23. On August 27, 2024, Mr. Harris informed Mr. Salazar that filing grievances “was
24 not the way to do things” at CCSD and warned him of potential retaliation from Mr. Diaz.
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1 32. Under NRS 288.270(1)(c), it is a prohibited practice to “[d]iscriminate in regard
2 to hiring, tenure or any term or condition of employment to encourage or discourage membership
3 in any employee organization.”

4 33. Under NRS 288.270(1)(d), it is a prohibited practice to “[d]ischarge or otherwise
5 discriminate against any employee because the employee has signed or filed an affidavit, petition
6 or complaint or given any information or testimony under this chapter, or because the employee
7 has formed, joined or chosen to be represented by any employee organization.”

8 34. Respondent violated Mr. Salazar’s rights under the EMRA when it lied to him and
9 told him the August 26th meeting would not lead to disciplinary action but threat of disciplinary
10 action followed from the meeting. This violated NRS 288.270(1)(a) because it stripped Mr.
11 Salazar of his Weingarten rights and denied him union representation in the meeting.

12 35. Respondent is further interfering with and restraining Mr. Salazar’s rights
13 guaranteed under the EMRA by creating and maintaining a “black book” of employees who file
14 grievances or otherwise assert their legal rights. The use of this "black book" as a tool for
15 retaliation against Mr. Salazar and others violates NRS 288.270(1)(a) by threatening, coercing
16 and restraining employees in the exercise of their legal rights guaranteed under the EMRA.

17 36. The Respondent has violated NRS 288.270(1)(c) by “[d]iscriminat[ing] in regard
18 to...any term or condition of employment to...discourage membership in any employee
19 organization.” The punitive action taken against Salazar, including stripping away his duties and
20 denying him overtime as a direct result of filing grievances is a prohibited practice.

21 37. The Respondent has violated NRS 288.270(1)(d) by “otherwise discriminat[ing]
22 against any employee because the employee...has...chosen to be represented by any employee
23 organization.” Again, the punitive action taken against Salazar, including stripping away his
24 duties and denying him overtime as a direct result of filing grievances is a prohibited practice
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1 under this Section because he necessarily chose union representation in the filing of his grievance
2 under the CBA.

3 38. Respondent continues to this day to engage in prohibited practices because it still
4 is refusing to provide Salazar with overtime, continues to prevent him from performing technician
5 duties, and continues to hold potential disciplinary action over him.

6 **PRAYER FOR RELIEF**

7 Complainant respectfully requests that this Board:

8 1. Find in favor of Complainant and against the Respondent on each and every claim
9 in this Complaint;

10 2. Find that Respondent violated NRS 288.270(1)(a), (c)-(d) by retaliating against
11 Mr. Salazar for exercising his rights under law and for filing a grievance under the CBA;

12 3. Find that Respondent violated Mr. Salazar's *Weingarten* rights by misleading him
13 about the nature of the August 26, 2024, meeting, thereby depriving him of his union
14 representation;

15 4. Find that Respondent's creation and maintenance of a "black book" of employees,
16 used for retaliation, violates NRS 288.270(1)(a), (c)-(d);

17 5. Order that Respondent cease and desist from further retaliatory actions against Mr.
18 Salazar and other similarly situated employees;

19 6. Order that Respondent reinstate Mr. Salazar to his former duties and allow him to
20 work overtime;

21 7. Order that Respondent pay Mr. Salazar's lost wages and any other damages
22 incurred as a result of its prohibited practices;

23 8. Order that Respondent pay Complainant's attorney's fees and costs incurred in
24 this matter; and
25
26

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on September 23, 2024, I have mailed in portable document format
3 as required by NAC 288.070(d)(3), a true and correct copy of EDUCATION SUPPORT
4 EMPLOYEE ASSOCIATION’S PROHIBITED PRACTICES COMPLAINT as addressed below
5 and sent certified mail pursuant to NAC 288.200(2). I also have filed the document with the
6 Nevada Government Employee-Management Relations Board via its email address at
7 emrb@business.nv.gov:

8
9 CLARK COUNTY SCHOOL DISTRICT
10 5100 West Sahara Avenue
11 Las Vegas, NV 89146

12 */s/ Suzanne Levenson*
13 _____

1 OFFICE OF THE GENERAL COUNSEL
2 CLARK COUNTY SCHOOL DISTRICT
3 CRYSTAL J. PUGH, ESQ. (NV Bar No. 12396)
4 5100 West Sahara Avenue
5 Las Vegas, Nevada 89146
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8 *Attorney for Respondent,*
9 *Clark County School District*

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

9 EDUCATION SUPPORT EMPLOYEES
10 ASSOCIATION,

CASE NO.: 2024-032

11 Complainant,

CLARK COUNTY SCHOOL DISTRICT'S
ANSWER

12 v.

13 CLARK COUNTY SCHOOL DISTRICT,

14 Respondent.

15
16 COMES NOW, Respondent, CLARK COUNTY SCHOOL DISTRICT (“District”), by and
17 through its undersigned counsel, and for its Answer to the Complaint on file herein, admits, denies,
18 states, and alleges as follows:

19 **INTRODUCTION**

20 Answering the first paragraph of this section of the Complaint, the District admits that the
21 Education Support Employees Association (“ESEA”) filed the instant Complaint which speaks
22 for itself. The District denies and disputes the remaining allegations contained therein.

23 **JURISDICTION AND PARTIES**

24 1. Answering paragraph 1 of the Complaint, the District admits that ESEA is an
25 employee organization in accordance with NRS 288.040. The District is without sufficient
26 knowledge or information to admit or deny the remaining allegations in paragraph 1 of the
27 Complaint and therefore, denies those allegations.

28 ///

1 without sufficient knowledge or information to admit or deny the remaining allegations in said
2 paragraph, and therefore denies the allegations.

3 9. Answering paragraph 9 of the Complaint, the District admits that Salazar asked
4 Harris if the meeting on or about August 26, 2024 was a disciplinary meeting, to which Harris
5 responded that the meeting was not. The District is without sufficient knowledge or information to
6 admit or deny the remaining allegations in said paragraph, and therefore denies the allegations.

7 10. Answering paragraph 10 of the Complaint, the District admits that on or about the
8 August 26, 2024 meeting, Salazar was asked about his assigned vehicle idling for approximately
9 an hour and thirty minutes on or about August 16, 2024. The District denies the remaining
10 allegations contained therein.

11 11. Answering paragraph 11 of the Complaint, the District admits that on or about the
12 August 26, 2024 meeting, Salazar stated that while his assigned vehicle was idling for
13 approximately an hour and thirty minutes on or about August 16, 2024, he was on a lunch break
14 and had a telehealth call. The District denies the remaining allegations contained therein.

15 12. Answering paragraph 12 of the Complaint, the District denies the allegations
16 contained therein.

17 13. Answering paragraph 13 of the Complaint, the District denies the allegations
18 contained therein.

19 14. Answering paragraph 14 of the Complaint, the District denies the allegations
20 contained therein.

21 15. Answering paragraph 15 of the Complaint, the District denies the allegations
22 contained therein.

23 16. Answering paragraph 16 of the Complaint, the District admits that the 2023-2025
24 Negotiated Agreement between the District and ESEA contains Article 4 titled "Grievance and
25 Arbitration Procedure" which defines a grievance and identifies that a grievance may be filed by
26 an employee of the District covered by the Negotiated Agreement individually or through ESEA,
27 or by ESEA. The District denies the remaining allegations contained therein.

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1 17. Answering paragraph 17 of the Complaint, the District denies the allegations
2 contained therein.

3 18. Answering paragraph 18 of the Complaint, the District denies the allegations
4 contained therein.

5 19. Answering paragraph 19 of the Complaint, the District denies the allegations
6 contained therein.

7 20. Answering paragraph 20 of the Complaint, that paragraph calls for or requires a
8 legal conclusion, for which no response is required. To the extent that a response is required, the
9 District denies the allegations contained therein.

10 21. Answering paragraph 21 of the Complaint, the District denies the allegations
11 contained therein.

12 22. Answering paragraph 22 of the Complaint, that paragraph calls for or requires a
13 legal conclusion, for which no response is required. To the extent that a response is required, the
14 District admits that the referenced EMRB decisions state what they state and denies any remaining
15 allegations contained therein.

16 23. Answering paragraph 23 of the Complaint, the District denies the allegations
17 contained therein.

18 24. Answering paragraph 24 of the Complaint, the District denies the allegations
19 contained therein.

20 25. Answering paragraph 25 of the Complaint, the District denies the allegations
21 contained therein.

22 26. Answering paragraph 26 of the Complaint, the District denies the allegations
23 contained therein.

24 27. Answering paragraph 27 of the Complaint, the District denies the allegations
25 contained therein.

26 28. Answering paragraph 28 of the Complaint, the District denies the allegations
27 contained therein.

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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of October, 2024, I sent a true and correct copy of the foregoing **CLARK COUNTY SCHOOL DISTRICT’S ANSWER** by email and U.S. Mail with first class postage fully prepaid to the following:

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*Counsel for Complainant,
Education Support Employees Association*

/s/ Elsa C. Peña
An employee of the Office of the General
Counsel, Clark County School District

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FILED
November 21, 2024
State of Nevada
E.M.R.B.
5:26 p.m.

7 Before the State of Nevada
8 Government Employee-Management
9 Relations Board

11 EDUCATION SUPPORT EMPLOYEES
12 ASSOCIATION,

13 Complainant,

14 v.

15 Clark County School District

16 Respondent.

CASE NO.: 2024-032

**EDUCATION SUPPORT
EMPLOYEES ASSOCIATION'S
PREHEARING STATEMENT**

17 **INTRODUCTION**

18 Comes now Complainant, Education Support Employees Association (“ESEA” or “the
19 Union”), by and through its attorneys of record, pursuant to NAC 288.250, and submits the following
20 Prehearing Statement in this action currently pending before the Local Government Employee-
21 Management Relations Board (the “Board” or “EMRB”) against the Clark County School District
22 (“CCSD” or “School District.”) ESEA reserves the right to supplement or amend this statement as

1 new or additional information becomes available. The Board has jurisdiction over this matter under
2 NRS 288.280, as the facts alleged herein demonstrate a prohibited practice by CCSD under NRS
3 288.270(1)(a) and NRS 228.270(1)(c)-(d).

4 **I. ISSUE OF FACT AND LAW TO BE DECIDED**

5 1. Whether CCSD violated NRS 288.270(1)(a) by interfering with the Weingarten rights
6 of the Union, and its member, Salazar, through its actions on or about August 26, 2024, when it
7 denied that a meeting could lead to “disciplinary” action when asked, questioned Mr. Salazar
8 regarding his activities, the meeting resulted in immediate discipline, and the union was denied the
9 ability to provide adequate representation to Salazar?

10 2. Whether CCSD violated NRS 288.270(1)(d) through adoption of formal or informal
11 policy where it or its management maintains a “black book” of employees who file grievances and
12 then subjects those employees to discipline and subpar working conditions, as well as disciplining
13 Mr. Salazar by withholding job duties and overtime after he filed his grievance?

14 3. Whether CCSD violated NRS 288.270(1)(c) when one of its employees, David
15 Harris, told Mr. Salazar that filing grievances “was not the way to do things,” and that he could
16 “suck it”?

17 **II. MEMORANDUM OF POINTS AND AUTHORITIES**

18 A. CCSD FAILED AND REFUSED TO PROVIDE ADEQUATE NOTICE OF THE
19 SUBJECT MATTER AND SPECIFICITY OF CHARGES TO THE UNION OR ITS
MEMBER SALAZAR BEFORE OR AT THE OUTSET OF THE INVESTIGATORY
INTERVIEW ON AUGUST 26, 2024.

20 Employees of local government employers covered by collective bargaining agreements are
21 granted rights under the U.S. Supreme Court’s landmark decision in NLRB v. J. Weingarten, Inc.,
22 420 U.S. 251 (1975); Teamsters Chauffeurs Warehousemen & Helpers Local Union No. 533 v.

1 Humboldt General Hospital, EMRB Case Nos. A1-045459 and A1-045460 (1990). The rights granted
2 by the Supreme Court in that case are known as Weingarten rights and the contours of those rights
3 have been developed in the ensuing nearly fifty years through NLRB decisions and court precedent.
4 See, e.g. U.S. Postal Service, 351 NLRB 1344 (2007) and Pac. Tel. & Tel. Co. v. NLRB, 711 F.2d 134
5 (9th Cir. 1983). Weingarten applies when an employee is brought into an investigator interview that
6 could lead to disciplinary action and requests representation. A specific right recognized under
7 Weingarten is the right to know the subject matter of the investigatory interview before the interview
8 to allow for adequate union representation. NLRB, Board Decision, United States Postal Service, 371
9 N.L.R.B. No. 7.

10 Here, CCSD refused to respect its employee and his union's Weingarten rights by refusing to
11 provide notice of the subject matter of the investigatory interview of Salazar before the interview or
12 at its outset. In fact, CCSD lied to the employee. Mr. Salazar clearly asked Mr. Harris whether the
13 meeting would be "disciplinary." Mr. Harris stated that it would not be, but Mr. Salazar was then
14 questioned by CCSD management, and he was told, following the meeting, that disciplinary action
15 may be taken against him.

16 Under applicable precedent, this is a violation of an employee's Weingarten rights. Pac. Tel.
17 & Tel. Co. v. NLRB, 711 F.2d 134 (9th Cir. 1983). As the Ninth Circuit stated therein, providing
18 accurate information about the subject matter of an investigatory interview before it is conducted is
19 crucial for a union representative to effectively assist and protect the employee's rights. Id. Without
20 this information, the union's ability to provide meaningful representation is significantly diminished
21 or outright denied. Id. An employer must provide information to the employee and the union
22 concerning the subject matter of the interview. Id.

23 The Pac. Tel. & Tel. Co. cases illustrate that the refusal to provide information about the

1 subject matter of investigatory interviews not only interferes with an employee’s right to
2 representation under Weingarten, but also significantly impairs or completely hinders the union's
3 ability to function as an advocate for the member.

4 CCSD violated Weingarten and denied Mr. Salazar the benefits of union representation. If
5 CCSD had accurately informed Mr. Salazar that the meeting could have led to potential discipline,
6 he would have been entitled to union representation. Because Mr. Salazar was told that the meeting
7 was “not disciplinary,” Mr. Salazar had no reason to ask that a Union representative be present at the
8 meeting. However, CCSD engaged in an obvious bait and switch. CCSD lied to Salazar and failed to
9 provide details concerning the subject matter of the August 26, 2024, interview. These actions are
10 directly contrary to the well-established body of law under Weingarten.

11 Furthermore, under NRS 288.270(1)(a), the test for interference with employee rights is
12 whether the employer’s action can be reasonably viewed as tending to interfere, coerce, or deter the
13 exercise of protected activity. As established in AFSCME Local 4041 v. State of Nevada, Case No.
14 2020-001, Item No. 861-B (2021), and Juvenile Justice Supervisors Ass'n v. County of Clark, Case
15 No. 2017-020, Item No. 834 (2018), once the employer’s conduct can be reasonably seen as
16 interfering with the free exercise of employee rights, (such as Weingarten rights), the burden shifts
17 to the employer to justify its actions with a substantial and legitimate business reason.

18 In this case, CCSD cannot provide any substantial or legitimate justification for its violation
19 of this employee’s Weingarten rights. Pursuant to NRS 288.270(a), it is clear that CCSD engaged in
20 a prohibited practice by lying to Mr. Salazar when it informed him that the August 26, 2024, meeting
21 was “not disciplinary.” CCSD’s actions denied him the ability to have union representation in an
22 investigatory interview that could result in discipline. CCSD engaged in a prohibited practice.

1 B. CCSD VIOLATED NRS 288.270(1)(d) THROUGH A POLICY OF MAINTAINING A
2 'BLACK BOOK' OF EMPLOYEES WHO FILE GRIEVANCES AND SUBJECTING
3 THEM TO DISCIPLINE AND SUBPAR WORKING CONDITIONS

3 NRS 288.270(1)(d) provides the following:

4 1. It is a prohibited practice for a local government employer
5 or its designated representative willfully to:

5 ...
6 (d) Discharge or otherwise discriminate against any employee
7 because the employee has signed or filed an affidavit, petition or
8 complaint or given any information or testimony under this chapter,
9 or because the employee has formed, joined or chosen to be
10 represented by any employee organization.

8 NRS 288.270(1)(d).

9 Nevada's EMRA was passed as a state level equivalent to the National Labor Relations Act,
10 which provides the following under 29 USC § 158(a)(4). "It shall be an unfair labor practice for an
11 employer to "Discharge or otherwise discriminate against an employee because he has filed
12 charges or given testimony under this subchapter."

13 For an aggrieved employee to proceed under NRS 288.270(1)(d), they must make a prima
14 facie case showing that the protected conduct was a motivating factor for the employer's
15 decision. *Bisch v. Las Vegas Metro Police Dep't*, 129 Nev. Adv. Op. 36, 302 P.3d 1108 (2013).
16 When this is established, the burden shifts to the employer to demonstrate by a preponderance of
17 the evidence that the same action would have taken place even in the absence of the protected
18 conduct. *Id.* at 1116. Moreover, when an employment action is undertaken within close temporal
19 proximity to protected conduct, retaliatory intent may be inferred. *Passantino v. Johnson & Johnson*
20 *Consumer Prod., Inc.*, 212 F.3d 493, 507 (9th Cir. 2000).

21 Here, Mr. Salazar filed grievances after being given job assignments that should have been
22 reserved for Water Treatment Technicians when Mr. Salazar was a Water Treatment Technician
23 (Entry Level). Pursuant to the collective bargaining agreement between ESEA and CCSD, he should

1 have been given “responsibility pay” or what is essentially a pay promotion for performing these
2 specific tasks. CCSD did not provide responsibility pay to Mr. Salazar for these specific tasks, even
3 after he requested it. Mr. Salazar then filed a grievance on August 19, 2024, stating that “Technician
4 Work orders being assigned despite being entry level and the district being told several months ago
5 to not assign us technician work without responsibility pay or being promoted to technician. Work
6 orders say that I am a technician.”

7 Subsequently, on or about August 27, 2024, Mr. Salazar attended a meeting with his
8 supervisor Dave Harris wherein he was told by Harris that “Doug has a black book of people who
9 have crossed him, and he does everything in his power to make those people’s lives miserable or keep
10 them from promoting or moving on into other positions in their Work careers at the District.” The
11 “Doug” that Mr. Harris was referring to was Manager Doug Diaz. Following this meeting and his
12 filing of grievance, Mr. Salazar’s technician status was stripped from him, and he was also told that
13 he could no longer work overtime or work alone.

14 This meeting and the actions taken against Mr. Salazar thereafter demonstrates a prima facie
15 case of retaliation based on Mr. Salazar’s filing of a grievance. Mr. Salazar filed the grievance on
16 August 19, 2024, 7 days prior to the first disciplinary meeting on August 26, 2024. On August 27,
17 2024, he was told by his supervisor that his manager kept a black book of employees who have
18 “crossed him” by filing grievances, and his overtime and technician status was then taken away.

19 There is nothing that CCSD can demonstrate, beyond outright denial of the veracity of the
20 statements, that could show that Mr. Salazar’s discipline was anything other than discriminating
21 against him for having “formed, joined or chosen to be represented by any employee organization.”

22 Even if CCSD denies that these statements were made, the timing of the removal of Mr.
23 Salazar’s overtime, which was only eight days after his grievance was filed demonstrates retaliatory

1 intent, as it was an “adverse employment action taken within a reasonable period of time after
2 complaints of discrimination were made.” *Passantino v. Johnson & Johnson Consumer Prod., Inc.*,
3 212 F.3d 493. CCSD clearly violated NRS 288.270(1)(d) when it told Mr. Salazar that Mr. Diaz kept
4 a ‘black book’ of employees who filed grievances, as well as when it punished Mr. Salazar by removing
5 his overtime pay after the grievances were filed. The intention of CCSD, Harris and Diaz was to chill
6 Salazar’s exercise of his rights under the EMRA.

7 C. CCSD VIOLATED NRS 288.270(1)(c) BY TELLING ITS EMPLOYEES FILING
8 GRIEVANCES IS ‘NOT THE WAY TO DO THINGS’

9 It is unlawful under NRS 288.270(1)(c) to “discriminate in regard to hiring, tenure or any
10 term or condition of employment to encourage or discourage membership in any employee
11 organization.” Discrimination in terms of employment to discourage membership in an employee
12 organization can take many forms, but often takes place in the form of statements made by
13 management which discourage and chill union activity. When these statements are made, the Board
14 may draw inferences from and make conclusions on proven facts with regard to whether antiunion
15 or animus existed. *National Labor Relations Board v. Electric Steam Radiator Corp.*, 321 F. 2d 733,
16 738 (6th Cir. 1963).

17 Specific intent to discriminate against or interfere with the union or its members is not
18 required “when the employer’s conduct inherently encourages or discourage union membership.”
19 *Radio Officer’s Union, etc. v. National Labor Relations Board*, 347 U.S. 17, 44, 74 S. Ct. 323, 338
20 (emphasis added.) Furthermore, the existence of discrimination or interference may be inferred by
21 the Board based upon its experience in the labor management relations area. *National Labor
22 Relations Board v. Erie Resistor Corp.*, 373 U.S. 221, 227, 83 S. Ct. 1139, 1144 (1963).

23 Here, when Mr. Harris told Mr. Salazar that (1) “filing grievances is not the way to do things,”
24 (2) that Mr. Diaz kept a “black book” of employees who have filed grievances, or (3) that “he could

1 suck it, and that comes straight from Doug” that Mr. Harris and Mr. Diaz’s intent was to discourage
2 membership in the employee organization and to chill Salazar’s rights under the EMRA. By stating
3 that ‘filing grievances is not the way to do things,’ it is abundantly clear that Mr. Harris did not want
4 Mr. Salazar to engage in the protected union activity of filing a grievance. This is direct evidence of
5 interference with Salazar’s participation as a union member. The employer’s actions in then taking
6 away overtime from Salazar and changing his terms and conditions of employment thereafter are
7 discrimination in terms and conditions of employment. For these reasons, CCSD violated NRS
8 288.270(1)(c).

9 **III. STATEMENT OF FACTS**

10 Zachary Salazar is employed by Clark County School District as a Water Treatment
11 Technician, Entry Level, and is a union member and member of the bargaining unit represented by
12 ESEA. As such, Mr. Salazar is an employee covered under the CBA between ESEA and CCSD.

13 On or about August 26, 2024, at approximately 1:30 PM, Mr. Salazar was summoned to the
14 office of Douglas Diaz, the Director of his Department. Mr. Salazar was accompanied by David
15 Harris, his immediate supervisor. Before the meeting, Mr. Salazar inquired if the meeting could lead
16 to disciplinary action being taken against him, and Mr. Harris assured him it would not.

17 Despite assurances that the meeting would not lead to disciplinary action, during the meeting,
18 Mr. Salazar was questioned concerning the GPS monitoring of his work vehicle by Roy Marshall, his
19 department lead. Mr. Salazar explained that he was on a protected FMLA telehealth call during his
20 lunch break, and previously had informed Mr. Marshall of this fact. Despite this explanation, Mr.
21 Marshall continued to question and target Mr. Salazar in the meeting.

22 As the August 26th meeting further progressed, Mr. Salazar’s supervisors aggressively
23 interrogated and harassed him for requesting the filing of a grievance related to working out of

1 classification and not receiving the proper responsibility pay, as is required per the terms of the CBA
2 signed by ESEA and CCSD. During this interrogation, Mr. Salazar felt intimidated by Mr. Diaz's
3 demeanor in the meeting and felt he was potentially being disciplined for filing a grievance under the
4 CBA.

5 At the conclusion of the August 26th meeting, Mr. Diaz informed Mr. Salazar that disciplinary
6 action may be taken against him, which directly contradicted the prior assurance that the meeting
7 would not lead to disciplinary action. CCSD's conduct was misleading and violated Mr.
8 Salazar's Weingarten rights.

9 On August 27, 2024, Mr. Harris informed Mr. Salazar that filing grievances "was not the way
10 to do things" at CCSD and warned him of potential retaliation from Mr. Diaz. Mr. Harris additionally
11 described Mr. Diaz as someone who maintains a "black book" of employees who have filed
12 grievances or crossed him in some way. Mr. Harris explained that those employees are often retaliated
13 against, either by preventing them from advancing in their careers or making their working conditions
14 miserable.

15 Shortly after the August 26th and August 27th meetings, Mr. Salazar's technician status and
16 duties were stripped away from him by management without explanation or justification. He was also
17 informed that he could no longer work alone or work overtime.

18 When Salazar asked Harris about removal of his technician duties and refusal to provide
19 overtime work, he was told that this is what happens when grievances are filed and if he had a
20 problem that he could "suck it" and "that comes straight from Diaz and not him."

21 The existence of a "black book" of employees and the threats of retaliation by Mr. Diaz
22 threaten, coerce and restrain employees, like Mr. Salazar, who exercise their legal rights, including the
23 right to file grievances and the right to representation in disciplinary proceedings.

1 18, 2024. The merit of those grievances is not at issue in this proceeding and this matter does not
2 need to be deferred pending resolution of those grievances. The actions complained of her do not
3 touch upon the merits of any grievance.

4 There are no other pending or anticipated administrative, judicial, or other proceedings
5 related to the subject matter of this hearing.

6 **VI. ESTIMATED TIME FOR LOCAL 14'S PRESENTATION**

7 ESEA estimates that its presentation will take approximately 8 hours, depending on the
8 time required for cross-examination.

9 **VII. CONCLUSION**

10 Complainant, ESEA, requests that the Board declare the Respondent, CCSD, committed a
11 prohibited practice under NRS 288.270(1)(a) by failing to provide sufficient notice of the subject
12 matter of the investigatory interview of Mr. Salazar before the interview was conducted, interfering
13 with the union's ability to represent its member during the interview by deceiving Mr. Salazar and
14 stating the meeting was not 'disciplinary' when, in fact, it was.

15 Complainant, ESEA, further requests that the Board declare the Respondent, CCSD,
16 committed a prohibited practice under NRS 288.270(1)(c)-(d) by disciplining and changing Mr.
17 Salazar's terms and conditions of employment for exercising his rights under the CBA to file
18 grievances and for his membership and association in the Union.

19 ESEA requests that the EMRB prohibit CCSD from maintaining any lists, "black books" or
20 other documents used to maintain a record of or punish protected union activity, that CCSD refrain
21 from telling employees that "filing grievances isn't the way to do things" and that CCSD refrain from
22 disciplining employees who exercise their right to file grievances under the CBA. ESEA requests the

1 enhanced remedy that Doug Diaz be required to read before a meeting of his subordinates the
2 Board's Order in this matter. See Federated Logistics & Operations, 340 NLRB 255, 258 (2003).
3

4 Date: November 21, 2024

5 Respectfully submitted,

6 /s/ Nathan R. Ring

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FILED

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STATE OF NEVADA
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STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,

Complainant,

v.

CLARK COUNTY SCHOOL DISTRICT,

Respondent.

CASE NO.: 2024-032

**CLARK COUNTY SCHOOL DISTRICT'S
PREHEARING STATEMENT**

COMES NOW, Respondent, CLARK COUNTY SCHOOL DISTRICT ("District"), by and through its undersigned counsel, and pursuant to NAC 288.250 submits the following Prehearing Statement in this action before the Local Government Employee-Management Relations Board ("Board" or "EMRB"). The District reserves the right to supplement or amend this Statement as new or additional information becomes available.

I.

STATEMENT OF THE ISSUES

Whether the District committed a prohibited labor practice in violation of NRS 288.270(1)(a), (c), and (d)?

...

...

...

...

1 II.

2 MEMORANDUM OF POINTS AND AUTHORITIES

3 A. INTRODUCTION

4 The Complainant Education Support Employee Association (“ESEA”) initiated this action
5 against the District based on an alleged prohibited practice concerning actions taken against an
6 employee named Zachary Salazar following his submission of a grievance. More specifically,
7 ESEA claims that Salazar was called into a disciplinary meeting and was told it was not a
8 disciplinary meeting, and therefore, Salazar was not afforded the ability to have a union
9 representative present, thereby violating his *Weingarten* rights. ESEA further claims that Salazar’s
10 Family Medial Leave (FMLA) information was somehow improperly shared with others, he was
11 interrogated for filing a grievance related to responsibility pay under the applicable negotiated
12 agreement, that there is some type of “black book” by an administrator for employees who file
13 grievances or cross him in some way, and that Salazar was retaliated against in no longer being
14 able to work alone or claim overtime. The allegations leave much information to be revealed by
15 ESEA since they distort and conflate information known by the District. Overall, the Complaint
16 appears premised on conjecture, Salazar’s self-serving perspective, and a vendetta against an
17 administrator without factual support for the same. The District should not be found to have
18 committed a prohibited labor practice in violation of NRS 288.270(1)(a), (c), or (d) under such
19 confounding circumstances.

20 B. RELEVANT AUTHORITY

21 NRS 288.270 states, in relevant part:

22 1. It is a prohibited practice for a local government employer or its designated
23 representative willfully to:

24 (a) Interfere, restrain or coerce any employee in the exercise of any right guaranteed under
25 this chapter.

26 ...

26 (c) Discriminate in regard to hiring, tenure or any term or condition of employment to
27 encourage or discourage membership in any employee organization.

27 ...

28 (d) Discharge or otherwise discriminate against any employee because the employee has
signed or filed an affidavit, petition or complaint or given any information or testimony

1 under this chapter, or because the employee has formed, joined or chosen to be represented
2 by any employee organization.

3 **C. RELEVANT FACTS**

4 As identified in the introductory paragraph, the allegations in this case leave much
5 information to be identified and disclosed to the District. Despite the District’s attempt to better
6 understand the allegations and their integrity, it provides this prehearing statement based on
7 information known and what can be surmised at this time.

8 On September 10, 2024, ESEA filed a grievance under the applicable negotiated agreement
9 between ESEA and the District grieving the alleged non-payment of responsibility pay to Salazar
10 and failure to move to a higher-level position. The matter was designated Grievance
11 # 2425/SK/01/05T and relevantly concerns Article 5-1-2-3 which provides:

12 An Employee who performs the responsibilities of a higher rated support
13 professional vacant position for six (6) consecutive months, will be promoted to
14 that position and placed in the salary schedule at the Step-in accordance with
15 Article 19 or Regulation 4293. The District agrees that it will not utilize this
16 provision to circumvent to the competitive bidding for promotional vacancies.

16 Salazar is employed with the District as a “Water Treatment Technician-Entry Level” and
17 maintained that he was doing the work of higher-level position, “Water Treatment Technician,”
18 and therefore, should be provided responsibility pay for his work and be promoted to the higher
19 level position under Article 5. The grievance was denied and subsequently moved to arbitration by
20 ESEA, on October 30, 2024. The arbitration has not been scheduled.

21 Before the filing of the referenced grievance, Salazar met with Doug Diaz, Director III of
22 Facility Optimization at the District, and David Harris, Maintenance Supervisor at the District, on
23 or about August 26, 2024. Despite allegations to the contrary, Roy Marshall, Maintenance Leader
24 at the District, was not present at the meeting. The intent of the meeting was to informally discuss
25 employee concerns taking place between Salazar and another employee and Salazar’s assigned
26 vehicle idling for approximately an hour and thirty minutes on or about August 16, 2024 as staff
27 were trying to locate Salazar for an assignment, could not reach him, grew concerned, and found
28 through GPS that his District-assigned vehicle was idling for a prolonged period of time. Diaz did

1 not treat the meeting as a disciplinary meeting and was not discourteous or threatening. He treated
2 the meeting as a supervisory meeting as he was concerned and sought to provide appropriate
3 direction as needed, not discipline. Salazar maintained that he was on a lunch break and taking a
4 telehealth call. He acknowledged that he had not informed anyone he would be unavailable during
5 that time (meaning, staff was unaware of his unavailability or being on lunch) and that his lunch
6 break is only for half an hour, not an hour and a half. Salazar was not disciplined for the incident,
7 as once more, that was not the meeting's purpose.

8 With respect to the Complaint's contention that (1) Salazar's FMLA information was
9 shared by management to others, and (2) Mr. Harris informed Salazar about retaliation from
10 Mr. Diaz and Mr. Diaz maintaining a "black book," there is no support for the allegations.
11 Mr. Harris denies making any such of the alleged representations about Mr. Diaz to Salazar.

12 With respect to the Complaint's contention that Salazar's technician status and duties were
13 "stripped away without explanation or justification" and Salazar was informed he could no longer
14 work alone or claim overtime, there is no support for the allegations. Salazar remains a Water
15 Treatment Technician-Entry Level with the same duties and responsibilities afforded under the
16 position and has never been informed he could not claim overtime if overtime was appropriately
17 worked. Salazar is seemingly taking issue with the District ensuring his duties are in line with his
18 entry level position in an effort to continue arguing he is doing the work of higher level position
19 "Water Treatment Technician," and therefore, should be provided responsibility pay for his work
20 and be promoted to the higher level position. Ultimately, what Salazar and ESEA seek is
21 contractual and the subject of a grievance, not one that can be used as a shield and a sword to aver
22 interference or discrimination.

23 **D. ARGUMENT**

24 ESEA alleges prohibited labor practices against the District under NRS 288.270(1)(a), (c),
25 and (d). The factual allegations in support of such claimed violations appear to be that: (1) Salazar
26 was questioned without a union representative present when Salazar asked if the meeting would
27 lead to discipline; (2) Salazar was questioned or felt threatened concerning his filing of a
28 grievance; (3) Salazar was retaliated against for filing a grievance in having duties removed away

1 from him and not being offered overtime. The allegations improperly contort facts and
2 circumstances in an effort to aver violations known to be false.

3 To begin, the District did not violate Salazar's *Weingarten* rights when it held a supervisory
4 meeting with him which was not intended to result in discipline, as communicated to him, nor did
5 it result in discipline. This Board has previously determined that a local government employee
6 who is represented by an employee organization has *Weingarten* rights, including the right on
7 request to have a representative of said organization present at an investigatory interview that the
8 employee reasonably believes may lead to discipline or which the employer seeks information to
9 enable it to impose discipline. Case Nos. A1-045459 and A1-045460, *Teamsters v. Humboldt*
10 *General Hospital* (6/11/90), Item No. 246. The employee's belief that a meeting may lead to
11 discipline must be objectively reasonable based upon all the circumstances of the case. *Brian*
12 *Heitzinger v. Las Vegas-Clark County Library District; Teamsters Local 14; and Amanda Lively*
13 *(1/30/12)*, Item No. 728C. As recognized by this Board, *Weingarten* rights do not guarantee an
14 employee a right to representation in every employer-conducted interview. Case No. A1-045964,
15 *North Las Vegas Police Officers Association; and Officer Gianni Cavaricci vs. The City of North*
16 *Las Vegas Police Department (03/03/11)*, Item No. 717A. *Weingarten* rights apply in cases in
17 which a "risk of discipline reasonably inheres." *Id.* Moreover, the chief remedy for a *Weingarten*
18 rights violation is for the employee to be made whole, by restoring to the employee rights lost or
19 other damage for which the violation was a legal cause. Case No. A1-045782, *Education Support*
20 *Employees Association vs. Clark County School District; Fran Juhasz, Juareen Castillo, Alive*
21 *Favella, Katie Barmettler and Lleeann Love (10/11/05)*, Item No. 568B.

22 Here, a *Weingarten* right violation cannot be maintained under the sole reason that an
23 employer-conducted interview occurred. Salazar was questioned by his supervisor concerning
24 concerns Salazar had with another employee and to understand why his vehicle was idling during
25 contract time for a prolonged period of time while he was unreachable; however, the meeting was
26 one of concern and to provide appropriate direction as needed, not discipline. That no discipline
27 was issued evidences the veracity of the intent and representation. Even putting aside the factual
28 disagreement, what ESEA and Salazar omit is that there is a procedure in place for how

1 investigatory interviews that may lead to discipline are noticed, issued, and coordinated. Indeed,
2 the negotiated agreement between ESEA and the District provides that “Employees will be
3 provided a minimum of two (2) Days *written notice* of a mandated *investigatory interview*.”
4 (Emphasis added). The written notice is a template form that identifies concerns that are the
5 subject of investigation and is generally provided to the employee in person for acknowledgement
6 of receipt. In conformity with the negotiated agreement, an employee is provided time to seek
7 union assistance and representation, if desired, and the District works with the union to ensure an
8 investigatory interview can proceed at a mutually available date and time. None of this occurred
9 with Salazar because, once more, the meeting was supervisory in nature and not disciplinary.
10 A *Weingarten* right violation does not occur every time there is an employer-conducted interview
11 and did not occur under these circumstances.

12 The complaint also fails to provide credible or persuasive allegations that Salazar was
13 questioned or felt threatened concerning his filing of a grievance. The meeting between Salazar
14 and Mr. Diaz took place on or about August 26, 2024. The grievance concerning Salazar was filed
15 on September 10, 2024. Chronologically, it cannot be said that the grievance prompted questioning
16 or threats a month prior, even taking the allegations at face value. Further, while the complaint
17 imputes some “black book” of retaliation on Mr. Diaz, no such “black book” exists and the
18 complaint is devoid of facts supporting otherwise.

19 Finally, the complaint alleges a prohibited labor practice in Salazar allegedly having duties
20 removed away from him and not being offered overtime. Noticeably absent from the complaint is
21 any identification as to what duties were removed from his position; that is, because none were.
22 Salazar remains a “Water Treatment Technician-Entry Level.” ESEA took issue that Salazar was
23 working independently at times and outside his scope of work, and therefore, an effort was made to
24 ensure Salazar’s duties remained in line with his position. This attempt has now seemingly been
25 characterized as “retaliatory.” Overall, it appears that ESEA is seeking to force the District to have
26 Salazar do work outside of his scope of work (while at the same time faulting the District for this)
27 so he may continue seeking responsibility pay and a promotion to a higher level position.
28 However, those issues are contractual and the subject of a pending grievance. ESEA cannot and

1 should not be permitted to take one position in one matter (*i.e.* contractually what is/is not
2 required) while taking an inconsistent position (*i.e.* this is all retaliatory) in another. Lastly, there
3 is no evidence that Salazar was denied overtime, let alone because of a filed grievance.

4 **E. CONCLUSION**

5 For the reasons stated herein, the District requests that Complainant take nothing by way of
6 its Complaint and that judgment be rendered in favor of the District as follows:

- 7 1. The District did not engage in a prohibited labor practice.
- 8 2. The District did not violate NRS 288.270(1)(a),(c), or (d).
- 9 3. The Complainants are not entitled to attorneys' fees and the District is entitled to
10 attorneys' fees.

11 **III.**

12 **LIST OF WITNESSES**

- 13 1. Douglas Diaz, Director III of Facility Optimization for the Clark County School
14 District, is expected to testify regarding his knowledge and actions concerning Complainant's
15 allegations.
- 16 2. David Harris, Maintenance Supervisor with the Clark County School District, is
17 expected to testify regarding his knowledge and actions concerning Complainant's allegations.
- 18 3. Roy Marshall, Maintenance Leader with the Clark County School District, is
19 expected to testify regarding his knowledge and actions concerning Complainant's allegations.
- 20 4. The District reserves the right to call additional witnesses as deemed appropriate
21 and necessary.

22 **IV.**

23 **STATEMENT OF OTHER RELATED PROCEEDINGS**

24 There is a proceeding pending related to the subject of this hearing. It has been identified
25 herein as Grievance # 2425/SK/01/05T and concerns Salazar's request for pay and promotion. The
26 grievance was moved to arbitration on October 30, 2024 and has not yet been scheduled for
27 arbitration.

28 **V.**

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ESTIMATED TIME OF PRESENTATION

It is estimated that the District would need four (4) hours to present its position; however, this is contingent on ESEA’s case as their allegations are broad and as noted in this statement, there is a level of specificity and detail that is missing.

DATED this 22nd day of November, 2024.

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL

By: /s/ Crystal J. Pugh
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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of November, 2024, I sent a true and correct copy of the foregoing **CLARK COUNTY SCHOOL DISTRICT’S PREHEARING STATEMENT** by email and U.S. Mail with first class postage fully prepaid to the following:

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