

EXHIBIT 3

EXHIBIT 3

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF ARBITRATION
BETWEEN:

KARA WHITE & WASHOE SCHOOL
PRINCIPALS' ASSOCIATION

Petitioners,

and

WASHOE COUNTY SCHOOL DISTRICT

Respondent.

Involving the dismissal appeal of Kara White,
Grievant.

Case No.: CV15-000572

Dept. No.: 9

NOTICE OF ENTRY OF ORDER

ATTORNEYS FOR THE PETITIONER

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Washoe County School District
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Reno, NV 89520



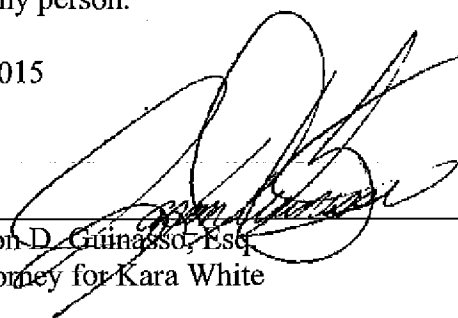
Reese Kintz,
Guinasso
190 W Huffaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

1 PLEASE TAKE NOTICE that, on November 10, 2015 at 1:33 p.m., the Court in the
2 above titled matter entered its Order Granting Motion to Vacate Arbitration Award. A copy
3 of the order is attached hereto.
4

5 **AFFIRMATION**

6 The undersigned does hereby affirm that the foregoing document filed in this matter
7 does not contain the social security number of any person.

8 DATED this 12th day of November, 2015
9

10 
11 Jason D. Guinasso, Esq.
12 Attorney for Kara White
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Reese Kintz,
Guinasso
190 W. Humboldt Ln.
Suite 402
Reno, NV 89511
(775) 853-8746

1 **CERTIFICATE OF SERVICE**

2 I am a resident of the State of Nevada, over the age of eighteen years, and not a party
3 to the within action. My business address is 190 W. Huffaker Lane, Suite 402, Reno,
4 Nevada, 89511.

5 On November 12th 2015, I served the following:

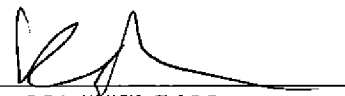
6 **NOTICE OF ENTRY OF ORDER**

7 on the following in said cause as indicated below:

8

9 KARA WHITE 601 W D STREET SOUTH DIXON, CA 95620 10 (VIA U.S. MAIL)	RON DREHER PO BOX 40502 RENO, NV 89504 11 (VIA U.S. MAIL)
12 VIRGNIA DORAN 425 E. 9TH STREET RENO, NV 89504 (VIA U.S. MAIL)	CHRISTOPHER REICH, ESQ. PO BOX 30425 RENO, NV 89520 (VIA U.S. MAIL)

13 I declare under penalty of perjury that the foregoing is true and correct. Executed on
14 November 12th 2015, at Reno, Nevada.

15 
16 KATRINA HUDSON



23 Reese Kintz,
Guinasso
190 W Huffaker Ln
Suite 402
Reno, NV 89511
24 (775) 853-8746

EXHIBIT 1

EXHIBIT 1

1 CODE: 3370

2

3

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

4

IN AND FOR THE COUNTY OF WASHOE

5

6 IN THE MATTER OF THE ARBITRATION
7 BETWEEN:

Case No. CV15-00572
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8

KARA WHITE & WASHOE SCHOOL
PRINCIPALS' ASSOCIATION,

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Petitioners.

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WASHOE COUNTY SCHOOL DISTRICT,

13

Respondent.

14

15 Involving the dismissal appeal of Kara White,
16 Grievant.

17

ORDER GRANTING MOTION TO VACATE ARBITRATION AWARD

18

19 This case came on regularly for hearing on October 27, 2015. The Court was in receipt of
20 KARA WHITE and WASHOE SCHOOL PRINCIPALS' ASSOCIATION's (hereinafter
21 "Petitioner", "Principal White", or "WSPA") *Motion to Vacate Arbitration Award* filed on March
22 20, 2015. On May 8, 2015, WASHOE COUNTY SCHOOL DISTRICT (hereinafter "WCSD") filed
23 an *Opposition to Petitioner's Motion to Vacate Arbitration Award*. On June 8, 2015, Petitioner filed
24 a *Reply to Respondent's Opposition to Petitioner's Motion to Vacate Arbitration Award*.

25

For the reasons set forth below, and upon careful review of the motions, exhibits, and oral
arguments, the Court GRANTS Petitioner's *Motion to Vacate Arbitration Award*.

26

FACTUAL AND PROCEDURAL BACKGROUND

27

28 Principal White has been employed with WCSD in since 1999, and most recently, for four
and a half years as principal of Lemon Valley Elementary School ("LVES"). She was terminated in
2013. In her capacity as principal of LVES, Principal White helped improve the performance of the
school which resulted in multiple awards and recognitions, including a "Gold Star School" award.

1 In 2009, LVES was audited. The auditing committee brought approximately six issues with
2 recommendations to Principal White's attention. One issue raised by the auditing committee
3 included a statement that giving gift cards to teachers and staff could expose WCSD to IRS fines and
4 penalties. In 2013, a school counselor reported Principal White to a Labor Relations Manager
5 expressing concern about Principal White's use of Student Activity Funds ("SAF's"). The school
6 counselor reported that Principal White had purchased the counselor a \$149 necklace as a gift and
7 that Principal White had bought lunch for the entire school staff.

8 In July of 2012, Principal White sent an email to the teachers of her school requiring them to
9 participate in Guided Language Acquisition Design ("GLAD") training, which was offered at
10 various times during the year. Some of the teachers used personal and sick days to participate in the
11 training. Those that used personal and sick days had those days restored to them. A teacher reported
12 Principal White to a Labor Relations Manager regarding the mandatory GLAD training on February
13 27, 2013.

14 On February 4, 2013, before Principal White was reported on the GLAD training issue,
15 Principal White was given Notice of Administrative Leave with Pay pending allegations of
16 misconduct regarding use of SAF's. Investigatory due process meetings were held on both March 7,
17 2013 and March 27, 2013 to review her performance under NRS 391.312(c). On April 29, 2013,
18 Principal White was given a Notice of Recommended Dismissal. Douglass Parry, area
19 superintendent, found "[d]uring the 2011-12 and 2013-13 school years [Grievant] authorized
20 excessive and inappropriate expenditures." 15 line 24. Arbitrator's Opinion and Award. Mr. Parry
21 also pointed out in the Notice of Administrative Leave that her responses to questions were "less
22 than credible and dishonest;" Principal White could not recall receiving training on use of SAF's nor
23 specific provisions in a manual regarding use of SAF's. *Id.* at 16-17.

24 Principal White was placed on administrative leave without pay on April 29, 2013. After a
25 grievance hearing was held on May 21, 2013, Principal White's dismissal was sustained. On June
26 13, 2013, WSPA gave notice that it was appealing Principal White's termination to arbitration.

27 Arbitration proceedings were conducted in front of Arbitrator Anna D. Smith on February
28 25-28, 2014 who heard witnesses for both WCSD and WSPA. Arbitrator Smith stated she would
return a decision within sixty days of the hearing. However, Arbitrator Smith became ill rendering
her unable to provide a decision on Principal White's case. Arbitrator Alexander Cohn was then

1 selected and provided post-hearing briefs and the arbitration record. Based on the briefs and record,
2 Arbitrator Cohn found, in his December 29, 2014 decision, WCSA had just cause to terminate
3 Principal White based solely on a finding of dishonesty.

4 STANDARD OF REVIEW

5 Under the Uniform Arbitration Act of 2000, codified in Nevada Revised Statutes
6 38.206 to 38.248, the District Court may review an arbitration award, and may, under NRS 38.241,
7 vacate the award.¹ An arbitration award may be vacated if it is arbitrary, capricious, or unsupported
8 by the agreement or when an arbitrator has manifestly disregarded the law. *Bohlmann v. Byron John*
9 *Printz and Ash, Inc.*, 120 Nev. 543, 96 P.3d 1155 (2004). In determining whether an arbitrator's
10 award is arbitrary or capricious the District Court considers whether the arbitrator's findings were
11 supported by substantial evidence. *Clark County Educ. Ass'n v. Clark County Sch. Dist.*, 122 Nev.
12 337, 344, 131 P.3d 5, 9 (2006).

13 Parties moving to vacate an award on the ground that an arbitrator exceeded his or her
14 authority have the burden of demonstrating by clear and convincing evidence how the arbitrator

15
16 ¹ NRS 38.241 provides

17 1. Upon motion to the court by a party to an arbitral proceeding, the court shall vacate an award made in an arbitral
18 proceeding if:

19 (a) The award was procured by corruption, fraud or other undue means;

20 (b) There was:

21 (1) Evident partiality by an arbitrator appointed as a neutral arbitrator;

22 (2) Corruption by an arbitrator; or

23 (3) Misconduct by an arbitrator prejudicing the rights of a party to the arbitral proceeding;

24 (c) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider
25 evidence material to the controversy, or otherwise conducted the hearing contrary to NRS 38.231, so as to prejudice
26 substantially the rights of a party to the arbitral proceeding;

27 (d) An arbitrator exceeded his or her powers;

28 (e) There was no agreement to arbitrate, unless the movant participated in the arbitral proceeding without raising the
objection under subsection 3 of NRS 38.231 not later than the beginning of the arbitral hearing; or

(f) The arbitration was conducted without proper notice of the initiation of an arbitration as required in NRS 38.223 so as
to prejudice substantially the rights of a party to the arbitral proceeding.

2. A motion under this section must be made within 90 days after the movant receives notice of the award pursuant to
NRS 38.236 or within 90 days after the movant receives notice of a modified or corrected award pursuant to NRS
38.237, unless the movant alleges that the award was procured by partiality, corruption, fraud or other undue means, in
which case the motion must be made within 90 days after the ground is known or by the exercise of reasonable care
would have been known by the movant.

3. If the court vacates an award on a ground other than that set forth in paragraph (c) of subsection 1, it may order a
rehearing. If the award is vacated on a ground stated in paragraph (a) or (b) of subsection 1, the rehearing must be before
a new arbitrator. If the award is vacated on a ground stated in paragraph (c), (d), or (f) of subsection 1, the rehearing may
be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the
rehearing within the same time as that provided in subsection 2 of NRS 38.236 for an award.

4. If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the
award is pending.

1 exceeded that authority. *Health Plan of Nevada, Inc. v. Rainbow Medical LLC*, 120 Nev. 689, 100
2 P.3d 172 (2004). Further,

3 Arbitrators exceed their powers when they address issues or make awards outside the
4 scope of the governing contract. The broader the arbitration clause in a contract, the
5 greater the scope of an arbitrator's powers. However, allegations that an arbitrator
6 misinterpreted the agreement or made factual or legal errors do not support vacating an
7 award as being in excess of the arbitrator's powers. Arbitrators do not exceed their
8 powers if their interpretation of an agreement, even if erroneous, is rationally grounded in
9 the agreement. THE QUESTION IS WHETHER [sic] the arbitrator had the authority under
10 the agreement to decide an issue, not whether the issue was correctly decided. REVIEW
11 UNDER EXCESS-of-authority grounds [sic] is limited and only granted in very unusual
12 circumstances. An award should be enforced so long as the arbitrator is arguably
13 construing or applying the contract. If there is a colorable justification for the outcome,
14 the award should be confirmed.

15 *Id.* (citing *Batten v. Howell*, 300 S.C. 545, 389 S.E.2d 170, 172 (S.C.Ct.App. 1990); *SIGNAL Corp.*
16 *v. Keane Federal Systems*, 265 Va. 38, 574 S.E.2d 253, 257 (2003); *Main State Emp. Ass'n v. State,*
17 *Etc.*, 436 A.2d 394, 397 (Me.1981); *National Ave. Bldg. Co. v. Stewart*, 910 S.W.2d 334, 349
18 (Mo.Ct.App.1995); *Arnold v. Morgan Keegan & Co., Inc.*, 914 S.W.2d 445, 448 (Tenn.1996)).

19 DISCUSSION

20 **A. Whether Arbitrator Cohn Exhibited Evident Partiality in Violation of NRS 38.241(1)(b)(1)**

21 As a preliminary matter, the Court first addresses whether Arbitrator Cohn exhibited evident
22 partiality in violation of NRS 38.241(1)(b)(1). The Court does not find Petitioner provided sufficient
23 evidence to determine Arbitrator Cohn exhibited evident partiality towards WCSD. The Court finds
24 "[t]he appearance of impropriety, standing alone, is insufficient to establish evident partiality in
25 actual bias cases" persuasive. *Woods v. Saturn Distribution Corp.*, 78 F.3d 424, 427 (9th Cir. 1996).
26 Here, Petitioners did not even provide sufficient evidence suggesting an appearance of impropriety,
27 let alone specific facts to lead to a determination of actual bias. Therefore, the Court does not find a
28 violation of NRS 38.241(1)(b)(1) as grounds to vacate the arbitration award.

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///

1 **B. Whether Arbitrator Cohn Exceeded his Authority and Manifestly Disregarded NRS**
2 **391.3116²**

3 However, the Court does find grounds to vacate the arbitration award based on the
4 determination that Arbitrator Cohn exceeded his authority and manifestly disregarded NRS
5 391.3116.

6 Respondent argues that Arbitrator Cohn did not exceed his authority; the standard for
7 determining whether an arbitrator exceeded his authority is "well articulated in Nevada." (Opp'n
8 Mot. Vac., 6). Additionally, Respondent argues Arbitrator Cohn did not manifestly disregard NRS
9 391.3116: "Petitioners conclude . . . because the language in the CBA says 'in accordance with NRS
10 391,' NRS 391.3116 applies, so then NRS 391.311 to 391.3197 do not apply and the arbitrator must
11 only use the language of Article 18.1!" *Id.* at 14. Respondents assert that the argument presented by
12 Petitioners is an incorrect interpretation of the CBA article and the NRS provisions. *Id.*

13 However, the Court finds Arbitrator Cohn exceeded his authority. "An arbitrator's award
14 'must be based on the collective bargaining agreement' . . . [and] is legitimate only so long as it
15 'draws its essence from the collective bargaining agreement.'" *Int'l Ass'n of Firefighters, Local 1285*
16 *v. City of Las Vegas*, 107 Nev. 906, 910, 823 P.2d 877, 879 (1991). An arbitrator is accorded
17 deference when interpreting a contract. *Id.* However, the deference "is not limitless; he is not free to
18 contradict the express language of the contract . . . Where a labor contract expressly prescribes
19 particular discipline for specified offenses, an arbitration award overturning or modifying that
20 discipline does not 'draw its essence' from the contract and is in excess of the arbitrator's authority."
21 *Id.*

22 In this case, Arbitrator Cohn did not draw his award from the essence of the CBA. Arbitrator
23 Cohn contradicted the express language of the CBA Article 18.1 which explicitly prescribes a
24 particular discipline for a specified offense:

25 ///

26 ///

27 ///

28
² Under NRS 391.3116, "Excluding the provisions of NRS 391.3129, and sections 1.9 and 1.95 of this act, the provisions of NRS 391.311 to 391.3197, inclusive, do not apply to a teacher or other licensed employee who has entered into a contract with the board negotiated pursuant to chapter 288 of NRS if the contract contains separate provisions relating to the board's right to dismiss or refuse to reemploy the employee."
-5-

ARTICLE 18
DISMISSAL AND DISCIPLINARY PROCEDURES

18.1 Disciplinary actions, *including but not limited to, demotion, suspension, dismissal, and non-renewal actions* taken against post-probationary unit members (in accordance with NRS 391), *shall be progressive* in nature and related to the nature of the infraction. Unit members *shall be given reasonable opportunity for improvement*.

The School District *shall not* discharge, demote, suspend or take any other disciplinary action against a post probationary bargaining unit member of this unit *without just cause*.

(Emphasis added) (Opp'n Mot. Vac., Ex. 1: *Negotiated Agreement Between WCSD and WSPA*, 20 ¶18.1 (2011-2013)).

Based on a plain language reading of CBA Article 18.1, the Court finds there are three mandatory provisions regarding dismissal and disciplinary procedures: an individual (1) *shall be* given progressive discipline, (2) *shall be* given a reasonable opportunity to improve, and (3) *shall not be* discharged without just cause. No ambiguity exists in Article 18.1 and the requirements are clear-cut.

In this case, Principal White was not afforded progressive discipline or a reasonable opportunity to improve. Arbitrator Cohn stated in his Arbitrator's Opinion and Award

Therefore, on the record presented, any inclination to reverse Grievant's discharge and substitute progressive discipline such as a lengthy suspension, last chance return, demotion, an opportunity to improve, etc., in light of her length of service and competency, is washed away by the dishonesty finding. More specifically, whether the "just cause" standard is viewed under the NRS or the Agreement, given the totality of her performance errors and misconduct, summary discharge is warranted.

(Arb. Op. Awd., 60 ¶24). Based on the above statement, it is clear Arbitrator Cohn did not find progressive discipline or a reasonable opportunity for improvement essential elements of Article 18.1. Further, the Court agrees with Petitioner's assertion that Arbitrator Cohn "looked to the words of the contract . . . and looked to the conduct of the District . . . but then rendered an award wholly contradictory to the express language in the CBA." (Mot. Vac., 9 ¶3). The Court takes issue with the fact that Arbitrator Cohn found that mandatory requirements of progressive discipline and a reasonable opportunity to improve were "washed away" because of his finding of dishonesty. The Court finds that Arbitrator Cohn exceeded his authority by not looking to the express terms of the

1 CBA and determining such provisions did not apply to Principal White's case. Arbitrator Cohn
2 cannot merely "wash away" contractual provisions agreed upon by WCSD and WSPA. "Washing
3 away" two mandatory collective bargaining terms does not rise to the level of dismissal based on just
4 cause.

5 Further, the Court finds Arbitrator Cohn manifestly disregarded NRS 391.3116. "An
6 arbitrator manifestly disregards the law when he or she recognizes that the law *absolutely requires* a
7 given result and nonetheless *refuses* to apply the law correctly." *Bohlmann v. Byron John Printz and*
8 *Ash, Inc.*, 120 Nev. 543, 545, 96 P.3d 1155, 1156 (2004) (emphasis in original). In this case, while
9 Arbitrator Cohn referenced NRS 391.3116, he did not apply the law correctly.

10 First, Arbitrator Cohn specifically referenced NRS 391.3116 thus recognizing that the statute
11 required a given result. He cited in bold and underlined the following: "**NRS 391.3116 Contract**
12 **negotiated by collective bargaining may supersede provisions of NRS 391.311 to 391.397,**
13 **inclusive; exception for certain employees deemed probationary.**" (Arb. Op. Awd., 4 ¶22). The
14 Court agrees with Petitioner's assertion that Arbitrator Cohn "correctly conclude[d] that NRS
15 391.3116 is applicable" to this case. (Mot. Vac., 11 ¶17).

16 Moreover, the Court finds Arbitrator Cohn manifestly disregarded NRS 391.3116 as he did
17 not apply the statute correctly. The statute expressly states that the provisions of NRS 391.311 to
18 391.3197 *do not apply* if a collective bargaining agreement contains a *separate provision* regarding
19 employee dismissal. Here, Article 18.1 provides the separate provision specifically referenced in
20 NRS 391.3197; Article 18.1 is a separate provision governing employee dismissal and termination.
21 Moreover, the article is specifically titled **Dismissal and Disciplinary Procedures**. Therefore, NRS
22 391.3116 does not apply to the dismissal procedures in this case because dismissal procedures are
23 specifically provided for in Article 18.1. As stated above, dismissal procedures *must* consist of (1)
24 progressive discipline and (2) a reasonable opportunity for improvement. A dismissal that does not
25 include progressive discipline and a reasonable opportunity to improve is not a dismissal based on
26 just cause.

27 Therefore, the Court finds Arbitrator Cohn exceeded his authority by not applying the
28 specific and clear provisions of Article 18.1. Principal White was not afforded progressive
discipline or a reasonable opportunity for improvement. Second, the Court finds Arbitrator Cohn
manifestly disregarded NRS 391.3116 as Article 18.1 provides a separate provision regarding

1 employee dismissal. As Arbitrator Cohn did not follow the separate provision outlined in Article
2 18.1, he manifestly disregarded NRS 391.3116.

3 **C. Whether the Award was Arbitrary and Capricious**

4 The Court finds Arbitrator Cohn's award was arbitrary and capricious based on lack of
5 substantial evidence of Principal White's dishonesty. In determining whether an arbitrator's award is
6 arbitrary or capricious the District Court considers whether the arbitrator's findings were supported
7 by substantial evidence. *Clark County Educ. Ass'n v. Clark County Sch. Dist.*, 122 Nev. 337, 344,
8 131 P.3d 5, 9 (2006). Arbitrator Cohn's award was based on a finding of dishonesty pursuant to NRS
9 391.31297(1)(p), which provides,

10 1. A teacher may be suspended, dismissed or not reemployed and an administrator may
11 be demoted, suspended, dismissed or not reemployed for the following reasons:

12 . . .

13 (p) Dishonesty.

14 First, the Court points out that before reaching a finding of dishonesty pursuant to NRS
15 391.31297(1)(p), Principal White still should have been afforded progressive discipline and a
16 reasonable opportunity for improvement based on the Court's above findings pursuant to Article
17 18.1 of the CBA. Even had Principal White been afforded progressive discipline and a reasonable
18 opportunity for improvement, the record still does not indicate she was dishonest.

19 Respondent WCSD argues that as the entire arbitration record was submitted as evidence,
20 "[t]he arbitrator in this matter had substantial evidence to support his Award, including: verbatim
21 transcripts of four days of arbitration testimony referencing the numerous documents entered into
22 evidence." (Opp'n Mot. Vac., 18 ¶18). However, the Court does not find that merely because the
23 arbitration record was voluminous, Arbitrator Cohn relied on *substantial* evidence. Rather, the Court
24 finds the award was arbitrary and capricious insofar as a careful review of the record does not turn
25 up substantial evidence of dishonesty.

26 The Court concurs with Petitioner's oral arguments in that dishonesty requires an element of
27 intent. The evidence does not support a finding of intentional dishonesty in Principal White's case.
28 For example, in regards to mandatory GLAD training, Arbitrator Cohn found

The record demonstrates that, while Grievant recommended that they take the training
during the summer where pay would not be problematic, it was not possible for everyone
to do so. Whether or not Grievant herself (directly) instructed teachers to use sick leave

1 for the mandatory training, somehow this was transmitted to them . . . and they filled out
2 sick leave forms for training days, which Grievant was responsible for approving.

3 (Arb. Op. Awd., 59 ¶7). Yet, during the arbitration proceeding, Principal White stated

4 I visited the GLAD training happening. No one says anything. I'm communicating to
5 teachers on a regular basis about when they're attending. No communication about a
6 concern, a question about their days about let me clarify, do you actually mean you're
7 making it mandatory for me to use my sick days, personal days, there was never even a
8 question about this whole thing.

9 (Tr., *Arbitration re: Kara White*, Vol. 4, 690 ¶11-17). The Court finds there is no indication of
10 intentional dishonesty regarding GLAD training. There is abundant evidence of miscommunication
11 between teachers and Principal White, but not evidence of Principal White being dishonest.
12 However, there is no indication of intentional dishonesty on Principal White's part.

13 Moreover, the record indicates Principal White was taken aback by certain teacher
14 accusations that she was requiring teachers to use personal and sick days to attend GLAD training.
15 Principal White's testimony does not demonstrate she was intentionally dishonest in making GLAD
16 training mandatory or that she was dishonest about such facts during the arbitration proceeding.
17 Rather, the record merely shows she was surprised that teachers had not communicated with her and
18 had gone directly to the Labor Relations Manager on this issue. Evidence of surprise does not equal
19 a substantial evidence of intentional dishonesty.

20 Additionally, substantial evidence does not support a finding of intentional dishonesty in
21 regards to Principal White's alleged misuse of SAF's to purchase lunches, dinners, gift cards, and a
22 necklace for staff members. Arbitrator Cohn found

23 Grievant's fundamental and steadfast defense, in summary, is that she had no knowledge
24 of how to use SAF funds, had never been trained on the Manual . . . Put simply,
25 persuasive evidence demonstrates that she mishandled the funds by using them for
26 purposes other than those for which they were restricted, contrary to clear and
27 unambiguous District Policies . . . Grievant incredibly testified that she did not know she
28 was improperly spending SAF monies and was unaware of the existence of the Manual.

29 (Arb. Op. Awd., 54-55). The Court takes issue with Arbitrator Cohn's findings that Principal
30 White's lack of knowledge about how to use SAF monies constitutes a conclusion that Principal
31 White intended to deprive the District of funds. The Court finds Principal White did not know she
32 was misusing SAF funds. As stated by Petitioner during oral arguments before this Court, dishonesty
33 requires intent. In Principal White's case, she was not intentionally dishonest. Principal White
34 believed she was using the funds to encourage and congratulate her teachers and to foster a sense of

1 community and pride. Principal White had no intention to disregard WCSD policies. Based on a
2 careful review of the entire record, substantial evidence does not support a finding of dishonesty in
3 regards to use of SAF monies.

4 Therefore, the Court vacates Arbitrator Cohn's award based on the fact that the decision was
5 arbitrary and capricious.

6 **D. Whether Arbitration Proceedings Were Fair and Expeditious in Violation of NRS 38.231(1)**

7 As stated on the record during oral arguments before this Court, the Court takes issue with
8 the length of time that passed in these proceedings. Under NRS 38.231(1), "an arbitrator may
9 conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and
10 expeditious disposition of the proceeding." While the Court does not vacate the arbitration award on
11 these grounds, the Court still finds it concerning that Principal White has waited so long to find out
12 whether she would be permanently dismissed from a career she has dedicated her entire life to. Her
13 livelihood and reputation have been on the line for far too long. Principal White deserved much
14 more than the long drawn out procedure she was afforded.

15 Based on the above, and good cause appearing, the Court HEREBY GRANTS Petitioner's
16 *Motion to Vacate Arbitration Award.*

17 DATED this 10 day of November, 2015.

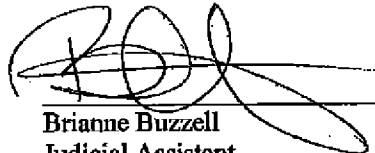
18 
19 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this ____ day of _____, 2015, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Further, I certify that on the 10th day of November, 2015, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

CHRISTOPHER REICH, ESQ. for WASHOE COUNTY SCHOOL DISTRICT
JASON GUINASSO, ESQ. for WASHOE COUNTY PRINCIPALS' ASSOCIATION et al
NEIL ROMBARDO, ESQ. for WASHOE COUNTY SCHOOL DISTRICT
SARA ALMO, ESQ. for WASHOE COUNTY SCHOOL DISTRICT



Brianne Buzzell
Judicial Assistant

EXHIBIT 2

EXHIBIT 2

1 CODE: 3370

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24 For the reasons set forth below, and upon careful review of the motions, exhibits, and oral
25 arguments, the Court GRANTS Petitioner's *Motion to Vacate Arbitration Award*.

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27 Principal White has been employed with WCSD in since 1999, and most recently, for four
28 and a half years as principal of Lemon Valley Elementary School ("LVES"). She was terminated in
2013. In her capacity as principal of LVES, Principal White helped improve the performance of the
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1 In 2009, LVES was audited. The auditing committee brought approximately six issues with
2 recommendations to Principal White's attention. One issue raised by the auditing committee
3 included a statement that giving gift cards to teachers and staff could expose WCSD to IRS fines and
4 penalties. In 2013, a school counselor reported Principal White to a Labor Relations Manager
5 expressing concern about Principal White's use of Student Activity Funds ("SAF's"). The school
6 counselor reported that Principal White had purchased the counselor a \$149 necklace as a gift and
7 that Principal White had bought lunch for the entire school staff.

8 In July of 2012, Principal White sent an email to the teachers of her school requiring them to
9 participate in Guided Language Acquisition Design ("GLAD") training, which was offered at
10 various times during the year. Some of the teachers used personal and sick days to participate in the
11 training. Those that used personal and sick days had those days restored to them. A teacher reported
12 Principal White to a Labor Relations Manager regarding the mandatory GLAD training on February
13 27, 2013.

14 On February 4, 2013, before Principal White was reported on the GLAD training issue,
15 Principal White was given Notice of Administrative Leave with Pay pending allegations of
16 misconduct regarding use of SAF's. Investigatory due process meetings were held on both March 7,
17 2013 and March 27, 2013 to review her performance under NRS 391.312(c). On April 29, 2013,
18 Principal White was given a Notice of Recommended Dismissal. Douglass Parry, area
19 superintendent, found "[d]uring the 2011-12 and 2013-13 school years [Grievant] authorized
20 excessive and inappropriate expenditures." 15 line 24. Arbitrator's Opinion and Award. Mr. Parry
21 also pointed out in the Notice of Administrative Leave that her responses to questions were "less
22 than credible and dishonest;" Principal White could not recall receiving training on use of SAF's nor
23 specific provisions in a manual regarding use of SAF's. *Id.* at 16-17.

24 Principal White was placed on administrative leave without pay on April 29, 2013. After a
25 grievance hearing was held on May 21, 2013, Principal White's dismissal was sustained. On June
26 13, 2013, WSPA gave notice that it was appealing Principal White's termination to arbitration.

27 Arbitration proceedings were conducted in front of Arbitrator Anna D. Smith on February
28 25-28, 2014 who heard witnesses for both WCSD and WSPA. Arbitrator Smith stated she would
return a decision within sixty days of the hearing. However, Arbitrator Smith became ill rendering
her unable to provide a decision on Principal White's case. Arbitrator Alexander Cohn was then

1 selected and provided post-hearing briefs and the arbitration record. Based on the briefs and record,
2 Arbitrator Cohn found, in his December 29, 2014 decision, WCSD had just cause to terminate
3 Principal White based solely on a finding of dishonesty.

4 STANDARD OF REVIEW

5 Under the Uniform Arbitration Act of 2000, codified in Nevada Revised Statutes
6 38.206 to 38.248, the District Court may review an arbitration award, and may, under NRS 38.241,
7 vacate the award.¹ An arbitration award may be vacated if it is arbitrary, capricious, or unsupported
8 by the agreement or when an arbitrator has manifestly disregarded the law. *Bohlmann v. Byron John*
9 *Printz and Ash, Inc.*, 120 Nev. 543, 96 P.3d 1155 (2004). In determining whether an arbitrator's
10 award is arbitrary or capricious the District Court considers whether the arbitrator's findings were
11 supported by substantial evidence. *Clark County Educ. Ass'n v. Clark County Sch. Dist.*, 122 Nev.
12 337, 344, 131 P.3d 5, 9 (2006).

13 Parties moving to vacate an award on the ground that an arbitrator exceeded his or her
14 authority have the burden of demonstrating by clear and convincing evidence how the arbitrator

15
16 ¹ NRS 38.241 provides

17 1. Upon motion to the court by a party to an arbitral proceeding, the court shall vacate an award made in an arbitral
18 proceeding if:

19 (a) The award was procured by corruption, fraud or other undue means;

20 (b) There was:

21 (1) Evident partiality by an arbitrator appointed as a neutral arbitrator;

22 (2) Corruption by an arbitrator; or

23 (3) Misconduct by an arbitrator prejudicing the rights of a party to the arbitral proceeding;

24 (c) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider
25 evidence material to the controversy, or otherwise conducted the hearing contrary to NRS 38.231, so as to prejudice
26 substantially the rights of a party to the arbitral proceeding;

27 (d) An arbitrator exceeded his or her powers;

28 (e) There was no agreement to arbitrate, unless the movant participated in the arbitral proceeding without raising the
objection under subsection 3 of NRS 38.231 not later than the beginning of the arbitral hearing; or

(f) The arbitration was conducted without proper notice of the initiation of an arbitration as required in NRS 38.223 so as
to prejudice substantially the rights of a party to the arbitral proceeding.

2. A motion under this section must be made within 90 days after the movant receives notice of the award pursuant to
NRS 38.236 or within 90 days after the movant receives notice of a modified or corrected award pursuant to NRS
38.237, unless the movant alleges that the award was procured by partiality, corruption, fraud or other undue means, in
which case the motion must be made within 90 days after the ground is known or by the exercise of reasonable care
would have been known by the movant.

3. If the court vacates an award on a ground other than that set forth in paragraph (e) of subsection 1, it may order a
rehearing. If the award is vacated on a ground stated in paragraph (a) or (b) of subsection 1, the rehearing must be before
a new arbitrator. If the award is vacated on a ground stated in paragraph (c), (d), or (f) of subsection 1, the rehearing may
be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the
rehearing within the same time as that provided in subsection 2 of NRS 38.236 for an award.

4. If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the
award is pending.

1 exceeded that authority. *Health Plan of Nevada, Inc. v. Rainbow Medical LLC*, 120 Nev. 689, 100
2 P.3d 172 (2004). Further,

3 Arbitrators exceed their powers when they address issues or make awards outside the
4 scope of the governing contract. The broader the arbitration clause in a contract, the
5 greater the scope of an arbitrator's powers. However, allegations that an arbitrator
6 misinterpreted the agreement or made factual or legal errors do not support vacating an
7 award as being in excess of the arbitrator's powers. Arbitrators do not exceed their
8 powers if their interpretation of an agreement, even if erroneous, is rationally grounded in
9 the agreement. THE QUESTION IS WHETHER [sic] the arbitrator had the authority under
10 the agreement to decide an issue, not whether the issue was correctly decided. REVIEW
UNDER EXCESS-of-authority grounds [sic] is limited and only granted in very unusual
circumstances. An award should be enforced so long as the arbitrator is arguably
construing or applying the contract. If there is a colorable justification for the outcome,
the award should be confirmed.

11 *Id.* (citing *Batten v. Howell*, 300 S.C. 545, 389 S.E.2d 170, 172 (S.C.Ct.App. 1990); *SIGNAL Corp.*
12 *v. Keane Federal Systems*, 265 Va. 38, 574 S.E.2d 253, 257 (2003); *Main State Emp. Ass'n v. State*,
13 *Etc.*, 436 A.2d 394, 397 (Me.1981); *National Ave. Bldg. Co. v. Stewart*, 910 S.W.2d 334, 349
14 (Mo.Ct.App.1995); *Arnold v. Morgan Keegan & Co., Inc.*, 914 S.W.2d 445, 448 (Tenn.1996)).

15 DISCUSSION

16 **A. Whether Arbitrator Cohn Exhibited Evident Partiality in Violation of NRS 38.241(1)(b)(1)**

17 As a preliminary matter, the Court first addresses whether Arbitrator Cohn exhibited evident
18 partiality in violation of NRS 38.241(1)(b)(1). The Court does not find Petitioner provided sufficient
19 evidence to determine Arbitrator Cohn exhibited evident partiality towards WCSD. The Court finds
20 "[t]he appearance of impropriety, standing alone, is insufficient to establish evident partiality in
21 actual bias cases" persuasive. *Woods v. Saturn Distribution Corp.*, 78 F.3d 424, 427 (9th Cir. 1996).
22 Here, Petitioners did not even provide sufficient evidence suggesting an appearance of impropriety,
23 let alone specific facts to lead to a determination of actual bias. Therefore, the Court does not find a
24 violation of NRS 38.241(1)(b)(1) as grounds to vacate the arbitration award.
25

26 ///

27 ///

1 **B. Whether Arbitrator Cohn Exceeded his Authority and Manifestly Disregarded NRS**
2 **391.3116²**

3 However, the Court does find grounds to vacate the arbitration award based on the
4 determination that Arbitrator Cohn exceeded his authority and manifestly disregarded NRS
5 391.3116.

6 Respondent argues that Arbitrator Cohn did not exceed his authority; the standard for
7 determining whether an arbitrator exceeded his authority is “well articulated in Nevada.” (Opp’n
8 Mot. Vac., 6). Additionally, Respondent argues Arbitrator Cohn did not manifestly disregard NRS
9 391.3116: “Petitioners conclude . . . because the language in the CBA says ‘in accordance with NRS
10 391,’ NRS 391.3116 applies, so then NRS 391.311 to 391.3197 do not apply and the arbitrator must
11 only use the language of Article 18.1!” *Id.* at 14. Respondents assert that the argument presented by
12 Petitioners is an incorrect interpretation of the CBA article and the NRS provisions. *Id.*

13 However, the Court finds Arbitrator Cohn exceeded his authority. “An arbitrator’s award
14 ‘must be based on the collective bargaining agreement’ . . . [and] is legitimate only so long as it
15 ‘draws its essence from the collective bargaining agreement.’” *Int’l Ass’n of Firefighters, Local 1285*
16 *v. City of Las Vegas*, 107 Nev. 906, 910, 823 P.2d 877, 879 (1991). An arbitrator is accorded
17 deference when interpreting a contract. *Id.* However, the deference “is not limitless; he is not free to
18 contradict the express language of the contract . . . Where a labor contract expressly prescribes
19 particular discipline for specified offenses, an arbitration award overturning or modifying that
20 discipline does not ‘draw its essence’ from the contract and is in excess of the arbitrator’s authority.”
21 *Id.*

22 In this case, Arbitrator Cohn did not draw his award from the essence of the CBA. Arbitrator
23 Cohn contradicted the express language of the CBA Article 18.1 which explicitly prescribes a
24 particular discipline for a specified offense:

25 ///

26 ///

27 ///

28 _____
² Under NRS 391.3116, “Excluding the provisions of NRS 391.3129, and sections 1.9 and 1.95 of this act, the provisions of NRS 391.311 to 391.3197, inclusive, do not apply to a teacher or other licensed employee who has entered into a contract with the board negotiated pursuant to chapter 288 of NRS if the contract contains separate provisions relating to the board’s right to dismiss or refuse to reemploy the employee.”

ARTICLE 18
DISMISSAL AND DISCIPLINARY PROCEDURES

18.1 Disciplinary actions, *including but not limited to, demotion, suspension, dismissal, and non-renewal actions* taken against post-probationary unit members (in accordance with NRS 391), *shall be progressive* in nature and related to the nature of the infraction. Unit members *shall be given reasonable opportunity for improvement*.

The School District *shall not* discharge, demote, suspend or take any other disciplinary action against a post probationary bargaining unit member of this unit *without just cause*.

(Emphasis added) (Opp'n Mot. Vac., Ex. 1: *Negotiated Agreement Between WCSD and WSPA*, 20 ¶18.1 (2011-2013)).

Based on a plain language reading of CBA Article 18.1, the Court finds there are three mandatory provisions regarding dismissal and disciplinary procedures: an individual (1) *shall* be given progressive discipline, (2) *shall* be given a reasonable opportunity to improve, and (3) *shall* not be discharged without just cause. No ambiguity exists in Article 18.1 and the requirements are clear-cut.

In this case, Principal White was not afforded progressive discipline or a reasonable opportunity to improve. Arbitrator Cohn stated in his Arbitrator's Opinion and Award

Therefore, on the record presented, any inclination to reverse Grievant's discharge and substitute progressive discipline such as a lengthy suspension, last chance return, demotion, an opportunity to improve, etc., in light of her length of service and competency, is washed away by the dishonesty finding. More specifically, whether the "just cause" standard is viewed under the NRS or the Agreement, given the totality of her performance errors and misconduct, summary discharge is warranted.

(Arb. Op. Awd., 60 ¶24). Based on the above statement, it is clear Arbitrator Cohn did not find progressive discipline or a reasonable opportunity for improvement essential elements of Article 18.1. Further, the Court agrees with Petitioner's assertion that Arbitrator Cohn "looked to the words of the contract . . . and looked to the conduct of the District . . . but then rendered an award wholly contradictory to the express language in the CBA." (Mot. Vac., 9 ¶3). The Court takes issue with the fact that Arbitrator Cohn found that mandatory requirements of progressive discipline and a reasonable opportunity to improve were "washed away" because of his finding of dishonesty. The Court finds that Arbitrator Cohn exceeded his authority by not looking to the express terms of the

1 CBA and determining such provisions did not apply to Principal White's case. Arbitrator Cohn
2 cannot merely "wash away" contractual provisions agreed upon by WCSD and WSPA. "Washing
3 away" two mandatory collective bargaining terms does not rise to the level of dismissal based on just
4 cause.

5 Further, the Court finds Arbitrator Cohn manifestly disregarded NRS 391.3116. "An
6 arbitrator manifestly disregards the law when he or she recognizes that the law *absolutely requires* a
7 given result and nonetheless *refuses* to apply the law correctly." *Bohlmann v. Byron John Printz and*
8 *Ash, Inc.*, 120 Nev. 543, 545, 96 P.3d 1155, 1156 (2004) (emphasis in original). In this case, while
9 Arbitrator Cohn referenced NRS 391.3116, he did not apply the law correctly.

10 First, Arbitrator Cohn specifically referenced NRS 391.3116 thus recognizing that the statute
11 required a given result. He cited in bold and underlined the following: "**NRS 391.3116 Contract**
12 **negotiated by collective bargaining may supersede provisions of NRS 391.311 to 391.397,**
13 **inclusive; exception for certain employees deemed probationary.**" (Arb. Op. Awd., 4 ¶22). The
14 Court agrees with Petitioner's assertion that Arbitrator Cohn "correctly conclude[ed] that NRS
15 391.3116 is applicable" to this case. (Mot. Vac., 11 ¶17).

16 Moreover, the Court finds Arbitrator Cohn manifestly disregarded NRS 391.3116 as he did
17 not apply the statute correctly. The statute expressly states that the provisions of NRS 391.311 to
18 391.3197 *do not apply* if a collective bargaining agreement contains a *separate provision* regarding
19 employee dismissal. Here, Article 18.1 provides the separate provision specifically referenced in
20 NRS 391.3197; Article 18.1 is a separate provision governing employee dismissal and termination.
21 Moreover, the article is specifically titled **Dismissal and Disciplinary Procedures**. Therefore, NRS
22 391.3116 does not apply to the dismissal procedures in this case because dismissal procedures are
23 specifically provided for in Article 18.1. As stated above, dismissal procedures *must* consist of (1)
24 progressive discipline and (2) a reasonable opportunity for improvement. A dismissal that does not
25 include progressive discipline and a reasonable opportunity to improve is not a dismissal based on
26 just cause.

27 Therefore, the Court finds Arbitrator Cohn exceeded his authority by not applying the
28 specific and clear provisions of Article 18.1. Principal White was not afforded progressive
discipline or a reasonable opportunity for improvement. Second, the Court finds Arbitrator Cohn
manifestly disregarded NRS 391.3116 as Article 18.1 provides a separate provision regarding

1 employee dismissal. As Arbitrator Cohn did not follow the separate provision outlined in Article
2 18.1, he manifestly disregarded NRS 391.3116.

3 **C. Whether the Award was Arbitrary and Capricious**

4 The Court finds Arbitrator Cohn's award was arbitrary and capricious based on lack of
5 substantial evidence of Principal White's dishonesty. In determining whether an arbitrator's award is
6 arbitrary or capricious the District Court considers whether the arbitrator's findings were supported
7 by substantial evidence. *Clark County Educ. Ass'n v. Clark County Sch. Dist.*, 122 Nev. 337, 344,
8 131 P.3d 5, 9 (2006). Arbitrator Cohn's award was based on a finding of dishonesty pursuant to NRS
9 391.31297(1)(p), which provides,

10 1. A teacher may be suspended, dismissed or not reemployed and an administrator may
11 be demoted, suspended, dismissed or not reemployed for the following reasons:

12 . . .

13 (p) Dishonesty.

14 First, the Court points out that before reaching a finding of dishonesty pursuant to NRS
15 391.31297(1)(p), Principal White still should have been afforded progressive discipline and a
16 reasonable opportunity for improvement based on the Court's above findings pursuant to Article
17 18.1 of the CBA. Even had Principal White been afforded progressive discipline and a reasonable
18 opportunity for improvement, the record still does not indicate she was dishonest.

19 Respondent WCSD argues that as the entire arbitration record was submitted as evidence,
20 "[t]he arbitrator in this matter had substantial evidence to support his Award, including: verbatim
21 transcripts of four days of arbitration testimony referencing the numerous documents entered into
22 evidence." (Opp'n Mot. Vac., 18 ¶18). However, the Court does not find that merely because the
23 arbitration record was voluminous, Arbitrator Cohn relied on *substantial* evidence. Rather, the Court
24 finds the award was arbitrary and capricious insofar as a careful review of the record does not turn
25 up substantial evidence of dishonesty.

26 The Court concurs with Petitioner's oral arguments in that dishonesty requires an element of
27 intent. The evidence does not support a finding of intentional dishonesty in Principal White's case.
28 For example, in regards to mandatory GLAD training, Arbitrator Cohn found

The record demonstrates that, while Grievant recommended that they take the training during the summer where pay would not be problematic, it was not possible for everyone to do so. Whether or not Grievant herself (directly) instructed teachers to use sick leave

1 for the mandatory training, somehow this was transmitted to them . . . and they filled out
2 sick leave forms for training days, which Grievant was responsible for approving.

3 (Arb. Op. Awd., 59 ¶7). Yet, during the arbitration proceeding, Principal White stated

4 I visited the GLAD training happening. No one says anything. I'm communicating to
5 teachers on a regular basis about when they're attending. No communication about a
6 concern, a question about their days about let me clarify, do you actually mean you're
7 making it mandatory for me to use my sick days, personal days, there was never even a
8 question about this whole thing.

9 (Tr., *Arbitration re: Kara White*, Vol. 4, 690 ¶11-17). The Court finds there is no indication of
10 intentional dishonesty regarding GLAD training. There is abundant evidence of miscommunication
11 between teachers and Principal White, but not evidence of Principal White being dishonest.
12 However, there is no indication of intentional dishonesty on Principal White's part.

13 Moreover, the record indicates Principal White was taken aback by certain teacher
14 accusations that she was requiring teachers to use personal and sick days to attend GLAD training.
15 Principal White's testimony does not demonstrate she was intentionally dishonest in making GLAD
16 training mandatory or that she was dishonest about such facts during the arbitration proceeding.
17 Rather, the record merely shows she was surprised that teachers had not communicated with her and
18 had gone directly to the Labor Relations Manager on this issue. Evidence of surprise does not equal
19 a substantial evidence of intentional dishonesty.

20 Additionally, substantial evidence does not support a finding of intentional dishonesty in
21 regards to Principal White's alleged misuse of SAF's to purchase lunches, dinners, gift cards, and a
22 necklace for staff members. Arbitrator Cohn found

23 Grievant's fundamental and steadfast defense, in summary, is that she had no knowledge
24 of how to use SAF funds, had never been trained on the Manual . . . Put simply,
25 persuasive evidence demonstrates that she mishandled the funds by using them for
26 purposes other than those for which they were restricted, contrary to clear and
27 unambiguous District Policies . . . Grievant incredibly testified that she did not know she
28 was improperly spending SAF monies and was unaware of the existence of the Manual.

29 (Arb. Op. Awd., 54-55). The Court takes issue with Arbitrator Cohn's findings that Principal
30 White's lack of knowledge about how to use SAF monies constitutes a conclusion that Principal
31 White intended to deprive the District of funds. The Court finds Principal White did not know she
32 was misusing SAF funds. As stated by Petitioner during oral arguments before this Court, dishonesty
33 requires intent. In Principal White's case, she was not intentionally dishonest. Principal White
34 believed she was using the funds to encourage and congratulate her teachers and to foster a sense of

1 community and pride. Principal White had no intention to disregard WCSD policies. Based on a
2 careful review of the entire record, substantial evidence does not support a finding of dishonesty in
3 regards to use of SAF monies.

4 Therefore, the Court vacates Arbitrator Cohn's award based on the fact that the decision was
5 arbitrary and capricious.

6 **D. Whether Arbitration Proceedings Were Fair and Expeditious in Violation of NRS 38.231(1)**

7 As stated on the record during oral arguments before this Court, the Court takes issue with
8 the length of time that passed in these proceedings. Under NRS 38.231(1), "an arbitrator may
9 conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and
10 expeditious disposition of the proceeding." While the Court does not vacate the arbitration award on
11 these grounds, the Court still finds it concerning that Principal White has waited so long to find out
12 whether she would be permanently dismissed from a career she has dedicated her entire life to. Her
13 livelihood and reputation have been on the line for far too long. Principal White deserved much
14 more than the long drawn out procedure she was afforded.

15 Based on the above, and good cause appearing, the Court HEREBY GRANTS Petitioner's
16 *Motion to Vacate Arbitration Award.*

17 DATED this 10 day of November, 2015.

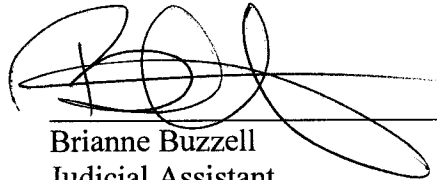
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this ____ day of _____, 2015, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Further, I certify that on the 10th day of November, 2015, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

CHRISTOPHER REICH, ESQ. for WASHOE COUNTY SCHOOL DISTRICT
JASON GUINASSO, ESQ. for WASHOE COUNTY PRINCIPALS' ASSOCIATION et al
NEIL ROMBARDO, ESQ. for WASHOE COUNTY SCHOOL DISTRICT
SARA ALMO, ESQ. for WASHOE COUNTY SCHOOL DISTRICT



Brianne Buzzell
Judicial Assistant

EXHIBIT 1

EXHIBIT 1

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF ARBITRATION
BETWEEN:

KARA WHITE & WASHOE SCHOOL
PRINCIPALS' ASSOCIATION

Petitioners,

and

WASHOE COUNTY SCHOOL DISTRICT

Respondent.

Involving the dismissal appeal of Kara White,
Grievant.

Case No.

Dept. No.

MOTION TO VACATE ARBITRATION AWARD

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1 **MOTION TO VACATE ARBITRATION AWARD**

2 COMES NOW, Plaintiff, WASHOE SCHOOL PRINCIPALS' ASSOCIATION (hereinafter
3 "WSPA" or "Association"), and pursuant to NRS 38.241, as well as Nevada common law, hereby
4 moves this Honorable Court for an Order Vacating the *Arbitrator's Opinion and Award* issued by
5 Arbitrator Alexander Cohn in Napa, California, dated December 29, 2014.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. INTRODUCTION**

8 Kara White (hereinafter "Principal White") was a very high-performing and successful
9 Principal at Lemon Valley Elementary School for approximately 4.5 years when she was wrongfully
10 terminated by the Washoe County School District ("District"). The District terminated Principal
11 White's employment based on various allegations of misconduct set forth in NRS 391 without
12 imposing any form of progressive discipline and without providing any reasonable opportunity for
13 improvement. The District's injudicious conduct violated Nevada law and an express provision of
14 the Collective Bargaining Agreement ("CBA") between the WCSD and the WSPA.

15 NRS 391.3116, *emphasized by the arbitrator in his award*, expressly states that the provisions
16 of NRS 391 *do not apply* to an administrator who has entered into a contract with the Board
17 negotiated pursuant to NRS 288 if the contract contains a separate provision relating to the Board's
18 right to dismiss or demote an administrator. The WCSD and the WSPA entered into a CBA
19 negotiated pursuant to NRS 288 on behalf of members, including Principal White. The arbitrator
20 cited to the CBA in his award. The CBA contains a separate provision relating to the Board's right to
21 dismiss or demote an administrator. Specifically, Article 18.1 in the CBA mandates that any
22 disciplinary action, including dismissal, *done in accordance with NRS 391*, as was the case here,
23 **shall** be progressive in nature and members **shall** be given reasonable opportunity for improvement.
24 There are no exceptions listed in Article 18.1. Pursuant to NRS 391.3116, Article 18.1 supersedes
25 other provisions in NRS 391 as they relate to Principal White's dismissal.



1 The arbitrator's award and the evidence relied upon fully demonstrate that Principal White
2 **did not** receive progressive discipline and **did not** receive any reasonable opportunity for
3 improvement regarding the alleged issues for which she was terminated in accordance with the
4 requirements of Article 18.1. Nevertheless, the arbitrator concluded that Principal White was not
5 entitled to progressive discipline and was not entitled to an opportunity for improvement prior to her
6 termination. The arbitrator completely ignored the express requirements of the CBA and the express
7 requirements of the statute. Thus, the arbitrator exceeded his powers and manifestly disregarded the
8 law and his award must be vacated.

9 Additionally, substantial evidence in the record does not support the arbitrator's award as set
10 forth below, and the proceedings were not fair and expeditious as required by Nevada law. In
11 rendering his award, the arbitrator showed partiality towards the District and made an arbitrary and
12 capricious decision. Accordingly, the Court must vacate the Arbitrator's award pursuant to all of, or
13 any one of, the provisions of NRS 38.241(1)(b), (c) and (d) and common law grounds for vacating
14 such awards.

15 **II. SHORT SUMMARY OF RELEVANT FACTS AND STATEMENT OF THE** 16 **CASE**

17 Principal White had been employed with the District since 1999, first as a teacher for six
18 years, then a student dean for one year, then an assistant principal for two years, and finally as the
19 principal of Lemon Valley Elementary School ("LVES") for the past four and a half years. She loved
20 her job as Principal and she was very successful in turning the school around.¹ She received all
21 positive evaluations during her employment with the District. Exhibit 5, Transcript of Proceedings,
22 Volume 4, p. 700. In fact, during the 2012-2013 academic school year, Principal White was also a



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24
25 ¹ LVES was an underperforming school, but not a Title I school, when Ms. White became principal. Arbitrator Cohn acknowledged that the school improved substantially under her administration, eventually becoming a Gold Star School. Exhibit 1, p. 52, lines 9-11.

1 mentor for other principals. *Id.*, p. 657. Principal White had a total of seven years as an administrator
2 with the District at the time of her termination on April 29, 2013. *Id.* at p. 654.

3 The District terminated Principal White from her employment for (1) an alleged misuse of
4 “Student Activity Funds” (“SAFs”), (2) requiring teachers at LVES to attend “Guided Language
5 Acquisition Development” (“GLAD”) training, (3) allegedly requiring them to use sick or personal
6 days for some of the training, and (4) allegedly being dishonest during various IDP’s associated with
7 the above allegations. *Id.* at p. 682.²

8 On February 4, 2013, Principal White was directed to meet with Paul LaMarca, the District’s
9 Chief School Performance Officer. She and her representative, Ron Dreher, met with Mr. LaMarca
10 as directed. During the meeting, Mr. LaMarca handed Principal White a letter dated that same day
11 advising her that she was being “placed on administrative leave with pay effective this day February
12 4, 2013, pending an investigation into the allegations of misconduct on your part.” Exhibit 6,
13 February 4, 2013 Letter. On February 27, 2013, Mr. LaMarca issued a “Letter of Admonition”
14 stating: “this notification is intended to give you an opportunity to correct her performance and
15 conduct.” Exhibit 7, January 28, 2014 Arbitration Award, p. 4. The letter further provided for a
16 professional assistance plan to provide Principal White with an opportunity to improve as required by
17 the CBA and Nevada law. *Id.* **Despite the representations in this letter, Principal White was**
18 **never placed on a plan or given the opportunity to improve.** Exhibit 5, p. 704-705. Moreover,
19 the alleged areas needing improving as addressed in this letter did not relate to SAF funds or GLAD
20 training.

21 A few minutes after issuing the Letter of Admonition to Principal White, Mr. LaMarca
22 handed her a “Notice of Intent to Suspend for ten days.” Exhibit 7, p. 6. The WSPA immediately

23 _____
24 ² Principal White vehemently disputes the allegations against her, and in particular the allegation of dishonesty; however,
25 for purposes of this motion and the legal standard involved in vacating an award, the pertinent facts are limited to the
District’s and the Arbitrator’s failure to comply with the CBA and Nevada law.



1 filed a grievance protesting the Letter of Admonition and the suspension. The grievance was
2 arbitrated in August and September 2013. The Arbitrator found there were no grounds warranting a
3 suspension, but upheld the Letter of Admonition (“LOA”). *Id.* at 26. Pursuant to Article 17.1 in the
4 CBA, the LOA would have been removed from Principal White’s file within 90 days if she met the
5 standards and made the improvements set forth in the LOA.

6 **Up to this point, no progressive discipline or reasonable opportunity to improve had**
7 **been provided to Principal White for the allegations in the Letter of Admonition.**

8 Thereafter, on March 5, 2013, Principal White was notified by email to her representative that
9 the District would conduct an “Investigatory/Due Process Meeting” on March 7, 2013, for the
10 purpose of investigating allegations pursuant to NRS 391.312(c), including: allegations of
11 unprofessional conduct, inadequate performance, failure to comply with such reasonable
12 requirements as a board may prescribe, failure to show improvement and evidence of professional
13 training and growth, and dishonesty. Exhibit 8, March 5, 2013 Letter. The District alleged **for the**
14 **first time in this notice** that Principal White misused SAFs. *Id.* Importantly, the District was
15 already accusing Principal White of failing to show improvement for issues she was not even made
16 aware of until this notice, and she was accused of being dishonest prior to being investigated.³

17 On March 7, 2013, Principal White appeared with her representative before Doug Parry, Area
18 Superintendent, and Virginia Doran, Labor Relations Manager. Exhibit 9, March 7, 2013 IDP
19 Transcript. The meeting was continued to March 22, 2013. Exhibit 10, March 22, 2013 IDP
20 Transcript. When the meeting continued on March 22, 2013, Principal White was handed another
21 “Notice of Investigatory/Due Process Meeting and Right to Representation.” Exhibit 11, March 22,
22 2013 Letter. This notice alleged the same allegations under NRS 391.312(c), except it did not allege
23 dishonesty. Once again, **for the first time in this notice**, the District alleged that Principal White
24

25 ³ To the extent the District was trying to bootstrap the allegations relating to the Letter of Admonition to use to support a
dishonesty charge, the arbitrator in that proceeding found the District did not support such a charge. Exhibit 7.



1 improperly mandated GLAD training and allegedly required teachers to use sick and/or personal days
2 to complete the training. *Id.* The notice commanded her to appear on March 27, 2013, but she
3 agreed to address the issues during the March 22, 2013 meeting. Exhibit 10, March 22, 2013 IDP
4 Transcript, p. 34-46.

5 **Still, no progressive discipline or opportunity to improve on any of the allegations in the**
6 **two notices was provided to Principal White.**

7 On April 29, 2013, Principal White was given a “Notice of Recommended
8 Dismissal...pursuant to NRS 391.317.” Exhibit 12, April 29, 2013 Letter. The letter stated the basis
9 for the action was unprofessional conduct, inadequate performance, failure to comply with such
10 reasonable requirements as a board may prescribe, failure to show normal improvement and evidence
11 of professional training and growth, and dishonesty. *Id.* The allegations on which this letter was
12 based were excessive and inappropriate expenditures of SAFs and the accusation of mandating
13 teachers use sick or personal leave for GLAD training. *Id.* The letter referenced the Letter of
14 Admonition, but found Principal White’s alleged “misconduct warrants further action.” *Id.*
15 Moreover, the letter referenced further investigation, but no “Investigative Report” was ever drafted
16 or presented to the WSPA or Principal White to be analyzed, or to identify persons who were
17 contacted, etc.

18 **However, once again, no progressive discipline or opportunity to improve on any of the**
19 **allegations in the two notices was provided to Principal White.**

20 On April 29, 2013, Principal White was placed on administrative leave without pay effective
21 that same day. On May 3, 2013, Principal White’s representative filed an appeal of the
22 recommendation to dismiss with the Superintendent. Exhibit 13, May 5, 2013 Letter. Principal
23 White’s representative argued that placing her on administrative leave without pay prior to a hearing
24 by the Superintendent violated Nevada law and *Cleveland and Board of Education v. Loudermill*, 470
25



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1 U.S. 532 (1985). He demanded the District immediately place Principal White back on
2 administrative leave with pay and rescind the recommendation for termination. *Id.*

3 On May 21, 2013, a “hearing” was held before Deputy Superintendent Traci Davis, with Ms.
4 Doran and Mr. Parry attending on behalf of the District. Exhibit 14, May 21, 2013 Hearing
5 Transcript. Thereafter, on June 12, 2013, despite the District’s failure to provide Principal White
6 with progressive discipline and a reasonable opportunity to improve on any of the allegations against
7 her that were used to support the termination, Deputy Superintendent Davis upheld the
8 recommendation for termination. Exhibit 15, June 12, 2013 Letter. Principal White, through her
9 representative, appealed the decision to terminate to arbitration.

10 Arbitrator Anna D. Smith out of Cleveland, Ohio held arbitration proceedings on February
11 25-28, 2014. Arbitrator Smith heard testimony of witnesses for the District and WSPA. At the
12 conclusion of the proceedings, Arbitrator Smith indicated the parties would have a decision on or
13 around June 18, 2014. However, following the arbitration, Arbitrator Smith became ill and was
14 unable to fulfill her duties as arbitrator. The parties were forced to select another arbitrator.
15 Arbitrator Cohn was selected and was provided post-hearing briefs and the record on or about
16 October 30, 2014. He rendered his decision on December 29, 2014 based solely on the documents
17 submitted and without the benefit of live testimony in order to make credibility determinations,
18 particularly where dishonesty was alleged. Arbitrator Cohn ultimately found the District had “just
19 cause” to terminate Principal White despite the District failing to provide her with progressive
20 discipline and a reasonable opportunity for improvement.

21 **To date, Principal White has never been provided with her bargained-for right to**
22 **progressive discipline and a reasonable opportunity to improve prior to being terminated from**
23 **her long-time career with the District.**

24 ///

25 ///



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1 **III. LEGAL ARGUMENT**

2 **A. STANDARD OF REVIEW**

3 Nevada has adopted the Uniform Arbitration Act of 2000, codified in NRS 38.206 to 38.248
4 (UAA). The UAA provides for judicial review of arbitration awards, giving the parties 90 days from
5 the date of notice of an adverse arbitration award to move the district court to vacate, modify, or
6 correct the award. NRS 38.241(2); NRS 38.242(1).

7 For purposes of this motion, NRS 38.241(1) provides, in pertinent part, that upon motion to
8 the court by a party to an arbitral proceeding, the court shall vacate an award made in the arbitral
9 proceeding if: (b) there was evident partiality by an arbitrator as a neutral arbitrator or misconduct by
10 an arbitrator prejudicing the rights of the parties to the arbitral proceeding; (c) an arbitrator refused to
11 consider evidence material to the controversy or conducted the hearing contrary to NRS 38.231, so as
12 to prejudice substantially the rights of a party to the arbitral proceeding; and (d) an arbitrator
13 exceeded his or her powers.

14 There are also two common law grounds which require the court to vacate an arbitration
15 award, both of which are applicable to this matter: (1) where the award is arbitrary, capricious, or
16 unsupported by the agreement; and (2) where the arbitrator manifestly disregarded the law. *Clark*
17 *Cty. Educ. Ass'n v. Clark Cty. Sch. Dist.*, 122 Nev. 337, 341, 131 P.3d 5, 9 (200). The latter standard
18 ensures the arbitrator recognizes the applicable law while the former standard ensures the arbitrator
19 does not disregard facts or the terms of the arbitration agreement. *Id.*

20 **B. THE ARBITRATOR EXCEEDED HIS AUTHORITY BY FAILING TO**
21 **COMPLY WITH ARTICLE 18.1 IN THE CBA AND HE MANIFESTLY**
22 **DISREGARDED NRS 391.3116 IN UPHOLDING THE WRONGFUL**
23 **TERMINATION BECAUSE THE STATUTE REQUIRED THE DISTRICT**
24 **COMPLY WITH ARTICLE 18.1 IN THE CBA PRIOR TO DISMISSING**
25 **PRINCIPAL WHITE.**

23 The two most compelling grounds for vacating the arbitration award in this matter are: (1) the
24 arbitrator exceeded his powers by rendering an award that contradicts an express provision in the
25



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1 CBA, a violation of NRS 38.241(d); and (2) the arbitrator manifestly disregarded NRS 391.3116 in
2 rendering such an award because the statute required the arbitrator to ensure the District complied
3 with the CBA and, as such, required a different result.

4 **1. Arbitrator Cohn exceeded his powers in sustaining Principal White's**
5 **termination in violation of NRS 38.241(d).**

6 Arbitrator Cohn exceeded his powers. An arbitrator exceeds his powers when his award is
7 contradictory to the express language in the collective bargaining agreement. *See Int'l Assoc.*
8 *Firefighters v. City of Las Vegas*, 107 Nev. 906, 910, 823 P.2d 877, 879 (1991) (when interpreting a
9 CBA, an arbitrator's award may not be contradictory to the express language of the agreement).

10 Courts have allowed arbitrator's wide latitude in interpreting labor contracts. *Id.* (citing *Steel*
11 *v. Warrior & Gulf Co.*, 363 U.S. 574, 581-582 (1960)). The Nevada Supreme Court has been equally
12 deferential, stressing that "[w]hen an arbitrator is commissioned to interpret and apply the collective
13 bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of
14 the problem. *Reynolds Elec. v. United Bhd.*, 81 Nev. 199, 208, 401 P.2d 60, 65 (1965) (quoting
15 *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960). The Court has made clear, however, that the
16 deference accorded to an arbitrator is not limitless. **"[H]e is not free to contradict the express**
17 **language of the contract."** *City of Reno v. IAFF, Local 731*, 340 P.3d 589, 594 (Nev. 2014) (citing
18 *Leed Architectural Products v. Local 6674*, 916 F.2d 63, 65 (2nd Cir. 1990)(emphasis added)).

19 According to the Nevada Supreme Court, "[t]his limitation on arbitral authority holds for
20 disciplinary disputes as well. Where a labor contract expressly prescribed particular discipline for
21 specified offenses, an arbitration overturning or modifying that discipline does not 'draw its essence'
22 from the contract and is in excess of the arbitrator's authority." *Int'l Assoc. Firefighters v. City of Las*
23 *Vegas*, 107 Nev. at 910 (citing *Intern. Broth. Of Firemen v. Nestle Co., Inc.*, 630 F.2d 474 (6th Cir.
24 1980)). "To consider whether an award drew its essence from the ... agreement, the court must
25 ensure that the arbitrator looked to the words of the contract and to the conduct of the parties."



1 *Edward Hines Lumber Co. v. Lumber and Sawmill Workers Local No. 2588*, 764 F.2d 631, 635 (9th
2 Cir. 1985).

3 Arbitrator Cohn looked to the words of the contract in citing to Article 18.1 and looked to the
4 conduct of the District in not providing the required progressive discipline and reasonable
5 opportunity for improvement, but then rendered an award wholly contradictory to the express
6 language in the CBA. Specifically, Arbitrator Cohn cites to Article 18.1 as follows:

7 Disciplinary actions, including but not limited to, demotion, suspension, **dismissal**,
8 and non-renewal actions taken against post-probationary unit members (**in**
9 **accordance with NRS 391**), **shall** be progressive in nature and related to the nature of
10 the infraction. Unit members **shall** be given reasonable opportunity for improvement.

11 The [District] **shall** not discharge, demote, suspend or take any other disciplinary
12 action against a post probationary bargaining unit member of this unit without just
13 cause.

14 Exhibit 1, p. 2 (emphasis added).

15 The above language is mandatory and includes no exceptions with respect to post-
16 probationary unit members. Principal White is a post-probationary unit member and her dismissal
17 was allegedly done in accordance with NRS 391. Thus, based on the clear and unequivocal language
18 of Article 18.1, three things are required before the District can dismiss Principal White from her
19 employment:

- 20 1. She **shall** be entitled to progressive discipline,
- 21 2. She **shall** be given reasonable opportunity for improvement, and
- 22 3. She **shall not** be discharged without just cause.

23 Here, Principal White was not given progressive discipline, nor was she provided with a reasonable
24 opportunity to correct the alleged misconduct. Thus, Principal White was not terminated for just
25 cause because the District did not comply with Article 18.1.

26 Arbitrator Cohn acknowledged that progressive discipline and a reasonable opportunity for
27 improvement were not provided prior to the dismissal of Principal White (as set forth above in the



1 brief factual background) and, in fact, he found they were not necessary despite the language in the
2 CBA. According to Arbitrator Cohn, “any inclination to reverse Grievant’s discharge and *substitute*
3 *progressive discipline* such as a lengthy suspension, last chance return, demotion, an opportunity to
4 improve, etc., in light of her length of service and competency, is *washed away* by the dishonesty
5 finding.” Exhibit 1, p. 60, line 24 – p. 61, line 2 (emphasis added). Arbitrator Cohn even goes on to
6 state that “whether the ‘just cause’ standard is viewed under the NRS *or the Agreement*, [citing
7 directly to NRS 391.3116 discussed further below], given the totality of her performance errors and
8 misconduct, *summary discharge is warranted.*” *Id.* at p. 61, lines 3-6 (emphasis added).

9 Summary discharge cannot be and is not warranted given the express language of the CBA.
10 Arbitrator Cohn, therefore, exceeded his powers when he completely ignored Article 18.1 in
11 rendering his decision and, instead, “dispensed his own brand of industrial justice.” *Enterprise Wheel*
12 *& Car Corp.*, 362 U.S. 593, 597 (1960) (when an arbitrator “dispense[s] his own brand of industrial
13 justice” and “draws no legitimacy from the collective bargaining agreement – a court has no choice
14 but to refuse enforcement of the award”). Arbitrator Cohn’s finding that “summary discharge is
15 warranted” certainly does not draw its essence from the agreement; rather, it appears to be based on
16 the arbitrator’s own personal views and credibility determinations, none of which permit him to
17 ignore the language of the CBA and render an award contrary to what was bargained for by the
18 parties.

19 Arbitrator Cohn was obligated to ensure the District complied with the CBA and he was
20 obligated to render an award that does not contradict the express language of Article 18.1. He did not
21 do so. Arbitrator Cohn’s award, therefore, cannot stand because it is contradictory to the express
22 language of the CBA. *Int’l Assoc. Firefighters*, 107 Nev. at 910. Accordingly, the court must vacate
23 the award under NRS 38.241(d).

24 **2. Arbitrator Cohn manifestly disregarded NRS 391.3116.**

25



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1 Arbitrator Cohn manifestly disregarded the law. The manifest-disregard-of-the-law standard
2 is meant to ensure the arbitrator recognizes and follows the applicable law. “An arbitrator manifestly
3 disregards the law when he or she recognizes that the law *absolutely requires* a given result and
4 nonetheless *refuses* to apply the law correctly.” *Bohlmann v. Printz*, 120 Nev. 543, 545, 96 P.3d
5 1155, 1156 (2004), *overruled on other grounds by Bass-Davis v. Davis*, 122 Nev. 442, 134 P.3d 103
6 (2006) (emphasis in original). Mere error in the application of the law is not grounds to vacate an
7 arbitration award.” *Id.* at 545, 134 P.3d 103, 96 P.3d at 1156. Rather, in order to vacate an
8 arbitration award due to manifest disregard of the law, “[t]he governing law alleged to have been
9 ignored must be well-defined, explicit, and clearly applicable.” *Graber v. Comstock Bank*, 111 Nev.
10 1421, 1428, 905 P.2d 1112, 1116 (1995). “[C]ourts are not at liberty to set aside arbitration awards
11 because of an arguable difference regarding the meaning or applicability of laws.” *Id.* at 1428, 905
12 P.2d at 1116.

13 Arbitrator Cohn manifestly disregarded NRS 391.3116, despite citing to it and emphasizing it
14 in his award. In fact, Arbitrator Cohn emphasizes **in bold and underline** the title of NRS 391.3116,
15 which provides that a “[c]ontract negotiated by collective bargaining may **supersede provisions**
16 **of NRS 391.311 to 391.31197.**” Exhibit 1, p. 4, lines 22-23 (emphasis in original). Thus, he clearly
17 acknowledges and correctly concludes that NRS 391.3116 is applicable to these arbitration
18 proceedings. Arbitrator Cohn even cites to this very statute in a footnote after finding that progressive
19 discipline and a reasonable opportunity to improve are “washed away” because he thinks Principal
20 White is dishonest. *Id.* at p. 61, lines 2-4, n. 20.

21 Importantly, Arbitrator Cohn failed to cite to the *language* in NRS 391.3116. The provisions
22 of that statute he cited actually state:

23 Excluding the provisions of NRS 391.3129^[4], the provisions of NRS 391.311 to
24 391.3197, inclusive, **do not apply** to a teacher, **administrator**, or other licensed

25 ⁴ NRS 391.3129 deals with evaluations of post probationary employees and is not applicable here.



1 employee who has entered into a contract with the board negotiated pursuant to
2 chapter 288 of NRS if the contract contains separate provisions relating to the
3 board's right to dismiss or refuse to reemploy the employee or demote an
4 administrator.

4 [Emphasis added].

5 Article 18.1 is a separate provision in the bargained-for CBA that relates directly to the
6 District's right to dismiss Principal White and, therefore, the provisions of NRS 391.31297, NRS
7 391.313 and NRS 391.314, relied upon by the District and apparently the arbitrator, **do not apply**
8 with respect to her dismissal and cannot be used to support the arbitrator's award. Yet, despite
9 Arbitrator Cohn's citation of the applicable law, he failed to apply it when he ignored the provisions
10 of Article 18.1 and relied upon provisions of NRS 391 in its place.

11 Arbitrator Cohn's statement that it did not matter whether he viewed the "just cause" standard
12 under the NRS or the Agreement only further demonstrates his manifest disregard of NRS 391.3116
13 and the CBA. Exhibit 1 at p. 61, lines 3-6. Before he ever got to the just cause standard, he was
14 required to apply **all** the provisions of Article 18.1. Arbitrator Cohn's inexplicable disregard of this
15 unambiguous law is reversible error. Accordingly, based on all the foregoing, the Court should
16 vacate the award under the manifest disregard standard.

17 **C. THE ARBITRATOR EVIDENCED PARTIALITY TOWARDS THE DISTRICT**
18 **AND HIS AWARD WAS ARBITRARY AND CAPRICIOUS.**

19 Although the court can vacate the arbitration award based on the grounds set forth above,
20 additional grounds exist that also warrant the award being vacated. Arbitrator Cohn evidenced
21 partiality toward the District in violation of NRS 38.241(1)(b)(1) and his award was arbitrary and
22 capricious.

23 The arbitrary and capricious standard is meant to ensure the arbitrator does not disregard the
24 facts or the terms of the arbitration agreement. Under this standard, the arbitrator is confined to
25 interpreting and applying the agreement, and his award need not be enforced if it is arbitrary,



1 capricious, or unsupported by the agreement. *Bohlmann v. Printz*, 120 Nev. 543, 547, 96 P.3d 1155,
2 1158 (2004), *overruled on other grounds by Bass-Davis v. Davis*, 122 Nev. 442, 134 P.3d 103
3 (2006). In making this determination, the Nevada Supreme Court has considered whether the
4 arbitrator's findings were supported by substantial evidence. *Clark County Educ. Ass'n v. Clark*
5 *County Sch. Dist.*, 122 Nev. 337, 344, 131 P.3d 5, 9 (2006).

6 First and foremost, substantial evidence does not support that the District followed the
7 procedures in Article 18.1, which will not be rehashed here, but does support an additional ground on
8 which to vacate the arbitrator's award under this standard.

9 Additionally, substantial evidence does not support Arbitrator Cohn's finding that summary
10 dismissal was warranted under these facts, or that the District had just cause to terminate Principal
11 White. Arbitrator Cohn found that Principal White was discharged on the following three grounds:
12 (1) "poor management practices and other areas," Exhibit 1, at p. 55, lines 15-16; (2) teachers were
13 required to take GLAD training when there were not sufficient funds to pay them while they were
14 being trained, *Id.* at p. 59, lines 4-7; and (3) dishonesty *Id.* at p. 60, lines 21-23.

15 Arbitrator Cohn then opines that the first two grounds demonstrate "cause for discipline," but
16 the analysis would turn on whether the District demonstrated just cause existed for the dismissal. *Id.*
17 at p. 59, lines 22-25. Arbitrator Cohn acknowledges that NRS 391.313 and NRS 391.314 (assuming
18 for purposes of this argument that they applied) required the District to admonish Principal White for
19 reasons that may lead to dismissal, which also required "a reasonable effort to assist the employee to
20 correct whatever appears to be the cause for the employee's potential...dismissal" and "allow
21 reasonable time for improvement." *Id.* at p. 3, lines 16-27. Just as Article 18.1 was not followed,
22 substantial evidence in the record and in the arbitrator's award demonstrates that the District failed to
23 comply with NRS 391.313 to support a dismissal on the first two grounds. At no time during the
24 period when Principal White was being provided with notices of IDP investigations, placed on
25 administrative leave with and without pay, and then ultimately terminated was she ever counseled or



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1 given any opportunity whatsoever to improve in the alleged deficiencies cited by Arbitrator Cohn.
2 Thus, substantial evidence, including the evidence cited in the factual background portion of this
3 motion, supports finding the award arbitrary and capricious.

4 With respect to the third ground, dishonesty, substantial evidence does not support such a
5 finding. First and foremost, it's imperative to point out that Arbitrator Cohn did not personally
6 participate in the actual arbitration proceedings. He did not hear witnesses testify both for and
7 against Principal White. He did not hear any testimony whatsoever from Principal White. Rather, he
8 based his credibility determinations on documentary evidence and transcripts. Moreover, the District
9 had previously accused Principal White of dishonesty in the allegations related to the Letter of
10 Admonition and the prior arbitration. Arbitrator Cohn even acknowledged in his award that the
11 arbitrator who actually participated in those proceedings and heard testimony from Principal White
12 and other witnesses **did not sustain the dishonesty accusation.** Exhibit 1, p. 54, lines 7-8.

13 Arbitrator Cohn then finds that Principal White's testimony that she could not recall an audit
14 *that took place four years earlier*, discussing issues with an auditor regarding SAFs and gift cards,
15 filing the school's responses to the internal auditor, or seeing the a Manual before a March 7th
16 meeting "is simply too far a stretch." *Id.* at 60, lines 5-12. He seemed especially concerned with her
17 inability to recall the Manual, which he states "is wholly incredible," as well as her lack of
18 knowledge regarding SAFs and restricted funds. *Id.* at 60, lines 14-20. Thus, he found she was
19 "dishonest" on these issues.

20 Remarkably, the testimony of other witnesses ALSO demonstrates they too were unable to
21 recall seeing the Manual or had never bothered to read it, had a lack of knowledge of SAFs and
22 restricted funds, and were not aware that purchasing gift cards and other items was against District
23 policy. Exhibit 1, p. 19-47. In fact, similar testimony was given by multiple witnesses and no
24 testimony was given by any other principal that they were fully aware of SAFs and restricted funds,
25 they were fully apprised of the manual, they knew exactly what they could and could not purchase



1 using SAFs, etc. *Id.* Did Arbitrator Cohn find these witnesses not credible as well? If so, what
2 witnesses remain to contradict Principal White and support the award?

3 Substantial evidence in the record demonstrates that Arbitrator Cohn appeared to be partial
4 toward the District based on his own views and beliefs of what a school principal should and should
5 not know and do under the circumstances of this matter. Exhibit 1, p. 55-56, 58-61. Substantial
6 evidence in the record further demonstrates that the District bears some, if not the most, responsibility
7 for its complete lack of proper training for principals on the use of SAFs (even its own auditors don't
8 appear to know the correct use and give contradictory responses, mandating training when funds are
9 available, **and properly training District personnel on how to follow provisions in a CBA**
10 **relating to dismissing a principal.** Exhibit 1. Substantial evidence in the record does not support
11 the arbitrator's finding of dishonesty under these circumstances or his award upholding the
12 termination of Principal White. Accordingly, the award should be vacated pursuant to NRS
13 38.241(1)(b)(1) and because it is arbitrary and capricious.

14 **D. THE ARBITRATION WAS NOT FAIR AND EXPEDITIOUS WHICH**
15 **VIOLATED NRS 38.231(1).**

16 Finally, as a separate and independent ground to vacate the award in this matter, the
17 proceedings themselves violated NRS 38.231(1), which provides that an arbitrator may conduct an
18 arbitration in such a manner as the arbitrator considers appropriate **for a fair and expeditious**
19 **disposition of the proceeding.** A fair and expeditious disposition is a crucial factor under NRS
20 38.231(1). The proceedings in this manner were not conducted in a way that Principal White
21 received a fair and expeditious disposition.

22 These proceedings commenced on February 25-28, 2014 before Arbitrator Anna D. Smith out
23 of Cleveland, Ohio. Upon the conclusion of the proceedings, after she had heard witness testimony
24 and made credibility determinations, Arbitrator Smith stated that post-hearing briefs would be due
25 before April 18, 2014, after which time she would render her decision within sixty (60) days unless



1 an extension was granted. Exhibit 5, p. 809. Accordingly, a fair and expeditious disposition would
2 have been receiving a decision on or about June 18, 2014. Unfortunately, Arbitrator Smith became
3 ill and was unable to fulfill her duties as arbitrator. Arbitrator Smith informed the parties that a
4 decision was pending and, at one point, stated she could provide a summary award with supporting
5 facts, but no opinion was ever issued. Moreover, the WSPA and Principal White did not want to risk
6 an award rendered without supporting facts as presented to the arbitrator. Eventually, nearly one and
7 a half years after the events leading to the arbitration occurred, another arbitrator had to be selected.
8 Notably, the newly appointed arbitrator was also bound by the fair and expeditious standard cited
9 above.

10 Arbitrator Cohn was appointed and was provided with the record and post-hearing briefs on
11 or about October 30, 2014, some eight months after the proceedings had adjourned. Exhibit 1, p. 1.
12 Because the proceedings had already adjourned, Arbitrator Cohn did not hear witness testimony or
13 participate in the actual arbitration proceedings. Rather, he relied on the transcripts and evidence
14 admitted during the proceedings to make his credibility determinations. Astonishingly, as pointed out
15 in more detail above, he found Principal White to be dishonest without ever once speaking to her
16 directly or hearing her testimony for himself, a finding even Arbitrator Halter who personally
17 conducted prior arbitration proceedings and heard testimony directly from Principal White, and
18 whom Arbitrator Cohn cites to throughout his award, could not find. Arbitrator Cohn ultimately
19 issued his award and disposition on December 29, 2014, nearly one (1) year after the proceedings had
20 commenced.

21 Under this unusual set of circumstances, Principal White was not afforded a fair disposition
22 because she was not afforded the opportunity to be heard and have her credibility judged by someone
23 who actually witnessed her testimony and the testimony of the witnesses who spoke for and against
24 her where her truthfulness was in question and the arbitrator's decision turned on this finding.
25



1 Dishonesty is a very serious allegation and certainly warranted an arbitrator who based any
2 findings of dishonesty on more than simply reading transcripts and other documentary evidence. In
3 fact, courts defer to arbitrators, in part, because they are the one's who witness the testimony in order
4 to make credibility determinations in the first instance. Here, Arbitrator Cohn's award is no different
5 than if this Honorable Court had stepped in and substituted its judgment regarding Principal White's
6 truthfulness and her credibility and the credibility of other witnesses solely based on the paper record
7 before it; a disposition under these circumstances is hardly fair. And to make matters worse,
8 Arbitrator Cohn did not even cite to any legal authority to support his award or his conclusions that,
9 under these facts, progressive discipline can simply be "washed away" despite bargained-for rights,
10 and just cause can be found based on personal views rather than the legal standard applicable to the
11 matter.

12 Principal White was also not afforded an expeditious disposition where she had to wait nearly
13 a year to receive a decision. Principal White's livelihood and reputation are on the line and, pursuant
14 to NRS 38.231(1), she was entitled to more than the unfair and drawn out proceedings and
15 disposition she received in this matter. Through no fault of the parties, the initial arbitrator becoming
16 ill and being incapable of fulfilling her duties ultimately tainted these proceedings and caused an
17 unfair and non-expeditious disposition, which substantially prejudiced Principal White. Accordingly,
18 the court should vacate the award under NRS 38.231(1).

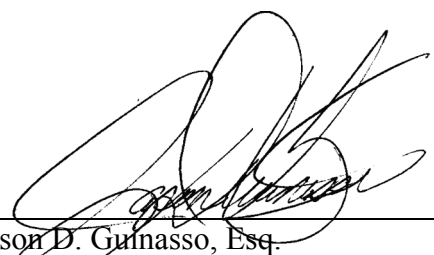
19 **IV. CONCLUSION**

20 The Court should vacate the arbitrator's award in this matter because he exceeded his powers
21 by rendering an award that contradicts the CBA; he manifestly disregarded the law by acknowledging
22 a statute that expressly states the CBA controls in this matter and then ignoring it; he showed
23 partiality towards the district and rendered an arbitrary and capricious award where substantial
24 evidence did not support his findings; and the proceedings in this matter did not result in a fair and
25 expeditious disposition as required under Nevada law.



1 In accordance with all the foregoing, the Washoe School Principals' Association respectfully
2 requests the Court **VACATE** the *Arbitrator's Opinion and Award* issued by Arbitrator Alexander
3 Cohn in Napa, California, dated December 29, 2014.

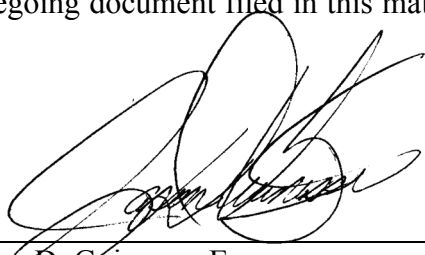
4 DATED this 27th day of March , 2015.


Jason D. Guinasso, Esq.
Attorney for Washoe School Principals'
Association and Kara White

5
6
7
8 **AFFIRMATION**

9
10 The undersigned does hereby affirm that the foregoing document filed in this matter does not
11 contain the social security number of any person.

12 DATED this 27th day of March, 2015.


Jason D. Guinasso, Esq.
Attorney for Washoe School Principals'
Association and Kara White



23 Reese Kintz,
Guinasso
190 W Huffaker Ln
Suite 402
24 Reno, NV 89511
(775) 853-8746
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CERTIFICATE OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 190 W. Huffaker Lane, Suite 402, Reno, Nevada, 89511.

On March 27, 2015, I served the following:

MOTION TO VACATE ARBITRATION AWARD

on the following in said cause as indicated below:

KARA WHITE 601 W D STREET SOUTH DIXON, CA 95620 (VIA U.S. MAIL)	RON DREHER PO BOX 40502 RENO, NV 89504 (VIA U.S. MAIL)
VIRGNIA DORAN 425 E. 9TH STREET RENO, NV 89504 (VIA U.S. MAIL)	CHRISTOPHER REICH, ESQ. PO BOX 30425 RENO, NV 89520 (VIA U.S. MAIL)

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 27, 2015, at Reno, Nevada.

/s/ Katelyn Prinz

KATELYN PRINZ



Reese Kintz,
Guinasso
190 W Huffaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

LIST OF EXHIBITS
CASE NO. (not yet assigned)
Arbitration between Kara White and Washoe County School District
MOTION TO VACATE ARBITRATION AWARD

EXHIBIT	DOCUMENT TITLE	# OF PAGES
Exhibit 1	Arbitrator's Opinion and Award, dated December 29, 2014	62
Exhibit 2, Part One	Arbitration Transcript of Proceedings, Volume 1 dated February 25, 2014	19
Exhibit 2, Part Two	Arbitration Transcript of Proceedings, Volume 1 dated February 25, 2014	17
Exhibit 2, Part Three	Arbitration Transcript of Proceedings, Volume 1 dated February 25, 2014	18
Exhibit 2, Part Four	Arbitration Transcript of Proceedings, Volume 1 dated February 25, 2014	13
Exhibit 3, Part One	Arbitration Transcript of Proceedings, Volume 2 dated February 26, 2014	19
Exhibit 3, Part Two	Arbitration Transcript of Proceedings, Volume 2 dated February 26, 2014	18
Exhibit 3, Part Three	Arbitration Transcript of Proceedings, Volume 2 dated February 26, 2014	17
Exhibit 3, Part Four	Arbitration Transcript of Proceedings, Volume 2 dated February 26, 2014	18
Exhibit 3, Part Five	Arbitration Transcript of Proceedings, Volume 2 dated February 26, 2014	16
Exhibit 3, Part Six	Arbitration Transcript of Proceedings, Volume 2 dated February 26, 2014	13
Exhibit 4, Part One	Arbitration Transcript of Proceedings, Volume 3, dated February 27, 2014	20
Exhibit 4, Part Two	Arbitration Transcript of Proceedings, Volume 3, dated February 27, 2014	17



Reese Kintz,
Guinasso
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1	EXHIBIT	DOCUMENT TITLE	# OF PAGES
2	Exhibit 4, Part Three	Arbitration Transcript of Proceedings, Volume 3, dated February 27, 2014	17
3	Exhibit 4, Part Four	Arbitration Transcript of Proceedings, Volume 3, dated February 27, 2014	18
4			
5	Exhibit 4, Part Five	Arbitration Transcript of Proceedings, Volume 3, dated February 27, 2014	13
6	Exhibit 5, Part One	Arbitration Transcript of Proceedings Volume 4, dated February 28, 2014	18
7			
8	Exhibit 5, Part Two	Arbitration Transcript of Proceedings Volume 4, dated February 28, 2014	16
9	Exhibit 5, Part Three	Arbitration Transcript of Proceedings Volume 4, dated February 28, 2014	18
10	Exhibit 5, Part Four	Arbitration Transcript of Proceedings Volume 4, dated February 28, 2014	15
11			
12	Exhibit 6	February 4, 2013 Letter	1
13	Exhibit 7, Part One	January 28, 2014 Arbitration Award	22
14	Exhibit 7, Part Two	January 28, 2014 Arbitration Award	4
15	Exhibit 8	March 5, 2013 Letter	2
16	Exhibit 9, Part One	March 7, 2013 IDP Transcript	33
17	Exhibit 9, Part Two	March 7, 2013 IDP Transcript	26
18	Exhibit 10, Part One	March 22, 2013 Transcript	33
19	Exhibit 10, Part Two	March 22, 2013 Transcript	13
20	Exhibit 11	March 22, 2013 Letter	2
21	Exhibit 12	April 29, 2013 Letter	4
22	Exhibit 13	May 3, 2013 Letter	3
23	Exhibit 14	May 21, 2013 Superintendent Hearing Transcript	11
24	Exhibit 15	June 12, 2013 Letter	2
25			



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IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

WASHOE COUNTY SCHOOL DISTRICT,

Appellant,

v.

KARA WHITE AND WASHOE SCHOOL
PRINCIPALS' ASSOCIATION,

Respondents.

No. 69385

Electronically Filed
Jan 04 2016 03:52 p.m.

DOCKETING STATEMENT
CIVIL APPEALS
Tara K. Miller
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Second Department 9

County Washoe Judge Scott Freeman

District Ct. Case No. CV15-00572

2. Attorney filing this docketing statement:

Attorney Christopher B. Reich, Esq. Telephone (775) 348-0300

Firm Washoe County School District, Office of the General Counsel

Address 425 E. 9th Street
PO Box 30425
Reno, Nevada 89520

Client(s) Washoe County School District

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Jason D. Guinasso, Esq. Telephone (775) 853-8746

Firm Reese Kintz Guinasso, LLC

Address 190 W Huffaker Lane, Suite 402
Reno, NV 89511

Client(s) Kara White and Washoe School Principals' Association

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Vacated Arb Award</u> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None; not applicable.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None other than the one appealed from: Kara White and Washoe School Principals' Association v. Washoe County School District; CV15-00572; disposed on November 10, 2015 by Order Vacating Arbitration Award.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This matter stems from an application for judicial relief pursuant to Nevada Revised Statutes 38.218 filed by Kara White and the Washoe School Principals' Association. The District Court has jurisdiction to review 'binding arbitration' Awards in accordance with NRS 38.206 to 38.248, also known as the Uniform Arbitration Act of 2000. On December 29, 2014 an Arbitrator's Award was issued by Arbitrator Alexander Cohn in Napa, California upholding the Washoe County School District's termination of former Principal Kara White. On November 10, 2015, after briefing and oral argument, the District Court granted Respondents' motion to vacate the Arbitrator's Opinion and Award.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

- The District Court erroneously and improperly vacated the Arbitration Award
- The District Court exceeded its limited review of the Arbitration Award
- Respondents failed to meet their high burden to prove their case by clear and convincing evidence
- The Arbitrator did not exceed his powers, NRS 38.241(d)
- The Arbitrator did not manifestly disregard the law, NRS 391.3116
- The Arbitration Award is not arbitrary and capricious

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Appellants believe this matter is not presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17.

14. Trial. If this action proceeded to trial, how many days did the trial last? 0 _____

Was it a bench or jury trial? Not applicable _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from November 12, 2015

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

Not applicable.

17. Date written notice of entry of judgment or order was served November 12, 2015

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed December 11, 2015

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Not applicable.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRS 38.247(1)(e) and (2)</u> | |
-

(b) Explain how each authority provides a basis for appeal from the judgment or order:

"NRS 38.247 Appeals.

1. An appeal may be taken from:

(a)

(e) An order vacating an award without directing a rehearing;

2. An appeal under this section must be taken as from an order or a judgment in a civil action."

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Washoe County School District, Appellant
Kara White, Respondent
Washoe School Principals' Association, Respondent

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Not applicable.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Appellants: Arbitration Award should be confirmed

Respondents: Arbitration Award should be vacated

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

Not applicable.

(b) Specify the parties remaining below:

None. Not applicable.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

The November 10, 2015 Order is independently appealable under NRS 38.247(1)(e) and (2).

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

Please see the attached Exhibits:

Exhibit 1: Motion to Vacate Arbitration Award

Exhibit 2: Order Granting Motion to Vacate Arbitration Award

Exhibit 3: Notice of Entry of Order

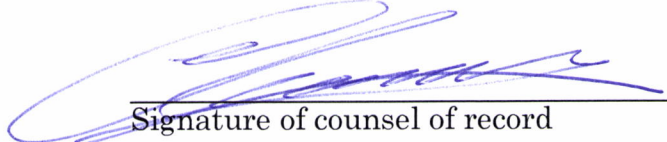
VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Washoe County School District
Name of appellant

Christopher B. Reich, Esq.
Name of counsel of record

Jan 4, 2016
Date


Signature of counsel of record

Washoe County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the _____ day of _____, _____, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

SEE ATTACHED CERTIFICATE OF SERVICE

Dated this _____ day of _____, _____

Signature

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25(c), I certify that I am an employee of the WASHOE COUNTY
3 SCHOOL DISTRICT and that on this date I served a true and correct copy of the preceding
4 document addressed to the following:

5 Jason D. Guinasso, Esq.
6 Reese Kintz Guinasso, LLC
7 190 W Huffaker Lane, Suite 402
8 Reno, NV 89511
9 Attorney for Kara White and Washoe School Principals' Association

10 **AND**

11 Robert L. Eisenberg
12 6005 Plumas St., Suite 300
13 Reno, NV 89509
14 Settlement Program Judge

15 by electronically filing the foregoing document with the Clerk of the Court which served Mr.
16 Guinasso and Mr. Eisenberg electronically.

17 DATED this 4th day of January, 2016.

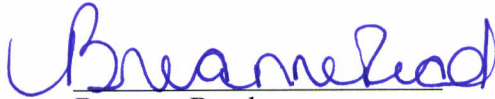
18 
19 Breanne Read
20
21
22
23

EXHIBIT INDEX

Exhibit No.	Exhibit Name	No. of Pages (including cover sheet)
1.	Motion to Vacate Arbitration Award	26
2.	Order Granting Motion to Vacate Arbitration Award	12
3.	Notice of Entry of Order	16