

1
2 IN THE SUPREME COURT OF THE STATE OF NEVADA

3
4 WASHOE COUNTY SCHOOL
5 DISTRICT,

6 Appellant,

7 vs.

8 KARA WHITE; AND WASHOE
9 SCHOOL

10 PRINCIPALS' ASSOCIATION,

11 Respondents.

Electronically Filed
Aug 04 2016 03:25 p.m.
Tracie K. Lindeman
Supreme Court Case No. 69385
Clerk of Supreme Court

12
13
14 **RESPONDENT'S ANSWERING BRIEF**

15
16 **ATTORNEY FOR THE
APPELLANT**

17 CHRISTOPHER REICH, ESQ.
18 Nevada Bar No. 10198
19 PO Box 30425
20 Reno, NV 89520
21 Attorney for Washoe County School
22 District

ATTORNEY FOR RESPONDENT

JASON D. GUINASSO, ESQ.
Nevada Bar No. 8478
DEVON T. REESE, ESQ.
Nevada Bar No. 7496
Reese Kintz Guinasso, LLC
190 W. Huffaker Lane, Suite 402
Reno, NV 89511
Tel.: 775-832-6800
Fax: 775-201-9611
Attorneys for Kara White



23 Reese Kintz,
Guinasso
190 W Huffaker Ln
Suite 402
Reno, NV 89511
24 (775) 833-8746

1 **DISCLOSURE STATEMENT IN COMPLIANCE WITH NRAP 26.1**

2 The undersigned counsel of record certifies that the following are
3 persons and entities as described in NRAP 26.1(a) and must be disclosed.
4 These representations are made in order that the judges of this court may
5 evaluate possible disqualification or recusal.
6

- 7 1. KARA WHITE
- 8 2. WASHOE SCHOOL PRINCIPAL'S ASSOCIATION
- 9 3. Jason D. Guinasso, Esq. and Devon T. Reese, Esq. of REESE
10 KINTZ GUINASSO, LLC, are and have been at all times relevant
11 to the commencement of litigation subject to the Appellant's
12 appeal the attorneys of record for Kara White. No other partners
13 or associates from Reese Kintz Guinasso are expected to appear
14 before this Court with respect to the appeal now pending.
15
16
17
18
19
20
21



23 Reese Kintz,
24 Guinasso
25 190 W Hoffaker Ln
 Suite 402
 Reno, NV 89511
 (775) 853-8746

TABLE OF CONTENTS

TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
I. ROUTING STATEMENT.....	6
II. STATEMENT OF ISSUES PRESENTED FOR REVIEW	7
III. STATEMENT OF THE CASE.....	7
A. PROCEDURAL HISTORY	7
1. CASE NO. A1-046098.....	7
2. CASE NO. CV15-00572	7
3. SUPREME COURT CASE NO. 69385	8
IV STATEMENT OF FACTS	8
V. SUMMARY OF ARGUMENT	14
VI. ARGUMENT.....	16
A. THE DISTRICT COURT PROPERLY FOUND ARBITRATOR COHN EXCEEDED HIS AUTHORITY AS AN ARBITRATOR.....	16
B. THE DISTRICT COURT PROPERLY FOUND THAT ARBITRATOR COHN MANIFESTLY DISREGARDED NRS 391.3116.....	22
C. THE DISTRICT COURT PROPERLY FOUND ARBITRATOR COHN'S AWARD TO BE ARBITRARY AND CAPRICIOUS	27
VII. CONCLUSION.....	31



1	ATTORNEY'S CERTIFICATE OF COMPLIANCE.....	32
---	---	----

2	TABLE OF AUTHORITIES	
3	<u>STATUTES</u>	

4	NRAP 17.....	6
5	NRAP 17(a)(11).....	6
6	NRS 391.3116.....	7, 15, 16, 22, 23, 25, 26, 31
7	NRS 391.312(c).....	11
8	NRS 391.317.....	12
9	NRS 391.....	15, 18
10	NRS 288.....	15
11	NRS 38.241(d).....	22
12	NRS 391.311.....	23, 24, 25
13	NRS 391.3197.....	23, 24, 25
14	NRS 391.3129.....	23, 24, 25
15	NRS 391.313.....	24
16	NRS 391.314.....	24
17	NRS 391.31297(1)(p).....	28
18	NRAP 32(a)(4).....	32
19	NRAP 32(a)(5).....	32
20	NRAP 32(a)(6).....	32
21	NRAP 32(a)(7).....	32


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

1	NRAP 32(a)(7)(C).....	32
---	-----------------------	----

2	NRAP 28(e)(1).....	32
---	--------------------	----

CASES

4	<i>Clark Cty. Educ. Ass'n v. Clark Cty. Sch. Dist.</i> , 122 Nev. 337, 341, 131 P.3d 5,	
5	8 (2006).....	6, 27

7	<i>Cleveland and Board of Education v. Loudermill</i> , 470 U.S. 532	
8	(1985).....	13

9	<i>Int'l Assoc. Firefighters v. City of Las Vegas</i> , 107 Nev. 906, 910, 823 P.2d 877,	
10	879 (1991).....	16, 17

11	<i>Steel v. Warrior & Gulf Co.</i> , 363 U.S. 574, 581-582 (1960).....	17
----	--	----

12	<i>Reynolds Elec. v. United Bhd.</i> , 81 Nev. 199, 208, 401 P.2d 60, 65	
13	(1965).....	17

15	<i>Enterprise Wheel & Car Corp.</i> , 363 U.S. 593	
16	(1960).....	17

17	<i>Int'l Broth. Of Firemen & Oilers, AFL-CIO, Local No. 935-B v. Nestle Co.,</i>	
18	<i>Inc.</i> , 630 F.2d 474 (6 th Cir. 1980).....	19

19	<i>Int'l Assoc. Firefighters, Local 1285 v. City of Las Vegas</i> , 107 Nev. 906, 823	
20	P.2d 877 (1991).....	19

22	<i>Health Plan of Nevada, Inc. v. Rainbow Med., LLC</i> , 120 Nev. 689, 697-98,	
23	100 P.3d 172, 178 (2004).....	20



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

1	<i>Int'l Assoc. Firefighters,</i>	107	Nev.	at
2	910.....	22		
3	<i>Bohlmann v. Printz,</i>	120 Nev. 543, 545, 96 P.3d 1155, 1156 (2004),	<i>overruled</i>	
4	<i>on other grounds by Bass-Davis v. Davis,</i>	122 Nev. 442, 134 P.3d 103		
5	(2006).....	22, 27		
6	<i>Graber v. Comstock Bank,</i>	111 Nev. 1421, 1428, 905 P.2d 1112, 1116		
7	(1995).....	23		



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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5

2
3
4
5
6

7

8
9
0
1
2
3
4

5
6
7
8
9
20
21
22
23



1 **II. STATEMENT OF ISSUES PRESENTED FOR REVIEW**

2 A. Whether the District Court erred in determining that Arbitrator
3 Cohn exceeded his authority.

4 B. Whether the District Court erred in determining that Arbitrator
5 Cohn manifestly disregarded NRS 391.3116.
6

7 C. Whether the District Court erred in determining that the award
8 given by Arbitrator Cohn was arbitrary and capricious.

9 **III. STATEMENT OF THE CASE**

10 **A. PROCEDURAL HISTORY**

11 **1. CASE NO. A1-046098**

12
13 On February 25, 2014, arbitration commenced under Case No. A1-
14 046098, continuing to its' completion on February 28, 2014.

15 The original arbitrator, Arbitrator Smith, became ill rendering her unable
16 to provide a decision, wherein Arbitrator Cohn was appointed and was
17 provided post-hearing briefs and the arbitration record. On December 29,
18 2014, Arbitrator Cohn rendered his decision stating, "*Grievant was discharged*
19 *for just cause.*" **JA0087.**
20

21 **2. CASE NO. CV15-00572**

22 On March 27, 2015, Kara White filed her Motion to Vacate Arbitration
23 Award. WCSD filed their Opposition to the Motion on May 8, 2015.
24



25
Reese Kintz,
Gunnasso
190 W. Huffaker Ln.
Suite 402
Reno, NV 89511
(775) 853-8746

1 The Reply brief and Request for Submission were subsequently filed by
2 Ms. White on June 8, 2015.

3 On August 25, 2016, a hearing was set for this matter to be heard on
4 October 27, 2015.

5
6 On November 10, 2015, the Honorable Patrick Flanagan of the Second
7 Judicial District Court issued the Order Granting Motion to Vacate Arbitration
8 Award.

9 **3. SUPREME COURT CASE NO. 69385**

10 On December 11, 2015, the WCSD filed the foregoing appeal with the
11 Supreme Court of the State of Nevada.

12
13 **IV. STATEMENT OF FACTS**

14 Principal White had been employed with the District since 1999, first as
15 a teacher for six years, then a student dean for one year, then an assistant
16 principal for two years, and finally as the principal of Lemon Valley
17 Elementary School ("LVES") for four and a half years (up to the point of her
18 termination). LVES was an underperforming school, but not a Title I school,
19 when Ms. White became principal, with the school improving substantially
20 under her administration and eventually becoming a Gold Star School.

21
22 **JA0078.** She received all positive evaluations during her employment with the
23 District. **JA0368.** (Transcript of Proceedings, Volume 4, p. 700). In fact,



1 during the 2012-2013 academic school year, Principal White was a mentor for
2 other principals. **JA0358** (p. 657). Principal White had a total of seven years
3 as an administrator with the District at the time of her termination on April 29,
4 2013. **JA0357** (p. 654).

5
6 The District terminated Principal White from her employment for (1) an
7 alleged misuse of "Student Activity Funds" ("SAFs"), (2) requiring teachers at
8 LVES to attend "Guided Language Acquisition Development" ("GLAD")
9 training, (3) allegedly requiring her employees to use sick or personal days for
10 some of such GLAD training, and (4) allegedly being dishonest during various
11 IDP's associated with the above allegations. **JA0364** (p. 682).

12
13 On February 4, 2013, Principal White was directed to meet with Paul
14 LaMarca, the District's Chief School Performance Officer. She and her
15 representative, Ron Dreher, met with Mr. LaMarca as directed. During the
16 meeting, Mr. LaMarca handed Principal White a letter dated that same day
17 advising her that she was being "placed on administrative leave with pay
18 effective this day February 4, 2013, pending an investigation into the
19 allegations of misconduct on your part." **JA0424** (February 4, 2013 Letter).

20
21 On February 27, 2013, Mr. LaMarca issued a "Letter of Admonition" stating
22 that should Principal White fail to make required improvements, she will be
23 subject to further disciplinary action, up to and including dismissal. **JA0429**



1 (January 28, 2014 Arbitration Award, p. 4). The letter further provided for a
2 professional assistance plan to provide Principal White with an opportunity to
3 improve as required by the CBA and Nevada law. **JA0429. Despite the**
4 **representations in this letter, Principal White was never placed on a plan**
5 **or given the opportunity to improve.** **JA0369-JA0370** (Transcript of
6 Proceedings, Volume 4, p. 704-705). Moreover, the alleged areas needing
7 improving as addressed in this letter did not relate to SAF funds or GLAD
8 training.

9
10 A few minutes after issuing the Letter of Admonition to Principal White,
11 Mr. LaMarca handed her a "Notice of Intent to Suspend for ten days."
12 **JA0431.** The WSPA immediately filed a grievance protesting the Letter of
13 Admonition and the suspension. The grievance was arbitrated in August and
14 September 2013. The Arbitrator found there were no grounds warranting a
15 suspension, but upheld the Letter of Admonition ("LOA"). **JA0452.** Pursuant
16 to Article 17.1 in the CBA, the LOA would have been removed from Principal
17 White's file within 90 days if she met the standards and made the
18 improvements set forth in the LOA.

19
20
21 Up to this point, no progressive discipline or reasonable opportunity to
22 improve had been provided to Principal White for the allegations in the Letter
23 of Admonition.



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

1 Thereafter, on March 5, 2013, Principal White was notified by email to
2 her representative that the District would conduct an "Investigatory/Due
3 Process Meeting" on March 7, 2013, for the purpose of investigating
4 allegations pursuant to NRS 391.312(c), including: allegations of
5 unprofessional conduct, inadequate performance, failure to comply with such
6 reasonable requirements as a board may prescribe, failure to show
7 improvement and evidence of professional training and growth, and
8 dishonesty. **JA0454-JA0455** (March 5, 2013 Letter). The District alleged **for**
9 **the first time in this notice** that Principal White misused SAFs. **JA0454.**
10
11 Importantly, the District was already accusing Principal White of failing to
12 show improvement for issues she was not even made aware of until this notice,
13 and she was accused of being dishonest prior to being investigated.¹
14

15 On March 7, 2013, Principal White appeared with her representative
16 before Doug Parry, Area Superintendent, and Virginia Doran, Labor Relations
17 Manager. **JA0457-JA0516** (March 7, 2013 IDP Transcript). The meeting was
18 continued to March 22, 2013. **JA0518-JA0564** (March 22, 2013 IDP
19 Transcript). When the meeting continued on March 22, 2013, Principal White
20 was handed another "Notice of Investigatory/Due Process Meeting and Right
21

22
23 ¹ To the extent the District was trying to bootstrap the allegations relating to
24 the Letter of Admonition to use to support a dishonesty charge, the arbitrator
25 in that proceeding found the District did not support such a charge.



1 to Representation.” **JA0566-JA0567** (March 22, 2013 Letter). This notice
2 alleged the same allegations under NRS 391.312(c), except it did not allege
3 dishonesty. Once again, **for the first time in this notice**, the District alleged
4 that Principal White improperly mandated GLAD training and allegedly
5 required teachers to use sick and/or personal days to complete the training.
6 **JA0566-JA0567**. The notice commanded her to appear on March 27, 2013,
7 but she agreed to address the issues during the March 22, 2013 meeting.
8 **JA0552-JA0554** (March 22, 2013 IDP Transcript, p. 34-46).

9
10 Still, no progressive discipline or opportunity to improve on any of the
11 allegations in the two notices was provided to Principal White.
12

13 On April 29, 2013, Principal White was given a “Notice of
14 Recommended Dismissal...pursuant to NRS 391.317.” **JA0569-JA0572**
15 (April 29, 2013 Letter). The letter stated the basis for the action was
16 unprofessional conduct, inadequate performance, failure to comply with such
17 reasonable requirements as a board may prescribe, failure to show normal
18 improvement and evidence of professional training and growth, and
19 dishonesty. **JA0569-JA0572**. The allegations on which this letter was based
20 were excessive and inappropriate expenditures of SAFs and the accusation of
21 mandating teachers use sick or personal leave for GLAD training. **JA0569-**
22 **JA0572**. The letter referenced the Letter of Admonition, but found Principal
23
24
25



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

1 White's alleged "misconduct warrants further action." **JA0569-JA0572.**

2 Moreover, the letter referenced further investigation, but no "Investigative
3 Report" was ever drafted or presented to the WSPA or Principal White to be
4 analyzed, or to identify persons who were contacted, etc. However, once
5 again, no progressive discipline or opportunity to improve on any of the
6 allegations in the two notices was provided to Principal White.
7

8 On April 29, 2013, Principal White was placed on administrative leave
9 without pay effective that same day. On May 3, 2013, Principal White's
10 representative filed an appeal of the recommendation to dismiss with the
11 Superintendent. **JA0574-JA0576** (May 3, 2013 Letter). Principal White's
12 representative argued that placing her on administrative leave without pay
13 prior to a hearing by the Superintendent violated Nevada law and *Cleveland*
14 *and Board of Education v. Loudermill*, 470 U.S. 532 (1985). He demanded the
15 District immediately place Principal White back on administrative leave with
16 pay and rescind the recommendation for termination. **JA0574-JA0576.**
17

18 On May 21, 2013, a "hearing" was held before Deputy Superintendent
19 Traci Davis, with Ms. Doran and Mr. Parry attending on behalf of the District.
20 **JA0578-JA0588** (May 21, 2013 Hearing Transcript). Thereafter, on June 12,
21 2013, despite the District's failure to provide Principal White with progressive
22 discipline and a reasonable opportunity to improve on any of the allegations
23
24
25



1 against her that were used to support the termination, Deputy Superintendent
2 Davis upheld the recommendation for termination. **JA0590-JA0591** (June 12,
3 2013 Letter). Principal White, through her representative, appealed the
4 decision to terminate to arbitration.

5
6 Arbitrator Anna D. Smith out of Cleveland, Ohio held arbitration
7 proceedings on February 25-28, 2014. Arbitrator Smith heard testimony of
8 witnesses for the District and WSPA. At the conclusion of the proceedings,
9 Arbitrator Smith indicated the parties would have a decision on or around June
10 18, 2014. However, following the arbitration, Arbitrator Smith became ill and
11 was unable to fulfill her duties as arbitrator. The parties were forced to select
12 another arbitrator. Arbitrator Cohn was selected and was provided post-
13 hearing briefs and the record on or about October 30, 2014. He rendered his
14 decision on December 29, 2014 based solely on the documents submitted and
15 without the benefit of live testimony in order to make credibility
16 determinations, particularly where dishonesty was alleged. Arbitrator Cohn
17 ultimately found the District had "just cause" to terminate Principal White
18 despite the District failing to provide her with progressive discipline and a
19 reasonable opportunity for improvement.
20
21



22
23 Reese Kintz,
Guinasso
190 W Hoffaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746
24
25

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

4 **V. SUMMARY OF ARGUMENT**

5 Respondents ask that the Supreme Court affirm the decision in District
6 Court Case No. CV 15-00572.

7
8 Kara White (hereinafter "Principal White") was a very high-performing
9 and successful Principal at Lemon Valley Elementary School working in such
10 position for approximately 4.5 years when she was wrongfully terminated by
11 the Washoe County School District ("District" or "WCSD"). The District
12 terminated Principal White based on allegations of misconduct set forth in
13 NRS Chapter 391 without imposing the requisite progressive discipline and a
14 reasonable opportunity for improvement. The conduct displayed by the
15 District violated Nevada law and an express provision contained within the
16 Collective Bargaining Agreement ("CBA") between the WCSD and the
17 Washoe County School Principals' Association ("WSPA").
18

19
20 NRS 391.3116 expressly states that the provisions of NRS 391 **do not**
21 **apply** to an administrator who has entered into a contract with the Board
22 negotiated pursuant to NRS Chapter 288 if the contract contains a separate
23 provision relating to the Board's right to dismiss or demote an administrator.
24
25



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

1 The WCD and the WSPA entered into a CBA negotiated pursuant to NRS
2 288 on behalf of members, including Principal White. The CBA contains a
3 separate provision relating to the Board's right to dismiss or demote an
4 administrator. Specifically, Article 18.1 in the CBA mandates that any
5 disciplinary action, including dismissal, done in accordance with NRS 391,
6 as was the case here, shall be progressive in nature and members shall be
7 given reasonable opportunity for improvement. No exceptions are listed
8 within Article 18.1. Pursuant to NRS 391.3116, Article 18.1 supersedes other
9 provisions in NRS 391 as they relate to Principal White's dismissal.
10

11 Principal White did not receive progressive discipline and did not
12 receive any reasonable opportunity for improvement regarding the alleged
13 issues for which she was terminated in accordance with the requirements under
14 Article 18.1. This is evidenced by the arbitrator's award. Nevertheless, the
15 arbitrator concluded that Principal White was not entitled to progressive
16 discipline and was not entitled to an opportunity for improvement prior to her
17 termination. The arbitrator ignored the express requirements of the CBA and
18 the express requirements of the statute. Thus, the District Court properly
19 found that the arbitrator exceeded his powers and manifestly disregarded the
20 law.
21
22



1 Additionally, substantial evidence in the record does not support the
2 arbitrator's award based on lack of substantial evidence of Principal White's
3 dishonesty. The District Court properly found that the arbitrator's award was
4 arbitrary and capricious.

5
6 Accordingly, the District Court granted Respondents' Motion to Vacate
7 Arbitration Award and vacated the Arbitrator's decision, issuing their Order
8 Granting Motion to Vacate Arbitration Award. **JA0832-JA842.**

9 **VI. ARGUMENT**

10 **A. The District Court Properly Found Arbitrator Cohn**
11 **Exceeded His Authority as an Arbitrator.**

12 The District Court properly found that Arbitrator Cohn exceeded his
13 powers. **Order at 5.** An arbitrator exceeds his powers when his award is
14 contradictory to the express language in the collective bargaining agreement.
15 *See Int'l Assoc. Firefighters v. City of Las Vegas*, 107 Nev. 906, 910, 823 P.2d
16 877, 879 (1991). Courts have allowed arbitrator's wide latitude in interpreting
17 labor contracts. *Id.* (citing *Steel v. Warrior & Gulf Co.*, 363 U.S. 574, 581-582
18 (1960)). The Nevada Supreme Court has been deferential in such matters,
19 stressing that "[w]hen an arbitrator is commissioned to interpret and apply the
20 collective bargaining agreement, he is to bring his informed judgment to bear
21 in order to reach a fair solution of the problem." *Reynolds Elec. v. United Bhd.*,



22
23 Reese Kintz,
Guinasso
190 W. Huffaker Ln.
Suite 402
Reno, NV 89511
(775) 853-8746
24

1 81 Nev. 199, 208, 401 P.2d 60, 65 (1965) (quoting *Enterprise Wheel & Car*
2 *Corp.*, 363 U.S. 593 (1960). However, as the Supreme Court has stated, and as
3 relied upon by the District Court, the deference accorded to an arbitrator "is
4 not limitless; he is not free to contradict the express language of the
5 contract...Where a labor contract expressly prescribes particular discipline for
6 specified offenses, an arbitration award overturning or modifying that
7 discipline does not "draw its essence" from the contract and is in excess of the
8 arbitrator's authority." *Int'l Ass'n of Firefighters, Local 1285 v. City of Las*
9 *Vegas*, 107 Nev. 906, 910, 823 P.2d 877, 879 (1991).

11 The District Court was therefore correct in its determination that
12 Arbitrator Cohn failed to draw his award from the "essence" of the CBA,
13 contradicting the express language of Article 18.1 of the CBA. Specifically,
14 Article 18.1 provides as follows:
15

16 ARTICLE 18
17 DISMISSAL AND DISCIPLINARY PROCEDURES

18 18.1 Disciplinary actions, including but not limited to,
19 demotion, suspension, **dismissal**, and non-renewal actions
20 taken against post-probationary unit members (**in**
21 **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.

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



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

1 **JA0028** (emphasis added).

2 This mandatory language provides no exceptions with respect to post-
3 probationary unit members. Principal White, a post-probationary unit
4 member, and her dismissal was allegedly done in accordance with NRS
5 Chapter 391. Thus, based on the clear and unequivocal language of Article
6 Chapter 391. Thus, based on the clear and unequivocal language of Article
7 18.1 of the CBA, the District Court rightly found three requirements are
8 necessary before the District can dismiss Principal White from her
9 employment:

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

13
14 Principal White was not given progressive discipline, nor was she provided
15 with a reasonable opportunity to correct the alleged misconduct. Thus,
16 Principal White was not terminated for just cause because the District did not
17 comply with Article 18.1.

18
19 Arbitrator Cohn acknowledged that progressive discipline and a
20 reasonable opportunity for improvement were not provided prior to the
21 dismissal of Principal White and, in fact, he found they were not necessary
22 despite the language in the CBA, stating: "any inclination to reverse Grievant's
23 discharge and *substitute progressive discipline* such as a lengthy suspension,
24
25



Reese Kintz,
Guinness
190 W. Hoffacker Ln.
Suite 402
Reno, NV 89511
(775) 853-8746

1 last chance return, demotion, an opportunity to improve, etc., in light of her
2 length of service and competency, is *washed away* by the dishonesty finding.”

3 **JA0086-JA0087** (emphasis added).

4 The express language of the CBA cannot be ignored, and the contractual
5 provisions cannot merely be “washed away.” Arbitrator Cohn, therefore,
6 exceeded his powers when he completely ignored Article 18.1 in rendering his
7 decision.
8

9 Appellant’s argument that the District Court improperly substituted its
10 own judgment for Arbitrator Cohn is misplaced. Appellant contends that
11 Article 18.1 of the CBA is not the type of language contemplated by the
12 Supreme Court, attempting to distinguish *Int’l Assoc. Firefighters, Local 1285*
13 *v. City of Las Vegas*, 107 Nev. 906, 823 P.2d 877 (1991) and *Int’l Broth. Of*
14 *Firemen & Oilers, AFL-CIO, Local No. 935-B v. Nestle Co., Inc.*, 630 F.2d
15 474 (6th Cir. 1980) from the present case. **Opening Brief at 23-26.** Appellant
16 concludes that the present matter is distinguished because Article 18.1 of the
17 CBA does not include the “if this misconduct then this result” language
18 contemplated by the courts, giving the arbitrator broad discretion and
19 authority. Appellant’s fixation on “specific misconduct” misses the legal
20 concept at hand, and misconstrues and misapplies the court’s holding to the
21 facts in this matter.
22
23
24
25



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

1 While it is true that *City of Las Vegas* discusses labor contracts that
2 “expressly prescribes particular discipline for specified offenses”, this is not to
3 be construed to mean that when a labor contract prescribes particular discipline
4 for all offences, the language is to be ignored, quite the opposite in fact. In
5 such a case, an arbitrator must be held to the express language of such
6 contract. *Id.* at 910. More importantly, *City of Las Vegas* stands for the
7 proposition that an arbitrator exceeds his powers when his award is
8 contradictory to the express language in the collective bargaining agreement.
9 *Id.* The Court does not state such holding is limited to certain types of
10 language in CBA’s, or require relation to specified misconduct. The ultimate
11 issue before the District Court was whether the Arbitrator Cohn’s award in this
12 matter contradicts the express language of Article 18.1, which it unequivocally
13 does. Appellant does nothing more than confuse the legal issue under review.

16 The District Court therefore, did not substitute its own definitions for
17 “just cause” or “progressive discipline.” The District Court merely held that
18 mandatory contractual provision cannot be ignored, nor can they be “washed
19 away” for reasons beyond the scope of the CBA. In fact, Appellant’s own
20 authority provides support for the judgment rendered by the District Court.
21 The Supreme Court states that, “Arbitrators exceed their powers when they
22 address issues or make awards outside the scope of the governing contract.
23
24
25



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

1 *Health Plan of Nevada, Inc. v. Rainbow Med., LLC*, 120 Nev. 689, 697–98,
2 100 P.3d 172, 178 (2004). “Arbitrators do not exceed their powers if their
3 interpretation of an agreement, even if erroneous, is rationally grounded in the
4 agreement” *Id.* “An award should be enforced so long as the arbitrator is
5 arguably construing or applying the contract.” *Id.*

7 In the present matter, Arbitrator Cohn clearly and unequivocally made
8 an award outside the scope of the CBA. By failing to honor the express terms
9 of the contract, there exists no rational basis in any interpretation of the
10 agreement, as the contract is simply being ignored, rather than construed or
11 applied.

13 With respect to Appellants assertion that the parties stipulated to the
14 arbitrator having “wide authority” in the matter. **Opening Brief at 27.** Ms.
15 White’s rights have been violated by not affording her progressive discipline
16 and a reasonable opportunity for improvement. By denying her bargained-for
17 rights, her termination is not warranted. Because this procedure was not
18 followed, the District had no just cause for termination. Respondents never
19 gave the arbitrator “wide authority” to simply skip over the first two
20 superseding prongs under Article 18.1, moving directly to the just cause prong.

22 Finally, Appellant suggests that the requirements set out in Article 18.1
23 do not apply in the face of “gross misconduct which warrants summary
24



1 dismissal in the first instance.” **Opening Brief at 28.** Appellant provides no
2 legal support for such argument. Regardless, there is no authority to jump to
3 termination without first moving through the three prongs of Article 18.1.

4 Arbitrator Cohn was obligated to ensure the District complied with the
5 CBA and he was obligated to render an award that does not contradict the
6 express language of Article 18.1. He did not do so. Arbitrator Cohn’s award,
7 therefore, cannot stand because it is contradictory to the express language of
8 the CBA. *Int’l Assoc. Firefighters*, 107 Nev. at 910. Accordingly, the District
9 Court correctly vacated the Arbitrator’s award pursuant to NRS 38.241(d).
10

11
12 **B. The District Court Properly found that Arbitrator Cohn**
13 **manifestly disregarded NRS 391.3116.**

14 The District Court properly found that Arbitrator Cohn manifestly
15 disregarded the law, stating that “while Arbitrator Cohn references NRS
16 391.3116, he did not apply the law correctly.” **Order at 7.**

17 The manifest-disregard-of-the-law standard is meant to ensure the
18 arbitrator recognizes and follows the applicable law. “An arbitrator manifestly
19 disregards the law when he or she recognizes that the law *absolutely requires* a
20 given result and nonetheless *refuses* to apply the law correctly.” *Bohlmann v.*
21 *Printz*, 120 Nev. 543, 545, 96 P.3d 1155, 1156 (2004), *overruled on other*
22 *grounds by Bass-Davis v. Davis*, 122 Nev. 442, 134 P.3d 103 (2006) (emphasis
23
24
25



1 in original). Mere error in the application of the law is not grounds to vacate an
2 arbitration award.” *Id.* at 545, 134 P.3d 103, 96 P.3d at 1156. Rather, in order
3 to vacate an arbitration award due to manifest disregard of the law, “[t]he
4 governing law alleged to have been ignored must be well-defined, explicit, and
5 clearly applicable.” *Graber v. Comstock Bank*, 111 Nev. 1421, 1428, 905 P.2d
6 1112, 1116 (1995).

8 Arbitrator Cohn manifestly disregarded NRS 391.3116, despite citing to
9 it and emphasizing it in his award. Arbitrator Cohn emphasizes **in bold and**
10 **underline** the title of NRS 391.3116, which provides: “**NRS 391.3116**
11 **Contract negotiated by collective bargaining may supersede provisions of**
12 **NRS 391.311 to 391.397, inclusive; exception for certain employees**
13 **deemed probationary.**” JA0030 (emphasis in original). Thus, Arbitrator
14 Cohn acknowledged and correctly concluded that NRS 391.3116 is applicable
15 to these arbitration proceedings. Arbitrator Cohn even cites to this very statute
16 in a footnote after finding that progressive discipline and a reasonable
17 opportunity to improve are “washed away” due to alleged dishonesty.
18 JA0087.

20
21 Arbitrator Cohn failed to cite to the *language* in NRS 391.3116. The
22 provisions of that statute he cited actually state:



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

1 Excluding the provisions of NRS 391.3129^[2], the provisions of
2 NRS 391.311 to 391.3197, inclusive, **do not apply** to a teacher,
3 **administrator**, or other licensed employee who has entered into a
4 contract with the board negotiated pursuant to chapter 288 of NRS
5 **if the contract contains separate provisions relating to the**
6 **board's right to dismiss** or refuse to reemploy the employee or
7 demote an administrator.

8 (Emphasis added).

9 As the District Court notes, Article 18.1 is a separate provision in the
10 bargained-for CBA relating directly to the District's right to dismiss Principal
11 White and, therefore, the provisions of NRS 391.31297, NRS 391.313 and
12 NRS 391.314, relied upon by the District and apparently the arbitrator, do not
13 apply with respect to her dismissal and cannot be used to support the
14 arbitrator's award. **Order at 7.** Yet, despite Arbitrator Cohn's citation of the
15 applicable law, he failed to apply it when he ignored the provisions of Article
16 18.1 and relied upon provisions of NRS Chapter 391 in its place.

17 Appellant asserts that this is the first time the WSPA has asserted that
18 the language contained within Article 18.1 "usurps or supersedes" the
19 provisions of NRS 391.311 to 391.3197. **Opening Brief at 33.** However, as is
20 well known to the Appellant, this matter is a matter of first impression in
21 which District has discharged a principal without complying with Article 18.1

22
23 ² NRS 391.3129 relates to evaluations of post probationary employees and is
24 therefore not applicable in this instance.



1 for the types of conduct outlined and alleged. Thus, this matter is raised now,
2 and not previously under separate and unrelated facts, as the District has not
3 previously made an error similar to the present matter. It is important to note
4 that no other principal has been discharged or even disciplined by the District
5 for similar conduct.
6

7 Appellant further argues a lack of evidence of record demonstrating that
8 Arbitrator Cohn knew if or how NRS 391.3116 applied to the arbitration,
9 asserting the position adopted by the District Court is "confusing" and
10 "convoluted." **Opening Brief at 33.** Again, to be clear, NRS 391.3116 states
11 that the provision of NRS 391.311 to 391.3197 (excluding NRS 391.3129), do
12 not apply to an administrator who entered into a contract negotiated pursuant
13 to NRS Chapter 288 if a CBA contains a separate provision relating to the
14 District's right to dismiss an administrator.
15

16 Principal White, through the WSPA entered into a CBA with the
17 District, that contains a separate provision, Article 18.1, directly related to the
18 District's right to dismiss a post-probationary employee. Ms. White is a post-
19 probationary employee covered under Article 18.1. Article 18.1 provides
20 bargained-for rights including the right to progressive discipline, a reasonable
21 opportunity for improvement, and no termination without just cause, each
22 being independent and separate rights. No exceptions to such provisions are
23
24
25



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

1 stated within Article 18.1. Article 18.1 supersedes the provisions of NRS
2 391.311 to 391.3197 in as far as the provisions do not provide for progressive
3 discipline, reasonable opportunity for improvement, and just cause prior to
4 discharge.

5
6 Arbitrator Cohn acknowledged the provisions of both Article 18.1 and
7 NRS 391.3116 in his award. *See generally, JA0027-JA0087.* Arbitrator Cohn
8 found the District did not provide Ms. White with progressive discipline or a
9 reasonable opportunity for improvement. **JA0086-JA0087.** By failing to
10 provide Ms. White with her bargained-for rights of progressive discipline and
11 a reasonable opportunity for improvement, skipping to termination, Arbitrator
12 Cohn manifestly disregarded NRS 391.3116 by upholding Ms. White's
13 discharge in violation of Article 18.1.

14
15 Appellant attempts to classify Arbitrator Cohn's award as his
16 interpretation of NRS 391.3116, however the award demonstrates unequivocal
17 manifest disregard for the provisions of NRS 391.3116. Arbitrator Cohn cited
18 directly to the statute and the contract language contemplated by the statute,
19 finding that Ms. White's bargained-for rights to progressive discipline and a
20 reasonable opportunity for improvement are "washed away" because he
21 believed she was dishonest. **JA0087.**



22
23 Reese Kintz,
24 Guinasso
190 W. Huffaker Ln.
Suite 402
Reno, NV 89511
(775) 853-8746

1 Arbitrator Cohn's statement that it did not matter whether he viewed the
2 "just cause" standard under the NRS or the Agreement only further
3 demonstrates his manifest disregard of NRS 391.3116 and the CBA. **JA0087.**
4 Before he ever got to the just cause standard, he was required to apply all the
5 provisions of Article 18.1. Arbitrator Cohn's inexplicable disregard of this
6 unambiguous law is reversible error. Accordingly, based on all the foregoing,
7 the District Court correctly vacated the arbitrator's award under the manifest
8 disregard standard.
9

10 **C. The District Court Properly Found Arbitrator Cohn's Award**
11 **to be Arbitrary and Capricious.**

12 Although the District Court vacated the arbitration award based on the
13 grounds set forth above, the District Court provided an additional ground also
14 warranting the award being vacated. The District Court properly found that
15 Arbitrator Cohn's award was arbitrary and capricious based on lack of
16 substantial evidence of Principal White's dishonesty. **Order at 8.**
17

18 The arbitrary and capricious standard is meant to ensure the arbitrator
19 does not disregard the facts or the terms of the arbitration agreement. Under
20 this standard, the arbitrator is confined to interpreting and applying the
21 agreement, and his award need not be enforced if it is arbitrary, capricious, or
22 unsupported by the agreement. *Bohlmann v. Printz*, 120 Nev. 543, 547, 96
23 P.3d 1155, 1158 (2004), *overruled on other grounds by Bass-Davis v. Davis*,
24
25



1 122 Nev. 442, 134 P.3d 103 (2006). In making this determination, the Nevada
2 Supreme Court has considered whether the arbitrator's findings were
3 supported by substantial evidence. *Clark County Educ. Ass'n v. Clark County*
4 *Sch. Dist.*, 122 Nev. 337, 344, 131 P.3d 5, 9 (2006).

5
6 First and foremost, substantial evidence does not support that the
7 District followed the procedures in Article 18.1, which will not be reasserted
8 here, but does support an additional ground on which to vacate the arbitrator's
9 award under this standard. Respondents rely on above stated argument in
10 support of such position.

11
12 Additionally, substantial evidence does not support Arbitrator Cohn's
13 finding that summary dismissal was warranted under these facts, or that the
14 District had just cause to terminate Principal White. Arbitrator Cohn found
15 that Principal White was discharged on the following three grounds: (1) "poor
16 management practices and other areas," **JA0081**; (2) teachers were required to
17 take GLAD training when there were not sufficient funds to pay them while
18 they were being trained, **JA0085**; and (3) dishonesty **JA0086**. Importantly,
19 Arbitrator Cohn appears to solely rely on the dishonesty finding to support his
20 decision to deprive Ms. White of her bargained-for right of progressive
21 discipline and a reasonable opportunity for improvement. **JA0086**.



1 As the District Court points out, “before reaching a finding of
2 dishonesty pursuant to NRS 391.31297(1)(p), Principal White still should have
3 been afforded progressive discipline and a reasonable opportunity for
4 improvement based on the Court’s above findings pursuant to Article 18.1 of
5 the CBA.” **Order at 8.** The Court continues, and concludes: “Even had
6 Principal White been afforded progressive discipline and a reasonable
7 opportunity for improvement, the record still does not indicate she was
8 dishonest. *Id.*

10 With respect to the dishonesty, substantial evidence does not support
11 such a finding. First and foremost, it’s imperative to point out that Arbitrator
12 Cohn did not personally participate in the actual arbitration proceedings. He
13 did not hear witnesses testify both for and against Principal White. He did not
14 hear any testimony whatsoever from Principal White. Rather, he based his
15 credibility determinations on documentary evidence and transcripts.
16 Moreover, the District had previously accused Principal White of dishonesty in
17 the allegations related to the Letter of Admonition and the prior arbitration.
18 Arbitrator Cohn even acknowledged in his award that the arbitrator who
19 actually participated in those proceedings and heard testimony from Principal
20 White and other witnesses did not sustain the dishonesty accusation. **JA0080.**



1 Arbitrator Cohn recounts Principal White's testimony that she could not
2 recall an audit *that took place four years earlier*, discussing issues with an
3 auditor regarding SAFs and gift cards, filing the school's responses to the
4 internal auditor, or seeing the Manual before a March 7th meeting, stating such
5 "is simply too far a stretch." **JA0086**. Arbitrator Cohn seemed especially
6 concerned with her inability to recall the Manual, which he states "is wholly
7 incredible," as well as her lack of knowledge regarding SAFs and restricted
8 funds. **JA0086**. Thus, he found she was "dishonest" on these issues.

10 Remarkably, the testimony of other witnesses demonstrates they too also
11 were unable to recall seeing the Manual or had never bothered to read it, had a
12 lack of knowledge of SAFs and restricted funds, and were not aware that
13 purchasing gift cards and other items was against District policy. *See*,
14 **JA0045-JA0073**. In fact, similar testimony was given by multiple witnesses
15 and no testimony was given by any other principal that they were fully aware
16 of SAFs and restricted funds, they were fully apprised of the manual, they
17 knew exactly what they could and could not purchase using SAFs, etc. *See*,
18 **JA0045-JA0073**.

21 Dishonesty requires some element of intent, and substantial evidence
22 does not support a finding of intentional dishonesty as to Principle White's
23 matter. The District Court points to the record, finding no indication of
24



1 intentional dishonesty contained therein. **Order at 8-9.** The Appellant again
2 either does not understand the issue at hand, or is attempting to divert attention
3 away from the issue, focusing on the definition the District Court cited for
4 “dishonesty”, and the voluminous record. **Opening Brief at 37.** To be clear,
5 Arbitrator Cohn’s award is not arbitrary and capricious because the record is
6 scant, nor because Arbitrator Cohn fails to cite to evidence in the record.
7 Arbitrator Cohn’s award is arbitrary and capricious because the voluminous
8 evidence of record does not support the finding of dishonesty, and thus Ms.
9 White’s termination. As established, Arbitrator Cohn’s award, based on a
10 finding of dishonesty, contradicts the testimony of witnesses and the
11 substantial evidence of record. The District Court does not put its definition in
12 place of Arbitrator Cohn’s. Under any definition of dishonesty, an element of
13 intent is required. Even under the definition asserted by Arbitrator Cohn, and
14 cited by Appellant, requires “willful” action. **Opening Brief at 37; JA0086.**

17 Substantial evidence in the record does not support Arbitrator Cohn’s
18 finding of dishonesty under these circumstances nor his award upholding the
19 termination of Principal White. Accordingly, the District Court correctly
20 vacated the Arbitrator’s award because it is arbitrary and capricious.



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

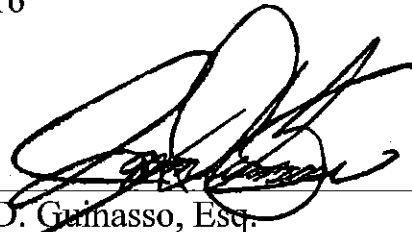
1 **VII. CONCLUSION**

2 For the forgoing reasons, Respondents respectfully request that this
3 Court uphold the District Court's Order Granting Motion to Vacate Arbitration
4 Award. The District Court properly found that that Arbitrator Cohn exceeded
5 his authority, manifestly disregarded NRS 391.3116, and was arbitrary and
6 capricious. For these reasons, this Court must uphold the District Court's
7 decision.
8

9 **AFFIRMATION**

10 The undersigned does hereby affirm that **RESPONDENTS'**
11 **ANSWERING BRIEF** filed under Supreme Court Case No. 69385 does not
12 contain the social security number of any person.
13

14 DATED this 4th day of August, 2016

15
16
17 

18 Jason D. Guinasso, Esq.
19 Devon T. Reese, Esq.
20 Reese Kintz Guinasso, LLC.
21 190 W. Huffaker Lane, Suite 402
22 Reno, NV 89511
23 Tel.: 775-832-6800
24 Fax: 775-201-9611
25 Attorney for Kara White



23 Reese Kintz,
24 Guinasso
190 W Huffaker Ln
Suite 402
Reno, NV 89511
(775) 833-8746

1 **ATTORNEY'S CERTIFICATE OF COMPLIANCE**

2 1. I hereby certify that this brief complies with the formatting
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5)
4 and the type style requirements of NRAP 32(a)(6) because:
5

6 a. This brief has been prepared in a proportionally spaced
7 typeface using Microsoft Word 97 in 14 Point Times New Roman
8 Font.

9 2. I further certify that this brief complies with the page-or type-volume
10 limitations of NRAP 32(a)(7) because, excluding the parts of the brief
11 exempted by NRAP 32(a)(7)(C), it is:
12

13 a. Proportionately spaced, has a typeface of 14 points or more and
14 contains 6,455 words; and

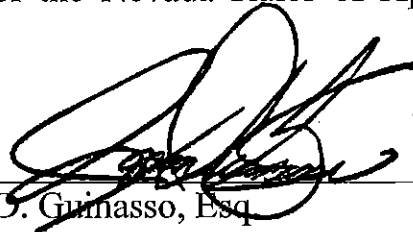
15 b. Does not exceed 30 pages.

16 3. Finally, I hereby certify that I have read this appellate brief, and to the
17 best of my knowledge, information, and belief, it is not frivolous or interposed
18 for any improper purpose. I further certify that this brief complies with all
19 applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1),
20 which requires every assertion in the brief regarding matters in the record to be
21 supported by a reference to the page and volume number, if any, of the
22 transcript or appendix where the matter relied on is to be found. I understand
23
24
25



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

1 that I may be subject to sanctions in the event that the accompanying brief is
2 not in conformity with the requirements of the Nevada Rules of Appellate
3 Procedure.
4



5 Jason D. Guinasso, Esq.
6 Attorney for Respondent
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5

2
3
4

6

7

8

9
0
1

2

4.

6

3
4