ITEM # 36

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

In the Matter of the WHITE PINE ASSOCIATION OF CLASSROOM TEACHERS, Complainant, vs. WHITE PINE COUNTY BOARD OF SCHOOL TRUSTEES; WHITE PINE COUNTY SCHOOL DISTRICT, and JOHN ORR, Superintendent, Respondents.	Case No. A1-045288

DECISION

By complaint filed April 4, 1975, the White Pine Association of Classroom Teachers seeks two determinations: (1) that the respondents be found to have violated the provisions of NRS 288.270(1)(e)[1] in that they refused to negotiate in good faith, and, (2) that salary, class size, teachers hours, maintenance of standards, reduction of staff and notification be declared the mandatory subjects of negotiation between the parties pursuant to NRS 288.150.

The respondents have answered and counterclaimed requesting a determination that the complainant has refused to bargain collectively in good faith, a violation of NRS 288.270(2)(b).[2]

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1. NRS 288.270(1)(e) provides:

   It is a prohibited practice for a local government employer or its designated representative willfully to:
   ...
   (e) Refuse to bargain collectively in good faith with the exclusive representative as required in NRS 288.150. Bargaining collectively shall be construed to include the entire bargaining process, including mediation and factfinding, provided for in this chapter.

2. NRS 288.270(2)(b) provides:

   It is a prohibited practice for a local government employee or for an employee organization or its designated agent willfully to:
   ...
   (b) Refuse to bargain collectively in good faith with the local government employer, if it is an exclusive representative, as required in NRS 288.150. Bargaining collectively shall be construed to include the entire bargaining process, including mediation and factfinding, provided for in this chapter.

An expedited hearing was requested by the complainant and the matter was heard on May 5, 1975. At the conclusion of the hearing, the parties stipulated to submit the complaint and counterclaim for decision immediately without a transcript or post-hearing briefs.

The factual situation which gave rise to the complaint commenced on December 16, 1974, when the Association notified the District of its intent to negotiate a contract for the fiscal year 1975-76. The notification included matters which required the budgeting of money and is conceded by the complainant to be in violation of NRS 288.180(1) as then in effect.[3]

When the District's principal negotiating representative, Superintendent Orr, refused to commence negotiations because of the statutory violation, the Association brought the matter before the Board of School Trustees. On December 23, 1974, Association President Leonard Schafer appeared before the School Board and requested an extension of the December 1 deadline because of his admitted oversight in filing the documentation in a timely fashion. A motion before the Board was unanimously carried "to grant the Association this favor in order that they might negotiate as they had in the past." (The portion in quotes reflects the statement contained in the School Board's minutes of the December 23rd meeting.)

In Douglas County Professional Education Association vs. Douglas County School District and the Board of Trustees of the Douglas County School District, Case No. A1-045281, Item #30, decision filed March 10, 1975, we found that the failure to comply with the provisions of NRS 288.180(1) absolved the

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3. NRS 288.180(1) provided:

> Whenever an employee organization desires to negotiate concerning any matter which is subject to negotiation pursuant to this chapter, it shall give written notice of such desire to the local government employer. If the subject of negotiation requires the budgeting of money by the local government employer, the employee organization shall give such notice on or before December 1.

District from formally negotiating this year. However, in this instance we have a substantially different situation. The governing body of the School District, the Board of School Trustees, agreed unanimously to overlook the statutory violation and enter into formal negotiations. Such a statutory requirements may be waived by a clear and unequivocal manifestation to do so. See, Kondas v. Washoe County Bank, 50 Nev. 181, 254 P.2d 1080 (1927).

Contrary to the assertions of the respondents, the waiver does not appear to be either limited or conditional. The School Board overlooked the statutory violation, waived their right to rely on it and agreed to proceed as though the notification had been timely filed on or before December 1. We find no difficulty with the term "as they had in the past" which appears in the School Board minutes. The parties had negotiated and entered into collective bargaining agreements "in the past", and, the same was to occur this year.

Finding the waiver of the statutory deadline to be legally permissible, we turn to a consideration of the claim of each party that the other failed to negotiate in good faith.

In considering a claim that a party refused to bargain collectively in good faith, courts have generally looked to the totality of the circumstances in the particular case to determine if it appears that a party clearly indicated a desire to not reach agreement. See, National Labor Relations Bd. v. Reed & Prince Mfg. Co., 205 F.2d 131, cert. den. 346 U.S. 887 (1st Cir. 1953). More than a bare showing that the bargaining has been ineffective is necessary to find that a party refused to bargain in good faith. See, Oil, Chemical & Atomic Workers, Int. U., AFL-CIO v. N.L.R.B., 486 F.2d 1266 (D.C. Cir. 1973).

The testimony and exhibits presented at the hearing indicate that the parties commenced collective bargaining on January 31, 1975. They meet and negotiated on numerous occasions and resolved some areas in the proposed contract prior to the filing of the complaint. Superintendent Orr in several instances suggested mediation which the Association rejected because of the financial

impact of mediation and the fact that previous attempts at non-binding proceedings had been unsuccessful. On the other hand, Superintendent Orr refused to negotiate several areas asserting that the waiver was a limited and conditional one or that the areas were management prerogatives under NRS 288.150(2). On those occasions where one party appeared reluctant to continue negotiations, the other party sought and encouraged a return to the bargaining table.

The complainant has relied heavily in its claim of bad faith bargaining on the "counterproposals" of the respondents' negotiator, Mr. Orr. These "counterproposals" were contained as handwritten notations in the margin of the existing contract and included such language as "we will take this to arbitration" next to some of the proposed modifications. Although the District's bargaining position could have been more artfully presented, Mr. Orr's adamant insistence on his bargaining position, as evidenced by the language relating to arbitration, is not alone sufficient to render him guilty of refusing to bargain in good faith. See, Wal-Lite Division of United States Gypsum Co. v. N.L.R.B., 484 F.2d 103 (8th Cir. 1973).

Although neither party may claim that they made the utmost effort in their collective bargaining, we cannot find from the evidence presented facts sufficient to warrant a finding that either party refused to bargain collectively in good faith.

Turning to a consideration of the items sought to be declared the mandatory subject of negotiation, the parties stipulated at the hearing that the hours and notification provisions are negotiable thus withdrawing them from our consideration. Further, the respondents admit in their pre-hearing statement that salaries are the mandatory subject of negotiation. In light of these admissions and our finding that the waiver of the December 1 notification deadline was neither limited nor conditional, the parties shall proceed to negotiate these matters in conformity with Chapter 288 of the Nevada Revised Statutes.

In In the Matter of the Mineral County Classroom Teachers Association vs. Mineral County School District and Board of Trustees of the Mineral County School District, Case No. Al-00099, Item #15, decision rendered June 20, 1974, reduction in force (or staff) was found negotiable to a limited extent:

> Under the provisions of NRS 288.150(2)(c) the determination of when a reduction in force is necessary, the number of individuals whose employment must be terminated and the areas wherein the reductions shall occur are management prerogatives and not the subject of mandatory negotiation between the parties.
>
> The order in which personnel within the area or areas shall be discharged and any rights they may possess after discharge with regard to preference in re-employment are the subject of mandatory negotiation between the parties pursuant to NRS 288.150(1).

Sections 2(t) and 3 (b) of the new enactment recognize a similar partially negotiable status; the parties shall proceed to negotiate the

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4. Stats. of Nev., 1975, ch. 539, §15, pps. _____, continued:

> (s) Teacher preparation time.
> (t) Procedures for reduction in work force.
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> 3. Those subjects which are not within the scope of mandatory bargaining and which are reserved to the local government employer without negotiation include:
> (a) The right to hire, direct, assign or transfer an employee, but excluding the right to assign or transfer an employee as a form of discipline.
> (b) The right to reduce in force or lay off any employee because of lack of work or lack of funds, subject to paragraph (t) of subsection 2.
> (c) The right to determine:
> (1) Appropriate staffing levels and work performance standards, except for safety considerations;
> (2) The content of the workday, including without limitation workload factors, except for safety considerations;
> (3) The quality and quantity of services to be offered to the public; and
> (4) The means and methods of offering those services. ...
>
> 7. Contract provisions presently existing in signed and ratified agreements as of May 15, 1975, at 12 p.m. shall remain negotiable.

The three issues which remain for our determination of their negotiability are: reduction in staff, maintenance of standards and class size.

Subsequent to the hearing on this case, the Nevada State Legislature passed, and the Governor signed into law on May 18, 1975, A.B. 572. The new law was effective upon passage and approval. Stats. of Nev., 1975, ch. 539, §21, pps. _____ . Section 15 of the Act makes sweeping changes in the portion of the law which controls what matters shall be the mandatory subject of negotiation.[4]

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4. Stats. of Nev., 1975, ch. 539, §15, pps. ____ provides in part:

> Except as provided in subsection 4, it is the duty of every local government employer to negotiate in good faith through a representative or representatives of its own choosing concerning the mandatory subjects of bargaining set forth in subsection 2 with the designated representatives of the recognized employee organization, if any, for each appropriate negotiating unit among its employees. ...
> 2. The scope of mandatory bargaining is limited to:
> (a) Salary or wage rates or other forms of direct monetary compensation.
> (b) Sick leave.
> (c) Vacation leave.
> (d) Holidays.
> (e) Other paid or nonpaid leaves of absence.
> (f) Insurance benefits.
> (g) Total hours of work required of an employee on each work day or work week.
> (h) Total number of days' work required of an employee in a work year.
> (i) Discharge and disciplinary procedures.
> (j) Recognition clause.
> (k) The method used to classify employees in the negotiating unit.
> (l) Deduction of dues for the recognized employee organization.
> (m) Protection of employees in negotiating units from discrimination because of participation in recognized employee organizations consistent with the provisions of this chapter.
> (n) No-strike provisions consistent with the provisions of this chapter.
> (o) Grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining agreements.
> (p) General savings clauses.
> (q) Duration of collective bargaining agreement.
> (r) Safety.

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"[p]rocedures for reduction in work force" as provided therein.

By the very language of NRS 288.150, as amended, the mandatory subjects of negotiation are limited and delineated. These enumerated areas that are subject to mandatory negotiation do not include the two other matters the complainant seeks declared negotiable. Neither, does the contract in existence between the parties contain provisions in these areas. Stats. of Nev., ch. 539, §15(7), pps. ____ . Therefore these areas are not a mandatory subject of negotiation between the parties, but, would be appropriate matters for the informal discussion procedure suggested by Section 15(6) of the Act.[5]

FINDINGS OF FACT

1. That the complainant, White Pine Association of Classroom Teachers, is a local government employee organization recognized by the respondents as the exclusive bargaining agent for the certified classroom teaching personnel at the White Pine County School District.

2. That the respondent, White Pine County School District, is a local government employer.

3. That the White Pine County Board of School Trustees is the governing body of the White Pine County School District.

4. That Mr. John Orr is the Superintendent of the White Pine County School District.

5. That on December 16, 1974, the Association notified the District of its desire to commence negotiations on a contract for the fiscal year 1975-76.

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5. Stats. of Nev., 1975, ch. 539, §15(6) provides:

> This section does not preclude, but this chapter does not require the local government employer to negotiate subject matters enumerated in subsection 3 which are outside the scope of mandatory bargaining. The local government employer shall discuss subject matters outside the scope of mandatory bargaining but it is not required to negotiate such matters.

6. That the notification was not timely filed in conformity with the provisions of NRS 288.180(1) as then in effect.

7. That on December 23, 1974, the Board of School Trustees unanimously passed a motion "to grant the Association this favor in order that they might negotiate as they had in the past."

8. That the action of the Board of Trustees on December 23, 1974, waived the violation of the statutory provision.

9. That subsequent to the School Board's action the parties commenced negotiations on January 31, 1975, meeting and negotiating on numerous occasions and resolving several areas of the proposed contract prior to the filing of this complaint.

10. That the Association refused to enter into mediation as suggested by the School District's negotiating representative, Superintendent John Orr.

11. That respondent Orr refused to negotiate class size, teachers hours, maintenance of standards, reduction of staff and notification asserting that the matters were not the mandatory subjects of negotiation under NRS 288.150 as then in effect.

12. That the respondent Orr refused to negotiate the subject of salaries asserting that the waiver of the Board of School Trustees was limited and conditional.

13. That the respondents in their pre-hearing statement admitted that salaries, teachers hours and notification were the mandatory subject of negotiation thus withdrawing them from our consideration.

CONCLUSIONS OF LAW

1. That under the provisions of Chapter 288 of the Nevada Revised Statutes the Local Government Employee-Management Relations Board possesses original jurisdiction over the parties and subject matter of this complaint.

2. That the complainant, White Pine Association of Classroom Teachers, is a local government employee organization within the term as defined in NRS 288.040 as amended by Stats. of Nev., 1975, ch. 539, §11, pps. _____ .

3. That the complainant, White Pine Association of Classroom Teachers, is recognized by the respondents as the exclusive bargaining agent for the certified classroom teaching personnel at the White Pine County School District.

4. That the respondent, White Pine County School District, is a local government employer within the term as defined in NRS 288.060.

5. That the respondent School Board, as governing body of the White Pine County School District, legally and without condition or limitation waived the complainant's violation of NRS 288.180(1) as then in effect.

6. That based upon the evidence presented, we do not find that either party refused to bargain collectively in good faith in violation of the provisions of NRS 288.270.

7. That the stipulation of the parties at the hearing and the admissions in the respondents' pre-hearing statement leave no justiciable issue as to whether or not salaries, teachers hours and notification are negotiable.

8. That class size is an area not covered by the current collective bargaining agreement executed between the parties and is not expressly delineated as a negotiable matter in Stats. of Nev., 1975, ch. 539, §15, pps. _____, and is therefore not a mandatory subject of negotiation between the parties.

9. That maintenance of standards is an area not covered by the current collective bargaining agreement executed by the parties and is not expressly delineated as a negotiable matter in Stats. of Nev., 1975, ch. 539, §15, pps. _____, and is therefore not a mandatory subject of negotiation between the parties.

10. That "procedures for reduction in work force" are a mandatory subject of negotiation between the parties pursuant to Stats. of Nev., 1975, ch. 539, §15(2)(t), however, all other determinations with regard to reduction in the work force are expressly designated as management prerogatives under the provisions of Stat. of Nev., 1975, ch. 539, §15(3)(b).

The parties shall proceed with their negotiations in conformity with this decision.

Dated this 30th day of May, 1975.

Chris N. Karamanos, Board Chairman

John T. Gojack, Board Vice Chairman

Dorothy Eisenberg, Board Member