Item No. 109

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

Washoe County School District Nurses Association; and Nevada Nurses Association, Complainants, vs Washoe County School District; Board of Trustees of Washoe County School District; and John Does I - X, Respondents.	)	Case No. A1-045329

D E C I S I O N

On Friday, June 13, 1980 and Wednesday, June 25, 1980, the Local Government Employee-Management Relations Board held a hearing in the above matter. The hearing was properly noticed and posted pursuant to Nevada's Open Meeting Law.

This written Decision is prepared in conformity with NRS 233B.125 which requires that the final Decision contain Findings of Fact and Conclusions of Law separately stated.

In its Complaint the Washoe County School District Nurses Association and Nevada Nurses Association, hereafter Association, asserts that the action of the Respondents, Washoe County School District, Board of Trustees of Washoe County School District and John Does I - X, hereafter District, wherein the District hired clinical aides to replace the voluntarily departed Nurse Marilee Kuhl constitutes a prohibited practice, bad faith bargaining and is arbitrary and capricious. In addition, the Association seeks a clarification of the proper bargaining unit and proper recognition of the bargaining agent Washoe County School District Nurses - Nevada Nurses Association.

The District denies all allegations asserted in the Complaint.

From December, 1973 until November, 1979 the Association held only meet and confer sessions with the District. Collective bargaining, as set forth in NRS Chapter 288, did not exist between the parties until 1979 when the Association indicated that it desired to participate in formal collective bargaining negotiations. However, before conclusion of those negotiations, this action was filed.

Prior to the last quarter of 1980, and at various times over the past decade, the District had been considering the use of clinical aides in its health services program. Principals had complained about inadequate service to students because of the unavailability of nurses who were assigned to several schools. Question 6, pending at this time, placed school districts in a precarious financial position and the District was seeking more efficient ways to fill the educational needs of the District's children. Therefore, following the voluntary resignation of one of the elementary school nurses, Marilee Kuhl, the District elected to substitute clinical aides for the departed nurse Kuhl on a trial basis until the end of the year.

The District maintains that the pilot project was instituted to meet the complaints of elementary school principals, to explore possible areas for budgetary cuts in the event of passage of Question 6 and to avoid the termination of a nurse currently on duty in light of the opportunity to try the program following a voluntary resignation.

By contrast the Association contends that the District sought to harass and discriminate against the nurses in their

endeavors to obtain a contract. In particular, the Association alleges that District Nursing Supervisor Beverly Dyas, an agent of the District, threatened the nurses by indicating: that they would lose her support if they unionized; that they were unprofessional to negotiate a contract; that she would retaliate; and that she would hire nursing aides. While testifying, Ms. Dyas denied that she threatened to hire nursing aides.

Thus, the first question raised is whether the District has acted in a retaliatory manner in response to the Association's statutory right to bargain collectively under NRS Chapter 288. We think not.

Public employees have a constitutionally protected right under the First and Fourteenth Amendments to join organizations, attend meetings and express their attitudes and philosophies through organizational activity. In addition, under the laws of Nevada, public employees have a statutory right to form, join, and assist employee organizations and to participate in collective bargaining free from restraint or coercion. NRS 288.140, NRS 288.270.

Nevertheless, the burden of proof falls upon the Association to demonstrate that an action taken by the District does in fact fall into the category of an unfair labor practice or an interference with the right of an employee to become a member of an employee organization and to participate in its activities.

The Board believes that in the factual setting of the case before it that burden has not been met.

In termination cases, which understandably this case is not, the Board has found that an employer has the power under NRS 288.150 to discharge an employee for any cause, or no

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cause at all, as long as the discharge is not discrimination because of union membership or activity. Laborers International Union of North America, Local Union No. 169 for Reginald D. J. Becker vs Washoe Medical Center, Case No. 1, Item No. 1. Further "even in cases where the employee has extensively engaged in union activity to the displeasure of the employer and is discharged, the employee has no right to be reinstated if the employer can show the discharge was for any other reason than union membership or activity." Id. Similarly "Suspicion" alone is not enough to conclusively establish that union activity was the sole reason, or the real reason, for discharge. Davis vs Harrison, et. al., Case No. Al-00234, Item No. 15, July 12, 1974; Kremen, et. al. vs Southern Nevada Memorial Hospital, et. al., Case No. Al-045292, Item No. 53, May 9, 1976.

Applying the principles of these cases to the instant matter it is clear that a mere suspicion will not substantiate an unfair labor charge and if the District has been able to show that its activities are justified and not merely arbitrary or capricious the Association's charge must fail.

The Association has charged that the District acted in an arbitrary or capricious manner. A working definition of arbitrary and capricious is found in the case of East Texas Motor Freightlines vs United States, 96 F Supp 424, 427-28 (N.D. Tex. 1951), "The meaning of arbitrary and capricious is 'without any reasonable cause based upon the law; without reason given; and disregard of evidence.' It is comparable to without justification or excuse; with no substantial evidence to support it; a conclusion contrary to substantial, competent evidence."

The Board believes that the action taken by the District in hiring clinical aides was consistent with good business

judgement and but for the timing, was not related to the fact that the Association had chosen to bargain collectively. The subject of clinical aides was discussed for sometime prior to the decision by the Association to bargain collectively and the pending threat of Question 6 as well as dissatisfaction of the elementary school principals with the inadequate service of nurses assigned to multiple schools establish adequate foundation for the District to implement a trial program to determine if clinical aides could better fulfill the needs of the District at a lower or equal cost. The trial program was instituted without the necessity of terminating any present nurse in that a nurse voluntarily resigned which provided the District with an opportune time to initiate the program.

The Board is not unmindful that the District Nursing Supervisor was both discouraging and disparaging in her remarks to her subordinates regarding nurses taking part in formal contract negotiation sessions versus the original meet and confer sessions. An honest and sincere effort by Supervisor Dyas to adapt to the changing times and goals of the nursing profession would do much to alleviate the communication gap which obviously exists between her and those she supervises.

Nevertheless the Board cannot in good conscience rule against the District in regard to the charges filed. In our opinion, there has been no failure to bargain in good faith, nor commission of a prohibited practice, not an interference with an employee's right to join and exercise his/her protected rights. The District was entirely justified in hiring clinical aides and proceeding with the pilot program. NRS 288.150(3).

The second question raised involves the clarification of the bargaining unit to be represented by the Nevada Nurses

Association. The Association urged that two part-time, evening nurses assigned to Washoe High School be incorporated into the bargaining unit of the Washoe County School District Nurses Association. However, at the time of the hearing, the Board was, and remains, unpersuaded that the nurses in question share the requisite community of interest with the remainder of the bargaining unit. Insufficient Association evidence having been presented to establish a prima facie case, the District's motion at the time of the hearing, a 41B directed verdict-type of motion, was granted. The night nurses at Washoe High School shall not be included as a part of the Washoe County School District Nurses Association bargaining unit. NRS 288.170. Clearly, however, the Nevada Nurses Association is and shall be recognized as the exclusive bargaining agent for the nurses bargaining unit.

FINDINGS OF FACT

1. That the Complainant, Washoe County School District Nurses Association, is a local government employee organization.

2. That the Complainant, Nevada Nurses Association, is the bargaining agent for the bargaining unit comprised of the Washoe County School District Nurses.

3. That the Respondent, Washoe County School District; Board of Trustees of Washoe County School District, is a local government employer.

4. That in November, 1979, the Association indicated an intent to the District to participate in collective bargaining negotiations which, in 1980, the parties engaged in. Prior thereto the parties held only meet

and confer sessions.

5. That in November of 1979, Nurse Marilee Kuhl informed District Nursing Supervisor Beverly Dyas that there was a possibility that she would be moving to Elko, Nevada. In February of 1980, Nurse Kuhl confirmed that she would leave the District in March of 1980.

6. That in February, 1980, Nurse Kuhl voluntarily resigned from the District effective March 10, 1980.

7. That toward the end of February, 1980, Nurse Kuhl assisted in interviewing potential replacement nurses. However, no replacement nurse was hired.

8. That prior to the last quarter of 1980, and at various times over the past decade, the District had been considering the use of clinical aides in its health services program.

9. That the uncertainty of Question 6 placed school districts in a precarious financial position and the District sought more efficient ways to fill the educational needs of the District's children.

10. That elementary school principals complained about inadequate service to students because of the unavailability of nurses who were assigned to several schools.

11. That when assigned school nurses are not present, principals, secretaries, volunteers, etc., administer first aid as required by the students.

12. That in February, 1980, the District elected to hire three clinical aides, on a trial basis until the end of the year, to, in part, fill the void

created by Nurse Kuhl's voluntary departure.

13. That the hiring of clinical aides was consistent with good business judgement and, but for the timing, was not related to the fact that the Association had chosen to bargain collectively.

14. That the pilot program afforded the District and the students increased health coverage in the peak injury hours of 10:00 a.m. till 2:00 p.m. at an equal or lower cost than hiring one full-time nurse to replace Nurse Kuhl.

15. That one of three clinical aides hired by the District was in fact a registered nurse, and that the substitute aide was a registered nurse.

16. That District Nursing Supervisor Beverly Dyas, was both discouraging and disparaging in her comments to her subordinates regarding nurses taking part in formal contract negotiations versus the original meet and confer sessions.

17. That notwithstanding Supervisor Dyas' personal biases, the District did not act in a retaliatory manner in response to the Associations's statutory right to bargain collectively under NRS Chapter 288.

18. That insufficient Association evidence was presented to establish a prima facie case that two part-time evening nurses assigned to Washoe High School shared the requisite community of interest with the other Association nurses to be included in the bargaining unit.

19. That the Nevada Nurses Association is the bargaining agent for the nurses bargaining unit.

CONCLUSIONS OF LAW

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

2. That the Complainant, Washoe County School District Nurses Association, is a local government employee organization within the term as defined in NRS 288.040.

3. That the Complainant, Nevada Nurses Association is the exclusive bargaining agent for the bargaining unit comprised of the Washoe County School District Nurses. NRS 288.027.

4. That the Respondent, Washoe County School District; Board of Trustees of Washoe County School District, is a local government employer within the term as defined in NRS 288.060.

5. That the Association provided notice of intent to negotiate to the District in November of 1979. NRS 288.180.

6. That the respective parties engaged in collective bargaining in 1980 pursuant to NRS Chapter 288.

7. That the hiring of clinical aides was consistent with good business judgement and, but for the timing, was not related to the fact that the Association had chosen to bargain collectively. NRS 288.150(3).

8. That notwithstanding Supervisor Dyas' personal biases, the District did not act in a retaliatory

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manner in response to the Association's statutory right to bargain collectively under NRS Chapter 288.

9. That the District did not fail to bargain in good faith, nor commit a prohibited practice, nor interfere with an employee's right to join and exercise his/her protected rights. NRS 288.270 (1).

10. That the District was entirely justified in hiring clinical aides and proceeding with the pilot program. NRS 288.150 (3).

11. That the evidence presented did not sustain a finding that two part-time evening nurses assigned to Washoe High School shared the requisite community of interest to include them in the Association's bargaining unit. NRS 288.170 (1), (2).

12. That the Nevada Nurses Association is the exclusive bargaining agent for the nurses bargaining unit. NRS 288.027, NRS 288.160.

The requested relief is denied and the Complaint dismissed. In addition, as raised in the post hearing briefs, Complainant's Motion to Strike a portion (p. 19 ll 4-7) of the Respondent's "Responsive Brief" is denied. Each party shall bear its own costs and attorney's fees.

Dated this 11th day of February, 1981.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

Carole Ann Vilardo

Carole Ann Vilardo, Board Chairperson

Dorothy Eisenberg

Dorothy Eisenberg, Board Member

Board Member Earl L. Collins did not participate in the hearing or deciding of this case.

Certified Mail: John N. Schroeder
C. Robert Cox

xc: Board Members