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STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

NEVADA CLASSIFIED SCHOOL)
EMPLOYEES ASSOCIATION, CHAPTER 6,)

ITEM NO. 254

Petitioner,)

CASE NO. A1-045467

-vs-)

DECISION

DOUGLAS COUNTY SCHOOL DISTRICT)
and DOUGLAS COUNTY BOARD OF)
SCHOOL TRUSTEES,)

Respondents.)

11 For the Complainant: Michael E. Langton, Esq.
LANGTON & KILBURN

12 For the Respondents: C. Robert Cox, Esq.
13 WALTHER, KEY, MAUPIN, OATS,
COX, LEE & KLAICH

14 For the EMRB: Salvatore C. Gugino, Chairman
15 Tamara Barengo, Vice Chairman
Howard Ecker, Member

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17 STATEMENT OF THE CASE

18 On March 26, 1990, the Nevada Classified School
19 Employees Association, Chapter 6, NCSEA ("Union") petitioned
20 the Local Government Employee-Management Relations Board
21 ("Board") to make a unit determination regarding bus drivers
22 employed by the Douglas County School District ("District")
23 and to order the District to recognize the Union as the
24 exclusive representative of the bus driver unit.

25 On January 24, 1990, the Union had requested recognition
26 from the District, by letter, as the exclusive representative
27 for a bargaining unit consisting solely of bus drivers. The
28 Union also provided the District with a copy of its

1 constitution and bylaws, a list of officers, a no-strik
2 pledge and a roster of its members.

3 On February 15, 1990, the District, by letter, denied
4 recognition to the Union alleging that the roster of members
5 did not qualify as a verified membership list as required by
6 NRS 288.160(2).

7 On March 13, 1990, the Union again appealed for
8 recognition of the bus driver unit to the Trustees of the
9 District at a public meeting.

10 On March 14, 1990, the District informed the Union, by
11 letter, that it determined that the most appropriate
12 bargaining unit for the District classified employees would be
13 a unit of all classified employees and accordingly, denied the
14 Union's request for recognition.

15 On March 26, 1990, the Union filed this petition.

16 At the hearing on this matter before the Board held in
17 Reno on September 14, 1990, the following issues were
18 presented for determination:

19 1. Whether a collective bargaining unit
20 consisting solely of bus drivers is an appropriate
21 unit pursuant to NRS 288.170.

22 2. Whether the Union's application for
23 recognition as exclusive representative for the
24 bargaining unit consisting of bus drivers was
25 sufficient pursuant to NRS 288.160.

26 3. Whether the District's refusal to
27 recognize the Union as the exclusive representa-

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1 Exhibit "B"). However, the District has not recognized th.
2 entity as the exclusive bargaining agent, nor has this
3 competing union petitioned for recognition with this Board.
4 See NRS 288.170.5. Hence, no bargaining unit of employees
5 with a community of interest with bus drivers exists in the
6 District. In the absence of the existence of any recognized
7 unit, the bus drivers were entitled to seek recognition of
8 their own bargaining unit solely composed of bus drivers.

9 All other unit determination cases which have come
10 before this Board, including those cited by counsel in
11 argument, were distinctly different from this case in that
12 they involved either carving smaller bargaining units from
13 existing units or adding groups of employees to existing
14 units. (See EMRB Items No. 4, 11, 43, 76, 96, 104, 136, 185,
15 230, 251.) In those cases where there was a choice of
16 bargaining units available to the employees, the Board has
17 determined the most appropriate unit after considering the
18 community of interest, the desires of the employees and the
19 public interest. However, in this instant case, the Board is
20 not faced with choosing the most appropriate unit. The Board
21 is simply determining whether the petitioning employees
22 constitute an appropriate unit.

23 NRS 288.170(1) and (5) provide:

24 1. Each local government employer which has
25 recognized one or more employee organizations
26 shall determine, after consultation with the
27 recognized organization or organizations, which
28 group or groups of its employees constitute an
appropriate unit of units for negotiating. The
primary criterion for that determination must be
the community of interest among the employees

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concerned.

5. If any employee organization is aggrieved by the determination of a bargaining unit, it may appeal to the board. Subject to judicial review, the decision of the board is binding upon the local government employer and employee organizations involved. The board shall apply the same criterion as specified in subsection 1.

(Emphasis added.)

Here, the Board must consider the interests of the public in making a reasonable and equitable decision which will, at the same time, promote effective collective bargaining. For guidance, the Board turns to the words of Senator Carl Dodge, the primary sponsor and author of the Local Government Employee-Management Relations Act. Senator Dodge, while acknowledging the difficulty of trying to anticipate each type of bargaining unit, used a school district as an example of what he had in mind:

. . . are probably four or five different groups of employees in a school district that would form their own bargaining units, as a result of this community of interest. I think the teachers, themselves, the professional certified people, would be a bargaining unit; the office and clerical staff would be a bargaining unit because they have a community of interest; the maintenance people would be a bargaining unit; possibly the bus drivers would be a bargaining unit, because again, they have communities of interest. So the only reason I am mentioning this to you is to place in proper context at least, what this community of interest would constitute.

See Minutes of Jt. Hearing of Senate Committee on Federal, State and Local Governments and Assembly Committee on Government Affairs (Feb. 25, 1969), (emphasis added).

The Board believes that the bus drivers in the Douglas County School District have the requisite job similarity,

1 mutuality of interest, and desire intended by NRS 288.170(1,
2 for an appropriate unit. It is clearly accepted that the bus
3 drivers perform the same tasks, in the same working
4 conditions, with the same working hours, requiring the same
5 training and licensure, working under the same supervision.
6 (Transcript at 19, 7.) (Also see NAC 288.332.) The desire
7 for representation is clearly demonstrated by the submission
8 of membership cards by the majority of employees in the unit.
9 (Stipulated Exhibit "1".)

10 It is inequitable to deny bargaining and representation
11 rights to a group of employees in these circumstances. The
12 public interest is not served by postponing the bargaining
13 rights of employees until such time as a "more appropriate"
14 unit might be established. Such an action is contrary to the
15 intent of NRS Chapter 288 and runs the risk of obstructing the
16 collective bargaining process in violation of NRS 288.270.
17 Although the Board does not condone the actions of the
18 District in this matter, it does not find a prohibited
19 practice because of the District's reliance on EMRB Item 96.

20 II

21 UNION IS ENTITLED TO RECOGNITION AS
22 EXCLUSIVE REPRESENTATIVE OF THE BUS
DRIVER UNIT.

23 The Board finds the Union's petition for recognition
24 sufficient pursuant to NRS 288.160(1) and (2) which provide:

- 25 1. An employee organization may apply to a
26 local government employer for recognition by
27 presenting:
28 (a) A copy of its constitution and bylaws, if
any;

1 (b) A roster of its officers, if any, and
2 representatives; and

3 (c) A pledge in writing not to strike against
4 the local government employer under any circum-
5 stances.

6 A local government employer shall not recognize as
7 representative of its employees any employee
8 organization which has not adopted, in a manner
9 valid under its own rules, the pledge required by
10 paragraph (c).

11 2. If an employee organization, at or after
12 the time of its application for recognition,
13 presents a verified membership list showing that
14 it represents a majority of the employees in a
15 bargaining unit, and if the employee organization
16 is recognized by the local government employer, it
17 shall be the exclusive bargaining agent of the
18 local government employees in that bargaining
19 unit.

20 On January 24, 1990, the Union provided the District
21 with copy of its constitution and bylaws, a list of officers,
22 a no-strike pledge and a roster of its members. (Union
23 Petition Exhibit "A", District Answer, Page 1, and Exhibit
24 "A".)

25 The Board also admitted into evidence forty-five (45)
26 membership cards which had been submitted to the District on
27 March 13, 1990 as proof of membership in the Union by a
28 majority of the bus drivers.

The Union met its obligations for recognition under NRS
288.160. Further, the District failed to raise any objection
with the petition under Nevada Administrative Code 288.143
which provides:

**Objection to application for recognition of
organization.** Upon the proper filing of an
application for recognition, any local government
employer objecting to the sufficiency of the
application may, within 5 days after receipt of
the application, request a hearing before the
board to challenge the sufficiency of the
application.

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1 From all the above, the Board finds the Union's
2 application for recognition was sufficient and accordingly,
3 the Union must be recognized as exclusive representative of
4 the bus driver unit.

5 FINDINGS OF FACT

6 1. That on January 24, 1990, the Union notified the
7 District by letter of its desire to represent a bargaining
8 unit consisting solely of bus drivers in the District.

9 2. That attached to the letter of January 24, 1990, was
10 a copy of the Union's constitution and bylaws, a list of its
11 officers, a no-strike pledge and a roster of its members.

12 3. That on January 31, 1990, a competing union entitled
13 "Douglas County Educational Support Personnel Association"
14 ("ESPA") requested recognition as the exclusive representative
15 of all the classified employees.

16 4. That the District did not grant recognition to the
17 ESPA.

18 5. That the ESPA did not appeal the District's failure
19 to grant it recognition to the Board between February 1, 1990
20 and September 14, 1990.

21 6. That there is no bargaining unit of employees in the
22 District with a community of interest with the bus drivers.

23 7. That on February 15, 1990, the District notified the
24 bus driver Union by letter that it had denied recognition of
25 the Union because the roster did not qualify as a verified
26 membership list.

27 8. That on March 13, 1990, the Union appealed for
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1 recognition as representative of a bus driver unit at a public
2 meeting of the School Trustees.

3 9. That the majority of the bus drivers were members of
4 the Union on March 13, 1990.

5 10. That on March 14, 1990, the District informed the
6 Union by letter that it had determined that the most
7 appropriate bargaining unit for the classified school
8 employees was a unit of all of the classified employees and,
9 accordingly, denied the Union's request for recognition.

10 11. That the District never requested a hearing before
11 the Board to challenge the sufficiency of the Union's
12 application for recognition.

13 CONCLUSIONS OF LAW

14 1. To the extent that these conclusions of law contain
15 findings of fact, they are hereby incorporated in the portion
16 of the decision and vice versa.

17 2. That the Local Government Employee-Management
18 Relations Board possesses original jurisdiction over the
19 parties and subject matter of this Petition pursuant to the
20 provisions of NRS Chapter 288.

21 3. That Petitioner, Nevada Classified School Employees
22 Association, Chapter 6, is an employee organization within the
23 meaning of NRS 288.040.

24 4. That Respondent, Douglas County School District, is
25 a local government employer within the meaning of NRS 288.060.

26 5. That the bus drivers in Douglas County School
27 District share a community of interest which warrants their
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1 designation as an appropriate unit under provisions of NR.
2 288.170(1).

3 6. That NRS 288.160 contemplates that upon proper
4 filing of an employee organization representing the majority
5 of members in an appropriate bargaining unit, the employer
6 shall recognize the employee organization as the initial
7 exclusive representative of that unit.

8 7. That the District was required within five (5) days
9 after receipt of the Union's application for recognition to
10 request a hearing before the Board pursuant to NAC 288.143 if
11 it wished to challenge recognition of the Union. The District
12 failed to do so.

13 8. That the Union complied with the provisions of NRS
14 288.160(1) and NRS 288.160(2) in seeking recognition as the
15 initial exclusive representative of an appropriate bargaining
16 unit of bus driver and, therefore, must be recognized as the
17 exclusive representative of the bus driver unit.

18 ORDER

19 Upon decision rendered by the Board at its meeting on
20 September 14, 1990, it is hereby

21 ORDERED, ADJUDGED AND DECREED as follows:

22 1. That the District shall recognize the Union as the
23 exclusive representative for the bargaining unit composed of
24 bus drivers;

25 2. That this order shall be publicly posted at the work
26 sites of the employees affected by this decision for a period
27 of thirty (30) days; and
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3. That each party shall bear its own costs and attorney fees in this matter.

DATED this 3RD day of October, 1990.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By *Salvatore C. Gugno*
SALVATORE C. GUGINO, Chairman

By *Tamara Barengo*
TAMARA BARENGO, Vice Chairman

By *Howard Ecker*
HOWARD ECKER, Member