

1 STATE OF NEVADA
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD
4

5 INTERNATIONAL BROTHERHOOD OF)
6 TEAMSTERS, LOCAL 14, AFL-CIO,)
7 Petitioner,)

ITEM NO. 520D

8 vs.)

CASE NO. A1-045735

9 CLARK COUNTY SCHOOL DISTRICT and)
10 EDUCATION SUPPORT EMPLOYEES)
11 ASSOCIATION)
12 Respondents.)

DECISION

11 For Complainant: Lewis N. Levy, Esq.
12 Levy, Stern & Ford

13 For Respondents: C.W. Hoffman, Esq.
14 Clark County School District

15 Michael W. Dyer, Esq.
16 Sandra G. Lawrence, Esq.
17 Dyer, Lawrence, Cooney & Penrose

18 STATEMENT OF THE CASE

19 On January 29, 2002, Petitioner INTERNATIONAL BROTHERHOOD OF
20 TEAMSTERS, LOCAL 14, AFL-CIO (hereafter "Teamsters 14") filed an Application for Order
21 Convening an Administrative Hearing for the Purpose of Determining Whether to Conduct an
22 Election Pursuant to NRS 288.160, NAC 288.145 and NAC 288.146(1) and (2) with the Local
23 Government Employee-Management Relations Board (hereafter "Board") against the CLARK
24 COUNTY SCHOOL DISTRICT (hereafter "CCSD") and EDUCATION SUPPORT
25 EMPLOYEES ASSOCIATION (hereafter "ESEA").

26 A hearing was conducted on September 19 and 20, 2002. The Board deliberated on all
27 issues presented at the hearing on September 20, 2002, noticed in accordance with Nevada's
28 Open Meeting Law. The Board heard testimony from three witnesses and received evidence
from all parties.

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1 DISCUSSION

2 Gary Mauger testified as the first witness on behalf of Teamsters 14. He testified that
3 cards were passed out by approximately 140 people, including employees of the CCSD and
4 organizers from the International Brotherhood of Teamsters. The bargaining unit employees
5 were solicited during non-work time and in the parking lot. The employees were told that
6 signing the cards would be kept confidential, as the employees indicated apprehension should
7 their names be disclosed to the incumbent employee organization. Mr. Mauger testified he and
8 Kathy Naumann, of his office, kept track of the cards as they were received. He testified he
9 received 4,017 by November 19 and 4,121 by November 30, 2001. Exhibit 7 was the list of
10 categories of employees signing the Teamsters 14's cards.

11 Exhibit HH was offered to show that Teamsters 14 waived the requirement to pay dues
12 until that organization had been recognized. Mr. Mauger conceded that the bottom part of
13 Exhibits 6 and GG may have been the only part some of the employees signed. Exhibits 6 and
14 GG were examples of the application to the union with the bottom portion thereof authorizing
15 Teamsters 14 to represent the employee signing the document.

16 Mauger testified that he took two "mail" boxes of authorization cards to CCSD on
17 December 20, 2001 for the purpose of allowing Dr. Goldman of CCSD to conduct a count of the
18 cards to verify the employees were indeed employees of the CCSD and were proper for that
19 bargaining unit. Dr. Goldman's testimony on September 18, 2002, substantiated that Mr.
20 Mauger had brought two boxes of cards to his office on December 20, 2001. Mauger did state
21 that he was not going to let the CCSD keep the cards due to confidentiality concerns. All cards
22 were supposedly dated. Mauger instructed the organizing individuals to ask the employees if
23 they were probationary or not. The authorization cards do not ask if the signing employee is
24 probationary. Additionally, Dr. Goldman did not ask for a verified membership list.

25 Cards received after December 1, 2001, were not considered, and the tally list (Exhibit 7)
26 does not contain any reference to cards received on December 1, 2001 and thereafter.

27 References were made to prior organizing attempts in Mesquite, Nevada by Teamsters 14
28 and that similar authorization cards were utilized. However, this matter was distinguished from

1 the present matter in that the election conducted in Mesquite, Nevada, was by the consent of the
2 parties. It is a customary practice during an organization attempt, to waive dues until the
3 challenging union is recognized.

4 Mauger agreed that although he did receive certain documents and/or a computer disc
5 from the CCSD containing the names of employees, he did not compare the authorization cards
6 with that list.

7 Dean Leavitt testified. He works for CCSD as a building engineer, and has also been a
8 bus driver for the CCSD. He was a member of ESEA and has held positions in that organization.
9 He is, however, no longer a member of ESEA, having resigned during the window period in July
10 2002. At the time of the Teamsters 14's organizing attempt, he assisted in soliciting ESEA
11 members to the Teamsters 14 organization. He felt that ESEA did not really support its members
12 and that there had been a problem with ESEA's health and welfare trust fund. Many members
13 experienced problems with that trust fund in paying medical claims and bills, leaving members
14 to pay the entire bills received from health care providers. He also felt there were problems by
15 the ESEA in the grievance process.

16 Mr. Leavitt started passing out authorization cards in September and continued through
17 November, 2001. He was told by Teamsters 14 not to interfere with the employees doing their
18 work, and to only approach them during non-work hours. He turned his cards into Teamsters 14
19 on a daily basis. He estimates he visited 20 or 30 locations. CCSD has about 300 different
20 facilities. He informed the employees that the authorization cards were necessary in order to
21 obtain an election.

22 He estimates he personally came into contact with about 130 employees, about 50% of
23 that number complained about problems with the ESEA and from that 50%, he received
24 authorization cards from about 45% of those complaining employees. Mr. Leavitt confirmed
25 that 30 of the 130 individuals contacted signed authorization cards.

26 Mr. Leavitt was recalled by the Board and was asked why he continued paying ESEA
27 dues after joining Teamsters 14. His first reason was because of the limited drop period in July
28 2002. That was the first opportunity he had to drop ESEA membership. He also indicated he did

1 not want to harm his relationship with ESEA if it stayed the incumbent representative of the
2 CCSD employees. He also offered that he attempted to change the ESEA's attitude towards its
3 members while on the Board of Directors and on the grievance committee, but he felt he was
4 unsuccessful.

5 Joseph Furtado testified as the Executive Director of ESEA. ESEA, in this matter,
6 represents the support staff. That would not include the teachers, police officers, counselors,
7 administrators, and those not working at least 4 hours per day. Exhibit 7 (Teamsters 14's tally
8 list) contains a listing for one counselor and that would be improper for this bargaining unit.
9 Exhibit 7 also had "radio repair" and Mr. Furtado stated there is no such classification. Upon
10 cross-examination, he agreed that such a description would fall into a category that is a proper
11 member of the bargaining unit in dispute in this matter, e.g., parts/garage. Therapist and Speech
12 therapist were included in Exhibit 7 and they should be in the teachers' bargaining unit. Thus,
13 there are about 3 individuals that are improperly listed in Exhibit 7. Mr. Furtado did mention
14 another category identified as "classification not provided," which had 272 employees listed.
15 Joint Exhibits 1 and 2 were provided indicating current dues-paying members. He believes 84
16 employees later revoked Teamsters 14 representation.

17 Exhibit BB is a list from CCSD's payroll department listing ESEA's dues-paying
18 members as of November 30, 2001. Mr. Furtado agreed that members could not drop their
19 membership with ESEA except during the window period in July 2002, i.e., months after the
20 November 2001 organizing attempts.

21 He testified that ESEA solicited employees to drop their membership with Teamsters 14
22 and such revocations were mailed to Teamsters 14. He did indicate that the employees of CCSD
23 had a "legitimate" reason to be upset with ESEA and that was due to the financial problems with
24 the health and welfare trust fund not paying ESEA members' medical bills. He believes that
25 57% of employees of CCSD employees are still with ESEA.

26 The CCSD offered no witnesses for this portion of the hearing. Dr. Goldman of CCSD
27 testified, however, on Wednesday, September 18, 2002 during the first portion of this
28 administrative hearing.

1 The parties offered closing arguments. Teamsters 14 stated there are two main issues
2 before the Board at this time. Those reasons are (a) whether a good faith doubt exists as to
3 which employee organization has the support of the majority of CCSD support staff and (b) the
4 proper time for the presentation of a verified membership list. Teamsters 14 states NRS
5 288.160(2) requires the list to be provided "at or after" the time of recognition; however, that
6 statute states "at or after" an application for recognition. The attorney for Teamsters 14
7 requested that the Board consider the authorization cards as the "verified membership list" as
8 allegedly the Board has done in prior decisions. Teamsters 14 further offered that the
9 authorization cards are "appropriate" to establish a question on the majority issue, triggering the
10 need for an election.

11 The ESEA argued that all paragraphs of NRS 288.160 must be read together, as a step by
12 step process. Verified membership lists are necessary to verify the accuracy of the authorization
13 cards. Counsel for ESEA agreed that Dean Leavitt was a credible witness and agreed with the
14 assessment of the employees' problems with the health & welfare trust fund not paying medical
15 bills. ESEA asserted that the bottom portions of Exhibits 6 and GG indicated only an interest in
16 Teamsters 14; however, the wording of such exhibits indicate the employees' desire to have
17 Teamsters 14 represent them in the collective bargaining process. Counsel for ESEA indicated
18 that Teamsters 14 seems to only want to "slop" something down for the Board to "lap" up in this
19 matter. ESEA further indicated that if Teamsters 14 wants to argue public policy requiring an
20 election in this matter, that it should seek the assistance of the Legislature.

21 FINDINGS OF FACT

22 1. That Teamsters 14 presented a proper "challenge" (pursuant to NAC 288.146) to the
23 CCSD that it now represents the majority of the bargaining unit that has the ESEA as its current
24 representative and the date of such challenging correspondence was dated November 15, 2001
25 and received by the CCSD on November 19, 2001.

26 2. That CCSD had recognized ESEA as the representative of the bargaining unit in
27 question in this matter.
28

1 3. That Teamsters 14 initiated an organizing attempt, which included approximately 140
2 individuals soliciting membership from CCSD employees.

3 4. That testimony was offered that the solicitation did not interfere with the workday of
4 the employees.

5 5. That testimony was offered that two "mail" boxes of authorization cards were taken to
6 CCSD for the purposes of counting and random verification. No testimony was presented by any
7 party to refute this allegation and in fact, Dr. Goldman of CCSD agreed on September 18, 2002,
8 that two "mail" boxes were indeed delivered to his office pursuant to a conversation with Mr.
9 Mauger for counting purposes.

10 6. That Teamsters 14 did not provide a "verified membership list" to CCSD nor was one
11 requested by CCSD.

12 7. That CCSD did provide Teamsters 14 with documents and/or a computer disc with the
13 names of employees for this bargaining unit.

14 8. That testimony was offered by not only Teamsters 14 witnesses but also by Mr.
15 Furtado of ESEA that employees were disgruntled and/or dissatisfied with ESEA due to financial
16 problems with the health & welfare trust fund and the potential financial liability it has created
17 for the individual members.

18 9. That figures were provided by Mr. Mauger and Mr. Leavitt as to the number of
19 employees signing authorization cards for Teamsters 14.

20 10. That members cannot drop their ESEA membership except during the window period
21 in July 2002.

22 11. That it is not unusual or inconsistent in a "raid" setting for bargaining unit members
23 to remain in the incumbent employee organization and sign authorization and/or enrollment
24 cards with a rival employee organization.

25 12. That credible testimony was also offered concerning bases of dissatisfaction with the
26 ESEA, in addition to the problems with its health and welfare trust fund.

27 13. A verified membership list is only referenced in NRS 288.160(2).

28 14. NRS 288.160(4) is silent as to the issue of a verified membership list.

1 15. Exhibit 7 did not contain any probationary employees.

2 16. Should any finding of fact be more properly construed as a conclusion of law, may
3 they be so deemed.

4 **CONCLUSIONS OF LAW**

5 1. That CCSD is a local government employer as defined by NRS 288.060.

6 2. This Board has jurisdiction over the parties and the subject matter contained in the
7 application on file with the Board, pursuant to the provisions of NRS Chapter 288.

8 3. The Incumbent Association and Teamsters 14 are employee organizations as defined
9 by NRS 288.040.

10 4. Teamsters 14 presented a proper challenge to the representation of the bargaining unit
11 in question by its correspondence dated November 15, 2001.

12 5. NRS 288.160(4) states that the Board may order an election if it has a good faith doubt
13 as to "whether any employee organization is supported by a majority of the local government
14 employees."

15 6. ESEA and Teamsters 14 both agreed that the CCSD employees were "legitimately"
16 upset, dissatisfied, and/or disgruntled with ESEA's representation and especially with the
17 financial problems with its health and welfare trust fund and the members' potential financial
18 liability due to the trust fund's inability to pay the bills of health care providers.

19 7. That no "verified membership list" was presented to CCSD, nor was one requested
20 by CCSD.

21 8. That Exhibit 7 contains a tally, or list, identifying the classifications of employees
22 signing authorization cards for Teamsters 14 and such classifications would be proper for the
23 bargaining unit in question with very few exceptions.

24 9. That such a list did not contain probationary employees and if such employees had
25 been included in the recruitment, then the list (Exhibit 7) may have contained a higher number of
26 employees wishing to join Teamsters 14.

27 10. That only a few categories of classifications in Exhibit 7 were discredited by ESEA
28 and/or the CCSD.

1 11. That the organization drive was conducted in late September through November
2 2001 and the only window period allowing employees to drop their membership with ESEA
3 would not open until July 2002; so it was impossible for the employees to drop their association
4 with ESEA during this organization drive.

5 12. That it is not unusual or inconsistent for employees to stay with the incumbent
6 employee organization while indicating an interest in associating and/or joining a new
7 organization as they do not want to lose the effectiveness of their representation, if necessary, by
8 that incumbent employee organization and they do not wish to alienate that organization should
9 it remain as their bargaining agent. Employees may have many reasons for maintaining dual
10 status during times of uncertainty over representation. Thus, it is not inconsistent to pay dues to
11 one organization while signing authorization cards for another organization.

12 13. The relevant time period to evaluate whether a good faith doubt existed is November
13 1 to 30, 2001 (NAC 288.146).

14 14. That evidence was presented that there exists two "mail" boxes of authorization
15 cards supporting Teamsters 14, and this was confirmed by the testimony of Mr. Mauger. Dr.
16 Goldman of CCSD confirmed Mr. Mauger brought two boxes of cards to his office on December
17 20, 2001.

18 15. The cases mentioned by Teamsters 14, involving Levitz Furniture and Allentown, do
19 indicate that a doubt as to the membership can be created by a showing of employees'
20 dissatisfaction with an incumbent organization and such a showing was presented in the current
21 matter.

22 16. That NRS 288.160(4) does not require the presence of a verified membership list; it
23 only requires a good faith doubt by the Board.

24 17. This Board concludes that a good faith doubt exists whether ESEA or Teamsters 14
25 or any other employee organization is supported by a majority of employees in this bargaining
26 unit.

27 18. Should any conclusion of law be more properly construed as a finding of fact, may
28 they be so deemed.

