

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

5 DOUGLAS COUNTY PROFESSIONAL
6 EDUCATION ASSOCIATION and
7 DOUGLAS COUNTY SUPPORT STAFF
8 ORGANIZATION,

9 Complainant,

10 vs.

11 DOUGLAS COUNTY SCHOOL DISTRICT,

12 Respondents,

) ITEM NO. 755A

) CASE NO. A1-046008

) **ORDER**

13 For Complainant: Jessica C. Prunty, Esq.

14 For Respondent: Rick R. Hsu, Esq.

15 This matter came on before the State of Nevada, Local Government Employee-
16 Management Relations Board ("Board") on April 10-12, 2012 for consideration and decision
17 pursuant to the provisions of the Local Government Employee-Management Relations Act ("the
18 Act"); NAC Chapter 288, NRS chapter 233B, and was properly noticed pursuant to Nevada's
19 open meeting laws. This order is issued pursuant to NAC 288.410 and NRS 233B.120.

20 I.

21 In this case, we address the Douglas County School District's obligations to respond to a
22 request for information from two of its recognized bargaining agents. This petition for
23 declaratory order was brought by the Douglas County Professional Education Association
24 ("Association") and the Douglas County Support Staff Organization ("Organization"). For
25 purposes of this order, the two bargaining agents are collectively referred to as the "unions."

26 The unions ask the Board to declare that the obligation to bargain in good faith imposed
27 by NRS 288.270(1)(e) extends throughout the duration of a collective bargaining agreement, and
28 includes the duty for an employer to provide information that has been requested by the

1 bargaining agent so that the bargaining agent can perform its essential function of policing and
2 enforcing the agreement.

3 The Association's request originates in a request for information that the Association
4 made to the District in order to investigate the District's claim of a past practice as a defense to a
5 grievance proceeding ("the Mattison grievance"). The Association requested the names of
6 teachers who had been denied a step advancement on the salary schedule due to working less
7 than 120 days in a school year, along with an identification of the type of leave that had been
8 taken in relation to the advancement denial.

9 The Organization's request originates out of a request for the names of employees who
10 had had their hours cut during the 2010-2011 school year. The purpose of the request was to
11 evaluate the merits of a grievance relating to compensation of classroom and playground aides
12 ("the classroom/playground aide grievance").

13 Both unions claim that the information requested is vital to their evaluations of potential
14 grievances and without a proper response to their requests for information from the District they
15 are unable to proceed in a judicious manner or ably carry out the duties owed to their respective
16 members.

17 The District argues that it cannot simply release employees' information to the unions,
18 including employee names, because its employees have an expectation of privacy in such
19 information. In regards to the Mattison grievance in particular, the District argues that the name
20 of an employee coupled with an account of the type of leave the employee had taken involves
21 privacy concerns, as the leave in some cases may be sick leave and may be leave afforded by the
22 Family Medical Leave Act.

23 The unions' request for declaratory relief seeks a declaratory order regarding the
24 applicability or interpretation of NRS 288.270(1)(e) and is an appropriate request. NAC
25 288.380(1).

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II.

General Obligation to Provide Information During the Term of an Agreement

NRS Chapter 288 was modeled after the National Labor Relations Act, and it is proper to look to decisions interpreting the NLRA to inform our interpretation of Chapter 288. Rosequist v. International Ass'n of Firefighters Local 1908, 118 Nev. 444, 449, 49 P.3d 651, 654 (2002).

As is the case with the NLRA, good faith bargaining under NRS Chapter 288 extends beyond the mere negotiation process and includes the duration of the collective bargaining agreement. See NRS 288.033; City of Reno v. Reno Police Protective Ass'n., 118 Nev. 889, 59 P.3d 1212 (2002) (upholding bad-faith bargaining charge under unilateral change theory).

Section 8(a)(5) of the NLRA imposes an obligation on "...an employer to provide information that is needed by the bargaining representative for the proper performance of its duties. Similarly, the duty to bargain unquestionably extends beyond the period of contract negotiations and applies to labor management relations during the term of an agreement." N.L.R.B. v. Acme Industrial Co., 385 U.S. 432, 435-436 (1967) (internal citations omitted). However, "[a] union's bare assertion that it needs information to process a grievance does not automatically oblige the employer to supply all the information in the manner requested. The duty to supply information under § 8(a)(5) turns upon 'the circumstances of the particular case,' and much the same may be said for the type of disclosure that will satisfy that duty." Detroit Edison Co. v. N.L.R.B., 440 U.S. 301, 314-315 (1979).

NRS 288.270(1)(e) is the state counterpart to Section 8(a)(5). Compare NRS 288.270(1)(e); 29 U.S.C. § 158(a)(5). Accordingly, the same obligations arise under NRS 288.270(1)(e). See Advanced Sports Information, Inc. v. Novotnak, 114 Nev. 336, 340-341, 956 P.2d 806, 809 (1998). Therefore NRS 288.270(1)(e) does impose a general obligation on a local government employer to provide information that is needed to the bargaining agent for the proper performance of its duties, including during the term of the collective bargaining agreement.

1 NRS 288.270(2)(b) imposes the same good-faith bargaining obligation upon a bargaining
2 agent; thus the obligation to provide information is a mutual obligation between the local
3 government employer and the bargaining agent.

4 This general obligation to supply information under NRS 288.270(1)(e) turns on the
5 circumstances of a particular case and the particular request for information that is made. Where
6 a local government employer declines to provide the requested information, the bargaining
7 agent's interest in obtaining the information is balanced against any concerns raised against
8 disclosure of the information. see Detroit Edison at 318-320.

9 Accordingly, the Board finds that enforcing the terms of a collective bargaining
10 agreement is an extension of the negotiations process and is covered by the provisions of NRS
11 Chapter 288. The Board also finds that there is a general mutual obligation on local government
12 employers and bargaining agents to provide information necessary to enforce the terms of a
13 collective bargaining agreement including information necessary to investigate and process
14 grievances. This obligation and the actions that will satisfy the obligation to provide information
15 depend upon the circumstances of a particular request. In order to resolve a dispute over whether
16 certain information must be provided, the Board will balance the needs of the party requesting
17 the information against the interests of the party declining to provide the information.

18 Our decision in this matter does not disturb this Board's prior decision in Education
19 Support Employees Ass'n v. Clark County School Dist., Item No 607A, EMRB Case No. A1-
20 045820 (2006). In that case, this Board did state that the duty to provide information to a
21 bargaining agent under NRS 288.180 was limited solely to information requested in the
22 negotiations process. However, in that case, the Board's analysis and conclusion was based
23 solely upon NRS 288.180 and did not address whether the obligation to provide information
24 arose separately under NRS 288.270(1)(e).

25 The Unions' Specific Requests

26 The Association has also asked for guidance from the Board relating to the specific
27 requests for information that it made for the Mattison grievance. The Board notes that this

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1 proceeding does not come to us in the form of a prohibited labor practice and instead seeks only
2 a declaratory order on this point.

3 The evidence admitted at the hearing and the arguments of the parties reveals that the
4 Association requested the names of teachers employed by the District who had been denied step
5 advancement based upon failing to meet the 120 minimum requirement. Because the
6 Association believes that under the terms of the collective bargaining agreement the 120-day rule
7 only applies when a certain type of leave is taken, and the District asserted a broader application
8 of the 120-day rule based upon past practice, the Association asserts that it needed the names of
9 the affected teachers as well as information related to what type of leave had been taken. The
10 propriety of a grievance brought under the Association's interpretation of the 120 day rule
11 depended upon the viability of the District's past practice assertions. Under these circumstances,
12 the Board accepts that the Association had a need for the requested information and the
13 Association's request for employee names to investigate the past practice issue was reasonable.

14 However, based upon information and evidence at the hearing, District raised a concern
15 over providing the Association with the names combined with the type of leave taken.. The
16 District's concerns were that these employees were not part of grievance, and the Association's
17 request raised a concern over the employees' expectation of privacy in their own employment
18 records. The District asserts that it has established, by policy, an expectation of privacy in
19 employment records. According to the District, the Association's request was for more than
20 merely the names of the employees; the request was for the identity of certain employees who
21 are associated with having taken a certain kind of leave. The District's concerns and objections
22 to providing this information to the Association also appear to be reasonable in this instance.

23 In this case, the District did not simply refuse to provide any information at all to the
24 Association. Rather, the District attempted to provide information that attempted to satisfy the
25 Association's interest while still attempting to maintain the teacher's expectation of privacy in
26 their employment records. Specifically, the District provided redacted records to the Association
27 indicating the employees that the District believed to have established the past practice. While
28 the District did not provide the names of the employees, it did provide an employee number to

1 identify the relevant employees. Additionally, the District indicated that it would provide the
2 requested information where the individual employee had signed a waiver allowing for the
3 release of the requested information. As the District did provide redacted information and as the
4 District did substitute employee names for an employee number, the District appears to have
5 taken reasonable steps to satisfy its duty to provide necessary information to the Association in
6 the Mattison grievance.

7 The Douglas County Support Staff Organization has also asked for guidance relating the
8 classroom/playground aide grievance referenced in the petition. It appears to the Board that the
9 Organization's interests in the requested names are reasonable and are related to the
10 Organization's duties as the recognized bargaining agent. As to this grievance, the District
11 expressed no concern over expectation of privacy, but merely held that it was not in the practice
12 of providing names, to the Organization. In this respect it the District's justifications for refusing
13 to provide the employee's names does not appear to outweigh the Organization's interests. It is
14 the opinion of the Board, based upon the evidence and arguments presented at the hearing, that
15 the District did not satisfy its obligation to respond to the Organization's request for information
16 in this instance.

17 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

18 1. Petitioners Douglas County Professional Education Association and Douglas County
19 Support Staff Organization are recognized bargaining agents to bargain with Respondent
20 Douglas County School District.

21 2. The unions' petition seeks a declaration regarding the applicability of NRS 288.270(1)(e)
22 and this Board is authorized to provide the requested declaratory order pursuant to NRS
23 233B.120, NRS 288.110(2) and NAC 288.380.

24 3. Under NRS 288.270(1)(e) and NRS 288.270(2)(a) a local government employer and a
25 bargaining agent have a mutual obligation to bargain in good faith.

26 4. The obligation to bargain in good faith is not limited to negotiating the terms of a
27 collective bargaining agreement and extends throughout the duration of the agreement.

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1 5. The obligation to bargain in good faith imposes a general obligation on a local
2 government employer to provide a bargaining agent with information which has been requested
3 by the bargaining agent in order for the bargaining agent to carry out its duties to police and
4 enforce the terms of the agreement.

5 6. The extent of a local government employer's duty to provide requested information and
6 the type of response that will satisfy that duty will depend upon the circumstances and context of
7 a particular request.

8 7. A local government employer has the duty to provide requested information when the
9 bargaining agent's interest in the requested information outweighs the local government
10 employer's concerns about releasing the information.

11 **DECLARATION AND ORDER**

12 Based upon the foregoing, and good cause appearing therefore as set forth above,

13 IT IS HEREBY ORDERED AND DECLARED that the parties' duty to bargain in good-
14 faith extends through the duration of a collective bargaining agreement;

15 IT IS FURTHER ORDERED AND DECLARED that the duty to bargain in good faith
16 requires the parties to respond to requests for information necessary to enforce the terms of a
17 collective bargaining agreement;

18 IT IS FURTHER ORDERED AND DECLARED that the duty to respond to requested
19 information is not absolute and the type of response that will satisfy the duty will depend upon
20 the circumstance of a particular request;

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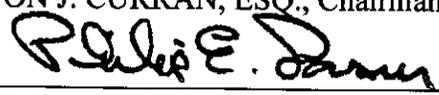
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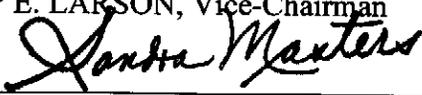
1 IT IS FURTHER ORDERED AND DECLARED that the Board will balance a requesting
2 party's interest in the requested information against the requested party's concerns over
3 disclosing the requested information in order to determine whether the good-faith bargaining
4 requirements of NRS 288.270 warrant disclosure of the requested information in a particular
5 case.

6 DATED this 3rd day of May, 2012.

7 LOCAL GOVERNMENT EMPLOYEE-
8 MANAGEMENT RELATIONS BOARD

9 BY: 
10 SEATON J. CURRAN, ESQ., Chairman

11 BY: 
12 PHILIP E. LARSON, Vice-Chairman

13 BY: 
14 SANDRA MASTERS, Board Member

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CASE NO. A1-046008

NOTICE OF ENTRY OF ORDER

13 To: Jessica C. Prunty, Esq.

14 To: Rick R. Hsu, Esq.

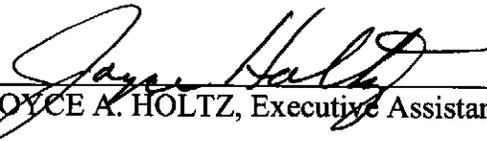
15 PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on
16 May 3, 2012.

17 A copy of said order is attached hereto.

18 DATED this 3rd day of May, 2012.

19 LOCAL GOVERNMENT EMPLOYEE-
20 MANAGEMENT RELATIONS BOARD

21 BY


22
23 JOYCE A. HOLTZ, Executive Assistant

