

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

5 CLARK COUNTY EDUCATION
6 ASSOCIATION,)

7 Complainant,)

8 vs.)

9 CLARK COUNTY SCHOOL DISTRICT,)

10 Respondents,)
11

CASE NO. A1-046025

ITEM: 764B

ORDER

12 For Complainant: Clark County Education Association & their attorney Francis C.
13 Flaherty, Esq.

14 For Respondent: Clark County School District and their attorney S. Scott Greenberg, Esq.

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

20 This Board had previously stayed this matter pending the outcome of a grievance
21 arbitration that Complainant Clark County Education Association ("CCEA") had filed over
22 Respondent Clark County School District's ("CCSD") reduction of employee salaries by 1.125%
23 in order to cover an increase in the contribution rate to the Public Employees Retirement System
24 ("PERS"). That arbitration proceeding has concluded and CCSD has moved this Board to
25 dismiss CCEA's prohibited labor practices complaint.

26 This Board has exclusive jurisdiction over prohibited labor practice issues arising under
27 NRS Chapter 288. City of Reno v. Reno Police Protective Ass'n, 118 Nev. 889, 895-897, 59 P.3d

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1 1212, 1217-1218 (2002). The Board retains jurisdiction even when a related arbitration occurs.

2 Id.

3 CCSD's motion asks the Board to dismiss this matter by deferring to the arbitrator's
4 decision under the limited deferral doctrine. We grant in part and deny in part.

5 As recognized in City of Reno, the limited deferral doctrine is not a jurisdictional
6 doctrine, but is a prudential doctrine reflecting a policy of favoring grievance arbitration as the
7 preferred method of resolving disputes. See also United Technologies Corp., 268 NLRB 557,
8 560 (1984). When countervailing policies outweigh the policy of preferring arbitration, the
9 limited deferral doctrine will not apply. In this case, CCEA argues that the limited deferral
10 doctrine should not be applied. We agree with CCEA.

11 Under City of Reno, the Board defers to an arbitrator's decision if: "(1) the arbitration
12 proceedings were fair and regular; (2) the parties agreed to be bound; (3) the decision was not
13 "clearly repugnant to the purposes and policies of the [National Labor Relations Act (NLRA)];"
14 (4) the contractual issue was factually parallel to the unfair labor practice issue; and (5) the
15 arbitrator was presented generally with the facts relevant to resolving the [unfair labor practice]."
16 City of Reno at 896, 59 P.3d at 1217.

17 CCEA has the burden to show that these elements are not met. Id. In opposing the motion
18 to dismiss, CCEA has met its burden.

19 The contractual issue is not factually parallel to the prohibited labor practice issue. CCEA
20 argues, and we agree, that the factual issue before the arbitrator was whether CCSD violated the
21 2010-2011 collective bargaining agreement by reducing employee salaries to account for the
22 PERS rate increase. This necessarily focused on the content of the collective bargaining
23 agreement. In this prohibited labor practice proceeding, the factual inquiry will focus on the
24 course of action leading up to the salary reduction and whether or not CCSD refused to negotiate
25 with CCEA over the PERS increase. As CCEA has alleged a refusal to bargain, the resolution of
26 this complaint will depend upon whether or not the PERS increase is a mandatory subject of
27 bargaining, and whether or not CCSD in fact refused to bargain over the change. These issues are

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1 distinct from the question confronting the arbitrator of whether CCSD had breached a term of the
2 collective bargaining agreement.

3 Additionally, and more importantly, CCEA has met its burden to show that the
4 arbitrator's decision is "clearly repugnant" to the purposes and policies of the Act. CCEA argues
5 that NRS 286.421(3) allows for an option of how a PERS increase is to be funded and that the
6 choice of how an employer funds a PERS increase is a mandatory subject of bargaining. CCEA
7 reasons that if the election of how a PERS increase is funded is in fact a mandatory subject of
8 bargaining, then deferring to the arbitrator's finding in favor of CCSD would allow a local
9 government employer to refuse to bargain over a mandatory subject of bargaining. CCEA points
10 to a statement in the arbitration decision that there was no such negotiation between the parties as
11 to how the 2011 PERS contribution rate increase would be funded. This appears to be the basis
12 upon which the arbitrator found that the PERS rate increase was not a part of the collective
13 bargaining agreement.

14 The very heart of the Act is to allow local government employees to bargain, through
15 their recognized bargaining agent, with their employer over the terms and conditions of their
16 employment as set forth in NRS 288.150. If CCEA's complaint is well taken, then deferral to the
17 arbitrator's decision at this stage would result in the Board's approval of a local government
18 employer's refusal to bargain over a mandatory subject of bargaining. Such a result is clearly
19 repugnant to the policies and purposes of the Act. e.g. Ciba-Geigy Pharmaceuticals Division, 264
20 NLRB 1013, 1016 (1982), *enf'd*, 722 F.2d 1120 (3d Cir. 1983).

21 In issuing this order, we note that the Board has not yet decided whether the selection of
22 the options to fund a PERS rate increase is truly a mandatory subject of bargaining, and the
23 parties will be allowed to present evidence and arguments on this issue should a hearing occur,
24 but consistent with City of Reno, CCEA has shown that the limited deferral doctrine does not
25 apply to this case. This implicates CCEA's First and Third causes of action, which will survive
26 the motion to dismiss.

27 CCEA, in its opposition, states that it withdraws its second cause of action, therefore will
28 with grant the motion to dismiss with respect to CCEA's second cause of action only.

1 CCEA also requests the opportunity to submit updated prehearing statements. While we
2 will not mandate that any party submit an updated prehearing statement, we will allow any party
3 the option to do so. Any updated prehearing statement must be submitted within 20 days of the
4 date of this order.

5 We also note that this order does not constitute a decision to hold a hearing in this case,
6 and this case will be placed on the agenda at a future board meeting to decide that question.

7 Based upon the foregoing, and good cause appearing therefore,

8 IT IS HEREBY ORDERED that CCSD's motion to dismiss is granted as to CCEA's
9 Second Cause of Action, and is denied as to CCEA's First and Third Causes of Action as set
10 forth above;

11 IT IS FURTHER ORDERED that any party that desires to file an updated pre-hearing
12 statement with the Board may do so within 20 days of the date of this order.

13 DATED this 3rd day of August, 2012.

14 LOCAL GOVERNMENT EMPLOYEE-
15 MANAGEMENT RELATIONS BOARD

16 BY: 
17 SEATON J. CURRAN, ESQ., Chairman
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NOTICE OF ENTRY OF ORDER

12 To: Clark County Education Association & their attorney Francis C. Flaherty, Esq.

13 To: Clark County School District and their attorney S. Scott Greenberg, Esq.

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

16 A copy of said order is attached hereto.

17 DATED this 3rd day of August, 2012.

18 LOCAL GOVERNMENT EMPLOYEE-
19 MANAGEMENT RELATIONS BOARD

20 BY


21 JOYCE A. HOLTZ, Executive Assistant
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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 3rd day of August, 2012, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

Francis C. Flaherty, Esq.
Dyer, Lawrence, Penrose, Flaherty, Donaldson, & Prunty
2805 Mountain Street
Carson City, NV 89703

S. Scott Greenberg, Esq.
Office of the General Counsel
Clark County School District
5100 West Sahara Ave.
Las Vegas, NV 89146


JOYCE HOLTZ, Executive Assistant

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