LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

In the Matter of the MINERAL COUNTY CLASSROOM TEACHERS ASSOCIATION, Complainant, vs. MINERAL COUNTY SCHOOL DISTRICT and BOARD OF TRUSTEES OF THE MINERAL COUNTY SCHOOL DISTRICT, Respondents.	)	No. A1-00099

DECISION

By complaint filed July 11, 1973, the complainant seeks an order of this Board directing the respondents to negotiate a proposal setting forth the procedures to be employed when a reduction in the teaching force is necessary.[1]

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1. The proposal for reduction in force provides:

> The Board may, upon giving written notice by March 1, refuse to re-employ any teacher for the next contract year due to a justifiable decrease in teaching positions due to either decreased enrollment or district reorganization; provided there is consultation with the Association prior to the decision to make any such reductions, and provided that the reductions shall be accomplished according to the following procedures.
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> A. The Board shall determine the areas in which reductions shall be made and such reductions shall then be accomplished in the following order: teacher aides, probationary teachers, and lastly, permanent teachers. Seniority shall be criterion for retentions.
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> B. Released teachers shall be placed on leave of absence with no obligation to rehire after the expiration of three (3) years. Each teacher placed on leave of absence as aforementioned shall be reinstated in inverse order of his placement on leave of absence for a vacancy for which he is qualified.

The complainant first submitted a reduction in force proposal to the respondents during negotiations for the 1972-1973 fiscal year. The proposal was tabled and subsequently submitted to advisory factfinding pursuant to the provisions of NRS 288.200; V. Wayne Kenaston, the factfinder, found the reduction in force proposal to be a condition of employment and therefore negotiable. Not bound by the advisory award, the respondents refused to negotiate the proposal asserting it was a non-negotiable management prerogative pursuant to NRS 288.150(2).

In 1973 a reduction in force proposal was again presented by complainants and, after rejection by the respondents, was submitted by the Governor, pursuant to NRS 288.200(7), to binding factfinding contingent upon the proposal being found negotiable by competent authority. The factfinder restricted his award in the matter as he found it had not been dealt with during the course of negotiations between the parties.

Following the factfinder's determination, this complaint was filed and the matter heard before the Board on March 11, 1974.

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1. (footnote one, continued)

> C. The Board shall notify teachers on leave of absence of subsequent vacancies by certified mail to the last address registered by the teacher at the school district office. No new appointments, except on a substitute basis, shall be made within thirty (30) days from the mailing of such notification. No appointment of new teachers shall be made until all those on leave of absence have been given an opportunity to be reemployed. If a teacher does not return to work at the specified time the Board shall have no further employment obligation to him, except that when a teacher who has given notice of his intent to return is prevented from so doing due to illness or other emergencies, his leave shall be extended for a period not to exceed one (1) year.
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> D. Upon return such teacher shall retain all credits toward all leaves of absence and experience credits for salary purposes, but shall not accrue any such credits for leave of absence and experience for salary purposes during lay off; provided that college or university course credit gaining during lay off shall be evaluated for salary purposes upon re-employment.

The record reflects that the persistence of the complainant in seeking a reduction in force provision in its contract is based principally on two elements: first, declining teacher morale when an uncertainty about continued employment exists due to indications that a reduction in force may take place, and, second, the possibility that the county's principal employer, a military installation, might at any time reduce its staffing resulting in drastic declines in school enrollment and school funding.

Complainants assert that the proposal is a "condition of employment" and is the subject of mandatory negotiation between the parties pursuant to NRS 288.150(1). The respondents contend that the proposal is a management prerogative not subject to negotiation; they rely on the provisions of NRS 288.150(2)(c): "Each local government employer is entitled, without negotiation or reference to any agreement resulting from negotiation: ... (c) To relieve any employee from duty because of lack of work or for any other legitimate reason; ... ."

Chapter 391 of the Nevada Revised Statutes also deals with the termination of a teachers employment due to decreased enrollment or district reorganization. See NRS 391.312(1)(g). However, NRS 391.3116 states that the provisions of several statutes, including NRS 391.312, "do not apply to a teacher who has entered into a contract with the board [of trustees] as a result of the Local Government Employee-Management Relations Act, if such contract provides separate provisions relating to the board's [board of trustees] right to dismiss or refuse to reemploy such teacher." The statute obviously envisions circumstances where the procedures for the reduction of the teaching force would be contained in a written contract resulting from the negotiations of the local government employer and the employee organization.

The proposal in question would require that the reduction in force result first in the termination of non-tenured teaching personnel. Tenure is recognized as a significant and valuable right by this State's statutory scheme and its Highest Court. NRS Chapter 391; Winterberg v. University of Nevada System, 513 P.2d 1248 (Nev. 1973). The position of the tenured teacher has likewise been recognized in other states. Barnes v. Mendenhall, 183 N.E. 556 (Ind. 1932); Seidel v. Board of Education of Ventnor City, 164 A. 901 (N.J. Sup. Ct. 1933), affd. 168 A. 297 (N.J. Ct. of Err. & App. 1933); Pickens County Board of Education v. Keasler, 82 S.2d 197 (Ala. 1955). In Board of School Trustees v. O'Brien, 190 A.2d 23 (Del. 1963), the Court stated, "...there is a substantial weight of authority standing for the proposition that a provision in a tenure act, allowing dismissal of tenure teachers as a result of a reduction in service or enrollment, does not apply if there are non-tenure teachers teaching in the general area of competence, interest, and training of the tenure teacher." Id at 26.

The question of whether or not reductions in force should occur and the procedures whereby they would be carried out have also been considered in cases arising in the private sector. In N.L.R.B. v. Royal Plating & Polishing Co., 350 F.2d 191 (3rd Cir. 1965) the appellee determined to close one of its plants due to economic reverses. The National Labor Relations Board found the unilateral closing of the plant to constitute a refusal to bargain resulting in an unfair labor practice in violation of Section 8(a)(1,5) of the National Labor Relations Act. In remanding the case to the Board, the Third Circuit ruled, "[w]e conclude that an employer faced with the economic necessity of either moving or consolidating the operations of a failing business has no duty to bargain with the union respecting its decision to shut down. However, under circumstances such as those presented by the case at bar an employer is still under an obligation to notify the

union of its intentions so that the union may be given an opportunity to bargain over the rights of the employees whose employment status will be altered by the managerial decision." Id at 196. N.L.R.B. v. Transmarine Navigation Corporation, 380 F.2d 933 (9th Cir. 1967); N.L.R.B. v. Rapid Bindery, Inc., 293 F.2d 170 (2nd Cir. 1961).

A similar approach is warranted in the public sector where the necessity for a reduction in force is created by circumstances beyond the control of the local government employer.

FINDINGS OF FACT

1. That the complainant is a local government employee organization organized and existing under the provisions of the Nevada Revised Statutes Chapter 288 and is recognized as the exclusive negotiating representative for all certified teaching personnel employed by the respondents.

2. That the respondent school district is a political subdivision of the State of Nevada and is a local government employer within the definition set forth in NRS 288.060; the respondent board of trustees is an elected body which governs the activities of the school district.

3. That in the course of negotiations between the complainant and respondents, undertaken pursuant to Chapter 288 of the Nevada Revised Statutes, the complainant submitted a proposal entitled "Reduction in Force" which the respondent refused to negotiate claiming it was a management prerogative and not the subject of mandatory negotiation between the parties.

4. That the evidence discloses that the economic base of Mineral County is a military installation whose compliment of personnel may be subject to substantial declines causing a decrease in school enrollment and school funding.

5. That the absence of set procedures for reductions in the teaching force have created serious morale problems in the teaching staff in Mineral County.

CONCLUSIONS OF LAW

1. Under Chapter 288 of the Nevada Revised Statutes, the Local Government Employee-Management Relations Board has original jurisdiction over the parties and subject matter of this complaint.

2. Under the provisions of NRS 288.150(2)(c) the determination of when a reduction in force is necessary, the number of individuals whose employment must be terminated and the areas wherein the reductions shall occur are management prerogatives and not the subject of mandatory negotiation between the parties.

3. The order in which personnel within the area or areas shall be discharged and any rights they may possess after discharge with regard to preference in re-employment are conditions of employment and the subject of mandatory negotiation between the parties pursuant to NRS 288.150(1).

The parties shall proceed in their negotiation of a reduction in force proposal in conformity with this decision.

Dated this 20th day of June, 1974.

Dennis Pletzke, Chairman

Harriet Trudell, Vice Chairman