

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

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| In the Matter of the |) | |
| CLARK COUNTY CLASSROOM TEACHERS |) | |
| ASSOCIATION, |) | |
| |) | |
| Complainant, |) | No. A1-00011 |
| |) | |
| vs. |) | No. A1-00012 |
| |) | |
| CLARK COUNTY SCHOOL DISTRICT AND |) | No. A1-00845 |
| BOARD OF TRUSTEES OF THE CLARK |) | |
| COUNTY SCHOOL DISTRICT, |) | |
| |) | |
| Respondents. |) | |

D E C I S I O N

These complaints were brought before the Board seeking a determination that the following areas are the mandatory subject of negotiation between the parties pursuant to NRS 288.150¹:
class size, teacher load, posting of vacancies, maintenance of

1. NRS 288.150 provides:

1. It is the duty of every local government employer, except as limited in subsection 2, to negotiate in good faith through a representative or representatives of its own choosing concerning wages, hours, and conditions of employment with the recognized employee organization, if any, for each appropriate unit among its employees. If either party requests it, agreements so reached shall be reduced to writing. Where any officer of a local government employer, other than a member of the governing body, is elected by the people and directs the work of any local government employee, such officer is the proper person to negotiate, directly or through a representative or representatives of his own choosing, in the first instance concerning any employee whose work is directed by him, but may refer to the governing body or its chosen representative or representatives any matter beyond the scope of his authority.

2. Each local government employer is entitled, without negotiation or reference to any agreement resulting from negotiation:

standards, student discipline, student placement, instructional equipment allocation, library allocation and curriculum development.

The complainant and respondent commenced collective bargaining for the fiscal years 1973-74 and 1974-75 in January of 1973. During the month of January, 1973, the complainant submitted numerous proposals it wished to negotiate. On January 20, 1973, the respondent notified the complainant that it would not negotiate on the nine proposals as they were not properly the subject of collective bargaining under NRS 288.150.

On January 30, 1973, March 9, 1973, and May 22, 1973, these complaints were filed. The complaints were consolidated for the purposes of hearing and decision on April 11, 1974, and heard before the Board on August 15, 16, and 21, 1974. Upon the filing of post-hearing statements, the matters were submitted for decision.

This Board initially construed the provisions of NRS 288.150 in its third decision, In the Matter of the Washoe County School District and the Washoe County Teachers Association, rendered October 9, 1971, "(i)t is presumed the Legislature in enacting

1. (Continued)

- (a) To direct its employees;
 - (b) To hire, promote, classify, transfer, assign, retain, suspend, demote, discharge or take disciplinary action against any employee;
 - (c) To relieve any employee from duty because of lack of work or for any other legitimate reason;
 - (d) To maintain the efficiency of its governmental operations;
 - (e) To determine the methods, means and personnel by which its operations are to be conducted; and
 - (f) To take whatever actions may be necessary to carry out its responsibilities in situations of emergency.
- Any action taken under the provisions of this subsection shall not be construed as a failure to negotiate in good faith.

Chapter 288 did not enact a nullity. Under the school district's interpretation of the relationship between NRS 288.150, Subsection 1, and NRS 283.150, Subsection 2, any matter, including the very question of wage scale, involves management prerogatives; and consequently, under said view would not be negotiable. ... It is the opinion of the Board, therefore, that any matter significantly related to wages, hours, and working conditions is negotiable, whether or not said matters also relate to questions of management prerogative; and it is the duty of the local government employer to proceed and negotiate said items." Id. at 3-2.

The Board reiterated this construction of the statute in In the Matter of the Clark County Teachers Association's complaint regarding the Clark County School District interpretation of NRS 288.150 concerning the negotiation of preparation time, Item #5, rendered March 22, 1972.

The Washoe County decision was appealed and reversed by the Second Judicial District Court; the Clark County decision was appealed and affirmed by the Eighth Judicial District Court. Both cases were taken to the Nevada Supreme Court. On December 22, 1974, the High Court rendered an opinion on both appeals affirming the Board's implementation of the statute. Clark County School District v. Local Government Employee-Management Relations Board, 91 Nev. ____ , ____ P.2d ____ (1974).

With this background on the statute, we turn to a consideration of the individual subjects sought to be declared the subject of mandatory negotiation between the parties.

FINDINGS OF FACT

1. CLASS SIZE:

In the Washoe County decision the Board found the subject

of class size to be a negotiable item stating at page 3-2:

Class size is significantly related to wages, hours, and working conditions inasmuch as student density directly affects a teacher's workload including the required hours of preparation and post-class evaluation; affects the teacher's control and discipline problems; affects the teacher's teaching and communication techniques; and affects the total amount of work required for a fixed compensation.

This finding was upheld by the Supreme Court.

The testimony presented at the hearing of these three cases reinforces our prior determination that the subject of class size is significantly related to wages, hours and conditions of employment. We, therefore, reaffirm our holding in the Washoe County decision that class size is a negotiable item.

2. TEACHER LOAD:

The subject of teacher load was also considered in the Washoe County case and found to be negotiable:

Where a teacher works, the amount of work done, and the kind of work done is a part of a teacher's working conditions. The remuneration (sic) for overtime for extra work assignments is a matter of wages and hours. ... The subject of teacher load is negotiable. Although the Board recognizes that emergency situations may occasionally arise in which the local government employer may be compelled to assign or direct its employees contrary to the provisions of a contractual clause, such a factual situation does not render the subject matter non-negotiable but merely provides the local government employer with justification for exercising management prerogative under NRS 288.150, Subsection 2.

This finding of the Board was also upheld by the Nevada Supreme Court.

The testimony presented at this hearing reiterates the significance of the subject of teacher load. We, therefore, reaffirm our holding in the Washoe County decision that teacher load is significantly related to wages, hours and conditions of employment and is a negotiable item.

3. STUDENT DISCIPLINE:

We have also previously decided in the Washoe County decision that the subject of student discipline is negotiable:

The matter of student discipline is significantly related to a teacher's working conditions since the requirements for discipline at any given time usually demand a priority of the teacher's attention. The degree of control and discipline required in a classroom affects the demands on a teacher's ability to effectively teach the class.

This determination was likewise upheld by the Supreme Court.

There are, in fact, statutory provisions expressly stating that teachers possess the authority to discipline students, NRS 391.270; NRS 392.460. There are also statutory provisions limiting certain disciplinary action to the board of trustees of the school district. NRS 292.030. Also, there are statutory directives on the subject of corporal punishment. NRS 392.465.

Although due deference should be given to the applicable Legislative pronouncements on the subject of student discipline, none of these statutes appear to foreclose negotiation on the general subject of student discipline.

The evidence presented in these cases also graphically portrays the impact of student discipline on the wages, hours and conditions of employment of teachers. We reaffirm our prior holding that student discipline is significantly related to wages, hours and conditions of employment and therefore the subject of mandatory negotiation between the parties.

4. POSTING OF VACANCIES:

In the Washoe County decision, a similar item, entitled "Vacancies and Promotion" was raised by the complainant. However, counsel stipulated to the negotiability of the notice provisions thus withdrawing the issue from the Board's consideration.

The thrust of the instant proposal is to afford all teachers notice of vacancies so they are afforded knowledge of, and an opportunity to apply for, available positions.

Respondent's principal argument against the proposal is that it places a nearly insurmountable burden on the respondent to notify each teacher of vacancies and that making the notification would cause delay in appointing a permanent teacher to fill the vacancy. As the Supreme Court stated in the Clark County decision, supra, "(t)he association's request that certain questions be at least discussed in their negotiations is not unreasonable. Discussion alone does not guarantee their adoption." The matters relating to the proposal which concern the respondent can be raised during the course of collective bargaining on the issue.

The California Supreme Court was recently called upon to determine the negotiability of a vacancies and promotions proposal. In holding the proposal to be the proper subject of negotiations between the parties, the Court stated: "The union's Vacancies and Promotions proposal concerns fire fighters' job security and opportunities for advancement and therefore relates to the terms and conditions of their employment." Fire Fighters Union, Local 1125, Etc. v. City of Vallejo, 526 P.2d 971, 977 (Cal. 1974).

The posting of vacancies proposal is significantly related to a teacher's wages, hours and conditions of employment and is therefore negotiable.

5. INSTRUCTIONAL EQUIPMENT ALLOCATION AND LIBRARY ALLOCATION:

These proposals seek to negotiate the budgetary formula for the per student allocation of funds in the areas of instructional equipment and library materials.

In the Board's Washoe County decision, supra, the subject of instructional supplies was considered. The Board found that the amount, type, quality and availability of instructional supplies affected a teacher's ability to discharge his job properly and that the subject significantly related to the teacher's working conditions and possibly hours of work. The proposal was declared negotiable. It should be noted that "supplies" refers to consumable materials while "equipment" refers to non-consumables.

In In the Matter of the Washoe County Teachers Association and the Washoe County School District; Determination of the Negotiability of Proposals for the 1972-1973 Contract Year and Unity (sic) Determination, Item #12, Case No. 102472-A, decision rendered March 26, 1974, the Board found that the establishment of a discretionary fund of \$100.00 per teacher to be utilized for instructional materials was not negotiable where a school district was reasonably responsive to the teachers' needs for instructional materials. That decision also considered school libraries, finding their establishment, composition and staffing were management prerogatives.

We believe that it is one thing to negotiate the "amount, type, quality and availability" of instructional materials and quite a different matter to seek to negotiate the per student budgetary formula to be used by the respondent in its budget for instructional equipment and library materials.

NRS 387.300 vests in the board of trustees of the school district the responsibility of preparing budgets of the moneys estimated to be necessary for the conduct of the public business of the school district. The Local Government Budget Act, NRS 354.470 to NRS 354.626, establishes the procedures for the

preparation, filing, adoption, augmentation and expenditures of a local government budget such as that of a school district.

There is nothing to foreclose the complainant and respondent within the budgetary formula established by the board of trustees, to negotiate the utilization of the moneys so designated, however, the establishment of the budgetary formulas for instructional equipment allocation and library allocation are management prerogatives and not the subject of mandatory negotiation between the parties. Spokane Education Association v. Barnes, 517 P.2d 1352 (Wash. 1974); Rutgers Council, Etc. v. New Jersey Bd. of Higher Ed., 312 A.2d 677 (N.J. App. 1973).

6. STUDENT PLACEMENT:

This proposal submitted by the complainant seeks to negotiate who shall have ultimate responsibility for determining the proper class placement of a grade school pupil; the proposal, as submitted, would vest the final decision in the teacher.

The present procedure for determining student placement is contained in Administrative Regulation No. 5123 approved 7/12/62 and revised 8/1/73 which makes consideration of the child's placement tripartite, involving the teacher, the parents and the principal. The final decision within the school regarding placement is made by the principal.

The record reflects that the improper placement of a student affects a teacher's wages, hours and conditions of employment. A student either advanced beyond his classmates or unable to keep up with their progress can be a disruptive force in the classroom, require special preparation by the teacher and affect the teacher's ability to teach other students. The teacher is often required to hold parent-teacher conferences regarding the misplaced student on the teacher's own time. It is also clear from the record that the teacher is best qualified to determine if a student is misplaced because of the daily contact with the pupil and the constant review of the student's class performance.

The placement of students is significantly related to a teacher's wages, hours and conditions of employment and is the mandatory subject of negotiation between the parties.

7. CURRICULUM DEVELOPMENT:

This proposal would permit the complainant to select the Association representatives on the various curriculum committees and provide compensation for such teachers if they spend in excess of their regular work day on the committee's work.

Under the provisions of NRS 385.110, the state board of education is vested with the power to prescribe and cause to be enforced the courses of study in the public schools of Nevada. Subsequent provisions of NRS Title 34 further delineate these powers.

The complainant's proposal and the supporting documentation and testimony at the hearing do not indicate any attempt to divest the state board of education of these statutory powers. The complainant seeks the right to determine the assignment of teachers to such committees and the amount of compensation these teachers would receive when the committee assignment required that time be spent beyond the normal work day or during the summer months. Both of these matters have a significant affect on the wages, hours and conditions of employment of teachers.

The assignment of teachers to curriculum committees and the determination of special compensation for such committee work are significantly related to wages, hours and conditions of employment and are the mandatory subject of negotiation between the parties. See, West Hartford Education Association v. De Courcy, 295 A.2d 526 (Conn. 1972); cf. Joint School District No. 8 v. Wisconsin Emp. Rel. Bd., 155 N.W.2d 78 (Wis. 1967).

3. MAINTENANCE OF STANDARDS:

This proposal seeks to foreclose the respondent from unilaterally changing policies and procedures affecting wages, hours and conditions of employment that exist at the time the contract is executed. One example of such unilateral action disclosed by the testimony was the elimination of preparation periods in numerous schools while the Board's Clark County decision, which found preparation periods negotiable, was on appeal to the Eighth Judicial District Court and the Nevada Supreme Court.

The respondent has expressed fear that the proposal is so all encompassing as to bring into the negotiations process non-negotiable management prerogatives. As the Supreme Court noted, discussion of a matter does not guarantee its adoption. The scope of a maintenance of standards proposal can properly be raised and negotiated at the collective bargaining table.

The maintenance of standards proposal significantly affects the wages, hours and conditions of employment of teachers and is the mandatory subject of negotiation.

CONCLUSIONS OF LAW

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

2. The complainant is a local government employee organization within the term as defined in NRS 288.040.

3. That the respondent is a local government employer within the term as defined in NRS 288.060.

4. That the complainant is recognized by the respondent as the exclusive negotiating representative for a bargaining unit composed of the certified teaching personnel at the respondent.

5. That in January of 1973, during the course of negotiations for the fiscal years 1973-74 and 1974-75, the respondent refused to negotiate on the following proposals presented by complainant asserting that they were management prerogatives and not the subject of mandatory negotiation: class size, teacher load, posting of vacancies, maintenance of standards, student discipline, student placement, instructional equipment allocation, library allocation and curriculum development.

6. That class size is significantly related to wages, hours, and conditions of employment and is the mandatory subject of negotiation between the parties.

7. That teacher load is significantly related to wages, hours and conditions of employment and is the mandatory subject of negotiation between the parties.

8. That student discipline is significantly related to wages, hours and conditions of employment and is the mandatory subject of negotiation between the parties.

9. That the posting of vacancies is significantly related to wages, hours and conditions of employment and is the mandatory subject of negotiation between the parties.

10. That there is nothing to foreclose the complainant and respondent from negotiating the utilization of moneys designated for instructional equipment allocation and library allocation, however, the establishment of budgetary formulas for instructional equipment allocation and library allocation are management prerogatives and not the subject of mandatory negotiation between the parties.

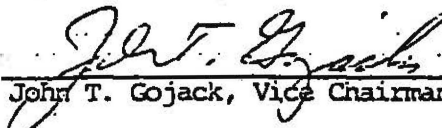
11. That student placement is significantly related to wages, hours and conditions of employment and is the mandatory subject of negotiation between the parties.

12. That the assignment of teachers to curriculum committees and the determination of special compensation for such committee work are significantly related to wages, hours and conditions of employment and are the mandatory subject of negotiation between the parties.

13. That the maintenance of standards significantly affects the wages, hours and conditions of employment of teachers and is the mandatory subject of negotiation.

The parties shall proceed in their negotiations in accordance with this decision.

Dated this 18th, day of February, 1975.


John T. Gojack, Vice Chairman


Dorothy Eisenberg, Board Member*

* A majority of the presently constituted Board did not hear this case, therefore, Ms. Eisenberg, in compliance with the provisions of NRS 233B.124, has read the record and case files and is participating in the decision.