

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

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| IN THE MATTER OF THE |) | |
| WASHOE COUNTY TEACHERS ASSOCIATION |) | |
| AND THE |) | |
| WASHOE COUNTY SCHOOL DISTRICT: |) | Case No. A1-045295 |
| |) | |
| PROHIBITED PRACTICE IN THE REFUSAL |) | |
| OF THE WASHOE COUNTY SCHOOL DISTRICT |) | |
| TO BARGAIN IN GOOD FAITH, AND |) | |
| VIOLATION OF NRS 288.270(1)(a) and |) | |
| (1)(e). |) | |

DECISION

By complaint filed February 17, 1976, the Washoe County Teachers Association asserts that the Washoe County School District has refused to negotiate in good faith because of the District's unilateral determination that this year's negotiations sessions must be open to the public.

The parties negotiated publicly last year, but, the contract resulting from those negotiations contained no provision mandating that this year's negotiating sessions be open.

On January 14, 1976, the Association directed a memorandum to the District indicating a desire to have closed sessions this year. The District responded on January 30th, stating that they were ready to enter into negotiations "but only if such sessions are open."

The controversy centers around the parties' differing interpretations of the provisions of NRS 288.220(1):

The following proceedings, required by or pursuant to this chapter, are not subject to any provision of chapter 241 of NRS:

1. Any negotiation or informal discussion between a local government employer and an employee organization or employees as individuals, whether conducted by the governing body or through a representative or representatives.

Chapter 241 of the Nevada Revised Statutes is Nevada's "Open Meeting Law" which requires meetings of public agencies, commissions, bureaus, departments, public corporations, municipal corporations, quasi-municipal corporations and political subdivisions be open and public.

Although the parties have not directed us to any decision which construes a statute similar to NRS 288.200(1), several of our sister agencies have considered claims of bad faith bargaining where the employer unilaterally directed that negotiations be open. Mayor Samuel E. Zoll and City of Salem and IAFF Local 1780, Massachusetts Labor Relations Commission, 485 GERR B-7, January 8, 1973; Quamphegan Teachers Association, Eliot and South Berwick, and Eliot and South Berwick School Board of Directors, Maine Public Employee Labor Relations Board, 505 GERR A-11, May 28, 1973; Pennsylvania Labor Relations Board vs. Board of School Directors of the Bethlehem Area School District, Case No. PERA-C-2861-C, 505 GERR E-1, May 28, 1973.

In the Zoll and Quamphegan cases specific mention was made of existing state laws comparable to our "Open Meeting Law." Yet, despite the absence of any specific statutory provision exempting negotiations from these open meeting provisions, each Board found a unilateral directive that negotiations be open constituted a failure to bargain in good faith. All three Boards ordered that the parties enter into closed negotiations sessions.

In Bassett v. Braddock, 262 S.2d 425 (Fla. 1972) and Talbot v. Concord Union School District, 323 A.2d 912 (N.H. 1974) the Supreme Courts of Florida and New Hampshire thoroughly considered the impact of open negotiations. The laws of both states included statutes similar to our "Open Meeting Law" and neither had a provision exempting collective bargaining from their purview, yet, both Courts found that meaningful negotiations must be closed.

The District argues that NRS 288.220(1) is not applicable in the case of school districts as the actions of the board of trustees of the school district are not covered by the provisions of NRS Chapter 241, but, by the provisions of NRS 386.335. This latter statute is not mentioned in NRS 288.220(1).

Without setting out the entire statute in full, NRS 386.335 requires that meetings of the board of trustees of a school district be open and public, with the exception of certain executive sessions. The key term in the statute is "meetings." The Florida Supreme Court in the Bassett decision, supra, addressed itself to a very similar situation; the citizens who brought suit relied upon Florida's "Government in the Sunshine" law which required that "meetings" of any board or commission be open. They insisted that matters preliminary to the actual discussion and ratification of the teachers' contract be open and public. In affirming the denial of relief to plaintiffs, the Court stated:

Full consideration of the recommendations of the Board's negotiator was accordingly had in a public meeting and aired and voted upon in public. Those recommendations were in a sense simply the acorn from which the final contract grew-in the sunshine. There is no violation. Id at page 427.

Obviously, the meeting wherein the Board of School Trustees ultimately reviews, considers and votes upon ratification of a contract with the Washoe County Teachers Association must be open and public. However, negotiation sessions, whether informal or formal, between the Board's negotiating team and the Association's negotiating team does not appear to us to constitute "meetings" within the purview of NRS 386.335.

Having found that these negotiations are exempt from the open meeting setting, it would seem that the provisions of NRS 288.220(1) indicate an option that negotiations may either be open or closed. Unfortunately, the statute does not address itself to

specifically who shall make the determination whether the sessions are to be open or closed.

The purpose of NRS Chapter 288 is to provide the framework within which local government employers and employee organizations may bargain collectively, and, to open lines of communication, both formal and informal. The obligation to bargain collectively is a mutual one and is defined as such by NRS 288.030. At any time one party to the collective bargaining process establishes, unilaterally, a condition precedent to collective bargaining which is not provided for in Chapter 288, they are thwarting the purpose of the Act and are in violation of their obligation to bargain in good faith.

The reasons for closed negotiation sessions are too numerous and too obvious to be restated here and are well expressed in the authority previously cited. We find that, in light of the purposes, both express and implied, in Chapter 288 of the Nevada Revised Statutes, negotiation sessions are to be closed unless the parties mutually agree otherwise.

During the course of the hearing on this matter, the Teachers Association wished to place into evidence a memorandum prepared by a District employee after consultation with the District's counsel. The document was ultimately presented to the Board of School Trustees in an executive (closed) session. Counsel for the District objected to our consideration of the document asserting that it is a privileged communication between attorney and client. We sealed the document pending written arguments by counsel on its privileged status.

We have concluded that it is unnecessary to make a determination on the privileged status of the document because we do not feel that its contents, whatever they might be, could impact upon our decision. Both parties have indicated that the question raised by this complaint is basically one of law. The essential factual situation is not in dispute and has been recited in the

the opening portion of this decision. Our determination of this complaint was, necessarily, based upon our review and construction of the Local Government Employee Management Relations Act. The sealed document cannot affect the written provisions of the Act. Since there is an adequate basis for reaching a determination on the complaint without reviewing the contents of the document, the proposed exhibit has remained sealed and has not been considered in reaching our determination.

FINDINGS OF FACT

1. That the Washoe County Teachers Association is a local government employee organization.
2. That the Washoe County School District is a local government employer.
3. That on January 14, 1976, the Washoe County Teachers Association directed a memorandum to the Washoe County School District indicating a desire to have closed negotiation sessions this year.
4. That the Washoe County School District responded on January 30, 1976, with a letter stating that they were ready to enter into negotiations "but only if such sessions are open."
5. That the Washoe County School District asserts that they must hold open negotiation sessions in light of the provisions of NRS 386.335.

CONCLUSIONS OF LAW

1. That the Local Government Employee-Management Relations Board possesses original jurisdiction over the parties and subject matter of this complaint pursuant to the provisions of NRS Chapter 288.

2. That the Washoe County Teachers Association is a local government employee organization within the term as defined in NRS 288.040.

3. That the Washoe County School District is a local government employer within the term as defined in NRS 288.060.

4. That the provisions of NRS 386.335 require that "meetings" of the Board of School Trustees be open and public.

5. That the term "meetings" in NRS 386.335 does not include informal and formal negotiation sessions between the negotiating team selected by the Washoe County School District Board of Trustees and the negotiating team selected by the Washoe County Teachers Association.

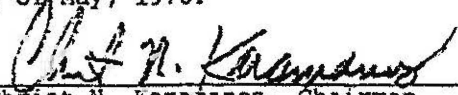
6. That the term "meeting" in NRS 386.335 does require that the final consideration, review and ratification of the collective bargaining agreement between the parties by the Board of School Trustees be open and public.

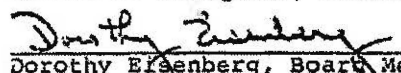
7. That the unilateral determination by the Washoe County School District that negotiations between the District and the Washoe County Teachers Association be open and public constitutes a refusal to bargain collectively in good faith in violation of the provisions of NRS 288.270(1)(e).

8. That in light of the intent of the provisions of NRS Chapter 288, negotiation sessions between the Washoe County Teachers Association and the Washoe County School District are to be closed unless the parties mutually agree that they be otherwise.

In conformity with this decision, the parties are directed to immediately commence closed negotiation sessions.

Dated this 21st day of May, 1976.


Christ N. Karaganos, Chairman


Dorothy Eisenberg, Board Member

John T. Gojack, Board Vice Chairman, has disqualified himself from participating in this case because of his participation in a recent mediation effort between the parties to this complaint.