

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

WASHOE COUNTY TEACHERS ASSOCIATION,)	
)	
Complainant,)	
)	Case No. A1-045297
vs.)	
)	
WASHOE COUNTY SCHOOL DISTRICT and)	
the BOARD OF TRUSTEES OF THE WASHOE)	
COUNTY SCHOOL DISTRICT,)	
)	
Respondent.)	

DECISION

On April 19, 1976, the Association filed this complaint seeking a determination that several subject areas were the mandatory subject of negotiation pursuant to NRS 288.150(2) or NRS 288.150(7). They further request that we find the refusal of the District to negotiate these matters to constitute a refusal to negotiate in good faith in violation of NRS 288.270(1)(e).

This is the first case in which we are called upon to construe the provisions of NRS 288.150 as amended by the Nevada Legislature in 1975. Under the negotiability provisions in effect prior to May of 1975, we utilized a "significant relationship" test to determine whether or not a matter was the mandatory subject of negotiation. This test was upheld by the Nevada Supreme Court.

Clark County School District vs. Local Government Employee-Management Relations Board, 90 Nev. 442, 530 P.2d 114 (1974).

The Legislature saw fit to substantially circumscribe the broad scope of negotiability under the "significant relationship" test by delineating in the amendments to NRS 288.150 twenty areas which are the mandatory subject of negotiation. In addition to these twenty specific areas, NRS 288.150(7) "grandfathers" into the area of negotiability all contract provisions which existed in signed and ratified contracts as of May 15, 1975, at 12 p.m.

All matters not made expressly negotiable by either NRS 288.150(2) [which delineates the twenty negotiable subject matters] or NRS 288.150(7) are subject to discussion only. NRS 288.150(6).

With this preface, we turn to a consideration of the individual subject areas sought to be declared negotiable.

PROPOSED AMENDMENTS TO ARTICLE X:

The proposed subject of negotiation is a further delineation and clarification of the existing contractual provisions of Article X. That section of the contract remains negotiable under the "grandfather" provision on the law. The District asserts that the proposed modifications in the article go beyond the scope of the current contract article and are therefore not the subject of mandatory negotiation. We feel they do not. The current provisions, after expressing both parties support for the participation of teachers in various facets of the educational process, establishes a joint administration-association committee to review and consider various books and educational resource materials. The proposed area of negotiation would provide for such committees in each school and further delineate the scope of their power. Such changes are not a radical departure from the existing contract article nor an attempt to bring peripheral matters into the contract under the guise of existing contract provisions.

We believe that the proposed amendment falls well within the scope and intent of NRS 288.150(7) and is therefore the mandatory subject of negotiation.

PROPOSED AMENDMENTS TO ARTICLE XXIII:

Article XXIII of the 1974-76 contract contains, as Article 23-4, a procedure for transfer requests. The proposed amendments would set forth procedures for involuntary transfers. It is the

Association's position that the matter is well within the scope of the current contractual provision and therefore negotiable.

Although the subject area of voluntary transfers remains negotiable by virtue of its existing as a contract article, in the absence of such status, it would no longer be negotiable to any extent. Transfers are expressly made a non-negotiable management prerogative by NRS 288.150(3): "[t]hose subject matters which are not within the scope of mandatory bargaining and which are reserved to the local government employer without negotiation include: (a) The right to... transfer an employee, but excluding the right to... transfer an employee as a form of discipline." Since the right to transfer employees is expressly made a management prerogative, we must strictly construe any attempt to expand upon an existing contractual provision in the area. Therefore, we find that this attempt to expand the existing contractual provisions dealing with voluntary transfer requests into the area of involuntary transfers is not within the scope or intent of NRS 288.150(7) and that the matter is not the mandatory subject of negotiation.

PROPOSED AMENDMENTS TO ARTICLE XXIV:

Under Article XXIV, section 24-4, of the existing contract all information and references originating outside the District are not subject to the contract and are not available for inspection by the individual teacher. The proposed amendment would make such information either available for review or require that it be returned to the originator. We must agree with the District that the current contractual provision clearly indicates that such materials in the individual's personnel file are not to be subject to negotiation. This express exclusion cannot be the basis now for a claim of negotiability. Neither is there any provision in NRS 288.150(2) which makes this particular subject matter negotiable. We therefore conclude that the proposed amendments are

not the mandatory subject of negotiation.

PROPOSED ARTICLE XXVI:

There are five parts to this proposed article. Of these, section 26-5 deals with the procedures set forth in NRS 391.314(4) which provides for short term suspension of a teacher as a disciplinary measure. The District has presented a counterproposal on this section in recognition of the fact that it is obviously a negotiable matter under NRS 288.150(2)(i).

The remainder of the sections are also sought to be negotiated as discharge and disciplinary procedures. NRS 288.150(2)(i). However, these sections do not appear to us to deal with discharge and discipline, rather, they set forth the format and procedures for teacher evaluations. The testimony at the hearing on the complaint substantiates this conclusion, for both the District and Association presented testimony that a substantially similar provision was negotiated last year as a teacher evaluation procedure.

Since the substance of the proposed area of negotiation, teacher evaluations, is not included as a mandatory subject of negotiation in NRS 288.150(2) and no current contractual provision deals directly with this specific subject matter, the article is not a mandatory subject of negotiation.

PROPOSED ARTICLE XXVII:

The District has presented a counterproposal to one portion of the article, section 27-6, which deals with unsafe and hazardous working conditions. We agree that this particular area is a mandatory subject of negotiation pursuant to NRS 288.150(2)(r).

Although the remainder of the article is also under the heading of "safety", the contents of the article actually deal with student discipline. With some changes a similar article was

presented by the Association for negotiation last year under a student discipline entitlement.

The Association asserts that the article not only affects safety in that it provides for remedial action prior to an actual physical attack upon the teacher, students or the school facilities, but also, that it is an extension of a current contractual provision, Article XI entitled Teacher Protection. The current article however deals with the actions a teacher may take to protect himself or herself, other persons or property from injury and assault. An extensive procedure for the disciplining of students is not within the scope of the current limited contact provision.

Since the proposed article is neither a mandatory subject of negotiation nor directly related to an existing contractual provision, it is not a mandatory subject of negotiation.

PROPOSED ARTICLE XXVIII:

The first two sections of the proposed article deal with the total work days per year for new and returning teachers and the holidays to be given teachers during the school year. As such, they are the mandatory subject of negotiation pursuant to NRS 288.150(2)(c), (d) and (h). The negotiability of these areas has been conceded by the District.

However, the two latter provisions of the proposed article would require a certain number of weekends to be contained in the Christmas and Spring vacations. As written they would circumscribe the right of the District to determine the school calendar. Since the school calendar is not a mandatory subject of negotiation, the District is not obliged to negotiate these two provisions.

The District has conceded the negotiability of other proposed articles presented in the complaint and they are therefore not considered in this decision.

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Since we find the District was justified in refusing to negotiate all but one article, we do not find that they refused to negotiate in good faith in violation of NRS 288.270(1)(e).

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 March 25, 1976, the District notified the Association by letter that it would not negotiate nine proposed contract articles because the matters contained therein were not the mandatory subject of negotiation pursuant to NRS 288.150.

4. That the District subsequently agreed to negotiate certain of the articles.

5. That the Association filed this complaint seeking a determination of the negotiability of those articles which the District still refused to negotiate.

6. That the Association also seeks by this complaint a determination that the District refused to negotiate in good faith by their refusal to negotiate the remaining articles.

7. That on July 6, 1976, the Board held a hearing on the complaint and at that time rendered an oral decision to assist the parties in their preparations for advisory factfinding which will commence in the near future.

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 proposed amendments to Article X of the existing collective bargaining agreement between the parties are a mandatory subject of negotiation pursuant to NRS 288.150(7).

5. That the proposed amendments to Article XXIII of the existing collective bargaining agreement between the parties are not a mandatory subject of negotiation pursuant to NRS 288.150.

5. That the proposed amendments to Article XXIV of the existing collective bargaining agreement between the parties are not a mandatory subject of negotiation pursuant to NRS 288.150.

6. That section 26-5 of proposed Article XXVI deals directly with discharge and discipline procedures and is a mandatory subject of negotiation pursuant to NRS 288.150(2)(i).

7. That the remaining sections of proposed Article XXVI are not a mandatory subject of negotiation pursuant to NRS 288.150.

8. That section 27-6 of proposed Article XXVII deals directly with safety and is a mandatory subject of negotiation pursuant to NRS 288.150(2)(r).

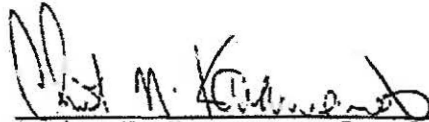
9. That the remaining sections of proposed Article XXVII are not a mandatory subject of negotiation pursuant to NRS 288.150.

10. That the first two sections of proposed Article XXVIII are a mandatory subject of negotiation pursuant to NRS 288.150(2)(c), (d) and (h).

11. That the latter two sections of proposed Article XXVIII are not a mandatory subject of negotiation pursuant to NRS 288.150.

12. That the District did not refuse to bargain collectively in good faith in violation of NRS 288.270(1)(e).

The parties shall proceed with the collective bargaining process in conformity with this decision.



Christ N. Karamanos, Board Chairman



Dorothy Eisenberg, Board Member

Board Vice Chairman John T. Gojack has disqualified himself from participation in this matter because of his recent mediation efforts between these two parties.