LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

In the Matter of the CLARK COUNTY CLASSROOM TEACHERS ASSOCIATION, Complainant, vs. CLARK COUNTY SCHOOL DISTRICT and BOARD OF TRUSTEES OF THE CLARK COUNTY SCHOOL DISTRICT, Respondents.	Case No. A1-045302

D E C I S I O N

On November 30, 1976, the day following the conclusion of the hearing on this case, we rendered an oral decision on the complaint. In that verbal decision, we expressed the opinion of the majority of Board members that the Respondents had not refused to bargain collectively in good faith in violation of NRS 288.270 (1)(e). This written decision is in conformity with NRS 233B.125, which requires that our final decision include findings of fact and conclusions of law separately stated.

The parties executed a multi-year contract with a limited reopener for the fiscal year 1976-77 for the negotiation of salaries only. The Association entered negotiations requesting a 12% salary increase, exclusive of increments for years of service or professional growth. Early in the negotiations process, the District offered a 1.5% salary increase, also exclusive of increments. Immediately after the offer from the District, the Association lowered its request to 10.5%.

When the dispute remained unsettled after some 14 negotiation sessions, the Association requested binding factfinding from Governor O'Callaghan pursuant to NRS 288.200(7). The request was denied by the Governor and, at the suggestion of the

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Association, the District agreed to utilize the services of a mediator. When the mediation efforts proved unsuccessful, the parties proceeded to advisory factfinding.

Association witnesses testified that in the Association's pre-hearing brief to the factfinder the salary request was modified to 7.53% and that they again modified the request to 6.2% in their post-hearing brief.

On August 26, 1976, factfinder William Eaton issued his opinion and recommended that the certified teaching personnel be given a 2.5% salary increase, exclusive of increments.

On September 3, 1976, the District's Board of Trustees, who had previously offered a 1.5% salary increase, voted to accept the factfinder's recommendation. At a meeting with the Association's representatives on September 7th, the District tendered an offer of a 2.5% salary increase. During a meeting on the following day, September 8th, the Association's membership rejected the offer and directed their leadership to continue negotiations.

The parties did not negotiate further, however, on September 17th, the District made another offer - a 3.5% salary increase. This offer was rejected by the Association's members at another mass meeting on September 22nd. Again, the Association's leadership was directed to continue negotiations.

The Association, in this complaint, asserts that the District refused to bargain collectively in good faith in violation of NRS 288.270(1)(e). The claim is predicated upon two series of events. First, the Association alleges that the District steadfastly refused to budge from its 1.5% salary offer from the commencement of negotiations through the factfinding process asserting a lack of available funds, yet, the District was able to later offer salary increases of 2.5% and 3.5%. It is asserted that the District knew full well during this period

of time that more funding was available for salary increases to teachers. Second, they assert that the District made these two latter offers on a "take it or leave it" basis and refused to discuss the offers or the funding on which they were predicated with the Association's representatives.

Turning to the first claim, we note that the District entered into negotiations with a budget fully spent and providing for a 1.5% salary increase for the certified teaching personnel. It is the prerogative, and indeed the responsibility, of the District's Board of Trustees to allocate the funding they anticipate each year to areas they determine to be appropriate, in the amounts they deem appropriate. The determination of budgetary priorities is made by the Trustess and may be reassessed by them. It is apparent that they are utilizing or have utilized this prerogative to reallocate their priorities so the supplemental funding necessary to meet the two latter offers could be found. These reallocations of priorities are being made despite the impartial factfinder's determination that the budgetary priorities as submitted to him, were justified and he saw fit not to disturb them.

The Association has directed our attention to the fact that the District did not alter its 1.5% offer from almost the beginning of bargaining until September. As we noted in In the Matter of the White Pine Association of Classroom Teachers v. White Pine County Board of School Trustees, White Pine County School District, and John Orr, Superintendent, Case No. A1-045288, Item #36, decision rendered May 30, 1975, adamant insistence on a bargaining position is not alone sufficient to warrant a finding that a party refused to bargain collectively in good faith. It is necessary to review the totality of the collective bargaining in order to make such a determination. See, National Labor Relations Board v. Algoma Plywood & V. Co., 121 F.2d 602 (7th Cir. 1941).

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The District not only participated in some 14 negotiations sessions, they agreed to utilize the services of a mediator. NRS 288.190 provides that the services of a mediator may be used if the parties mutually agree; the District was not obliged to participate in the mediation, it did so voluntarily.

The Association has also emphasized that they altered their salary request several times from the initial request of a 12% salary increase while the District remained firm. A similar situation was discussed by the Sixth Circuit in their decision in National Labor Relations Bd. v. United Clay Mines Corp., 291 F.2d 120 (6th Cir. 1955), at page 126:

> The Board [referring to the National Labor Relations Board] stresses the fact that the Union had already made many concessions while the Company had made very few and that in fairness to the Union it should have made this concession [relating to a grievance procedure]. But the concessions made by the Union were not concessions of rights which the employees had possessed. Actually, the Union gave up nothing; it merely abandoned certain demands which had never been agreed to, many of which involved increased labor costs, which the Company would not agree to on grounds not shown by the record to be unreasonable. We find nothing in the Act which requires an employer to abandon a settled position on a certain issue because of either the quantity or quality of concessions offered by the Union in the hope of securing such abandonment. It is still a matter of bargaining.

NRS 288.033 defines collective bargaining as the method of determining conditions of employment by negotiations and entailing the mutual obligation of the local government employer and employee organization to meet at reasonable times and bargain in good faith. The obligation under the statute does not compel either party to agree to a proposal nor does it require the making of a concession. NRS 288.270(1)(e) is the enforcing statute for this obligation and requires good faith negotiations throughout the entire negotiations process, including mediation and factfinding.

No provision of the Dodge Act mandates that the parties must reach an agreement.

The District participated in 14 negotiations sessions; they agreed to participate in mediation, which they were not obliged to do. NRS 288.190. The District, again without an obligation to do so, accepted the factfinder's recommendation. In addition thereto, they increased the offer to 3.5%, a sum equal to that received by other District employees and an offer which, when added to the average increment that would be received by teachers, amounted to 6.8%, a figure in excess of the cost of living increase for the prior year.

We cannot find that the District failed or refused to negotiate in good faith in light of this series of events.

Turning to the second claim upon which relief is sought, the Association asserts that the District refused to enter into negotiations following the 2.5% and the 3.5% salary offers.

This particular area was of great concern to the Board and, ultimately, resulted in this split decision.

The critical time frame here is the period of time from the 2.5% offer on September 7, 1976, through the time of our hearing on the complaint.

When the District made the 2.5% salary offer, it is was rejected by the Association's membership the following day. This, in our opinion, created an impasse. Once an impasse exists, a party is not required to engage in continued fruitless discussions. See, National Labor Relations Bd. v. American Nat. Ins. Co., 343 U.S. 395 (1952).

The impasse was broken on September 17, 1976, when the District offered the 3.5% salary increase. The rejection of that offer on September 22nd created the current impasse.

We cannot find that any of the series of impasses which occurred in the negotiations between the Association and District

were the result of bad faith bargaining on the part of the District. Without such a showing, a finding that the District violated NRS 288.270(1)(c) is not warranted.

FINDINGS OF FACT

1. That the complainant, Clark County Classroom Teachers Association, is a local government employee organization.

2. That the respondent, Clark County School District, is a local government employer.

3. That the respondent, Board of Trustees of the Clark County School District, is the body of elected officials responsible for the operation of the Clark County School District.

4. That the parties had executed a multi-year contract with a limited reopen for the fiscal year 1976-77 for the purpose of negotiating salaries only.

5. That the parties commenced negotiations in early 1976 on the issue of salaries.

6. That the Association entered negotiations requesting a 12% salary increase, exclusive of increments.

7. That the District thereafter offered a 1.5% salary increase, exclusive of increments.

8. That immediately subsequent to the District's offer, the Association modified their request to 10.5%, exclusive of increments.

9. That the parties participated in 14 negotiating sessions.

10. That the dispute remained unsettled and the Association requested binding factfinding from Governor O'Callaghan, pursuant to NRS 288.200(7).

11. That the request for binding factfinding was denied by the Governor.

12. That at the suggestion of the Association, the District

agreed to utilize a mediator pursuant to NRS 288.190.

13. That the mediation, which was held in May of 1976, proved unsuccessful.

14. That the parties proceeded to advisory factfinding in July of 1976 before factfinder William Eaton.

15. That in their pre-hearing brief to the factfinder, the Association modified its salary demand to 7.53%, exclusive of increments.

16. That in the post-hearing brief to the factfinder, the Association further modified its demand to a 6.2% salary increase, exclusive of increments.

17. That on August 26, 1976, the advisory factfinding award was issued by factfinder Eaton recommending that the certified teaching personnel be granted a 2.5% salary increase, exclusive of increments.

18. That on September 3, 1976, the District's Board of Trustees voted to offer the Association the salary increase recommended by the factfinder.

19. That the offer of a 2.5% salary increase, exclusive of increments, was made to the Association's representatives on September 7, 1976.

20. That on September 8, 1976, the Association's membership, at a mass meeting, rejected the salary offer.

21. That on September 17, 1976, the District presented an offer to the Association of a 3.5% salary increase, exclusive of increments.

22. That the Association's membership, at a mass meeting on September 22, 1976, rejected the 3.5% salary offer.

CONCLUSIONS OF LAW

1. That pursuant to the provisions of Nevada Revised Statutes Chapter 288, the Local Government Employee-Management

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Relations Board possesses original jurisdiction over the parties and subject matter of this complaint.

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

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

4. That the parties commenced collective bargaining in early 1976 in conformity with their existing contract and pursuant to NRS Chapter 288.

5. That the Clark County School District voluntarily participated in mediation in May of 1976 when it was not required to do so by the provisions of NRS 288.190.

6. That the provisions of NRS 288.033 state that a party to negotiations need not make a concession.

7. That the provisions of NRS 288.033 state that a party to negotiations need not agree to a proposal.

8. That no provision of NRS Chapter 288 mandates that the parties to collective bargaining must reach agreement upon any issue.

9. That the District's steadfast maintenance of a 1.5% salary offer from immediately after the commencement of negotiations through the factfinding procedures does not constitute a refusal to negotiate in good faith.

10. That neither party was required by the provisions of NRS Chapter 288 to accept an advisory factfinding award.

11. That the Association's rejection of the 2.5% salary offer created an impasse.

12. That the impasse was broken by the District's subsequent offer of a 3.5% salary increase.

13. That another impasse was created by the Association's rejection of the 3.5% salary increase offered by the District.

14. That there is no duty on the part of either party to bargain after impasse is reached.

15. That the impasse created by the Association's rejection of the 3.5% salary increase still exists.

16. That neither the current impasse or the impasses that occurred prior to the current impasse were created by bad faith bargaining on the part of the District.

17. That the evidence fails to disclose that the District refused to bargaining collectively in good faith in violation of NRS 288.270(1)(e).

As we stated in our oral decision, we deplore the lack of communication and good will on the part of the parties to this complaint, however, we cannot say that in this particular factual situation the Clark County School District refused to bargain collectively in good faith in violation of NRS 288.270 (1)(e).

The requested relief must be denied.

Dated this 10th day of December, 1976.

Dorothy Eisenberg

Dorothy Eisenberg, Board Chairman

Christ N. Karamanos

Christ N. Karamanos, Board Member

John T. Gojack, Board Vice Chairman, Dissenting:

I respectfully dissent from the majority decision in this case. While sharing the views of the majority on much of their decision, I differ on one crucial aspect, which in and of itself is, in my view, a profound failure to bargain in good faith.

The point on which I would find the School District failing to bargain in good faith, is in their adamant and consistent refusal to meet with the Teachers Association after submitting their last offer.

While much of the negotiations prior to this point was certainly no model of collective bargaining, and certainly not an example of good faith bargaining, it was nevertheless legal under our statutes I would hold. However, the School District's refusal to meet after granting its so-called final offer was at worst a high-handed treatment of the collective bargaining agent for the teachers. At best, this refusal to meet was, and is, a plain ignorance of one of the basic requirements of the collective bargaining process - which is to sit down and meet with the other party.

To meet the requirement of good faith bargaining there must be at least some semblance of the give and take that characterizes collective bargaining. This can never be accomplished by brief memos. At the very minimum this requires meetings between the negotiating parties.

Here the School District refused to meet because it had made its "final" offer. Even if this final offer came from the very bottom of an empty budget barrel, and even if it would have been impossible for the School District to find one more peso or a tuppence to sweeten its final offer, it had the legal and collective bargaining obligation to meet with the Teachers'

Association, and explain its inability to increase the final offer.

Who knows what might have happened had the School District met its obligation of sitting down at the bargaining table? In two, three, or however many meetings, it might have convinced the Teachers' Association Bargaining Team to accept that last offer. Or, on the other hand, the School District might have found additional funds, just as it found added funds for the "final" offer, to make one more improved offer. Either of these two courses developing from meetings at the bargaining table might well have resulted in a settlement of the issue.

To allow the School District's refusal to meet after making its "final" offer to stand as good faith bargaining is a most dangerous precedent. To be able to submit a brief memo proposal and then refuse to meet is a mockery of collective bargaining. This is nothing less than bringing into Nevada the disastrous and discredited doctrine of "Boulwarism" - which almost wrecked collective bargaining in a major industry in the 1950's. GE's Boulware advocated a policy of making one firm offer, with a take it or leave it posture, and then refusing to meet further. Needless to say the doctrine failed miserably, after considerable turmoil and strife, and the corporation abandoned it.

Nevada cannot stand anything in the public sector that smacks of that type of phoney collective bargaining. Nevada enjoys an enviable record of no strikes and peaceful collective bargaining in the public sector; due in large part to the functioning of the Dodge Act. Imagine what would happen if a large part of public employers in Nevada followed this example of the School District. There would be an immediate end of our outstanding no strike record, and confusion, chaos and turmoil would replace the peace and tranquility enjoyed in the past years.

Even if a few Police Chiefs decided that the School District's refusal to meet would be a good tactic in their next negotiations we could very well witness the introduction of the "blue flu" to our State. While police officers, like other local government employees, are responsible citizens, none of them is willing to trade collective bargaining for collective begging. And for any employee organization to accept the tactic of refusal to meet would be tantamount to trading collective bargaining for collective begging.

Here the School District rationalizes its refusal to meet on their claim that negotiations had been exhausted and an impasse reached. Yet, on September 2, 1976, and again on September 17, 1976, the School District raised its own ante while still refusing to meet. If there had been an impasse, and negotiations had been exhausted, the School District with these added offers broke the impasse and made it clear that negotiations were in no way exhausted. It was at these points that the School District had a solemn moral and legal obligation to meet with the Teachers Association, and if nothing more, at least explain fully why their final offer could not be improved upon. Aside from their legal obligation to meet once negotiations were reopened by their offers, from a practical standpoint it would have been most sensible to continue meetings. It would have taken much less time, effort and expense to continue negotiations than is being expended now. Also, a compromise settlement which could have been reached in negotiations is always preferable to a unilaterally imposed end result.

Volumes could be written or cited on the School District's obligation to meet in collective bargaining. For brevity's sake, here is a recent one from the Midwest Center for Public Sector Labor Relations, at Indiana University, that puts it most

succinctly:

> "What is 'good faith bargaining?'"
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> "It's more than a mere willingness to reach an agreement with another party over wages, hours and work conditions. It means the parties make an earnest effort and act meaningfully to help bring an agreement into being. For example, the parties should be willing to sit down at reasonable times and exchange nonconfidential information, views, and proposals on subjects that are within the scope of bargaining. Both sides should be represented by spokespersons who are duly authorized to bargain for their parties. When bargaining fails to bring agreement, differences should be justified with reasons. The parties must be ready to put into writing whatever agreement they arrive at. Most importantly, they must be willing to consider compromise solutions to their differences with an open mind and make an effort to find a mutually satisfactory basis of agreement. [Emphasis added.]

For all the foregoing reasons, I hereby dissent from the majority decision.

John T. Gojack

John T. Gojack, Board Vice Chairman