

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

RETAIL CLERKS UNION, LOCAL)
 1434, on behalf of the)
 PHARMACISTS employed by)
 WASHOE MEDICAL CENTER, Reno,)
 Nevada,)
)
 Appellant,)
)
 vs.)
)
 CARROLL OGREN, ADMINISTRATOR)
 of WASHOE MEDICAL CENTER and)
 WASHOE MEDICAL CENTER, Reno,)
 Nevada,)
)
 Respondents.)

Case No. AI-045312

ATTORNEY GENERAL

JUN 23 1978

LAS VEGAS, NEV.

DECISION

On February 23, 1978, we held a hearing in the above matter; the hearing was properly noticed and posted pursuant to Nevada's Open Meeting Law. At the conclusion of the hearing, we rendered a verbal decision in the matter. This written decision is prepared in conformity with NRS 233B.125 which requires that our final decision contain findings of fact and conclusions of law separately stated.

In October of 1977, representatives of the appellant and respondents met in an attempt to establish procedures for the recognition of an association of employees at the respondent hospital. Pursuant to NRS 288.170(1), it was determined that the appropriate unit in this instance be composed of the pharmacists employed at the facility. The parties also tentatively agreed to hold an election on the question of representation utilizing the same format as that used in elections under the National Labor Relations Act.

When the respondents' representatives indicated that they wished the election to be determined upon the basis of the

majority of persons in the unit rather than the majority of persons voting, the appellant objected. Subsequently the appellant's representatives attempted to comply with the requirements of NRS 288.160(1) and suggested a card check to establish a verified membership list pursuant to NRS 288.160(2).

On two occasions the respondents' representatives refused to accept a certified package containing the documentation required by NRS 288.160(1). They also stood by their demand for a secret ballot election with the results to be determined on the basis of the majority of persons in the unit voting in favor of the appellant rather than a determination of the election on the basis of the majority of those voting.

After the second rejection of the recognition documentation, this appeal was filed pursuant to NRS 288.160(4).

At the conclusion of the hearing on this matter, we directed that the appellant submit to us the documentation required by NRS 288.160(1). We also directed that a neutral third party, such as the State Labor Commission, review the signatures on the cards in the possession of the appellant and compare them with signatures on file at the hospital for the employees in question. All parties agreed that seven valid signatures would constitute a majority of the twelve member unit for purposes of recognition.

On February 24, 1978, we received, through the United States Mail, the documentation we had requested pursuant to NRS 288.160(1). We have reviewed that documentation and find it to be in compliance with that statutory subsection.

Also on February 24, 1978, we contacted the office of State Labor Commissioner Stanley P. Jones and a representative of Mr. Jones agreed to conduct a card check for us.

On March 23, 1978, we were notified by Mr. Roger M. Laird of the State Labor Commissioner's Office that he had completed the card check. In his letter, Mr. Laird stated:

It is my observation and as such certified to you that a majority of the employees in the unit as provided by the employer had signed Retail Clerks Union Membership Cards provided to me by the union.

The materials submitted by the appellant on February 24, 1978, and the letter from the State Labor Commissioner's Office dated March 23, 1978, comply with the requirements of NRS 288.160 (1) and (2) and we direct Washoe Medical Center to recognize the Retail Clerks Union, Local 1434, as the exclusive bargaining agent for a bargaining unit composed of the twelve pharmacists employed by Washoe Medical Center.

THE ASSESSMENT OF COSTS

At the 1977 session of the Nevada Legislature, the Employee-Management Advisory Committee, with our support, submitted a package of suggested legislative changes in NRS Chapter 288. Included in that package was a request that the Board be permitted to assess costs and fees. We asked that such power be permissible not mandatory for most often litigation before us involves a genuine dispute. The party who misconstrues the law without intent to make a mockery of it or to thwart its intent should not be "punished" by the assessment of costs and/or fees in our judgment. The Nevada State Legislature saw fit to enact our requested legislation in NRS 288.110(6):

The board may award reasonable costs, which may include attorney's fees, to the prevailing party.

We have never before utilized this power, however, we feel that this is an instance where the assessment of costs is appropriate.

Public sector collective bargaining at the local government level in Nevada is no longer a philosophical question. It exists by virtue of NRS Chapter 288 and has existed since 1969. The Legislature, wisely we believe, has established in that Chapter a simple procedure to change the relationship of employers and employee organizations from informal to formal. After the completion of the two simple steps in NRS 288.160(1) and (2), the relationship of the parties is formalized and they may negotiate in conformity with the Chapter.

The employer, in this instance, has undertaken numerous actions to stall, thwart and otherwise make a mockery of this simple and expeditious procedure. Thus, we believe that this is a case which warrants our first utilization of the powers granted us By NRS 288.110(6).

Since the appellant did not utilize counsel, there are no attorney's fees to be assessed. However we can and do order that the respondents pay the entire fee of the court reporter used at the hearing on February 23, 1978 - a fee generally split by the parties. The respondents are directed to submit written documentation to the Board's office within 30 days to show compliance with this order.

FINDINGS OF FACT

1. That the Retail Clerks Union, Local 1434, is a local government employee organization.
2. That the pharmacists employed by Washoe Medical Center, Reno, Nevada are local government employees.
3. That Carroll Ogren, the administrator of Washoe Medical Center, is a local government employee.
4. That Washoe Medical Center is a local government employer.

5. That in October of 1977 representatives of the Retail Clerks Union, Local 1434, and representatives of Washoe Medical Center met to determine the procedures that would be followed to establish a bargaining unit composed of certain employees of the Washoe Medical Center.

6. That in October of 1977 representatives of Washoe Medical Center determined that an appropriate bargaining unit in this instance should be composed of the pharmacists employed by Washoe Medical Center.

7. That in October of 1977 representatives of Washoe Medical Center and representatives of the Retail Clerk Union, Local 1434, met and determined to conduct an election within the bargaining unit utilizing the same form⁺ as is utilized in elections under the National Labor Relations Act.

8. That subsequent to the meeting in October of 1977, the representatives of Washoe Medical Center indicated their desire to have the majority in the election determined on the basis of the majority of persons in the bargaining unit rather than the majority of those voting in the election.

9. That the representatives of Retail Clerks Union, Local 1434, objected to the representatives' of Washoe Medical Center definition of majority as related to the election.

10. That the representatives of Retail Clerks Union, Local 1434, suggested a card check to establish that the union represented a majority of persons in the bargaining unit.

11. That the representatives of Retail Clerk Union, Local 1434, attempted to mail the basic recognition documentation to the representatives of Washoe Medical Center by certified mail return receipt requested.

12. That on two occasions the representatives of Washoe Medical Center refused to accept the certified package containing the recognition documentation.

13. That the representatives of Washoe Medical Center stood by their demand for a secret ballot election to be determined by the majority of the persons in the bargaining unit rather than the majority of persons voting.

14. That on December 6, 1977, Retail Clerks Union, Local 1434, filed this appeal before the Board.

15. That at the hearing on this matter on February 23, 1978, we directed the appellant, Retail Clerks Union, Local 1434, to file certain documentation with the Board. =

16. That at the hearing on this matter on February 23, 1978, we directed that a neutral third party conduct a card check to determine if a majority of the pharmacists employed by Washoe Medical Center wish to be represented by Retail Clerks Union, Local 1434, for purposes of collective bargaining.

17. That on February 24, 1978, the Retail Clerks Union, Local 1434, submitted the written documentation requested by the Board on February 23, 1978.

18. That on February 24, 1978, the Office of the State Labor Commissioner agreed to conduct a card check to determine whether a majority of the pharmacists employed by Washoe Medical Center wish to be represented by the Retail Clerks Union, Local 1434, for purposes of collective bargaining.

19. That on March 23, 1978, the Office of the State Labor Commissioner submitted the results of their card check to the Board.

20. That throughout the course of events commencing in October of 1977 through the meeting with the representatives of the State Labor Commissioner in March of 1978, the representatives of Washoe Medical Center have stalled and attempted to thwart the simple procedures for the recognition of an employee organization established by Nevada law.

CONCLUSIONS OF LAW

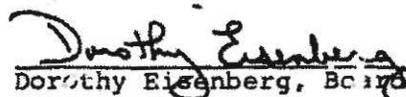
1. That the Local Government Employee-Management Relations Board possesses original jurisdiction over the parties and subject matter of this appeal.
2. That the Retail Clerks Union, Local 1434, is a local government employee organization within the term as defined in NRS 288.040.
3. That the pharmacists employed by Washoe Medical Center are local government employees within the term as defined in NRS 288.050.
4. That Carroll Ogren is a local government employee within the term as defined in NRS 288.050.
5. That Washoe Medical Center is a local government employer within the term as defined in NRS 288.060.
6. That the documentation submitted to us by the Retail Clerks Union, Local 1434, on February 24, 1978, is in compliance with the requirements of NRS 288.160(1).
7. That the March 23, 1978, letter from Mr. Roger M. Laird of the State Labor Commissioner's Office complies with the requirements of NRS 288.160(2).
8. That having complied with NRS 288.160(1) and (2), the appellant, Retail Clerks Union, Local 1434, is entitled to recognition as the exclusive bargaining agent for the pharmacists employed by Washoe Medical Center.
9. That pursuant to NRS 288.110(6), the Board directs that the entire cost of the court reporter utilized at the hearing on this matter on February 23, 1978, be paid by the respondents.

We therefore direct the respondents to:

- (1) recognize the Retail Clerks Union, Local 1434, as the exclusive bargaining agent for a bargaining unit composed of the pharmacists employed by Washoe Medical Center; and

(2) to pay the total cost of the court reporter's fee incurred during the hearing on this matter held on February 23, 1978. Written proof of compliance with this directive to be furnished the Board within 30 days of the date of receipt of this decision by the respondents.

Dated this 10th day of May, 1978.


Dorothy Eisenberg, Board Chairman


John T. Gojack, Board Vice Chairman


Carole Vilardo, Board Member