

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

5-70

Nevada Classified School Employees Association, Carson City Chapter No. 4,	)	
	)	
Complainant	)	
vs	)	AI-045328
	)	
Carson City School District,	)	
	)	
Respondent	)	

DECISION

On Friday, April 25, 1980, the Local Government Employee-Management Relations Board held a hearing in the above matter; the hearing was properly noticed and posted pursuant to Nevada's Open Meeting Law.

This written Decision is prepared in conformity with NRS 233.B.125 which requires that the final Decision contain Findings of Fact and Conclusions of Law separately stated.

By Complaint filed February 29, 1980, The Nevada Classified School Employees Association, Carson City Chapter No. 4 (hereafter NCSEA) alleges that the action to withdraw recognition of the NCSEA by the Respondent, Carson City School District (hereafter District) is capricious, arbitrary and contrary to law; constitutes bad faith bargaining; and constitutes a prohibited practice as set forth in NRS 288.270. The Respondent submits that the complainant lacks standing to bring the Complaint and further asserts that their own action withdrawing recognition for failure of the Association to maintain majority status as of January 15, 1980, is proper under the provisions of Chapter 288 of The Nevada Revised Statutes.

The NCSEA and the District entered into a contract on September 14, 1979, retroactively effective July 1, 1979, through June 30, 1980. School District Policy No. 105 was in effect at the time the contract was executed.

On December 27, 1979, the NCSEA notified the District by letter that it desired to reopen negotiations for the contract year 1980-81. However, on January 18, 1980, the District advised NCSEA that it was unable and unwilling to negotiate because "Our records indicate the Association is not supported by a majority of eligible members". A copy of the aforementioned School District Policy #105 was attached thereto. A January 31, 1980, letter from the District to the NCSEA confirmed the District's withdrawal of recognition of NCSEA as bargaining agent for the classified employees of the Carson City School District. Pursuant to the provisions of Chapter 288, this Complaint followed.

The District's contention that the NCSEA lacks standing to bring the complaint for partial failure to comply with the annual reporting requirements of NRS 288.165 and EMRB rule 6.02 is untenable. The NCSEA, whether formally recognized by the District or not, is an employee organization as defined in NRS 288.040 and has been aggrieved by an action of the District.

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1. School District Policy #105 provides, in relevant part, the following:

An employee organization must seek and receive recognition as bargaining agent for employee-management negotiations by January 15 each year in order to negotiate a contract for the next following fiscal year.

Recognition will be withdrawn at any time that the employee association does not maintain verified evidence on file with the school district that a majority of eligible personnel are currently members of the employee association.

In the event that recognition is not attained by the specified date of January 15, or is subsequently withdrawn, the Board will not consider giving recognition until the next following fiscal year.

NRS 288.160 (3). Just as the Board has jurisdiction to hear such a matter - NRS 288.110 (2), so has the employee organization standing to bring such a complaint. NRS 288.160 (4). See also Warth v Seldin, 95 S. Ct. 2197, 422 US 490, 45 L Ed 2nd 343, 1975 and Local 1908 of the International Association of Firefighters et. al. vs County of Clark et. al. case nos. 003486 and Al-045270, Item No. 43, August 19, 1975. In addition, evidence presented at the hearing established that the NCSEA ultimately complied with the reporting requirements, although the Board acknowledges that not all documents were filed timely. However, as no penalties are prescribed for failure to comply or for failure to comply timely with NRS 288.165, the argument that the NCSEA lacks standing to bring the action is without merit.

Turning to the withdrawal of recognition issue, the Board finds that the District is legally justified to withdraw recognition under its current policy and Chapter 288 of The Nevada Revised Statutes.

NRS 288.160 (3) provides that a local government employer may withdraw recognition from an employee organization which ceases to be supported by a majority of the local government employees in the bargaining unit for which it is recognized.

Testimony and documentary evidence introduced at the hearing revealed that the NCSEA did not have majority membership in the bargaining unit as of January 15, 1980. The District was therefore entirely justified to withdraw recognition from the NSCEA. NRS 288.160(3)(c). Concurrently, the Board finds no evidence that the District violated the statutory requirement of good faith bargaining with the NCSEA or that the District interfered with or attempted to interfere with the Association's representation of the unit.

The NCSEA contends that the District failed to provide formal notice of withdrawal of recognition to the Association. Additionally, Complainant's counsel urges the Board to adopt a procedure wherein the employer should not withdraw recognition unless a fair hearing is conducted in accordance with the principles of due process.

The Board is not unmindful that while NRS 288.160(3)(c) vests permissive power with the local government employer to withdraw recognition when the employee organization ceases to be supported by a majority in the bargaining unit for which it has been recognized, the statute is silent as to the procedure to be employed in withdrawing recognition.

In the only previous EMRB Decision to address the notice issue with respect to withdrawal of recognition, Local 1908, International Association of Firefighters, et. al, vs. County of Clark, et. al, Item #43, supra, this Board stated that the respondents had foreclosed an appeal by the Complainants through NRS 288.160 (4) "by never formally withdrawing the recognition of the local in whole or in part." Instead the employer contacted the battalion chiefs and offered them a salary and benefit package which could reasonably be inferred to be contingent upon their withdrawing from the Local and so presented as to entice the battalion chiefs to leave the Local.

In the instant case, the Board holds that the District's January 18, 1980, letter to the NCSEA constitutes formal notice by the employer of withdrawal of recognition. Further, the Board finds that District policy #105, which was duly adopted according to Nevada open meeting law requirements, provided ample notice to the NCSEA of the requirements of the District for maintaining and continuing recognition.

Testimony revealed that previous Association representatives were well aware of the policy and that it was in effect at the time the present contract was entered into. The policy is neither arbitrary nor capricious; nor does it conflict with the provisions of Chapter 288. Rather it is an attempt by the employer to bring order to its own procedures with respect to the negotiating practices set forth in Chapter 288.

The Board does believe that it would be advantageous to establish procedures to govern formal withdrawal of recognition. However, it feels that this is a proper function of the legislature, and accordingly, declines to adopt such procedures at this time. The Board will make such a recommendation to the 1981 legislature.

#### FINDINGS OF FACT

1. That the Complainant, Nevada Classified School Employees Association, is a local government employee organization.
2. That the Respondent, Carson City School District, is a local government employer.
3. That the Complainant and the Respondent entered into a contract on September 24, 1979, retroactively effective July 1, 1979, through June 30, 1980.
4. That School District Policy #105 was in effect at the time the contract was executed.
5. That on December 27, 1979, the Complainant notified the Respondent by letter that it desired to reopen negotiations for the contract year 1980-81.
6. That on January 18, 1980, the Respondent advised the Complainant that it was unable and unwilling to negotiate because the Complainant was not supported by a majority of eligible employees.

7. That on January 31, 1980, the Respondent by letter to the Complainant confirmed its withdrawal of recognition of Complainant as bargaining agent for the classified employees of the Carson City School District.

8. That on February 29, 1980, Complainant filed a Complaint with the EMRB seeking redress for this action.

9. That the Complainant, although not timely, ultimately complied with the annual report filing requirements of NRS 288.165 and EMRB rule 6.02.

10. That evidence presented at the April 25, 1980 hearing established that the Complainant did not have majority membership in the bargaining unit as of January 15, 1980.

11. That the Respondent did not violate the statutory requirement of good faith bargaining with the Complainant.

12. That the Respondent did not interfere with the Complainant's representation of the unit.

13. That the Respondent's January 18, 1980, letter to the Complainant provided formal notice by the Respondent of withdrawal of recognition.

14. That Respondent's policy #105, which was duly adopted according to Nevada Open Meeting Law requirements, provided sufficient notice to the Complainant of the requirements of the Respondents for maintaining and continuing recognition.

15. That the Respondent's policy is an attempt to bring order to its own procedures with respect to Chapter 288's negotiating practices.

#### CONCLUSION OF LAW

1. That pursuant to the provisions of the Nevada Revised Statutes Chapter 288, the Local Government Employee-Management Relations Board possesses original jurisdiction over the parties and subject matter of this Complaint.

2. That the Complainant, Nevada Classified School Employees Association is a local government employee organization within the term as defined in NRS 288.040.

3. That the Respondent, Carson City School District, is a local government employer within the term as defined in NRS 288.060.

4. That the Complainant has standing to bring the present action. NRS 288.040, NRS 288.160 (3), (4).

5. That the Respondent is legally justified to withdraw recognition under its current policy and Chapter 288 of The Nevada Revised Statutes. NRS 288.160 (3).

6. That the Respondent's January 18, 1980 letter to the Complainant constitutes formal notice by the employer of withdrawal of recognition. NRS 288.160 (3).

7. That Respondent's Policy #105 provided ample notice to the Complainant of the Respondent's requirements for maintaining and continuing recognition. NRS 288.160 (3).

8. That Respondent's Policy #105 is neither arbitrary nor capricious nor in conflict with the provisions of Chapter 288.

The requested relief is denied and the complaint dismissed. Each party shall bear its own costs and attorney's fees.

Dated this 30th day of May, 1980.

  
Dorothy Eisenberg, Board Chairman

  
Carole Vilarde, Board Vice Chairman

  
Earl L. Collins, Board Member

Certified Mail:  
John Nicholas Schroeder, Esq.  
457 Court Street  
Reno, NV 89501

F. Thomas Eck, III., Esq.  
777 East Williams, No. 206  
Carson City, NV 89701