

1 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD
2 STATE OF NEVADA
3

4 In the Matter of)
5 COUNTY OF WASHOE,)
6 Complainant,)
7 vs.)
8 WASHOE COUNTY EMPLOYEES')
9 ASSOCIATION,)
10 Respondent.)
11

ITEM NO. 159

Case No. A1-045365

12 For the Complainant:
13 For the Respondent:
14 For the EMRB Board:

I. Howard Reynolds
Paul H. Lambole, Esq.
Salvatore C. Gugino
Tamara Barengo
Jeffrey L. Eskin

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16 DECISION

17 On June 14, 1983, the Local Government Employee-Management
18 Relations Board (EMRB) held a hearing on the above-entitled
19 matter. The hearing was duly noticed and posted pursuant to the
20 provisions of the Nevada Open Meeting Law.

21 This written Decision is prepared in conformity with pro-
22 visions of NRS Chapter 233B, more particularly NRS 233B.125 which
23 requires that final decisions of this agency contain findings of
24 fact and conclusions of law separately stated.

25 STATEMENT OF CASE

26 On June 14, 1982, the COUNTY OF WASHOE (hereinafter
27 COUNTY), filed a Complaint alleging that Respondent WASHOE COUNTY
28 EMPLOYEES' ASSOCIATION (hereinafter WCEA) refused to bargain in
29 good faith in violation of provisions of NRS 288.270 by insisting
30 to the point of impasse on negotiating over an issue, i.e., the
31 impact of subcontracting, which the COUNTY contends is outside the
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1 scope of mandatory bargaining. The COUNTY prayed for an order
2 compelling the WCEA to remove the issue of subcontracting from
3 bargaining proposals and to bargain in good faith. On or about
4 September 17, 1982, COUNTY submitted an Amended Complaint, to
5 which, on September 22, 1982, the WCEA filed its Answer and
6 Counterclaim. On September 27, 1982, the COUNTY filed its Reply
7 to the Counterclaim of WCEA. By its Counterclaim, the WCEA sought
8 declaratory relief from this Board, determining and declaring that
9 the impact of subcontracting be considered negotiable under pro-
10 visions of NRS 288.150(2).

11 ISSUES

12 The Complaint and Counterclaim raise the same issue, i.e.,
13 the negotiability of the impact of subcontracting, but each do so
14 from different perspectives.

15 The COUNTY asserts the question in the context of pro-
16 hibited practice charges against the WCEA under provisions of
17 NRS 288.270(2)(b).

18 The WCEA seeks determination of the issue by declaratory
19 relief from this Board under provisions of NRS 233B.120 and the
20 General Rules of this Board, Chapter 4, Section 401, et seq.

21 The COUNTY's Complaint thus raises both the question of
22 (1) whether the subject is negotiable and (2) whether the WCEA
23 engaged in the prohibited practice of refusing to bargain in good
24 faith in relations to that subject.

25 The WCEA's Counterclaim for declaratory relief raises the
26 single issue whether the impact of subcontracting is negotiable.

27 DISCUSSION

28 For reasons here reviewed, we dismiss the Complaint for
29 prohibited practices, and find and declare that while the decision
30 to subcontract is a management prerogative, and, as such, is not
31 negotiable, the impact of the decision to subcontract is nego-
32 tiable.

1 A. PROHIBITED PRACTICE

2 At the conclusion of the COUNTY's case, we orally granted
3 the WCEA's Motion to dismiss the COUNTY's Complaint on the grounds
4 that the evidence did not prima facie establish that the WCEA
5 refused to bargain in breach of its duty under NRS 288.270(2)(b).

6 Our decision was predictated on the fact that the sub-
7 contracting proposals did not appear to be the cause of impasse;
8 each party at the time bargained in good faith and with an honest
9 belief as to the legitimacy of its position as to negotiability.

10 The circumstances of this case are substantially different
11 from those found in our decision in In Re Reno Police Protective
12 Association and the City of Reno, Item No. 101, (1980). In that
13 case, there was similar dispute over negotiability of a subject
14 proposed by the employee organization. However, the City asserted
15 that the subject was not negotiable and refused to bargain. We
16 found that action to be a violation of NRS 288.270(1)(e), for the
17 reason that while asserting non-negotiability and refusal to
18 bargain with the charging employee association, the City was,
19 at the same time, engaging in negotiation with another employee
20 association over the same topic.

21 The lack of good faith or legitimate doubt as to nego-
22 tiability was patently obvious in that case.

23 By contrast, in the case now before us, the totality and
24 quality of the parties bargaining on both procedural and substan-
25 tive issues evidence good faith and legitimate dispute, coupled
26 with ability to reach agreement as to other issues. See Reno
27 Municipal Employees Association v. City of Reno, Item No. 93
28 (1980).

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1 Further, because we now find and conclude that the impact
2 of subcontracting is negotiable, the complaint of the COUNTY
3 charging prohibited practice for refusal to bargain is not
4 sustained and is dismissed.

5 B. NEGOTIABILITY

6 In negotiations for both fiscal year 1981/82 and fiscal
7 year 1982/83 the WCEA submitted a proposal concerning sub-
8 contracting and requested bargaining with the COUNTY over the
9 proposal, asserting that it was negotiable because the impact of
10 the decision to subcontract affects wages, hours and certain other
11 working conditions of the employees, which are specifically
12 declared to be mandatory subjects of negotiation under provisions
13 of NRS 288.150(2).

14 The COUNTY, for its part, refused to bargain with WCEA or
15 for that matter to discuss subcontracting, asserting that the
16 proposal regarding subcontracting is not negotiable under pro-
17 visions of NRS Chapter 288 inasmuch as the term "subcontracting"
18 was specifically not enumerated among the topics listed in NRS
19 288.150.

20 Further, the COUNTY asserted that the decision to sub-
21 contract was a management prerogative relating to the employer's
22 right to determine appropriate staffing levels and the means and
23 methods of offering services to the public.

24 The record evidences a history of subcontracting by the
25 COUNTY of maintenance and custodial work over recent years. The
26 COUNTY also has considered contracting out services at Washoe
27 County Golf Course, which would affect employees represented by
28 the WCEA who presently perform those services.

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1 Thus, in light of the past and presently proposed sub-
2 contracting considerations by the COUNTY, the WCEA in the two
3 years has submitted proposals to the COUNTY seeking to negotiate
4 over the impact or effect a subcontracting decision may have on
5 employees the WCEA represents.

6 From the testimony it is clear that the WCEA's proposal
7 was, in fact, a limited request to negotiate over the impact of
8 the decision to subcontract. It was not understood nor considered
9 by the COUNTY to be a request to negotiate over the actual
10 decision to subcontract. The WCEA apparently concedes that the
11 decision to subcontract is within the management prerogative of
12 the COUNTY and is not negotiable.

13 We agree with the position of the parties that a decision
14 by an employer whether or not to subcontract is within the exclu-
15 sive province and prerogative of the employer, and, as such, is
16 not a mandatory subject of negotiation, within the provisions of
17 NRS 288.150(2).

18 However, once the decision to subcontract is made by the
19 employer, the impact of that decision on employees is, in our
20 view, a proper subject of mandatory negotiation under provisions
21 of NRS 288.150(2).

22 The record developed in this case demonstrates to us that,
23 as a matter of fact, the decision to subcontract has a direct,
24 substantial, significant, and pervasive impact and effect on
25 specific terms and conditions of employment, which are, in and of
26 themselves, mandatory subjects of negotiation, such as wages,
27 overtime, hours of work, days of work, workweek, reduction in
28 force and layoff, and such other significant employee concerns as
29 transfer and reassignment, reclassification and retraining,
30 safety, job security, supervision and promotional opportunities.

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1 We are cognizant that there is not an item set out in the
2 listing under NRS 288.150(2) entitled "subcontracting". However,
3 our determination that the impact and effect of a decision to sub-
4 contract is a mandatory subject of negotiation and predicated on
5 the fact that its impact and effect essentially includes various
6 terms and conditions of employment which are expressly and
7 specifically declared to be mandatory subjects of negotiation by
8 NRS 288.150(2), i.e.,

9 (2)(a) Salary or salary rates or other
10 forms of direct monetary compensation.

11 (2)(g) Total number of hours required of
12 an employee on each workday or workweek.

13 (2)(h) Total number of days required of
14 an employee in the work year.

15 (2)(m) Protection of employees in nego-
16 tiating from discrimination because of
17 participation in recognized organizations
18 consistent with provisions of this chapter.

19 (2)(r) Safety.

20 (2)(t) Procedures for reduction in the
21 workforce.

22 Testimony presented by the parties clearly evidences the
23 pervasive nature of a subcontracting decision and its impact and
24 effect on many terms and conditions of employment, both those that
25 are mandatory subjects of bargaining, and those that are per-
26 missive.

27 We agree with the WCEA that the decision to subcontract
28 brings a multifaceted dimension of consequences to the employment
29 situation and circumstances of employees, the impact of which sub-
30 stantially effects terms and conditions which themselves are
31 negotiable under provision of NRS 288.150(2). Accordingly, we
32 determine that the impact and effect of a decision to subcontract
is negotiable, and proposals regarding the impact and effect are
negotiable.

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1 We have reviewed NRS Chapter 288, its amendments and
2 decisions of this Board in our analysis of standards for nego-
3 tiability. We find nothing in the legislative history of the Act,
4 its amendments or decisions of this Board, which preclude our
5 determination that the impact of a decision to subcontract is
6 negotiable.

7 Prior to the 1975 amendments, the criteria for negotiation
8 adopted by this Board was set out in a case entitled In Re Washoe
9 County School District v. Washoe County Teachers Association, Item
10 No. 3 (1971), which stated the standard as follows:

11 "It is the opinion of the Board therefore
12 that any matter significantly related to
13 wages, hours, and working conditions, is
14 negotiable, whether or not said matters
 also relate to questions of management pre-
 rogative, and is the duty of local govern-
 ment employer to negotiate said items."

15 This early negotiability criteria was reaffirmed and
16 applied a short time later by the Board in In Re Clark County
17 Teachers Association Complaint re County County School District,
18 Item No. 5 (1972).

19 In 1975 the Nevada Legislature altered the provisions of
20 NRS Chapter 288 with reference to subject of negotiation. By
21 deliniating subjects, the scope of mandatory bargaining appeared
22 to be limited to those various subject matters specifically listed
23 in NRS 288.150(2).

24 While recognizing the general legislative intent to
25 deliniate the scope of collective bargaining, a different issue
26 arises when within the framework of a given subject declared to be
27 a mandatory subject under NRS 288.150(2), the Board is called on
28 to determine whether or not the scope of that particular subject
29 should be broadly or narrowly construed. Our decisions have
30 favored and today favor a broad construction of the scope of sub-
31 jects to be negotiated.

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1 In Henderson Police Officer Association v. City of
2 Henderson, Item No. 83 (1978), this Board found that physical
3 agility testing as a subject matter was negotiable under a broad
4 construction of "safety" as a mandatory subject of collective
5 bargaining under provisions of NRS 288.150(2)(r).

6 In In Re IAFF Local 1908 v. Clark County, Item No. 146
7 (1982), in determining whether Rules and Regulations were nego-
8 tiable stated:

9 "Rules and regulations in and of themselves
10 do not constitute a mandatory subject of
11 bargaining, but if they include matters
12 which relate to a mandatory subject of
13 bargaining, then such rule or regulation
14 would be negotiable." (emphasis added)

15 In other words, it appears that decisions of this Board
16 subsequent to the 1975 legislative amendments have approached
17 analysis of negotiability under NRS 288.150(2), subsections (a)
18 through (t), as being whether or not from the facts presented,
19 the subject matter involved is directly and significantly related
20 to any one of the subjects specifically enumerated in NRS
21 288.150(2)(a) through (t) under a broad construction of the par-
22 ticular listed subject.

23 The legislative intention of the provisions of NRS 288,
24 and, indeed, those of the existing collective bargaining agreement
25 between the parties, fosters a commitment to collective bargaining
26 over matters that are significantly and directly related to wages,
27 hours and working conditions among the other enumerated items
28 which are mandatory subjects of negotiation under NRS 288.150(2).

29 In our analysis, the present case to us is not a request
30 for declaration or outright determination that "subcontracting"
31 itself be declared a negotiable subject matter under provisions of
32 NRS 288.150(2); it cannot be for it is not one specifically enu-
merated and declared by statute. This approach was criticized by

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1 this Board in Nevada School Employees Association v. Clark County
2 School District, Item No. 111 (1981), in which we observed:

3 "Couched in its present terms, the Association's
4 position seeks an outright determination that
5 certain subjects be negotiable; rather than
6 that a particular provision of NRS 288.150 is
7 applicable to or includes the subjects at
8 issue."

9 WCEA distinctly requests the determination of negotia-
10 bility of the impact and effect of decision to subcontract
11 because particular provisions of NRS Chapter 288.150(2), pre-
12 viously cited as mandatory subjects are applicable to, and are
13 included in the subject at issue, i.e., the impact and effect of
14 decision to subcontract.

15 We are expressly not deciding that subcontracting itself
16 is negotiable, but rather we are making a determination of nego-
17 tiability because the particular and specific provisions of NRS
18 288.150(2) are applicable to, and included in the impact or effect
19 of decision to subcontract.

20 Based on the record evidence in this case, there is little
21 doubt that the impact and effect of decision to subcontract has
22 direct and significant consequence on various conditions of
23 employment, which conditions themselves are expressly declared to
24 be mandatory subjects of bargaining by statute. Each of those
25 mandatory subjects contemplate the obligation to negotiate.

26 Accordingly, because the impact and effect of decision to
27 subcontract applies to and includes subjects which are themselves
28 expressly declared to be negotiable within provisions of NRS
29 288.150(2), the local government employer is obligated to nego-
30 tiate and bargain in good faith with the employee organization
31 over the impact and effect of decision to subcontract.

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1 FINDINGS OF FACT

2 Based on the foregoing discussion and record in this case,
3 we find the following material facts:

4 1. Complainant COUNTY OF WASHOE (hereinafter COUNTY) is a
5 local government employer, as defined in the Act, NRS Chapter 288.

6 2. Respondent WASHOE COUNTY EMPLOYEES' ASSOCIATION (here-
7 inafter WCEA), is a local government employee organization as
8 defined in the Act, NRS Chapter 288.

9 3. Collective bargaining agreements exist between the
10 WCEA and COUNTY covering two (2) bargaining units of supervisory
11 and non-supervisory employees.

12 4. Collective bargaining agreements were negotiated and
13 in effect, for each of two fiscal years: (1) fiscal year 1981/82
14 and (2) fiscal year 1982/83.

15 5. In negotiations for each of the fiscal years for which
16 agreement was reached, the WCEA submitted proposals requesting the
17 COUNTY to bargain over the impact and effect of decisions to sub-
18 contract.

19 6. In each of the fiscal years for which negotiations
20 were undertaken, the COUNTY refused to negotiate with the WCEA
21 over the impact and effect of a decision to subcontract declaring
22 the subject matter to be non-negotiable as subcontracting is not a
23 subject matter specifically listed as negotiable under provisions
24 of NRS 288.150(2).

25 7. In each of the two fiscal years for which negotiations
26 were undertaken and in which the WCEA requested to bargain over
27 the impact and effect of subcontracting, the WCEA's position did
28 not cause impasse in negotiations between the parties, nor act as
29 impediment to agreement reached between the parties.

30 8. In the totality of the circumstances, quality of
31 bargaining reflects the parties adopted and maintained their posi-
32 tions in good faith.

1 9. Decision to subcontract has a direct, substantial,
2 significant and pervasive impact and effect on specific terms and
3 conditions of employment which are in and of themselves, mandatory
4 subjects of negotiation under provisions of NRS 288.150(2), such
5 as wages, overtime, hours of work, days of work, workweek, safety,
6 reduction in force and layoff, as well as such other significant
7 and substantial employee concerns as transfer and reassignments,
8 reclassification and retraining, job security, supervision and
9 promotional opportunities.

10 10. The impact and effect of a decision to subcontract
11 directly relates to and includes various terms and conditions of
12 employment which are expressly and specifically declared to be
13 mandatory subjects of negotiation by NRS 288.150(2), i.e.,

14 (2)(a) Salary or salary rates or other forms
15 of direct monetary compensation.

16 (2)(g) Total number of hours required of an
17 employee on each workday or workweek.

18 (2)(h) Total number of days required of an
19 employee in the work year.

20 (2)(m) Protection of employees in negotiating
21 from discrimination because of participation in
22 recognized organizations consistent with provisions
23 of this chapter.

24 (2)(r) Safety.

25 (2)(t) Procedures for reduction in the work-
26 force.

27 CONCLUSIONS OF LAW

28 Based on the foregoing, the Board concludes as a matter of
29 law as follows:

30 1. Pursuant to provisions of NRS Chapter 288, this Board
31 possesses original jurisdiction over the parties and subject
32 matter of this action. (NRS 288.110 and NRS 288.280)

33 2. Complainant COUNTY OF WASHOE (hereinafter COUNTY), is
34 a local government employer within the meaning of Nevada Revised
35 Statutes, Chapter 288, NRS 288.060.

1 3. Respondent WASHOE COUNTY EMPLOYEES' ASSOCIATION (here-
2 inafter WCEA), is a local government employee organization within
3 the meaning of Nevada Revised Statutes, Chapter 288, NRS 288.040.

4 4. Collective bargaining agreements exist between the
5 WCEA and the COUNTY covering two bargaining units, (1) supervisory
6 employees and (2) non-supervisory employees, as defined in the
7 provisions of NRS 288.028.

8 5. Collective bargaining agreements were in effect for
9 fiscal year 1981/82 and fiscal year 1982/83, each of one year
10 duration, executed by the parties, consistent with provisions of
11 NRS 288.033, NRS 288.150, and NRS 288.155.

12 6. The parties engaged in good faith collective
13 bargaining as to both procedural and substantive issues in each of
14 the fiscal years for which negotiations were held.

15 7. The position of the parties in dispute over negotia-
16 bility of the impact of subcontracting was not causal to impasse
17 or an impediment to agreement in either of the fiscal years for
18 which negotiations were held.

19 8. The decision to subcontract is a management preroga-
20 tive and, as such, is not negotiable under provisions of NRS
21 288.150(2).

22 9. The impact of decision to subcontract is negotiable as
23 it directly, substantially and significantly relates to, and
24 includes various terms and conditions of employment which are
25 expressly required negotiable under provisions of NRS 288.150(2).

26 10. Provisions of NRS 288.150(2), more particularly NRS
27 288.150(2)(a), 288.150(2)(g), 288.150(2)(h), 288.150(2)(m),
28 288.150(2)(r), and 288.150(2)(t), are applicable to, and include
29 the terms and conditions of employment impacted by decision to
30 subcontract; and, accordingly, the impact of subcontracting is
31 deemed negotiable.

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1 11. Neither party hereto has engaged in conduct in
2 violation of NRS 288.270(2)(b) in that there has been no violation
3 or breach of duty to bargain in good faith by either COUNTY or
4 WCEA.

5 ORDER

6 Based on the foregoing, we enter the following Order:

7 1. That the Complaint of COUNTY OF WASHOE is not
8 sustained and is dismissed, with relief prayed for in Application
9 for Declaratory Relief granted;

10 2. That the COUNTY OF WASHOE and the WASHOE COUNTY
11 EMPLOYEES' ASSOCIATION bargain in good faith over the impact of
12 subcontracting consistent with this Decision of the Board; and

13 3. That each party bear its own costs and attorney's fees
14 incurred herein.

15 DATED this 8th day of March, 1984.

16
17 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
18 RELATIONS BOARD

19 By: Salvatore C. Gugino
20 Salvatore C. Gugino, Chairman

21
22 By: Tamara C. Barengo
23 Tamara Barengo, Member

24 By: Jeffrey L. Eskin
25 Jeffrey L. Eskin, Member

26
27
28 cc: I. Howard Reynolds
29 Paul H. Lamboley, Esq.
30 Board Members
31 Interested Parties
32