

1 CASE NO. A1-045380

2
3 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
4 RELATIONS BOARD

5 ** ** **

6 DOUGLAS COUNTY PROFESSIONAL) ITEM NO. 168
7 EDUCATION ASSOCIATION,)
8 -vs- Petitioner,) DECISION
9 THE DOUGLAS COUNTY SCHOOL)
10 DISTRICT,) Respondent.
11)

12 STATEMENT OF THE CASE

13 On July 14, 1983, the ASSOCIATION filed a Petition for
14 Declaratory Ruling seeking a determination that two negotiation
15 proposals were within the scope of mandatory bargaining. The
16 two specific areas are (1) payment for unused sick leave, and
17 (2) a proposal addressing the conditions and times during which
18 representatives of the ASSOCIATION and the ASSOCIATION's affilia-
19 ted organizations may discuss matters pertaining to ASSOCIATION
20 business.

21 Regarding payment for unused sick leave, the ASSOCIATION
22 has proposed that the Master Contract provisions of Article V
23 addressing sick leave (5-B) be amended so as to include a provi-
24 sion for reimbursement of unused sick leave upon a teacher's
25 retirement or severance from employment. The ASSOCIATION propo-
26 sal would amend Article V, Section 5-B-1 of the Professional
27 Negotiations Agreement between the parties as follows:

28 "5-B-1: Fifteen (15) days of sick leave shall be
29 allocated for each certified employee whose contract is
30 written for one school year and each year thereafter.
31 Sick leave days shall be accumulated at the rate of one
32 and one-half days per month for ten months with an un-
limited accumulation of these days.

The District shall provide reimbursement of unused sick
leave at the teacher's daily salary at the time of retire-
ment or severance for the duration of the employee's
service to the District."

1 The ASSOCIATION contends that such proposal is the subject of mandatory bar-
2 gaining pursuant to NRS 288.150(2)(a) and (b) and NRS 391.180(5).

3 The ASSOCIATION has also proposed that new language be added to
4 Article 3-11 of the Professional Negotiations Agreement to remove the require-
5 ment of prior principal approval for ASSOCIATION contact time and to increase
6 the times during which ASSOCIATION business may be conducted. This ASSOCIA-
7 TION proposal would amend Article 3-11 as follows:

8 "The duly authorized representatives of the Association
9 and the organizations with which the Association is affilia-
10 ted not employed by the Douglas County School District shall
11 be permitted to discuss matters pertaining to Association
business [only after dismissal of the students and with the
approval of the school principal] during the teacher's pre-
paration time, free time, lunch time, and after school."

12 As support for the proposal regarding the times of the school day during which
13 ASSOCIATION business and related activities may be conducted, the ASSOCIATION
14 relies on NRS 288.150(2)(j) and NRS 288.150(7).

15 DISCUSSION

16 1. PAYMENT FOR UNUSED 17 SICK LEAVE

18 The ASSOCIATION argues that payment for unused sick leave is an
19 item of mandatory bargaining under NRS 288.150(2)(a) ("...other forms of
20 direct monetary compensation") and (b) ("sick leave"). We agree for the
21 reasons set forth below.

22 First, it is the position of this Board that payment for unused sick
23 leave is "significantly related" to the areas described in NRS 288.150(2)(a)
24 and (b). Specifically, pay for unused sick leave is a proposal "significantly
25 related" to the language "...other forms of direct monetary compensation"
26 contained in NRS 288.150(a) and the provision of NRS 288.150(b) that "sick
leave" is a subject of mandatory bargaining.

27 As originally enacted, NRS 288.150 provided that mandatory bargain-
28 ing encompassed "wages, hours, and conditions of employment". Statutes of
29 Nevada, 1969, 1377. This Board, in the case of In the Matter of the Clark
30 County Teachers Association's Complaint Regarding the Clark County School Dis-
31 trict's Interpretation of NRS 288.150 Concerning the Negotiation of Preparation
32 Time, Item No. 5, (decided March 22, 1972), held that application of the

1 significant relation test compelled the conclusion that the scope of mandatory
2 bargaining under "conditions of employment" was extremely broad. Our decision
3 was confirmed by the Nevada Supreme Court on appeal. Clark County School Dis-
4 trict v. Local Government Employee Management Relations Board, 90 Nev. 442 (1974).

5 In response to the Supreme Court's decision, the Legislature, by
6 Statutes of Nevada, 1975, 919, amended NRS 288.150 by specifically delineating
7 the "subjects" of mandatory bargaining that were within the "scope" of manda-
8 tory bargaining. By so doing, the Legislature expressed its intent that no
9 "subjects", other than those specified, were within the realm of mandatory bar-
10 gaining. However, the "subjects" specified by the Legislature are couched in
11 terms which lead to the inescapable conclusion that such "subjects" are the
12 specified areas of bargaining and the extent of topics encompassed within such
13 areas is subject to interpretation and limitation or definition by this Board.
14 In this limited context, the significant relation test has continuing validity.

15 When the significant relation test is applied to the statutory lan-
16 guage ". . . other forms of direct monetary compensation" (NRS 288.150(2)(a)) and
17 "sick leave" (NRS 288.150(2)(b)), there is little doubt that pay for unused
18 sick leave falls within the scope of mandatory bargaining. Pay for unused
19 sick leave is certainly a form of direct compensation. Temple v. Penn. Dept.
20 of Highways, 285 A.2d 137, 139 (Sup.Ct. Penn. 1971), and there can be no ques-
21 tion that it is "monetary" compensation. Moreover, determining how an employee
22 is to be allowed credit or other use of accumulated unused sick leave is not
23 only significantly related to "sick leave", it falls squarely within the
24 natural parameters of such "subject". Thus, we conclude that pay for unused
25 sick leave does fall within the scope of the delineated subjects of mandatory
26 bargaining.

27 Next we consider the effect of NRS 391.180(5) of the issue of
28 whether payment for unused sick leave is encompassed within the scope of
29 mandatory bargaining.

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1 NRS 391.180 provides:

2 "5. Boards of Trustees shall either prescribe by regula-
3 tion or negotiate pursuant to the Local Government Employee
4 Management Relations Act, with respect to sick leave, accu-
5 mulation of sick leave, payment for unused sick leave,
6 sabbatical leave, personal leave, professional leave,
military leave, and such other leave as they determine to
be necessary or desirable for employees . . . "
(Emphasis added)

7 Since both NRS 288.150(2)(b) and NRS 391.180(5) relate to bargain-
8 ing over sick leave, they must be construed together to determine
9 the intent of the Legislature. Torreyson v. Board of Examiners,
10 7 Nev. 19, 22 (1871). Such a consideration removes any doubt
11 concerning the legislative intention that payment for unused sick
12 leave is within the scope of mandatory bargaining.

13 In 1979, the Legislature amended NRS 391.180(5) with regard
14 to the responsibility of districts to act regarding unused sick
15 leave, by deleting the permissive language "may in the alternative"
16 and substituting the mandatory language "shall". This change
17 clearly shows that the Legislature intended to require districts
18 which negotiate pursuant to NRS Chapter 288 to negotiate with
19 regard to pay for unused sick leave, while leaving districts
20 which do not negotiate with the alternative of providing for pay
21 for unused sick leave through regulations.

22 Construction of NRS 288.150(2)(a) with NRS 391.180(5) thus
23 reveals that pay for unused sick leave is a subject of mandatory
24 bargaining. NRS 288.150(2)(a) was amended in 1975 to clarify
25 that "sick leave" was a subject of bargaining. The amendment
26 to NRS 391.180(5) in 1979 further clarified that school districts
27 could not avoid the requirement of bargaining pay for unused sick
28 leave as an element of sick leave merely by passing a regulation.

29 In conclusion, this Board believes that the ASSOCIATION's
30 proposal regarding payment for unused sick leave falls within the
31 scope and intent of NRS 288.150(2)(a) and (b) and that the clari-
32 fying language of NRS 391.180(5) removes any conceivable doubt

1 on this issue. Pay for unused sick leave is, therefore,
2 the subject of mandatory bargaining.

3 II. PROPOSAL TO EXPAND TIMES AND
4 MODIFY METHOD FOR DISCUSSION
5 OF ASSOCIATION BUSINESS BETWEEN
6 ASSOCIATION REPRESENTATION AND
7 MEMBERS.

8 The ASSOCIATION asserts that a proposal to remove the
9 requirement of prior approval by the principal and to expand the
10 times for ASSOCIATION contact is a subject of mandatory bargain-
11 ing. The ASSOCIATION proposal is set forth in full in the pre-
12 liminary part of this decision. We agree that the proposal is
13 subject to the requirements of mandatory bargaining.

14 Section 3-11 of Article III of the Master Contract was a
15 contract provision presently in existence as of twelve o'clock
16 P.M. on May 15, 1975. NRS 288.150(7) provides:

17 "Contract provisions presently existing in signed
18 and ratified agreements as of May 15, 1975, at 12:00
19 P.M. shall remain negotiable."

20 The question thus becomes whether the ASSOCIATION's proposal
21 falls within the "grandfather" provisions of NRS 288.150(7).

22 In the case of Washoe County Teachers Association v. Washoe
23 County School District, Item No. 56 (A1-045297), this Board deter-
24 mined that the inquiry to be undertaken with respect to whether
25 an item falls within the "existing provision" language of NRS 288.
26 150(7) is to determine whether the proposal constitutes a "radi-
27 cal departure" from the existing contract article or an attempt
28 to bring "peripheral matters" into the contract under the guise
29 of existing contract provisions. We feel that the proposal in
30 question is not a "radical departure" from the existing contract
31 provisions nor a "peripheral matter" and, therefore, is a subject
32 of mandatory bargaining under NRS 288.150(7).

33 The proposed changes to paragraph 3-11 of Article III of
34 the Master Contract include (1) increasing the number of times
35 during which ASSOCIATION business can be discussed; and (2)

1 removing the requirement of prior approval of the school principal.
2 These changes do not appear to this Board to be "radical departures"
3 or "peripheral matters" when measured against the existing contract
4 provision terms. This is especially true since the testimony
5 received indicates that, as a practical matter, the prior approval
6 requirement was tantamount to mere notification that the ASSOCIA-
7 TION representative is on the school premises. Certainly, the
8 removal of prior approval and the inclusion of additional times
9 do not constitute a "radical departure" from the existing language.
10 Indeed, the proposal addresses the very aspects addressed by the
11 existing language, i.e., (1) the requirement of prior approval
12 and (2) the times during which ASSOCIATION business and contact
13 may occur. Since the proposal is directed at the very substance
14 of the existing contract provision, the DISTRICT's argument that
15 it introduces peripheral matters is without merit.

16 FINDINGS OF FACT

17 1. That the DOUGLAS COUNTY PROFESSIONAL EDUCATION ASSOCIA-
18 TION is the local government employee organization.

19 2. That the DOUGLAS COUNTY SCHOOL DISTRICT is the local
20 government employer.

21 3. That during the course of 1983 negotiations concerning
22 the Master Contract Agreement between the DOUGLAS COUNTY SCHOOL
23 DISTRICT and the DOUGLAS COUNTY PROFESSIONAL EDUCATION ASSOCIATION,
24 there were disagreements between the parties regarding which pro-
25 posals should be the subject of mandatory bargaining.

26 4. That following an exchange of communications between
27 the DISTRICT and the ASSOCIATION, the ASSOCIATION notified the
28 DISTRICT that it intended to seek an EMRB ruling with respect to
29 the areas of (1) pay for unused sick leave and (2) a proposal
30 seeking to remove an existing requirement of prior approval and
31 to increase the times during which contact may occur between
32 ASSOCIATION members and non-district employee representatives of

1 affiliated organizations.

2 5. That on July 14, 1983, the ASSOCIATION filed a Petition
3 for Declaratory Ruling seeking a determination of the negotiabi-
4 lity of those issues listed in Paragraph 4 above.

5 6. That on September 21, 1983, the Board held a hearing on
6 the Petition for Declaratory Ruling.

7 CONCLUSION OF LAW

8 1. That the Local Government Employee-Management Relations
9 Board possesses original jurisdiction over the parties and subject
10 matter of this Complaint pursuant to the provisions of NRS Chapter
11 288.

12 2. That the DOUGLAS COUNTY PROFESSIONAL EDUCATION ASSOCIA-
13 TION is a local government employee organization within the term
14 as defined in NRS 288.040.

15 3. That the DOUGLAS COUNTY SCHOOL DISTRICT is a local
16 government employer within the term as defined in NRS 288.060.

17 4. That the proposal of the DOUGALS COUNTY PROFESSIONAL
18 EDUCATION ASSOCIATION concerning unused sick leave is a subject of
19 mandatory bargaining pursuant to NRS 288.150(2)(a) and (b) and
20 NRS 391.180(5).

21 5. That the proposal of the DOUGLAS COUNTY PROFESSIONAL
22 EDUCATION ASSOCIATION that the existing contract provision addres-
23 sing the conditions and times during which representatives of the
24 ASSOCIATION and the ASSOCIATION's affiliated organizations may
25 discuss matters pertaining to ASSOCIATION business be modified to
26 remove the requirement of prior principal approval and to increase
27 the times for discussion of matters pertaining to ASSOCIATION

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1 business is a subject of mandatory bargaining pursuant to NRS 288
2 150(7).

3 DATED this 11th day of July, 1984.

4 LOCAL GOVERNMENT EMPLOYEE-
5 MANAGEMENT RELATIONS BOARD

6 By Salvatore C. Gugino
7 SALVATORE C. GUGINO, Chairman

8 By Tamara Barengo
9 TAMARA BARENGO, Member

10 By Jeffrey L. Fskin
11 JEFFREY L. FSKIN, Member

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21 BOARD MEMBERS
22 Interested Parties
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