

1 CASE NO. A1-045382

2
3 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
4 RELATIONS BOARD

5 ** ** **

6 ORMSBY COUNTY TEACHERS)
ASSOCIATION,)

ITEM NO. 174

7 Petitioner,)

8 -vs-)

D E C I S I O N

9 THE CARSON CITY SCHOOL
DISTRICT,)

10 Respondent.)

11 For the Petitioner: Michael W. Dyer, Esq.

12 For the Respondent: F. Thomas Eck, III, Esq.

13 For the EMRB Board: Tamara Darenco, Chairperson
Jeffrey L. Eskin, Esq.
14 Salvatore C. Guino, Esq.

15 STATEMENT OF THE CASE

16
17 On September 19, 1983, the ORMSBY COUNTY TEACHERS ASSOCIATION (here-
18 inafter referred to as the ASSOCIATION) filed a Petition for Declaratory Ruling,
19 seeking a determination that six (6) negotiation proposals were within the
20 scope of mandatory bargaining. The proposals presented were: (1) a proposal
21 defining "teacher" for purposes of the collective bargaining agreement; (2) a
22 proposal to expand the definition of grievance to include certain inequitable
23 treatment; (3) a proposal to allow paid leave for job related court appearances;
24 (4) a proposal that salary be negotiated as a percentage of total budget; (5)
25 a proposal to establish a sick leave bank for catastrophically ill teachers,
26 and (6) a proposal to negotiate pay for unused sick leave. On January 10,
27 1984, the ASSOCIATION filed an amendment to its Petition for Declaratory Ruling
28 to remove the proposals regarding the definition of a teacher and salary as a
29 percentage of budget, on the basis that such proposals had, respectively, been
30 tentatively agreed to by the parties, and mooted by subsequent proposals.

1 Thus, the issues actually presented at the hearing of this case on January 13,
2 1984, were those relating to; (1) the definition of the grievance procedure;
3 (2) Pay for related court appearances; (3) the establishment of a sick leave
4 bank, and (4) payment for unused sick leave.

5 Regarding the definition of the grievance procedure, the ASSOCIATION
6 has proposed that Article 7.2 of the Comprehensive Agreement between the Car-
7 son City School District and the Ormsby County Teachers Association (herein-
8 after referred to as the Comprehensive Agreement) be modified as follows:

9 "7.2 Definitions

10 a. A 'grievance' shall mean a complaint by a teacher,
11 a group of teachers, or the Ormsby County Teachers Asso-
12 ciation, hereinafter known as the OCTA: (a) that he/she,
13 they or it has/have been treated inequitably by reason of
14 any act or condition which is contrary to any agreement
15 that is arrived at through the collective bargaining pro-
16 cedure under the Local Government Employee Management
17 Relations Act; (b) that he/she, they or it has/have been
18 treated inequitably by reason of any act or condition
19 which is contrary to the policies of the Carson City
20 School District; (c) that he/she, they or it has/have
21 been treated inequitably by an administrator or agent of
22 the Carson City School District; (d) any action that is
23 contrary to the individual rights or welfare of the teacher."

24 The ASSOCIATION contends that such proposal is the subject of mandatory bar-
25 gaining pursuant to NRS 288.140(2)(o).

26 The ASSOCIATION has proposed that a new section 10.5 be added to the
27 Comprehensive Agreement which will read as follows:

28 "10.5 Teachers shall be provided time off without loss of pay
29 when appearing in a court proceeding relating to an action
30 involving the teacher which occurred as a result of and with-
in the scope of his/her employment."

The ASSOCIATION believes that the referenced addition to Article 10.5 is a sub-
ject of mandatory bargaining pursuant to NRS 288.150(2)(a) and (e).

The ASSOCIATION has proposed that a new subsection (j) be added to
Article 16.1 of the Comprehensive Agreement, to establish a sick leave bank for
catastrophically ill teachers. The ASSOCIATION's proposal reads as follows:

"(j) A sick leave bank shall be established where catastro-
phically ill teachers may draw sick leave voluntarily

1 donated by individual teachers."

2 It is the position of the ASSOCIATION that this proposal is a subject of man-
3 datory bargaining pursuant to NRS 288.150(2)(a) and (b), and NRS 391.180(5).

4 Finally, the ASSOCIATION has proposed that Article 16 of the Compre-
5 hensive Agreement be amended by the addition of a new subsection (k) to pro-
6 vide payment for unused sick leave. Specifically, the ASSOCIATION has pro-
7 posed:

8 "(k) Teachers shall be paid for unused sick leave upon
9 termination of employment, to be paid at the current
 substitute rate on the date of termination."

10 The ASSOCIATION believes this proposal to be a subject of mandatory bargaining
11 pursuant to NRS 288.150(2)(a) and (b), and NRS 391.180(5).

12 DISCUSSION

13 I

14 EXPANSION OF
15 DEFINITION OF
 GRIEVANCE

16 The ASSOCIATION argues that its proposal to expand the definition
17 of a grievance to include inequitable treatment, which is contrary to the
18 policies of the CARSON CITY SCHOOL DISTRICT (hereinafter referred to as the
19 DISTRICT), inequitable treatment by an administrator or agent of the DISTRICT,
20 or any action contrary to the individual rights or welfare of the teacher, is
21 an attempt to interpret and apply existing contract language as it pertains to
22 the grievance procedure. Based on this premise, the ASSOCIATION argues that
23 the proposal to amend Article 7.2 of the Comprehensive Agreement falls within
24 the provision of NRS 288.150(2)(a) that "grievance and arbitration procedures
25 for resolution of disputes relating to interpretation or application of collec-
26 tive bargaining agreements" are the subject of mandatory bargaining. The Board
27 disagrees.

28 Negotiation proposals which address the grievance procedure within the
29 context of interpretation or application of collective bargaining agreements
30 clearly fall within the realm of mandatory bargaining. Thus, if the ASSOCIATION

1 proposal related to the interpretation or application of specific existing
2 language in the Comprehensive Agreement, the ASSOCIATION's argument would be
3 meritorious. However, the ASSOCIATION proposal goes far beyond any existing
4 language in the Comprehensive Agreement and constitutes a radical departure
5 from the expressed terms and conditions of the Comprehensive Agreement and
6 NRS 288.150(2)(o) in that it includes issues and topics inapplicable to the
7 Employee Management Relations Act and the Comprehensive Agreement. As such,
8 the proposal cannot fall within the realm of mandatory bargaining. Accord-
9 dingly, we conclude that the ASSOCIATION proposal to modify Article 7.2 of the
10 Comprehensive Agreement is not within the scope of mandatory bargaining for
11 the reason that it is not related to existing provisions of the Comprehensive
12 Agreement and is not otherwise within the scope of the Employee Management
13 Relations Act.

14 II

15 PAY FOR JOB RELATED
16 COURT APPEARANCES

17 By the second issue presented, the ASSOCIATION requests the Board to
18 determine whether a negotiation proposal concerning payment for job related
19 court appearances falls within the mandatory bargaining requirements of NRS
20 288.150(2)(e), which provides that "other paid or non-paid leaves of absences"
21 are subject to mandatory bargaining. Although, we agree with the ASSOCIATION
22 position that a proposal concerning payment for job related court appearances
23 does constitute a subject of mandatory bargaining under NRS 288.150(2)(e), it
24 is unnecessary to address any specific position of either the DISTRICT of the
25 ASSOCIATION in regard to this issue. At the hearing, the DISTRICT conceded
26 that payment for job related court appearances was a subject of mandatory bar-
27 gaining and pursuant to a stipulation between the DISTRICT and the ASSOCIATION
28 (TOP, p.114, 1.9 - p. 117, 1.19) we therefore hold that payment for job related
29 court appearances is a subject of mandatory bargaining under NRS 288.150(2)(e).
30

ESTABLISHMENT OF A SICK LEAVE BANK
FOR CATASTROPHICALLY ILL TEACHERS

The third proposal presented by the ASSOCIATION for decision concerns establishment of a sick leave bank for the benefit of catastrophically ill teachers. The ASSOCIATION asserts that the proposal to negotiate concerning establishment of such a sick leave bank is a subject of mandatory bargaining under NRS 288.150(2)(a) and (b), as well as NRS 391.180(5).

NRS 288.150(2)(a) provides in cogent part, that " ...other forms of direct monetary compensation" shall be the subject of mandatory bargaining. The establishment of "sick leave bank" has been held to be a form of compensation in the context of negotiated agreements between teachers' associations and school districts. Syracuse Teachers Association Inc. v. Board of Education, Syracuse, 345 N.Y.S. 2d 239, 244, 42 AD 2d 73 (1973). Receipt of sick leave from a sick leave bank is a form of direct monetary compensation. We, therefore, conclude that the establishment of a sick leave bank is a subject of mandatory bargaining under NRS 288.150(2)(a) as a form of "direct monetary compensation."

In the case of Douglas County Teachers Association v. Douglas County School District, Case No. A1-045380, Item No. 161, decided July 11, 1994, we acknowledged that in the limited context of determining the scope of the twenty (20) specified areas listed under NRS 288.150(2), the significant relationship test is applicable. There can be no doubt that the accumulation of sick leave and, inherently, the manner in which accumulated sick leave may be used or disposed of is significantly related to, and within, the scope of "sick leave". (NRS 288.150(2)(b)). Establishment of a sick leave bank is no more than a provision for the method in which accumulated sick leave may be used. Establishment of a sick leave bank is, then, within the scope of the mandatory bargaining area of "sick leave" under NRS 288.150(2)(b).

.....

1 Finally, with respect to establishment of a sick leave bank, we must
2 take note of NRS 391.180(5) which provides:

3 "5. Boards of trustees shall either prescribe by regulation
4 or negotiate pursuant to the Local Government Employee Manage-
5 ment Relations Act, with respect to sick leave, accumulation
6 of sick leave, 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 bargaining over sick
8 leave, they must be construed together to determine the intent of the legisla-
9 ture. Torreyson v. Board of Examiners, 7 Nev. 19, 22 (1871).

10 Prior to 1977, NRS 391.180(5) did not provide for accumulation of
11 "sick leave" or "payment for unused sick leave". In 1977, after the 1975
12 amendments to NRS 288.150(2) which added the twenty (20) areas of mandatory
13 bargaining, the legislature amended NRS 391.180(5) to specifically require
14 that school districts address the subjects of "accumulation of sick leave", and
15 "payment for unused sick leave". Statutes of Nevada, 1977, p. 514, 515. The
16 1977 language was couched in terms of "may in the alternative negotiate".

17 In 1979, the legislature amended NRS 391.180(5) with regard to the
18 responsibility of Districts to act on accumulation of sick leave and payment
19 for unused sick leave by deleting the permissive language "may in the alter-
20 native" and substituting the mandatory language "shall". This change clearly
21 shows that the legislature intended to require Districts which negotiate pur-
22 suant to NRS Chapter 288 to negotiate with regard to accumulation of sick leave
23 and payment for unused sick leave, while leaving Districts that do not nego-
24 tiate with the alternative to providing for these items through regulation.
25 Thus, as was held in Douglas County Professional Education Association v. Doug-
26 las County School District, supra, construction of NRS 288.150(2)(b) with NRS
27 391.180(5) reveals that accumulation of unused sick leave and payment for un-
28 used sick leave are subjects of mandatory bargaining.

29 As noted above, establishment of a sick leave bank deals with a
30 determination of how accumulated sick leave is to be disposed of, and payment

1 for unused sick leave likewise deals with disposal of accumulated sick leave.
2 We, therefore, conclude that a proposal to establish a sick leave bank, which
3 would necessarily involve accumulated sick leave, and payment for such accumu-
4 lated sick leave to the catastrophically ill teacher, is a subject of mandatory
5 bargaining in light of not only NRS 288.150(a) and (b), but particularly so
6 when construed with reference to NRS 391.180(5).

7 IV
8 PAYMENT FOR
9 UNUSED SICK LEAVE

10 As referenced above, this Board, in the case of Douglas County Profes-
11 sional Education Association v. Douglas County School District, supra, speci-
12 fically held that payment for unused sick leave is a subject of mandatory
13 bargaining. The issue of whether payment for unused sick leave constitutes
14 a subject of mandatory bargaining has been previously decided by this Board
15 and, on the basis of such previous decision and for the reasons stated therein,
16 we conclude that payment for unused sick leave is a subject of mandatory bar-
17 gaining.

18 In reaching our decision on payment for unused sick leave, we are not
19 unmindful of the DISTRICT's arguments concerning our previous holding in Ormsby
20 County Teachers Association v. Carson City School District, Case No. A1-045374,
21 Opinion No. 23, decided February 10, 1975. In that case, we specifically
22 held that the specificity of the leave provisions as they then existed in NRS
23 391.180(5) ^{1/} should be interpreted as precluding the specified subjects in
24 NRS 391.180(5) from the area of mandatory bargaining. Our opinion was founded
25 on the specificity of NRS 391.150(5) that school boards were expressly granted
26 the exclusive right to address the items of NRS 391.150(5) by rule and regula-
27 tion rather than by negotiation. However, as previously noted in the portion

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28 *****

29 ^{1/} NRS 391.180(5) as of the date of our decision in Ormsby County Teachers
30 Association v. Carson City School District, supra, provided:

"Boards of Trustees shall prescribe such rules and regulations
for sick leave, personal leave, professional leave, military
leave and such other leaves as they determine to be necessary
or desirable for employees."

1 of this opinion addressing establishment of a sick leave bank, the legislature
2 in 1977 amended NRS 391.180(5) to require the Districts which negotiate under
3 NRS Chapter 288 to negotiate the subjects specified in NRS 391.180(5). Our
4 opinion in Ormsby County Teachers Association v. Carson City School District,
5 supra, would, then, have no applicability in the present statutory context.

6 FINDINGS OF FACT

7
8 1. That the Ormsby County Teachers Association is a local government
9 employee organization.

10 2. That the Carson City School District is a local government employer.

11 3. That during the course of 1983 negotiations concerning the Compre-
12 hensive Agreement between the Carson City School District and the Ormsby County
13 Teachers Association, there were disagreements between the parties regarding
14 whether certain proposals were the subject of mandatory bargaining.

15 4. That following an exchange of communications between the DISTRICT
16 and the ASSOCIATION, the ASSOCIATION, on September 19, 1983, filed a Petition
17 for Declaratory Ruling with the Board seeking a determination of the negotia-
18 bility of the issues of: (1) Definition of a teacher; (2) definition of
19 grievance procedure; (3) paid leave for job related court appearances; (4)
20 salary as a percentage of total budget; (5) establishment of a sick leave
21 bank, and (6) payment for unused sick leave.

22 5. That on January 8, 1984, the ASSOCIATION withdrew the issues of
23 (1) definition of a teacher, and (2) salary as a percentage of total budget
24 from consideration by this Board.

25 6. That on January 13, 1984, the Board conducted a hearing on the
26 Petition for Declaratory Ruling.

27 CONCLUSIONS OF LAW

28
29 1. That the Local Government Employee-Management Relations Board
30 possesses original jurisdiction over the parties and subject matter of this

1 complaint pursuant to the provisions of NRS Chapter 288.

2 2. That the Ormsby County Teachers Association is a local government
3 employee organization within the term as defined in NRS 288.040.

4 3. That the Carson City School District is a local government employee
5 within the term as defined in NRS 288.060.

6 4. That the proposal of the Ormsby County Teachers Association con-
7 cerning expansion of the definition of a grievance is not related to inter-
8 pretation or application of the collective bargaining agreement between the
9 ASSOCIATION and the DISTRICT, and as such is beyond the scope of mandatory
10 bargaining under NRS 288.150(2)(o) and the Employee Management Relations Act.

11 5. That the proposal for paid leave for job related court appearances
12 as stipulated to by the parties is a subject of mandatory bargaining under
13 NRS 288.150(e).

14 6. That the proposal of the ASSOCIATION concerning establishment of
15 a sick leave bank is a subject of mandatory bargaining pursuant to NRS 288.150
16 (2)(a) and (b) and NRS 391.180(5).

17 7. That the proposal of the ASSOCIATION, concerning payment for un-
18 used sick leave, is as previously decided by this Board in the case of Douglas
19 County Professional Education Association v. Douglas County School District,
20 Case No. A1-045330, Item No. 161, decided July 11, 1984, a subject of manda-
21 tory bargaining pursuant to NRS 288.150(2)(a) and (b), and NRS 391.180(5).

22 DATED this 28th day of January, 1985.

23 LOCAL GOVERNMENT EMPLOYEE-
24 MANAGEMENT RELATIONS BOARD

25 By Salvatore C. Gugino
26 SALVATORE C. GUGINO, Member

27 By Jerrey L. Eskin
28 JERREY L. ESKIN, Member

29 OPINION OF BOARD MEMBER BARENGO
30 CONCURRING IN PART AND DISSENTING IN PART

I concur with Member Eskin and Member Gugino, with respect to the

1 proposals concerning the definition of the grievance procedure, pay for job
2 related court appearances, and payment for unused sick leave. However, I
3 dissent with regard to the holding of Member Gugino and Member Eskin concern-
4 ing establishment of a sick leave bank. It is my opinion that establishment
5 of a sick leave bank is beyond the scope of mandatory bargaining and is not,
6 as held by the majority, a subject of mandatory bargaining under NRS 288.150
7 (2)(a) and (b) and NRS 391.180(5).

8 Tamara Barengo
9 TAMARA BARENGO, Chairperson
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