

1 CASE NO. A1-045407

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LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

4

RELATIONS BOARD

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CLARK COUNTY CLASSROOM)
TEACHERS ASSOCIATION,)

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8

Complainant,)

ITEM NO. 202

9

vs.)

DECISION

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BOARD OF TRUSTEES OF THE)
CLARK COUNTY SCHOOL DISTRICT)
and CLARK COUNTY SCHOOL)
DISTRICT,)

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Respondents.)

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For the Complainant:

Georganne Wert, Esq. of the
law firm Schreck, Jones,
Bernhard, Woloson & Godfrey

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For the Respondents:

Thomas J. Moore, Esq.

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For the EMRB Board:

Salvatore C. Gugino, Esq.
Tamara Barengo
Jeffrey L. Eskin, Esq.

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STATEMENT OF THE CASE

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This dispute arose between Respondents BOARD OF SCHOOL
TRUSTEES OF THE CLARK COUNTY SCHOOL DISTRICT and the CLARK COUNTY
SCHOOL DISTRICT (hereinafter referred to as "Respondents or
District") and the Complainant, CLARK COUNTY CLASSROOM TEACHERS
ASSOCIATION (hereinafter referred to as "CCCTA") when the
District allegedly failed to negotiate scheduling double sessions
with the CCCTA resulting from asbestos and fire code

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1 retrofitting. Complainant alleges that Respondents engaged in
2 prohibitive practices under the Nevada Local Government
3 Employee-Management Relations Act (hereinafter referred to as the
4 "Act") in that Respondents violated NRS 288.270(1)(a).
5 Additionally, Complainant alleges that Respondents violated the
6 provisions of NRS 288.150 (2)(g)(h) and (s) by their failure to
7 bargain in good faith.

8 On September 9, 1987, the Local Government Employee-
9 Management Relations Board (hereinafter referred to as "BOARD")
10 held a hearing on the complaint. The hearing was held pursuant
11 to the provisions of the Act, as well as the provisions of the
12 Administrative Procedure Act. The Complainant and Respondents
13 each submitted evidence and argument in support of their
14 respective positions.

15 Following the hearing, the Board concluded that there was no
16 evidence to support the allegations of the Complainant's
17 complaint.

18 DISCUSSION

19 Extraordinary circumstances of asbestos/retrofit required
20 that several District schools be operated on double sessions.
21 Teachers at these schools were temporarily scheduled to perform
22 services within the agreement negotiated by CCCTA for the school
23 year 1985-86. The District maintained that the scheduling of
24 services within a seven-hour work day is a management prerogative
25 and was not subject to bargaining. The teachers worked six hours
26 and were paid for seven. The District operated within the

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1 negotiated agreement and scheduled the services to be performed
2 within the contracted work day. This is a right reserved to
3 management under NRS 288.150(3)(a) and (c).

4 The decision to institute double sessions is also
5 management's prerogative under NRS 288.150(3)(a), (c) and (d).
6 The impact and effect of exercising that management prerogative
7 in different circumstances may impinge upon wages, hours, and
8 working conditions under the provisions of NRS 288.150(2).
9 Clearly, a decision which materially affects a teacher's total
10 hours of work under NRS 288.150(2)(g), total number of days
11 worked under NRS 288.150(2)(h), or teacher preparation time under
12 NRS 288.150(2)(s) must be negotiated as a mandatory subject of
13 bargaining.

14 The Board in County of Washoe v. Washoe County Employees
15 Association (EMRB), Case No. A1-045365, Item No. 159 (1984), held
16 that a matter may require negotiations where the impact is
17 directly and significantly related to an enumerated subject.
18 That case dealt with an impasse in negotiating an agreement.
19 Here the parties had an agreement and the scheduling of services
20 within that agreement did not have a direct, substantial,
21 significant or pervasive impact and effect on the terms of
22 employment. The terms of employment remained as agreed upon.

23 In this case, the Board finds that the institution of double
24 sessions at schools within the District occurred because of
25 extraordinary circumstances related to asbestos removal and
26 retrofit. Under these circumstances, and based on the evidence

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1 presented, the Board finds that the Respondents did not engage
2 a prohibitive practice under NRS 288, and that the provisions of
3 288.150(2)(g), (h) and (s) were not violated.

4 FINDINGS OF FACT

5 1. That the Complainant, CLARK COUNTY CLASSROOM TEACHERS
6 ASSOCIATION, is a local government employee organization.

7 2. That the Respondent, CLARK COUNTY SCHOOL DISTRICT, is a
8 local government employer.

9 3. That on February 11, 1986, the Complainant filed a
10 complaint with the Local Government Employee-Management Relations
11 Board alleging in its complaint that the District had engaged in
12 prohibitive practices by:

13 a. Refusing to bargain in good faith as required by NRS
14 288.150 (g) (h) and (s).

15 b. That this action violated NRS 288.270(1)(e).

16 4. That asbestos removal and fire code retrofitting
17 required that District schools be operated on double sessions.

18 5. That this was an extraordinary circumstance.

19 6. That teachers at these schools were temporarily
20 scheduled to perform services within the total number of days and
21 hours worked per day as agreed within the negotiated agreement of
22 the parties.

23 7. That teacher preparation time was provided as agreed
24 under the agreement between the parties.

25 8. That the institution of double sessions did not affect
26 the total days worked, hours per day worked or the preparation

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1 time of the teachers scheduled for double sessions.

2 9. That the District scheduled services within the
3 existing negotiated agreement.

4 CONCLUSIONS OF LAW

5 1. That pursuant to the provisions of the Nevada Revised
6 Statutes, Chapter 288, the Board possesses original jurisdiction
7 over the parties and the subject matter of the Complaint. NRS
8 288.110, NRS 288.280.

9 2. That Complainant, CCCTA, is a local government employee
10 organization within the meaning of Nevada Revised Statutes
11 Chapter 288. NRS 288.040.

12 3. That the Respondent, Clark County School District, is a
13 local government employer within the meaning of Nevada Revised
14 Statutes, Chapter 288. NRS 288.060.

15 4. That there is insufficient evidence to support the
16 conclusion that the District failed to bargain in good faith with
17 the CCCTA. In this case, the Board finds that the institution of
18 double sessions at schools within the District occurred because
19 of extraordinary circumstances related to asbestos removal and
20 fire retrofitting. Under these circumstances, and based on the
21 evidence presented, the Board finds that the Respondents did not
22 engage in a prohibitive practice under NRS 288, and that the
23 provisions of 288.150(2)(g), (h) and (s) were not violated.

24 DECISION

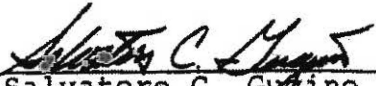
25 From the foregoing Discussion, Findings of Fact, and
26 Conclusions of Law,

27 IT IS HEREBY ORDERED that the complaint of the CCCTA be

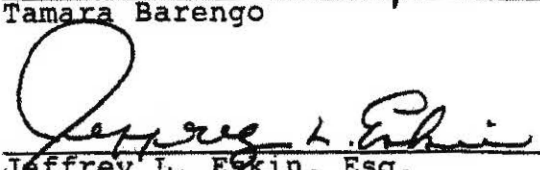
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1 dismissed with prejudice, each party to bear its own costs and
2 fees.

3 DATED this 16th day of MARCH, 1988.

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6 Salvatore C. Guggino, Chairman

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9 Tamara Barengo

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11 
12 Jeffrey L. Eskin, Esq.

13 CERTIFIED TO:

14 cc: Peter C. Bernhard, Esq.
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16 Woloson & Godfrey
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Copies to: Board members
Interested parties