

BEFORE THE
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

PERSHING COUNTY CLASSROOM
TEACHERS ASSOCIATION,

Petitioner,

v.

PERSHING COUNTY SCHOOL DISTRICT,

Respondent.

ITEM NO. 212

CASE NO. A1-045416

DECISION

For the Petitioner: Michael W. Dyer, Esq.

For the Respondent: C. Robert Cox, Esq.

For the EMRB: Salvatore C. Gugino, Chairman
Tamara Barengo
Jeffrey L. Eskin

STATEMENT OF THE CASE

This matter came before the Local Government Employee-Management Relations Board ("Board") upon the filing of a Petition for Declaratory Order by the Pershing County Classroom Teachers Association ("Association") seeking a determination that the subject of teacher evaluations is within the scope of mandatory bargaining.

In the spring of 1986, during the course of negotiating the collective bargaining agreement for the 1986-87 school year, the Association sought to negotiate with the Pershing County School District ("District") concerning teacher evaluations and the procedure to be followed in conducting them. The District notified the Association that it considered teacher evaluations to be beyond the scope of mandatory bargaining as established by NRS 288.150(2), and that it would not negotiate on the subject.

1 Thereafter, Petitioner and Respondent agreed upon the terms
2 of the collective bargaining agreement for the 1986-87 school
3 year, which contained no provision relating to teacher evaluations.
4 The Petitioner then submitted this issue in dispute to
5 the Board for its determination.

6 The parties filed a prehearing statement in which both sides
7 contended that the sole legal issue presented for determination
8 in this matter is whether the subject of teacher evaluations is
9 within the scope of mandatory bargain established by NRS
10 288.150(2).

11 There appearing to be no significant issues of fact concerning
12 this matter, but rather this being a case which must be
13 decided on the issues of law created by the underlying statutes,
14 the Board passed a motion in its meeting of March 16, 1988, to
15 dispense with a hearing, unless written objection by either party
16 was received within ten (10) days of receipt of notice. Having
17 received no written objection, the parties were invited to submit
18 supplemental briefs on the matter for the Board's consideration.

19 DISCUSSION

20 I

21 The Board Relies Upon the "Significant Relationship" 22 Test in Analyzing the Negotiability of a Topic

23 As originally enacted, NRS 288.150 provided that it was "the
24 duty of every local government employer, except as limited in
25 subsection 2, to negotiate...concerning wages, hours, and
26 conditions of employment...." Subsection 2 of the statute
27 enumerated items that were specifically exempted from the
28 negotiation requirement. 1969 Nev.Stats. 1377.

1 Under this statute, the Board long held that any matter
2 "significantly related to" wages, hours, and conditions of
3 employment was within the scope of mandatory bargaining. See, In
4 the Matter of the Washoe County School Dist. and the Washoe
5 County Teachers Assn., Item No. 3 (1971); In the Matter of the
6 Clark County Classroom Teacher's Assn.'s Complaint Regarding the
7 Clark County School Dist. Interpretation of NRS 288.150 Concern-
8 ing the Negotiation of Preparation Time, Item No. 5 (1972); In
9 the Matter of the Washoe Co. Teachers Assn. and the Washoe Co.
10 School Dist., Case No. 102472-A, Item No. 12-A (1974); In the
11 Matter of the Clark Co. Classroom Teachers Assn. v. Clark Co.
12 School Dist. and Board of Trustees of the Clark Co. School Dist.,
13 Case Nos. A1-00011, A1-00012, A1-00845, Item No. 29 (1975).

14 In 1975, the Nevada legislature amended NRS 288.150 to read
15 substantially as it does today. Whereas the former statute
16 provided that there was a general duty of negotiation, with
17 specified exceptions, the amended statute enumerated specific
18 topics which were to be the mandatory subjects of negotiation.
19 1975 Nev.Stats. 920.

20 However, as stated in Douglas Co. Professional Education
21 Assn. v. Douglas Co. School Dist., Case No. A1-045380, Item No.
22 168 (1984):

23 [T]he "subjects" specified by the Legislature are
24 couched in terms which lead to the inescapable
25 conclusion that such "subjects" are the specified areas
26 of bargaining and the extent of topics encompassed
27 within such areas is subject to interpretation and
28 limitation or definition by this Board. Id. at 3.

27 As pointed out in County of Washoe v. Washoe Co. Employees'
28 Assn., Case No. A1-045365, Item No. 159 (1984):

1 [I]t appears that decisions of this Board
2 subsequent to the 1975 legislative amendments have
3 approached analysis of negotiability under NRS
4 288.150(2), subsections (a) through (t), as being
5 whether or not from the facts presented, the subject
6 matter involved is directly and significantly related
7 to any one of the subjects specifically enumerated in
8 NRS 288.150(a) through (t) under a broad construction
9 of the particular listed subject. Id. at 8.

10 See also, Henderson Police Officer Assn. v. City of Henderson,
11 Item No. 83 (1978); In Re IAFF Local 1908 v. Clark Co., Item No.
12 146 (1982); Truckee Meadows Fire Prot. Dist. v. IAFF Local 2487,
13 Item No. 196 (1987). In this context, the Board continues to
14 rely upon the "significant relationship" test in analyzing the
15 negotiability of a topic.

16 II

17 Past Board Rulings on Teacher Evaluations 18 As a Mandatory Subject of Bargaining

19 Prior to the 1975 amendment to NRS 288.150, the Board ruled
20 that teacher evaluations were the subject of mandatory bargaining
21 because they affected the transfer, retention, and promotion of
22 teachers and thus were "significantly related" to their wages and
23 working conditions. In the Matter of the Washoe Co. Sch. Dist.
24 and the Washoe Co. Teachers Assn., Item No. 3, supra. This
25 determination was upheld by the Nevada Supreme Court in Clark Co.
26 Sch. Dist. v. Local Gov't., 90 Nev. 442, 530 P.2d 114 (1974).

27 Following the 1975 amendments to NRS 288.150, the Board
28 twice addressed the issue of whether evaluations were a mandatory
subject of bargaining and, in both instances, concluded they were
not. Washoe Co. Teachers Assn. v. Washoe Sch. Dist. and the Bd.
of Trustees of the Washoe Co. Sch. Dist., Case No. A1-045297, 1

. . . .

1 No. 56 (1976); Nevada Classified Sch. Employees Assn. v. Clark
2 Co. Sch. Dist., Case No. A1-045345, Item No. 111 (1981).

3 III

4 Recent Statutory Language Has Been Introduced
5 Which Significantly Relates Teacher Evaluations
6 to the Dismissal Process

7 In 1985, the legislature amended NRS Chapter 391 in a manner
8 which specifically makes evaluations part of the "discharge"
9 process for the dismissal of teachers.

10 Statutory language existed prior to 1985 which called for
11 each school district to develop a "uniform system" for the
12 "objective evaluation of teacher personnel." See 1973 Nev.Stats.
13 790. District policy concerning evaluations was to be developed
14 "following consultation and involvement of elected representa-
15 tives of teacher personnel or their designees." Id. at 790.
16 Reports of such evaluations, however, were simply a matter for
17 "consideration" in determining whether or not a teacher was
18 performing adequately. Id. at 792. With some minor changes,
19 this language still exists.

20 However, in a significant move, the 1985 Nevada legislature
21 amended NRS 391 to provide that any certificated employee who
22 becomes a post probationary employee after June 30, 1985, is
23 subject to dismissal from employment, if he or she receives three
24 (3) overall unsatisfactory evaluations within the immediately
25 preceding five (5) or fewer years. 1985 Nev.Stats. 1082.
26 According to the 1985 statute, by offering the three overall
27 unsatisfactory evaluations at the hearing, a presumption arose
28 that just cause existed to dismiss the teacher; and the burden of
29

1 proof then shifted to the employee to offer proof to rebut the
2 presumption. Id. at 1082.

3 NRS 391.31963 has since been amended by the 1987 legislature
4 to eliminate that portion of the 1985 statute which shifted the
5 burden of proof in a teacher dismissal hearing to the employee
6 but has preserved that portion significantly relating teacher
7 evaluations to the discharge procedure. NRS 391.31963(d).

8 The Board agrees with the Association's contention that the
9 statutory "tying" of evaluation to the formal statutory dismissal
10 process, a situation unique to teachers, has moved evaluation
11 into an area significantly and directly related to the subject
12 area of "discharge" pursuant to NRS 288.150(2)(i).

13 The Board has concluded that evaluations are no longer
14 simply a factor to be considered in determining whether or not
15 teacher is performing adequately. Since the 1985 legislative
16 changes in NRS 391, evaluations now play an integral statutory
17 role in the teacher discharge process. The Board concludes that
18 teacher evaluations are significantly related to and are a part
19 of "discharge and disciplinary procedures" pursuant to NRS
20 288.150(2)(i) and are, therefore, within the scope of mandatory
21 bargaining. In so deciding, the Board overrules its holdings in
22 Case No. A1-045435, Item No. 111, and Case No. A1-045297, Item
23 No. 56, cited supra.

24 FINDINGS OF FACT

25 1. That the Petitioner, Pershing County Classroom Teachers
26 Association, is a local government employee organization.

27 2. That the Respondent, Pershing County School District, is
28 a local government employer.

1 3. That in the spring of 1986, during the course of negoti-
2 ating the collective bargaining agreement for the 1986-87 school
3 year, the Association sought to negotiate with the District
4 concerning teacher evaluations and the procedure to be followed
5 in conducting such evaluations.

6 4. That the District thereafter notified the Association
7 that it considered the subject of teacher evaluations to be
8 outside the scope of mandatory bargaining, as established by NRS
9 288.150(2), and that it would not negotiate the subject.

10 5. That on September 26, 1986, the Association filed a
11 Petition for Declaratory Order seeking a determination that the
12 subject of teacher evaluations is within the scope of mandatory
13 bargaining.

14 CONCLUSIONS OF LAW

15 1. That the Local Government Employee-Management Relations
16 Board possesses original jurisdiction over the parties and
17 subject matter of this Petition pursuant to the provisions of NRS
18 Chapter 288.

19 2. That the Petitioner, Pershing County Classroom Teachers
20 Association, is a recognized employee organization within the
21 terms defined by NRS 288.040.

22 3. That the Respondent is a local government employer
23 within the terms defined by NRS 288.060.

24 4. That the 1985 Nevada legislature amended NRS 391 to
25 provide that any certificated employee who becomes a post
26 probationary employee after June 30, 1985, is subject to
27 dismissal from employment, if he or she receives three (3)
28 overall unsatisfactory evaluations within the immediately

1 preceding five (5) or fewer years. By offering the three overall
2 unsatisfactory evaluations at the hearing, a presumption aris
3 that just cause exists to dismiss the teacher; and the burden of
4 proof then shifts to the employee to offer proof to rebut the
5 presumption. NRS 391.31963(1)(d).

6 5. That NRS 391.31963(1)(d) has been amended by the 1987
7 legislature to eliminate that portion of the 1985 statute which
8 shifted the burden of proof in a teacher dismissal hearing to the
9 employee but has maintained the portion that significantly
10 relates teacher evaluations to the discharge procedure.

11 6. That teacher evaluations are significantly related to
12 and are a part of "discharge and disciplinary procedures"
13 pursuant to NRS 288.150(2)(i) and are, therefore, within the
14 scope of mandatory bargaining.

15 7. That each party is to bear its own costs and fees in the
16 above-entitled matter.

17 DATED this 2ND day of August, 1988.

18 LOCAL GOVERNMENT EMPLOYEE-
19 MANAGEMENT RELATIONS BOARD

20 By 
21 SALVATORE C. GUGINO, Chairman

22 By 
23 TAMARA BARENGO

24 By 
25 JEFFREY L. ESKIN

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1 Certified copies to:
2 Michael W. Dyer, Esq.
3 DYER AND McDONALD
4 POB 2426
5 Carson City, NV 89702

C. Robert Cox, Esq.
WALTHER, KEY, MAUPIN, et al.
POB 30000
Reno, NV 89520

4 Copies to:
5 James P. Kiley, Supt.
6 PERSHING CO. SCH. DIST.
7 POB 389
8 Lovelock, NV 89419

Cindy Lu Meyers
PERSHING CO. CLASSROOM
TEACHERS ASSN.
Route 1, Box 158
Lovelock, NV 89419

7 Board members
Interested parties

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