

1 BEFORE THE LOCAL GOVERNMENT
2 EMPLOYEE-MANAGEMENT RELATIONS BOARD
3

4 THE DOUGLAS COUNTY PROFESSIONAL)
5 EDUCATION ASSOCIATION,)

ITEM NO. 230

6 Complainant,)

CASE NO. A1-045442

7 -vs-)

DECISION

8 THE DOUGLAS COUNTY SCHOOL DISTRICT)
9 and THE DOUGLAS COUNTY BOARD OF)
10 SCHOOL TRUSTEES,)

Respondents.)

11 For the Complainant: Victor L. McDonald, Esq.
12 DYER and McDONALD

13 For the Respondents: George Mross
Assistant Superintendent

14 For the EMRB: Salvatore C. Gugino, Chairman
15 Tamara Barengo, Vice Chairman
Howard Ecker, Board Member

16 STATEMENT OF THE CASE

17 This matter has come before the Local Government Employee-Management
18 Relations Board ("Board") upon the filing of a Complaint by the Douglas
19 County Professional Education Association ("Association") appealing a
20 determination by the Douglas County School District and the Douglas County
21 Board of School Trustees ("District") denying school nurses inclusion in the
22 bargaining unit consisting of classroom teachers, librarians, counselors,
23 psychologists and special education teachers. Further, the Association
24 seeks a determination by the Board that the refusal of the District to
25 include school nurses in the teachers' bargaining unit constitutes a
26 prohibited practice pursuant to NRS 288.170(1).

27 In October or early November, 1988, the Association made a formal
28 written request to the District for a redetermination of the teachers'

1 bargaining unit to include full-time school nurses as appropriate membe
2 based on a shared community of interest. On December 13, 1988, the District
3 held a school board meeting at which the request by the Association to
4 include full-time nurses as appropriate members of the Association's
5 bargaining unit was heard. The Board of School Trustees denied the request,
6 claiming that the nurses at issue lack a community of interest with other
7 members of the bargaining unit. The Board of School Trustees voted 3-3 with
8 the President breaking the tie and voting against inclusion of the nurses in
9 the bargaining unit, whereupon the Association filed the instant Complaint
10 before the Board. The District answered the Complaint, affirming their
11 denial of the Association's request to include the nurses in the teachers'
12 bargaining unit based on their finding of an insufficient community of
13 interest between nurses and the other members of the current bargaining
14 unit.

15 The Board conducted a hearing on August 11, 1989, where the Association
16 presented evidence and argument in support of its Complaint. The District
17 presented evidence and argument in opposition to the Complaint and in
18 support of its determination. At the conclusion of the hearing the matter
19 was submitted for decision. The following constitutes the Board's findings
20 of fact and conclusions of law:

21 DISCUSSION

22 The key issue in this bargaining unit determination hearing, as
23 dictated by NRS 288.170(1), is whether the full-time school nurses employed
24 by the District share the requisite level of community of interest with the
25 current members of the bargaining unit comprised of classroom teachers,
26 librarians, counselors, psychologists and special education teachers.

27 NRS 288.170(1) provides that:

28 Each local government employer which has recognized one or

1 more employee organizations shall determine, after consultation
2 with the recognized organization or organizations, which group or
3 groups of its employees constitute an appropriate unit or units
4 for negotiating. The primary criterion for that determination
5 must be the community of interest among the employees concerned.
6 (Emphasis added.)

7 NRS 288.170(5) states:

8 If any employee organization is aggrieved by the
9 determination of a bargaining unit, it may appeal to the board.
10 Subject to judicial review, the decision of the board is binding
11 upon the local government employer and employee organizations
12 involved. The board shall apply the same criterion as specified
13 in subsection 1.

14 In its analysis on bargaining units in past decisions, the Board has
15 determined that "a broad interpretation of community of interest, although
16 it places a responsibility on the employees to develop a strong and fairly
17 representative negotiating team from all contributing elements within each
18 employee organization, provides the most effective representation for the
19 employees." I.A.F.F. #731 v. City of Reno, EMRB Item No. 4, page 2 (1972).

20 The Board has also maintained throughout its history that "the
21 interests of both local government employers and local government employees
22 are best served by establishing large bargaining units of employees rather
23 than a proliferation of smaller units." Operating Engineers #501 v. LV
24 Conv./Visitors Authority, EMRB Case No. A1-045323, Item No. 96, page 4
25 (1980). Also see, AFSCME #1863 v. City of Las Vegas, et al., EMRB Case No.
26 72-2, Item No. 9 (1972).

27 Although the Board has never directly addressed the issue of school
28 nurses sharing a community of interest with teachers' bargaining units,
other states' public employee relations boards have. The Employment
Relations Board of the State of Oregon ruled that the school nurses were
more appropriately included in the teachers' bargaining unit than in the
classified unit where they had been formerly. (See Complainant's Prehearing
Statement, Exhibit "A", Case No. C-87-83.) In 1977, a hearing officer in

1 California held that there was precedent by the Educational Employment
2 Relations Board of the State of California to require the inclusion of
3 nurses in the same unit with teachers. His decision was upheld by the
4 California EMRB. Case No. S-R-93, Decision No. 27 (1977). (See
5 Complainant's Prehearing Statement, Exhibit "B".)

6 In a recent decision the Maine Labor Relations Board, Orono School
7 Committee v. Orono Teachers Association, Case Nos. 89-UD-04 and 89-UC-02
8 (1988), ruled that "those factors tending to establish that the school nurse
9 shares a clear and identifiable community of interest with the teachers,
10 counselors, and librarians are qualitatively more significant than those
11 militating for the opposite result . . . [t]he factors tending to establish
12 lack of the requisite community of interest level primarily reflect the fact
13 that the school nurse has not been previously covered by a collective
14 bargaining agreement." Ibid, page 16.

15 In considering the criteria for testing community of interest, the
16 Board, in past decisions, has utilized all or part of the following factors,
17 depending on the particular employees and situations at issue: sharing an
18 identity of career paths, desires of the affected employees, similarity in
19 the qualifications, skills and training, commonalty of supervision,
20 similarity in the kind of work performed, similarity in employment benefits,
21 hours of work and other terms and conditions of employment, uniformity in
22 personnel policy, geographic proximity, common objectives in providing
23 services, the employee's organizational structure, the frequency of contact
24 among the employees. See EMRB Item Nos. 4, 11, 21, 43, 96 and 185.

25 In the instant case, the Board finds that the evidence outlined in the
26 Findings of Fact, Item No. 15, infra, establishes that the full-time school
27 nurses in the Douglas County School District do share an identifiable
28 community of interest with the classroom teachers, librarians, counselors,

1 psychologists, and special education teachers sufficient to warrant their
2 inclusion in the same bargaining unit.

3 The Board also finds that both parties in this action followed the
4 procedures outlined in the sections of NRS 288 referenced supra in good
5 faith. There is no indication that the County's refusal to recognize
6 full-time nurses as appropriate members of the teachers' bargaining unit
7 constitutes a prohibited practice pursuant to NRS 288.170(1).

8 FINDINGS OF FACT

9 1. That the Complainant, the Douglas County Professional Education
10 Association, is a local government employee organization.

11 2. That the Respondent, the Douglas County School District and the
12 Douglas County Board of School Trustees, is a local government employer.

13 3. That a Professional Negotiations Agreement exists between the
14 Douglas County School District and the Douglas County Professional Education
15 Association for the years 1987 through 1989.

16 4. That Marilyn Trelenberg is employed as a full-time school nurse by
17 the Douglas County School District.

18 5. That as a full-time school nurse, Marilyn Trelenberg is licensed by
19 the State of Nevada, Department of Education as a K-12 School Nurse, R.N.

20 6. That the total number of full-time licensed school nurses currently
21 employed by the Douglas County School District is two.

22 7. That on or about May 17, 1988, Marilyn Trelenberg made an
23 application to be enrolled as a member of the National Education
24 Association, and the Douglas County Professional Education Association.

25 8. That on August 26, 1988, by letter the Douglas County School
26 District informed Marilyn Trelenberg that they were denying her request that
27 member's dues for NEA, NSEA and DCPEA be deducted from her paycheck.

28 9. That on November 1, 1988, the Douglas County Professional Education

1 Association made a formal written request to the Douglas County Sch
2 District for a redetermination of the teachers' bargaining unit to include
3 full-time school nurses as appropriate members of the unit based upon a
4 community of interest.

5 10. That on December 13, 1988, the Board of Trustees heard evidence
6 whether the nurses had a community of interest, and after hearing that
7 evidence in a 4-3 vote denied the full-time school nurses request to be
8 included in the bargaining unit of the Douglas County Professional Education
9 Association.

10 11. That the classified workers employed by the Douglas County School
11 District do not bargain and are not recognized as a collective bargaining
12 unit.

13 12. That a government employer is mandated by NRS 288.170 to make a
14 determination of what employees constitute an appropriate bargaining unit.

15 13. That the primary criteria for determining an appropriate bargaining
16 unit is community of interest.

17 14. That the Douglas County Professional Education Association is a
18 recognized employee organization which membership currently consists of
19 classroom teachers, librarians, counselors, psychologists, and special
20 education teachers.

21 15. That entitlement of the school nurses in the bargaining unit
22 currently consisting of classroom teachers, librarians, counselors,
23 psychologists, and special education teachers is evidenced by:

24 a. School nurses, as well as classroom teachers, librarians,
25 counselors, psychologists and special education teachers, are
26 licensed by the Nevada State Department of Education and are
27 required to complete course work to maintain their license.

28 b. The terms and conditions under which nurses are employed

1 are similar to those of other employees in the teachers'
2 bargaining unit in that (1) they work similar hours, (2) they work
3 a similar work year, and (3) they receive the same sick leave,
4 administrative leave and retirement benefits.

5 c. School nurses, like others in the teachers' bargaining
6 unit, are required to attend faculty meetings.

7 d. School principals and vice principals provide a common
8 source of supervision and evaluation.

9 e. Like others in the same bargaining unit, school nurses
10 are required to interact on a day-to-day basis with students,
11 parents, and classroom teachers.

12 f. School nurses, like others in the teachers' bargaining
13 unit are required to act as a resource person for information to
14 other faculty members.

15 g. Nurses in the District have been used to teach health
16 issues to students in the classroom.

17 h. At least one out of the two nurses to be employed by the
18 District for the 1989-90 school year have expressed a desire to be
19 included in the teachers' bargaining unit.

20 i. That the District's Position Description for school
21 nurses (see Exhibit R-L) is indicative that the school nurse's
22 position is one of a professional in charge of a health services
23 program which makes he or she responsible not only for exercising
24 judgments and acting on the health needs of the students, but also
25 acting as a resource person to classroom teachers, meeting with
26 and advising students, teachers and parents concerning student
27 health problems and serving as a liaison between community
28 agencies and the school.

CONCLUSIONS OF LAW

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2 1. That the Local Government Employee-Management Relations Board
3 possesses original jurisdiction over the parties and subject matter of this
4 Complaint pursuant to the provision of NRS 288.

5 2. That the Complainant, Douglas County Professional Education
6 Association, is a recognized employee organization within the terms defined
7 by NRS 288.040.

8 3. That the Respondent, Douglas County School District and Douglas
9 County Board of School Trustees, is a recognized local government employer
10 within the terms defined by NRS 288.060.

11 4. That pursuant to NRS 288.170(1), each local government employer
12 determines which group or groups of employees constitute an appropriate unit
13 or units for negotiating.

14 5. That pursuant to NRS 288.170(5), any employee group which
15 aggrieved by the decision of the employer may appeal that decision to the
16 Board.

17 6. That NRS 288.170(1) provides that the primary criterion for the
18 determination of which group or groups of employees constitute an
19 appropriate bargaining unit must be the community of interest among the
20 employees concerned.

21 7. That the evidence presented sustains a finding that full-time
22 school nurses in the Douglas County School system share the requisite
23 community of interest to include them in the bargaining unit currently
24 consisting of classroom teachers, librarians, counselors, psychologists and
25 special education teachers.

26 8. That this conclusion is not altered by the fact that school nurses
27 teach regular classes only on an occasional basis and only with a license
28 teacher present, nor is it altered by the fact that the requirements for

1 initial licensing and the amount of courses needed for maintaining licensing
2 are not exactly the same.

3 9. That the Complainant is the exclusive bargaining agent representing
4 the bargaining unit in the Douglas County School District consisting of
5 classroom teachers, librarians, counselors, psychologists, special education
6 teachers and full-time school nurses.

7 10. That the actions of the Respondent in determining, after
8 consultation with the Complainant, which group or groups constituted
9 appropriate bargaining units was done in good faith pursuant to NRS
10 288.170(1) and does not constitute a prohibited practice pursuant to NRS
11 288.270(1).

12 DECISION AND ORDER

13 Upon decision rendered by the Board at its meeting on August 17, 1989,
14 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

15 1. That the Association's Appeal regarding the determination by the
16 District of the bargaining unit represented by the Association be, and the
17 same hereby is, upheld, and the District's determination be, and the same
18 hereby is, reversed.

19 2. That the District and Association immediately reopen negotiations
20 for the sole purpose of negotiating the wages, hours and other terms and
21 conditions of employment for full-time school nurses to be included in the
22 agreement between the Association and the District for the 1989-90 and
23 1990-91 school years.

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