

STATE OF NEVADA  
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

WASHOE COUNTY SHERIFF'S DEPUTIES ) ITEM NO. 316  
ASSOCIATION and WASHOE COUNTY, )  
Joint Petitioners, ) CASE NO. A1-045540  
 ) DECLARATORY ORDER

For WASHOE COUNTY  
SHERIFF'S DEPUTIES ASSN.: Walter R. Tarantino, Esq.

For WASHOE COUNTY: Maureen Sheppard-Griswold, Esq.  
WASHOE COUNTY DISTRICT ATTORNEY'S OFFICE

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

STATEMENT OF THE CASE

On February 24, 1993, Washoe County Sheriff's Deputies Association (hereinafter referred to as "the Association") and Washoe County (hereinafter referred to as "the County") filed a Joint Petition For Declaratory Order, requesting that the Board decide the issue of whether the Association's proposed "catastrophic sick leave bank" [which would provide benefits more extensive than those set forth in NRS 245.210(2)] falls within the scope of mandatory bargaining pursuant to NRS 288.150(2)(a), (b), (c) and (d).

Pursuant to request of the parties, the Board set a briefing schedule to enable the parties to fully set forth their respective positions on the issue(s) involved.

At its meeting on May 13, 1993, noticed pursuant to Nevada's Open Meeting Law, the Board determined, after due deliberation, that the provisions of NRS 245.210(1) preclude

1 negotiation of benefits more extensive than those set forth i  
2 NRS 245.210(2). The basis for the Board's determination is  
3 set forth in the DISCUSSION, CONCLUSIONS OF LAW and ORDER  
4 which follow:

5 DISCUSSION

6 The Association's proposal to establish a catastrophic  
7 sick leave bank for members of the bargaining unit reads as  
8 follows:

9 Employees shall be allowed to voluntarily  
10 transfer up to a maximum of forty (40) hours of  
11 their accumulated vacation leave during any  
12 calendar year to another employee who has no  
13 accumulated sick leave hours, but who is otherwise  
14 eligible to take paid sick leave. The maximum  
15 amount of accumulated leave transferred to any  
16 employee under the terms of this article shall be  
17 240 hours. These transferred leave hours shall be  
18 converted, on a one for one (1:1) ratio. The  
19 transferred leave will be valued at the donating  
20 employee's current rate of pay, and then converted  
21 to the appropriate amount of time based on the  
22 donee's current rate of pay. Once leave has been  
23 donated and transferred, such leave hours shall  
24 not be refundable to the donor making the  
25 transfer.

18 The County has indicated that it is not philosophically  
19 opposed to the proposal but is concerned that it may be  
20 statutorily constrained from agreeing to it by the provisions  
21 of NRS 245.210, which reads as follows:

22 1. The board of county commissioners of each  
23 of the several counties shall, by ordinance or  
24 agreement pursuant to chapter 288 of NRS, provide  
25 for annual, sick and disability leave for elected  
26 and appointed county officers and county  
27 employees. The provisions of such an ordinance or  
28 agreement may be more restrictive but not more  
extensive than the provisions set forth in this  
section.

27 / / /

1           2. The ordinance or agreement must include  
2 provisions in substance as follows:

3           (a) A provision that all elected and  
4 appointed officers and employees are entitled to  
5 annual leave with pay of 1 1/4 working days for  
6 each month of service, which may be cumulative  
7 from year to year not to exceed 30 working days.

8           (b) A provision that the board of county  
9 commissioners may by order provide for additional  
10 annual leave for long-term appointed officers and  
11 employees and for prorated annual leave for part-  
12 time employees.

13           (c) A provision that if an appointed officer  
14 or employee dies and was entitled to accumulated  
15 annual leave under the provisions of the  
16 ordinance, the heirs of such deceased officer or  
17 employee who are given priority to succeed to his  
18 assets under the laws of intestate succession of  
19 this state, or the executor or administrator of  
20 his estate, upon submitting satisfactory proof to  
21 the board of county commissioners of their  
22 entitlement, are entitled to be paid an amount of  
23 money equal to the number of days earned or  
24 accrued annual leave multiplied by the daily  
25 salary or wages of the deceased officer or  
26 employee.

27           (d) A provision that an elected county  
28 officer must not be paid for accumulated annual  
leave upon termination of his service.

          (e) A provision that during the first 6  
months of employment of any appointed officer or  
employee, annual leave accrues as provided in  
paragraph (a), but annual leave must not be taken  
during this period.

          (f) A provision that an appointed officer or  
employee must not be paid for accumulated annual  
leave upon termination of employment unless he has  
been employed for 6 months or more.

          (g) A provision that all elected and  
appointed officers and employees are entitled to  
sick and disability leave with pay of 1 1/4  
working days for each month of service, which may  
be cumulative from year to year.

          (h) A provision that the board of county  
commissioners may by order provide for additional  
sick and disability leave for long-term employees  
and for prorated sick and disability leave for  
part-time employees.

          (i) A provision that any appointed officer or  
employee may be granted a leave of absence without  
pay.

3. Such an ordinance or agreement may include  
a provision that upon termination of employment,  
retirement or death all elected and appointed

1 officers and employees are entitled to payment for  
2 their unused sick leave at their salary rate at  
the time of termination, retirement or death.

3 (Emphasis added.)

4 The language of NRS 245.210 clearly establishes a maximum  
5 limit on annual leave (vacation) accumulation and sick leave  
6 entitlement. Whether the County complies with the statute by  
7 ordinance or through collective bargaining, the statute makes  
8 it clear that said entitlements and accumulations may not be  
9 more extensive than those provided for in said statute.

10 The Association's proposal conflicts with two provisions  
11 of NRS 245.210. The first is subparagraph (g) of section 2  
12 which provides that "... employees are entitled to sick and  
13 disability leave with pay of 1 1/4 working days for each month  
14 of service, which may be cumulative from year to year." The  
15 proposal would allow an otherwise eligible employee who has no  
16 accumulated sick leave remaining, to be the recipient of a  
17 donation of additional leave of up to 240 hours per year.  
18 Effectively, the sick employee would become "entitled to sick  
19 ... leave" with pay in excess of 1 1/4 working days for each  
20 month of service per year.

21 Additionally, the effect on some donor employees would  
22 create a potential conflict with NRS 245.210(2)(a) which  
23 limits the amount of annual leave that may be accumulated and  
24 carried over each year. Under the proposal, employees may  
25 transfer or donate up to 40 hours of vacation to the sick  
26 employee's sick leave bank. For example, an employee accruing  
27 the maximum of 6.46 hours of vacation per pay period  
28



1 accumulates a total of 168 hours per year. If said employee  
2 has been accumulating vacation time for two years, he quickly  
3 reaches the limit of 240 hours of vacation that can be carried  
4 over at the end of the year (240 hours equals 30 days). If  
5 said employee as of September 1 of a given year has an annual  
6 leave balance on that date of 240 hours, he will accrue  
7 another 51.68 hours of annual leave through the end of the  
8 calendar year (6.46 hours x 8 pay periods = 51.68 hours).  
9 And, if said employee uses no other vacation time during that  
10 calendar year, he will lose the 51.68 hours of additional  
11 annual leave; i.e., it may not be carried over to the next  
12 calendar year.

13 Under the proposal, if that same employee on September 1  
14 transfers 40 hours of annual leave to sick employee's leave  
15 bank, by the end of the year the donor employee has recaptured  
16 40 hours of annual leave that otherwise is lost. Time which  
17 would otherwise be lost at the end of the year (the 51.68  
18 hours) because it was not used as vacation, is recovered to  
19 the extent of 40 hours. Consequently, under the proposal, not  
20 only would the sick employee receive a benefit of more sick  
21 leave per year than provided for in NRS 245.210(2)(g), but the  
22 donor employee would receive the benefit of more vacation time  
23 which could be used during that year. That otherwise lost  
24 time at year end would be made available to the donor employee  
25 by transferring excess unusable time to the sick employee.  
26 The net effect is that both the sick employee and the donating  
27 employee would receive more paid time off than that  
28

1 contemplated by NRS 245.210.

2 The Association asserts that this Board's decision in  
3 Ormsby County Teachers Association vs. Carson City School  
4 District, Case No. A1-045382, Item No. 174 (1985) is  
5 controlling. In that case the Board decided that receipt of  
6 sick leave from a sick leave bank was a form of direct  
7 monetary compensation under NRS 288.150(2)(a) and, therefore,  
8 negotiable. Also, in said case this Board held because NRS  
9 391.180(5) which provided that school districts either had to  
10 prescribe by regulation or negotiate under NRS Chapter 288  
11 provisions for "accumulation of sick leave", that the two  
12 statutes when read together required that accumulation of  
13 unused sick leave and payment therefor were subjects of  
14 mandatory bargaining. Reading the two statutes involved in  
15 the instant case, however, does not require the Board to  
16 conclude that the parties are required to negotiate benefits  
17 more extensive than those provided in NRS 245.210(2). In  
18 fact, by the terms of NRS 245.210, the parties are prohibited  
19 from doing so.

20 The Association also contends that even though Section 1  
21 of NRS 245.210 provides that an ordinance or agreement may not  
22 provide more extensive benefits than those provided in Section  
23 2 thereof, both subsections (b) and (h) of NRS 245.210(2),  
24 supra, specifically allow counties to agree (through  
25 collective bargaining) to provide for additional amounts of  
26 annual leave and additional amounts of sick and disability  
27 leave for "long-term employees". In this regard it must be  
28

1 noted that the Association's proposal is not limited to  
2 "long-term" employees. Also, subsections (b) and (h) of NRS  
3 245.210(2) authorize the County to provide additional annual,  
4 sick and disability leave for "long-term" employees, by  
5 "order", not by agreement. The Association's position in this  
6 regard, therefore, is without merit.

7 CONCLUSIONS OF LAW

8 The Association's reliance in this case upon the Board's  
9 decision in Ormsby County Teachers, supra, is misplaced, due  
10 to the differences between the statutes involved. In the  
11 former case (Ormsby County Teachers, supra) the Board found  
12 that NRS 391.180(5), construed with NRS 288.150(2)(b),  
13 required the Board to conclude that "a proposal to establish a  
14 sick leave bank, which would necessarily involve accumulated  
15 sick leave, and payment for such accumulated sick leave to the  
16 catastrophically ill teacher, is a subject of mandatory  
17 bargaining in light of not only NRS 288.150(a) and (b), but  
18 particularly so when construed with reference to NRS  
19 391.180(5)." In 1979, the legislature amended NRS 391.180(5)  
20 with regard to the responsibility of Districts to act on  
21 accumulation of sick leave and payment for unused sick leave  
22 by deleting the permissive language "may in the alternative"  
23 and substituting the mandatory language "shall". This change  
24 in NRS 391.180(5) clearly showed that the legislature intended  
25 to require districts to negotiate pursuant to NRS Chapter 288  
26 with regard to accumulation of sick leave and payment for  
27 unused sick leave. In the instant case, however, NRS 245.210  
28

1 refers specifically to NRS Chapter 288 and precludes the  
2 County from providing by ordinance or "agreement pursuant to  
3 chapter 288 of NRS" annual, sick and disability leave more  
4 extensive than provided for in said statute (NRS 245.210).  
5 Accordingly, the Board's decision in Ormsby County Teachers,  
6 supra, is distinguishable from the instant case and does not  
7 support the Association's position(s) herein.

8 The instant case differs from Ormsby County Teachers,  
9 supra, from the standpoint that the specificity of NRS  
10 245.210(1); i.e., "The provisions of such ... agreement may  
11 ... not be more extensive than the provisions set forth in  
12 this section", clearly precludes negotiating provisions (or  
13 benefits) that are more extensive than those contained in the  
14 statute. [See Ormsby County Teachers Association vs. Carson  
15 City School District, et. al., EMRB Case No. A1-045374, Item  
16 No. 23 (February 10, 1975), relating to the specificity of  
17 statutory provisions.] The language of NRS 245.210 is plain  
18 and unambiguous and the Nevada Supreme Court has held that "It  
19 is well established that if the language of a statute is plain  
20 and unambiguous, there is simply no room for construction of  
21 that statute by the court." Nevada Power Co. vs. Public  
22 Service Commission, 102 Nev. 1, 4, 711 P.2d 867 (1986).

23 To the extent that the provisions of NRS 245.210  
24 conflict with the provisions of NRS 288.150, the test for  
25 determining which statute will govern is set forth in Ronow  
26 vs. City of Las Vegas, 57 Nev. 332, 365, 65 P.2d 133, 146  
27 (1937); i.e.:

1           Where one statute deals with a subject in  
2           general and comprehensive terms, and another deals  
3           with another part of the same subject in a more  
4           minute and definite way, the special statute, to  
5           the extent of any necessary repugnancy, will  
6           prevail over the general one.

7           While NRS 288.150(2) is specific from the standpoint  
8           that it lists the mandatory bargaining subjects [including  
9           subjects which the Board has determined encompass  
10           "catastrophic sick leave banks"; see Ormsby County Teachers  
11           (Item No. 174), supra], in the instant case the legislature  
12           has adopted statutory language in NRS 245.210 which clearly,  
13           unambiguously and specifically limits collective bargaining on  
14           a particular subject; i.e., annual (vacation), sick and  
15           disability leave for county employees. Accordingly, NRS  
16           245.210 is a "special statute", inasmuch as it deals with the  
17           underlying issue (collective bargaining over annual, sick and  
18           disability leave) in a "more minute and definite way" than  
19           does NRS Chapter 288. This statutory limitation on collective  
20           bargaining, therefore, supersedes and/or modifies the terms of  
21           NRS Chapter 288, insofar as said terms pertain to  
22           negotiation(s) over annual, sick and disability leave for  
23           county employees.

#### 24                           ORDER

25           For the reasons set forth herein, the Board hereby  
26           ORDERS AND DECLARES that collective bargaining under NRS  
27           Chapter 288, involving annual, sick and disability leave for  
28           county employees (including any proposals for establishment of  
          a "catastrophic sick leave bank"), is limited to benefits  
          which are not more extensive than the provisions set forth in



1 NRS 245.210(2). The Association's proposal, supra, does not  
2 meet this criteria, therefore, collective bargaining pursuant  
3 to the provision of NRS Chapter 288 with respect thereto is  
4 precluded by the provisions of NRS 245.210.

5 / / /

6 / / /

7 / / /

8 / / /

9 / / /

10 / / /

11 / / /

12 / / /

13 / / /

14 / / /

15 / / /

16 / / /

17 / / /

18 / / /

19 / / /

20 / / /

21 / / /

22 / / /

23 / / /

24 / / /

25 / / /

26 / / /


27 / / /

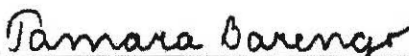
28

1           Each party shall bear its own fees and costs in the  
2 above-captioned matter.

3           DATED this 15th day of June, 1993.

4                           LOCAL GOVERNMENT EMPLOYEE-  
5                           MANAGEMENT RELATIONS BOARD

6                           By   
7                           SALVATORE C. GUCINO, Chairman

8                           By   
9                           TAMARA BARENGO, Vice Chairman

10                          By   
11                          HOWARD ECKER, Member  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28