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STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

4 NEVADA CLASSIFIED SCHOOL) ITEM NO. 339
EMPLOYEES ASSOCIATION, CHAPTER 6,)
5 Complainant,) CASE NO. A1-045551
6 -vs-) DECISION
7 DOUGLAS COUNTY SCHOOL DISTRICT,)
8 Respondent.)
9

10 For Complainant: Michael E. Langton, Esq.
LANGTON & KILBURN

11 For Respondent: C. Robert Cox, Esq.
12 WALTHER, KEY, MAUPIN, OATS,
COX, KLAICH & LeGOY

13 On January 25, 1994, Counsel for the parties met with
14 the Board's Commissioner in a Pre-Hearing Conference, during
15 which said Counsel indicated it was their desire to have the
16 Board decide this case, without a hearing, based on a jointly
17 filed "Stipulated Statement of Facts and Issues". The
18 Agreement setting forth said jointly stipulated facts and
19 issues is reproduced, in pertinent part, below:

20 I

21 STATEMENT OF THE CASE

22 The disagreement between the parties concerns
23 whether the District is obligated to negotiate
24 over the issue of "substitute" bus drivers being
25 covered by the collective bargaining agreement.
26 The District contends the original recognition of
27 the NCSEA was restricted to regular bus drivers.
28 The NCSEA contends there was no such restriction
on the recognition; that the NCSEA was recognized
as the exclusive bargaining agent for all persons
driving buses for the District, but the substitute
bus drivers were not included in the first two (2)

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contracts.

The District contends the NCSEA should be required to petition for unit modification under NRS 288.170, while the NCSEA contends the unit has already been defined and, accordingly, because substitute drivers were not covered in the contracts during negotiations, that it is proper to now negotiate their inclusion in the unit.

II

STATEMENT OF STIPULATED FACTS

1. On March 26, 1990, the NCSEA filed a Petition for Declaratory Relief and Appeal of Unit Determination with the Employee-Management Relations Board (hereinafter referred to as the "EMRB") and said Petition was assigned Case No. A1-045467.

2. On October 3, 1990, the Employee-Management Relations Board (hereinafter referred to as the "EMRB") issued its Decision in Case No. A1-045467, in which it declared that bus drivers constituted an appropriate unit for collective bargaining purposes and the NCSEA was recognized as the exclusive bargaining representative for these employees.

3. The District appealed the decision of the EMRB to the First Judicial District Court and on May 14, 1991, the Court upheld the EMRB Decision.

4. By way of settlement and in exchange for the District not appealing the Court's decision to the Nevada Supreme Court, and because the 1990-91 year was almost over when the Court issued its decision, the parties agreed that negotiations would commence for the 1991-92 contract, rather than the 1990-91 contract as originally requested. At no time during these proceedings did the NCSEA attempt to negotiate for substitute bus drivers. Under Article 2-2, it is stated that the bus drivers' bargaining unit shall be comprised of all contracted bus drivers who work a regular schedule of consistently approximate hours daily.

5. The parties executed their first collective bargaining agreement covering "contracted" bus drivers on or about December 17, 1991; said agreement was effective to June 30, 1992. When the parties finally reached agreement, the contract did not include substitute drivers,

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but did reference "contracted" bus drivers at the insistence of the District.

6. On May 27, 1992, the parties commenced negotiations for a successor agreement for the fiscal year 1992-93.

7. On or about February 9, 1993, the parties ratified a Negotiations Agreement for the period July 1, 1992 through June 30, 1993. Article 2-2 of this Agreement again specifies that the bus drivers bargaining unit shall be composed of all contracted bus drivers who work a regular schedule of consistently approximate hours daily. At no time did the Association attempt to negotiate for the substitute drivers.

8. Article II of each agreement is entitled "Recognition And Description of Bargaining Unit." Section 2-1 states:

The Board of Trustees recognized the contracted Douglas County School Bus Drivers (as defined in Section 1-9 of the Definitions), Chapter #6 of the Nevada Classified School Employees Association, as the exclusive negotiating representative of the contracted bus drivers of the Douglas County School District, subject to the provisions of NRS 288.

Article II, Section 2-2 states:

The Bus Drivers' bargaining unit shall be composed of all contracted bus drivers who work a regular schedule of consistently approximate hours daily.

9. On May 12, 1993, the parties had their first negotiating meeting for a successor collective bargaining agreement for fiscal year 1993-94. At said meeting, NCSEA presented its initial proposal and ground rules were discussed and agreed upon. Within said proposal, NCSEA proposed that the substitute bus drivers be included in the collective bargaining unit and be covered by the collective bargaining agreement.

10. Prior to May 12, 1993, NCSEA did not file a request with the District or the EMRB that the composition of the unit be expanded or clarified pursuant to NRS 288.170 to include substitute bus drivers.

1 11. The second negotiation meeting was held
2 on June 10, 1993. At the beginning of said
3 meeting, the District advised NCSEA it would be
4 unable to continue negotiations, unless the NCSEA
5 first withdrew its proposal to include substitute
6 bus drivers within the bargaining unit and refused
7 to negotiate the issue of whether substitute bus
8 drivers should be included in the collective
9 bargaining unit and whether NCSEA should be
10 recognized as the exclusive bargaining agent for
11 such persons. The NCSEA refused to do so, but did
12 not file a petition with the EMRB under NRS
13 288.170 relating to unit determination.

14 12. The District then informed the NCSEA
15 that it could not go forward with the negotiation
16 process at that time, but was prepared to submit a
17 counter-proposal as soon as the NCSEA would remove
18 the proposal concerning substitute bus drivers.

19 13. The District affirmed its refusal to
20 negotiate in writing by handing NCSEA
21 representatives a letter dated June 10, 1993.

22 14. No negotiating sessions have been held
23 since said time.

24 15. On July 15, 1993, the NCSEA filed its
25 instant complaint against the District for
26 refusing to negotiate in good faith over the issue
27 of whether substitute bus drivers should be
28 included in the collective bargaining agreement.

III

STATEMENT OF THE ISSUES

The parties agree the following issues must be determined by the EMRB:

1. Whether the EMRB's decision in Case No. A1-045467, Item No. 254 (October 3, 1990), included "substitute" bus drivers in the unit ordered to be recognized by Respondent pursuant to the Petition filed in said case.

2. Was the District required to negotiate the issue of whether substitute bus drivers should be included in the regular bus drivers bargaining unit?

3. Was the District's decision to refuse to continue negotiations unless the NCSEA removed its proposal to include the substitute bus drivers

1 within the bargaining unit a prohibited practice?

2 IV

3 STIPULATED DOCUMENTARY EVIDENCE

- 4 1. 1991-92 Agreement.
5 2. 1992-93 Agreement.
6 3. EMRB Order dated October 3, 1990.
7 4. District letter dated June 10, 1993.

8 DISCUSSION

9 After due deliberation at its meeting of May 18, 1994,
10 noticed pursuant to Nevada's Open Meeting Law, the Board
11 determined as follows:

12 I

13 **THE EMRB'S DECISION IN CASE NO. A1-045467,
14 ITEM NO. 254, DID NOT INCLUDE SUBSTITUTE
BUS DRIVERS.**

15 An objective perusal of the Board's Decision in Case No.
16 A1-045467, ITEM NO. 254, will reveal no indication that the
17 status of "substitute" bus drivers was at issue. However, it
18 appears from the pleadings in said case that the District's
19 consideration of "bus drivers" as a bargaining unit was in the
20 context of contracted bus drivers who work a regular schedule
21 of hours daily. It is also clear from the record in the
22 instant case that NCSEA initially accepted the District's
23 designation of the bargaining unit in that context. NCSEA's
24 initial acceptance of said designation is evidenced by the
25 fact that Article II, Section 2-2 of the first two collective
26 bargaining agreements negotiated by the parties, by its
27 explicit terms, defined the bargaining unit as follows:

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The Bus Drivers' bargaining unit shall be composed of all contracted bus drivers who work a regular schedule of consistently approximate hours daily.

In view of the foregoing and since NRS 288.170(1) provides, in pertinent part, that:

Each local government employer which has recognized one or more employee organizations shall determine, after consultation with the recognized organization or organizations, which group or groups of its employees constitute an appropriate unit or units for negotiating.

(emphasis added), the District's designation of the bargaining unit as regularly scheduled contracted bus drivers only, as well as NCSEA's concurrence therewith, was entirely proper and appropriate.

II

THE DISTRICT WAS NOT REQUIRED TO NEGOTIATE WHETHER SUBSTITUTE BUS DRIVERS SHOULD BE INCLUDED IN THE REGULAR BUS DRIVERS UNIT.

As indicated above, it is primarily the employer's prerogative to determine the appropriate bargaining unit(s) pursuant to NRS 288.170(1). After the employer has made such determination(s), NRS 288.170(5) provides "If any employee organization is aggrieved by the determination of a bargaining unit, it may appeal to the board." This case appears to be ripe for such an appeal, should Complainant choose to bring such a petition.

In the meantime, the employer has no duty to bargain with an employee organization as to the classification of employees that will be included in a bargaining unit; therefore, the District did not violate its duty to negotiate when it refused to bargain until said issue was withdrawn by

1 NCSEA. International Association of Firefighters, Local 1265
2 vs. City of Sparks, EMRB Case No. A1-045362, Item No. 136
3 (August 1992).

4 III

5 THE DISTRICT'S REFUSAL TO NEGOTIATE UNLESS
6 (OR UNTIL) NCSEA REMOVED (WITHDREW) ITS
7 PROPOSAL TO INCLUDE SUBSTITUTE BUS DRIVERS
8 IN THE BARGAINING UNIT WAS NOT A PROHIBITED
9 PRACTICE UNDER NRS 288.270.

10 Since the determination of the bargaining unit is a
11 right vested in the local government employer pursuant to NRS
12 288.170(1) and not a mandatory subject of bargaining under NRS
13 288.150(2), the District's refusal to bargain regarding said
14 non-mandatory subject of bargaining did not constitute a
15 refusal to bargain in good faith with NCSEA, or a prohibited
16 practice under the provisions of NRS 288.270. International
17 Association of Firefighters, supra.

18 CONCLUSIONS OF LAW

19 1. That the Local Government Employee-Management
20 Relations Board has jurisdiction over the parties and the
21 subject matter of this Complaint, pursuant to the provisions
22 of NRS Chapter 288.

23 2. That the Complainant, Nevada Classified School
24 Employees Association, Chapter 6, is a recognized employee
25 organization as defined by NRS 288.040.

26 3. That the Respondent, Douglas County School District,
27 is a local government employer as defined by NRS 288.060.

28 4. That the Respondent determined the appropriate
bargaining unit to be regularly scheduled contracted bus

1 drivers pursuant to NRS 288.170(1).

2 5. That the determination of the bargaining unit is not
3 a mandatory subject of bargaining under NRS 288.150(2), in
4 view of which Respondent's refusal to bargain with respect
5 thereto did not constitute bad faith bargaining or a
6 prohibited practice under the provisions of NRS 288.270.

7 6. That the Respondent's determination of the
8 bargaining unit is ripe for appeal to the Board under the
9 provisions of NRS 288.170(5).

10 ORDER

11 For the reasons set forth herein, the Board hereby
12 ORDERS that:

- 13 1. The Complaint be, and hereby is, denied; and
14 2. That each party shall bear its own costs and
15 attorney's fees.

16 DATED this 20th day of July, 1994.

17 LOCAL GOVERNMENT EMPLOYEE-
18 MANAGEMENT RELATIONS BOARD

19 By Tamara Baengo
20 TAMARA BARENGO, Chairman

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22 By Susan L. Johnson
23 SUSAN L. JOHNSON, Vice Chairman

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25 By Salvatore C. Gugano
26 SALVATORE C. GUGANO, Member

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