

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

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4 STOREY COUNTY EDUCATION) ITEM NO. 340
ASSOCIATION,)
5)
6 Petitioner,)
7)
8 -vs-) CASE NO. A1-045558
9)
10 STOREY COUNTY SCHOOL DISTRICT,)
11)
12 Respondent.)
13)
14 DECLARATORY ORDER
15)
16 MINERAL COUNTY CLASSROOM)
TEACHERS ASSOCIATION,)
17)
18 Petitioner,)
19)
20 -vs-) CASE NO. A1-045559
21)
22 MINERAL COUNTY SCHOOL DISTRICT,)
23)
24 Respondent.)
25)
26)
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28)

For Petitioners: Sandra G. Lawrence, Esq.
DYER, MCDONALD & LAWRENCE

For Respondents: Charles P. Cockerill, Esq.
BISCHOF, HUNGERFORD & WITTY

STATEMENT OF THE CASE

The above-captioned Cases have been consolidated pursuant to NAC 288.275 and the Board's Order dated February 28, 1994.

Petitioners have petitioned the Board for a determination that their so-called "just cause" proposals, submitted for negotiation during the 1993-94 collective bargaining season, are mandatorily negotiable under the provisions of NRS 288.150(2)(i) and (u), quoted below:

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2. The scope of mandatory bargaining is limited to:

(i) Discharge and disciplinary procedures.

(u) The policies for the transfer and reassignment of teachers.

Petitioners' proposals read as follows:

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Provided the District has complied with the provisions of NRS 391.3125 and 391.313, no employee will be disciplined, suspended, reduced in rank or compensation, adversely evaluated, transferred, dismissed, nonrenewed, terminated, or otherwise deprived of any professional advantage without just cause.

The Board agrees to follow a policy of progressive discipline which minimally includes verbal warning; reprimand and suspension with pay. Termination or dismissal will be used only as a final and last resort.

(Emphasis added.)

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No employee shall be disciplined, suspended, transferred, adversely evaluated, dismissed, terminated, or otherwise deprived of any professional advantage without just cause.

(Emphasis added.)

DISCUSSION

Essentially, the Respondent school districts have argued that they should not be required to negotiate a "just cause" provision into their respective collective bargaining agreements with school district employees. The Board, however, finds that such provisions are mandatorily negotiable, and that a "just cause" standard is implied in the parties' collective bargaining agreements by virtue of the provisions in NRS Chapters 288 and 391, the applicable case

1 law, and the nature of the contracts themselves.

2 I.

3 PUBLIC EMPLOYEES COVERED UNDER A COLLECTIVE
4 BARGAINING AGREEMENT CANNOT BE CONSIDERED TO BE
5 IN AN "AT-WILL" RELATIONSHIP WITH THEIR EMPLOYERS

6 Respondentst arguments would require this Board to
7 conclude that all public employees who are covered under a
8 collective bargaining agreement still remain "at-will"
9 employees who can be terminated at any time, for any cause, or
10 for no cause. This is simply not true.

11 For example, whether certain school district employees
12 are suspended, demoted, reemployed or dismissed is expressly
13 governed by the provisions of NRS 391.311 to 3197. In fact,
14 NRS 391.312 lists sixteen (16) specific causes for suspending,
15 demoting, dismissing or refusing to reemploy a teacher. See
16 NRS 391.312(a) through (o).

17 The standard applicable for discipline under this
18 statute has been defined by the Nevada Supreme Court as "legal
19 cause". See Rust v. Clark County School District, 100 Nev.
20 372, 683 P.2d 23 (1984), where the Court stated its definition
21 of legal cause:

22 As we have consistently reiterated, legal cause is
23 "not any cause which the officer authorized to
24 make such removal may deem sufficient." Rather
25 such cause "must be one which specifically relates
26 to and affects the administration of the office,
27 and must be restricted to something of a
28 substantial nature directly affecting the rights
and interests of the public. The cause must be
one touching the qualifications of the officer or
his performance of his duties, showing that he is
not a fit or proper person to hold the office.

Id. at 374 (emphasis added).

1 The above standard certainly does not connote an
2 "at-will" form of employment, since discipline without "legal
3 cause" of an employee covered by the above statute would
4 offend the public policy of the state as expressed by the
5 statute. Vancheri v. GNLV Corp., 105 Nev. 417, 777 P.2d 366
6 (1989), at 421.

7 The legislature, however, has exempted teachers,
8 administrators and other licensed employees who, pursuant to
9 NRS Chapter 288, negotiate collective bargaining agreements
10 with their employer boards which contain separate provisions
11 relating to the board's right to dismiss or refuse to reemploy
12 the employee or demote an administrator. NRS 391.3116. The
13 question then becomes, "What standard should be applied to
14 disciplinary actions under such agreements?" For the reasons
15 stated below, that standard must be "just cause".

16 II.

17 3. "JUST CAUSE" STANDARD SHOULD BE APPLIED
TO THESE COLLECTIVE BARGAINING AGREEMENTS

18 It must be remembered that, under subsection 2(i) of NRS
19 288.150, the scope of mandatory bargaining includes "discharge
20 and disciplinary procedures", and it is not unreasonable for
21 this Board to conclude, under the provisions of this
22 subsection alone, that the negotiation of a "just cause"
23 provision is significantly related thereto, and is therefore
24 mandatorily negotiable. Truckee Meadows v. Int'l
25 Firefighters, 109 Nev. Adv. Op. 57, 849 P.2d 343 (Nev. 1993);
26 Clark Co. Sch. Dist. v. Local Gov't and Washoe Co. Teachers
27 Ass'n. v. Washoe Co. Sch. Dist., 90 Nev. 442, 530 P.2d 114
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1 (1974).

2 There are, however, other reasons which support the
3 applicability of this standard which must be explored.
4 Recently, in describing various exceptions to the common-law
5 presumption of "at-will" employment, the Nevada Supreme Court
6 discussed the effect of what it has recently termed a
7 "contractual obligation of continuing employment." D'Angelo
8 v. Gardner, 107 Nev. 704, 819 P.2d 206 (1991); Sands Regent v.
9 Valgardson, 105 Nev. 436, 439, 777 P.2d 898, 899 (1989);
10 K-Mart Corp. v. Ponsock, 103 Nev. 39, 46 n.5, 732 P.2d 1364,
11 1369 n.5 (1987). Contractual obligations of continuing
12 employment arise when an employer expressly or impliedly
13 agrees with an employee that his or her employment is to be
14 for an indefinite term and may be terminated only for cause or
15 only in accordance with established policies or procedures.
16 D'Angelo, supra at 712. Se also, Vancheri v. GNLV Corp.,
17 supra.

18 Respondents cannot seriously contend that their
19 employment contracts do not provide for certain disciplinary
20 procedures or that the collective bargaining agreements do not
21 expressly and impliedly provide for employment which is
22 "continuing" in nature as long as the employees do their jobs
23 satisfactorily. As pointed out by the Court in Ponsock,
24 supra, "Such an arrangement cannot possibly be characterized
25 as "at-will". Id. at 42 n.1. See also, Bally's Employees'
26 Credit Union v. Wallen, 105 Nev. 553, 555, 779 P.2d 956
27 (1989), where the Court defined the opposite of an at-will
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employee as an employee who would be terminated "only for just cause."

A collective bargaining agreement creates "definite rights of employment tenure" which contractually entitle an employee to be retained until dismissal for cause is properly carried out in the manner provided for in the employment contract. Id. at 45. See also, D'Angelo v. Gardner, cited supra at 708, discussion in footnote 3 regarding "proper cause."

In Ponsock, the Court for the first time applied the covenant of "good faith and fair dealing" to employment contracts. See Ponsock, supra at 48, particularly footnote 8, citing NRS 104.1203 regarding the "Obligation of good faith" and Section 205 of the Restatement (Second) of Contracts o the "Duty of Good Faith and Fair Dealing." Under this theory, "bad faith" is presumed when the employer goes further than merely discharging the employee "wrongfully and without cause." Id. at 51.

It is instructive to observe that the Court, in applying the good faith and fair dealing covenant to employment contracts, relied upon the rationale of the employee's "dependency and economic vulnerability," citing F. Tannenbaum, A Philosophy of Labor 9 (1951). Id. at 51. The Board is compelled to ask, "How much more vulnerable and dependent are public employees whose bargaining ability is severely restricted by the inability to strike?" NRS 288.230 et seq. Shouldn't a covenant of good faith and fair dealing t

1 therefore applied, a fortiori, to public employee collective
2 bargaining agreements?

3 It should be noted that Black's Law Dictionary defines
4 "Just cause" as:

5 A cause outside legal cause, which must be based
6 on reasonable grounds, and there must be a fair
and honest cause or reason, regulated by good
faith.

7 Id. at 775 (Fifth Edition). From the above definition, it
8 would appear that "just cause" is a term or phrase which
9 connotes fairness, honesty and reasonableness. As such, it is
10 the correct standard for determining whether an employer has
11 breached its covenant of good faith with its employee.

12 Based upon all of the above, it is the Board's
13 determination that a "just cause" standard is properly
14 applicable to any collective bargaining agreement negotiated
15 between Petitioners and Respondents under NRS Chapter 288.

16 III.

17 REQUIRING THE PARTIES TO NEGOTIATE A "JUST CAUSE"
18 PROVISION DOES NOT MEAN THEY MUST AGREE
19 ON THE SPECIFIC TERMS

20 The recognition of a "just cause" standard as having
21 applicability to the collective bargaining agreements herein
22 does not necessarily mean that the "just cause" provisions
23 submitted by Petitioners must be adopted by Respondents. As
24 pointed out by the Nevada Supreme Court in Truckee Meadows,
supra,

25 "NRS 288.033 does not require that the
26 parties reach an agreement during
27 collective bargaining negotiations; it
28 only requires that the parties bargain
in good faith . . ."

1 109 Nev. Adv. Op. 57 at 9. Citing the Court in Lorain Cit.
2 Sch. Dist. Bd. Of Educ. v. State Employment Relations Bd., 533
3 N.E.2d 264 (Ohio 1988), the Court quoted as follows:

4 "Requiring appellee to bargain does not
5 require that an agreement be reached.
6 It does, however, provide a process
7 whereby employees will be consulted
8 about decisions which have profound
9 impact on them and thus, industrial
10 peace will be preserved and promoted."
11 Id. at 269.

12 109 Nev. Adv. Op. 57 at 10.

13 Thus, while the Board has concluded that the subject
14 matter of a "just cause" provision is one which is mandatorily
15 negotiable, it is not stating that the specific clauses
16 offered by the Petitioners herein must be accepted as they are
17 written. Rather, the Board has concluded that such clauses
18 may be considered and negotiated in the collective bargaining
19 process.

20 CONCLUSIONS OF LAW

21 1. That the Local Government Employee-Management
22 Relations board has jurisdiction over the parties and the
23 subject matter of this Petition, pursuant to the provisions of
24 NRS Chapter 288.

25 2. That the Petitioners, Storey County Education
26 Association and Mineral County Classroom Teachers Association,
27 are recognized employee organizations as defined by NRS
28 288.040.

3. That the Respondents, Storey County School District
and Mineral County School District, are local government
employers as defined in NRS 288.060.

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4. That public employees who are covered by a collective bargaining agreement in Nevada cannot be considered to be in an "at-will" relationship with their employers, inasmuch as a "just cause" standard is implied in the parties collective bargaining agreements by virtue of the provisions of NRS Chapter 288.

5. That the suspension, demotion, reemployment or dismissal of school district employees is expressly governed by the provisions of NRS 391.311 to NRS 391.3197, unless superceded by the provisions of a collective bargaining agreement negotiated under the provisions of NRS Chapter 288; see NRS 391.3116.

6. That a "just cause" provision is a subject of mandatory bargaining by virtue of being significantly related to NRS 288.150(2)(i), "Discharge and disciplinary proeedures."

7. That, pursuant to NRS 288.033, requiring the parties to negotiate regarding proposals involving "just cause" provisions does not mean they must agree on the specific terms.

ORDER

For the reasons set forth herein, the Board hereby **ORDERS AND DECLARES** that Petitioners' so-called "just cause" proposals are mandatorily negotiable.

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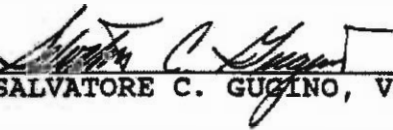
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IT IS FURTHER ORDERED that each party shall bear its own costs and attorney's fees in the above-captioned matter.

DATED this 9th day of August, 1994.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By 
SUSAN L. JOHNSON, Chairman

By 
SALVATORE C. GUCINO, Vice Chairman

By 
TAMARA BARENGO, Board Member