

1 **STATE OF NEVADA**
2 **LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT**
3 **RELATIONS BOARD**
4

5 **CARSON-TAHOE HOSPITAL,**
6 **Petitioner,**

7 **vs.**

8 **OPERATING ENGINEERS, LOCAL NO. 3,**
9 **OF THE INTERNATIONAL UNION OF**
10 **OPERATING ENGINEERS, AFL-CIO,**
11 **Applicant,**

12 **CARSON-TAHOE HOSPITAL EMPLOYEES**
13 **ASSOCIATION,**
14 **Intervenor.**

ITEM NO. 455B

CASE NO. A1-045665

DECISION

13 **For Petitioner:** **Charles P. Cockerill, Esq.**
14 **Bischof, Hungerford & Cockerill**
15 **For Applicant:** **Matthew J. Gauger, Esq.**
16 **Van Bourg, Weinberg, Roger & Rosenfeld**
17 **For Intervenor:** **Walter R. Tarantino, Esq.**
18 **Law Offices of Walter Tarantino**

19 **STATEMENT OF THE CASE**

20 On November 5, 1999, Petitioner **CARSON-TAHOE HOSPITAL** (hereafter "Hospital") filed
21 an objection to a petition for unit modification and request for recognition by the **OPERATING**
22 **ENGINEERS, LOCAL NO. 3, OF THE INTERNATIONAL UNION OF OPERATING**
23 **ENGINEERS, AFL-CIO** (hereafter "Union"). The objection pertained to registered nurses
24 employed at the Hospital.

25 On January 3, 2000, a petition to intervene in this matter was filed by the **CARSON-TAHOE**
26 **HOSPITAL EMPLOYEES ASSOCIATION** (hereafter "Association"), which was granted by the
27 **LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD** (hereafter
28 **"Board"**) on January 11, 2000.

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1 All parties filed prehearing statements; and on February 9, 2000, the parties filed a stipulation
2 of facts. The parties further stipulated to the admission of numerous exhibits as identified in that
3 stipulation on file herein.

4 On March 28, 2000, a hearing was held before the Board, noticed in accordance with
5 Nevada's Open Meeting Law, at which time the Board heard oral arguments from counsel, received
6 evidence, and heard testimony from nine (9) witnesses, namely, Patricia Eades, R.N.; Rod Rankin,
7 R.P.; Bob Schreichana, c/o Fire Department; Barbara Matthews, R.N.; Martha Gladue; Apryl Lucas,
8 Director of Human Resources at the Hospital; Kathy Dinauer, Chief Nursing Officer; Steven Smith,
9 C.E.O. of the Hospital; and Christina Tingle, Staff Nurse. Although this case was heard in
10 conjunction with Case No. A1-045669, these two cases were not consolidated as one case, due to
11 the fact that two objections to petitions were filed and the petitions pertained to two separate and
12 distinct units.

13 Post-hearing briefs were ordered from the respective parties and were indeed received by the
14 Board. The Board's findings as to the Hospital's Petition are set for in its Discussion, Findings of
15 Fact and Conclusions of Law, which follow.

16 DISCUSSION

17 The Hospital is a county hospital located in Carson City, Nevada; and has 128 beds at the
18 Hospital and 30 beds at the Carson Rehabilitation Center. C.E.O. Steve Smith oversees the day-to-
19 day activities for both facilities.

20 On or about August 28, 1972, the Hospital recognized the Association as the exclusive
21 bargaining representatives for all non-supervisory employees in a "wall-to-wall" bargaining unit, and
22 the Association has been the exclusive representative since that time. There are approximately 698
23 full and part time employees and 203 casual employees; these numbers include the registered nurses.

24 The Union filed its petition for unit modification with the Hospital on behalf of the registered
25 nurses on or about November 5, 1999, alleging the wall-to-wall representation is no longer adequate
26 and a community of interest no longer exists between the members. The Hospital filed its objection
27 thereto with this Board. The Association filed a petition to intervene on January 2, 2000. The
28 current collective bargaining agreement expires June 30, 2000. Although requested by the Hospital,

1 signed authorization cards have yet to be received from the Union, acknowledging the employees in
2 the proposed unit of registered nurses wish to have the Union as their bargaining representative.

3 During the hearing, the Union alleged there is no longer a community of interest among the
4 employees, as the groups have become too divergent to remain in one wall-to-wall bargaining unit.
5 The Union has further argued that the employees should have the right to choose their
6 representatives.

7 The Association argued that the "wall-to-wall" unit best represents the hospital's employees,
8 and that a proliferation of small units would be less effective, thus affecting the employees, the
9 employer, and patient care. As a matter of fact, the Association argued that nurses and registered
10 nurses have consistently been on the Association's negotiation teams and on its Board of Directors.

11 The Hospital argued that a team spirit, or effort, exists between the employees to assure
12 quality patient care. The Hospital further stated that all workers participate in common benefit plans
13 and share hospital employee rules. The Hospital also contends that the Union has failed to prove that
14 the "wall-to-wall" representation is inappropriate with clear and convincing evidence.

15 Patricia Eades testified concerning her educational background and responsibilities as a staff
16 nurse, the hierarchy of supervision, and ultimately testified that it is the physicians who provide orders
17 to nurses for patient care. She further testified that she cannot hire or fire other employees, nor can
18 she discipline others or award raises, but she does pass along the physicians' orders and assure they
19 are accomplished. In the lengthy time she has been with the hospital (approximately 23 years), she
20 has only attended 1 or 2 Association meetings and has only partially sought the Association's
21 assistance once.

22 Rod Rankin testified as a respiratory therapist, describing his education and certification as
23 well as responsibilities, the staffing hierarchy, and that he ultimately received directions from the unit
24 clerk who has received them from the physicians. Mr. Rankin further testified that he does not belong
25 to the Association but desires better benefits for hospital employees. Mr. Rankin further testified that
26 he never attended the Association's meetings, nor ever asked to review the applicable collective
27 bargaining agreement.

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1 Bob Schreihans of the Carson City Fire Department testified about the Union's alleged long-
2 term goal is to obtain numerous unit modifications for each specialty at the Hospital.

3 Barbara Jo Matthews testified as a longtime staff registered nurse at the Hospital, and that
4 she has been a Union Board member for 3 terms. She attended a meeting sponsored by the Union
5 to solicit members. She further testified as to the negotiations for prior collective bargaining
6 agreements, with voting thereon, and training offered by the Association.

7 Martha Gladue testified that she has been with the Association for some time and has served
8 as President of the Association for approximately 11 years, but not consecutively. Other positions
9 held included secretary and vice president. She further testified as to the workshops offered by the
10 Association, as well as monthly meetings and the composition of the Association's bargaining team.
11 She testified as to the posting of meeting notices, distribution of the collective bargaining agreements,
12 and grievances.

13 Apryl Lucas of the Human Resource Dept. of the Hospital testified concerning employee
14 matters and nurses' shifts, distribution of handbooks and the collective bargaining agreement. She
15 testified that in 1999 approximately nine grievances were processed. At the current time, the Hospital
16 is in negotiations with the Association to renew their collective bargaining agreement, and to date,
17 approximately four or five meetings have taken place. She testified there would be increased costs
18 for multiple bargaining units.

19 Cathy Dinawer has been the Hospital's chief nursing officer since approximately 1993 and
20 testified concerning nurses' education, training, and certification, as well as current staffing and
21 employees' responsibilities.

22 Steven Smith is the CEO of the Hospital and testified that the most appropriate unit is the
23 current wall-to-wall unit.

24 Christina Tingle is a staff R.N. at the hospital and is not a member of the Association. She
25 described her responsibilities including carrying out the physicians' orders through delegation.

26 **FINDINGS OF FACT**

27 1. The Hospital is a county hospital located in Carson City, Nevada, and has 128 beds at the
28 Hospital and 30 beds at the Carson Rehabilitation Center.

1 2. C.E.O. Steve Smith oversees the day-to-day activities for both facilities.

2 3. On or about August 28, 1972, the Hospital recognized the Association as the exclusive
3 bargaining representatives for all non-supervisory employees in a "wall-to-wall" bargaining unit.

4 4. The Association has been the exclusive "wall-to-wall" employee representative at the
5 Hospital since that date.

6 5. There are approximately 698 full and part time employees and 203 casual employees; these
7 numbers include registered nurses and respiratory therapists.

8 6. The Union filed its petition for unit modification with the Hospital on behalf of the
9 registered nurses on or about November 5, 1999, alleging the wall-to-wall representation is no longer
10 adequate and a community of interest no longer exists between the members; and the Hospital filed
11 its objection thereto with this Board.

12 7. The current collective bargaining agreement expires June 30, 2000.

13 8. Although requested by the Hospital, signed authorization cards have yet to be received
14 from the Union, acknowledging a majority of the employees within the proposed unit wish to have
15 the Union as their bargaining representative.

16 9. Testimony presented during the hearing revealed that various nurses have served on the
17 Association's Board as well as on the negotiation team for the parties' collective bargaining
18 agreement.

19 10. Further testimony presented at hearing evidenced a team spirit by all Hospital employees
20 in quality patient care and treatment.

21 11. It was adduced from the testimony that although the Association's information, scheduled
22 meetings and/or training sessions, and opportunity to vote were all available to members, there was
23 little member or employee interest and participation in the current Association.

24 12. Evidence was presented that registered nurses and respiratory therapists are unique units
25 of professional and technical employees, requiring specialized education, training, licensure and/or
26 certification.

27 13. Sufficient evidence was presented that such professional and/or technical employees, with
28 special education and licensure, have a community of interest separate and apart from other hospital

1 employees.

2 14. No evidence was presented by the Union that it represents a majority of the employees
3 in the proposed bargaining unit of registered nurses.

4 **CONCLUSIONS OF LAW**

5 1. The Local Government Employee-Management Relations Board has jurisdiction over the
6 parties and the subject matters of the complaint on file herein pursuant to the provisions of NRS
7 Chapter 288.

8 2. The Hospital is a local government employer as defined in NRS 288.060.

9 3. The Association and the Union are employee organizations as defined by NRS 288.040.

10 4. The Hospital and the Association are parties to a collective bargaining agreement.

11 5. That the Hospital employees have definitely shown a lack of interest in the Association.

12 6. Pursuant to NRS 288.028, and due to the specialized education, training, and licensure or
13 certification, registered nurses are a unique employee unit having a community of interest separate
14 and apart from the rest of the wall-to-wall employees currently represented by the Association,
15 notwithstanding the fact that this Board has in previous decisions rejected a proliferation of smaller
16 bargaining units.

17 7. Consistent with the above findings and conclusions, the Union has failed to provide clear
18 and convincing evidence that it has a majority of the employees for its proposed bargaining unit as
19 required by NRS 288.160(2) in the form of a verified membership list and based upon such failure,
20 it has failed to establish its rights to be the exclusive bargaining agent for the employees at issue
21 herein, namely, the registered nurses.

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DECISION AND ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the CARSON TAHOE HOSPITAL's objection to the petition for unit modification and request for recognition by the OPERATING ENGINEERS, LOCAL NO. 3, OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, on behalf of registered nurses is sustained and the request for unit modification is denied at this time.

DATED THIS 30th day of June, 2000.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY

David Goldwater
DAVID GOLDWATER, Chairman

BY

Karen L. McKay
KAREN L. MCKAY, Vice Chairman

BY

James E. Wilkerson, Sr.
JAMES E. WILKERSON, SR., Board Member