

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. 456B

CASE NO. A1-045669

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 16, 1999, Petitioner CARSON-TAHOE HOSPITAL (hereafter "Hospital")
21 filed 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 respiratory therapists
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 Schreichans, 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. A1-045665, 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 representative 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 and respiratory therapists.

25 The Union filed its petition for unit modification with the Hospital on behalf of the
26 respiratory therapists on or about November 15, 1999, alleging the wall-to-wall representation is no
27 longer adequate and a community of interest no longer exists between the members. The Hospital
28 filed its objection thereto with this Board. The current collective bargaining agreement expires June

1 30, 2000. Although requested by the Hospital, signed authorization cards have yet to be received
2 from the Union, acknowledging that a majority of the proposed unit of respiratory therapists wish
3 to have the Union as their bargaining representative.

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

8 The Association argued that the "wall-to-wall" unit best represents the hospital's employees,
9 and that a proliferation of small units would be less effective, thus affecting the employees, the
10 employer, and patient care.

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

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

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

27 Martha Gladue testified that she has been with the Association for some time and has served
28 as President of the Association for approximately 11 years, but not consecutively. Other positions

1 held included secretary and vice president. She further testified as to the workshops offered by the
2 Association, as well as monthly meetings and the composition of the Association's bargaining team.
3 She testified as to the posting of meeting notices, distribution of the collective bargaining
4 agreements, and grievances.

5 Apryl Lucas of the Human Resource Dept. of the Hospital testified concerning employee
6 matters and nurses' shifts, distribution of handbooks and the collective bargaining agreement. She
7 testified that in 1999 approximately nine grievances were processed. At the current time, the Hospital
8 is in negotiations with the Association to renew their collective bargaining agreement, and to date,
9 approximately 4 or 5 meetings have taken place. She testified there would be increased costs for
10 multiple bargaining units.

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

13 FINDINGS OF FACT

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

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

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

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

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

23 6. The Union filed its petition for unit modification with the Hospital on behalf of the
24 respiratory therapists on or about November 15, 1999, alleging the wall-to-wall representation is no
25 longer adequate and a community of interest no longer exists between the members; and the Hospital
26 filed its objection thereto with this Board. The Association filed its petition to Intervene on January
27 3, 1999.

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

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

4 9. Testimony presented during the hearing revealed that employees from various job
5 classifications have served on the Association's Board as well as on the negotiation team for the
6 parties' collective bargaining agreements.

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

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

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

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

18 14. No evidence was presented by the Union that it represents a majority of the employees
19 in the proposed bargaining unit of respiratory therapists..

20 **CONCLUSIONS OF LAW**

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

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

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

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

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

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1 6. Pursuant to NRS 288.028, and due to the specialized education, training, and licensure
2 or certification, respiratory therapists are a unique employee unit having a community of interest
3 separate and apart from the rest of the wall-to-wall employees currently represented by the
4 Association, notwithstanding the fact that this Board has in previous decisions rejected a
5 proliferation of smaller bargaining units.

6 7. Consistent with the above findings and conclusions, the Union has failed to provide clear
7 and convincing evidence that it has a majority of the employees for its proposed bargaining units as
8 required by NRS 288.160(2) in the form of a verified membership list and based upon such failure,
9 it has failed to establish its rights to be the exclusive bargaining agent for the employees at issue
10 herein, namely, the respiratory therapists.

11 **DECISION AND ORDER**

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

17 DATED THIS 30th day of June, 2000.

18 LOCAL GOVERNMENT EMPLOYEE-
19 MANAGEMENT RELATIONS BOARD

20 BY David Goldwater
21 DAVID GOLDWATER, Chairman

22 BY Karen L. McKay
23 KAREN L. MCKAY, Vice Chairman

24 BY James E. Wilkerson, Sr.
25 JAMES E. WILKERSON, SR., Board Member