

1 STATE OF NEVADA

2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

3 RELATIONS BOARD

4
5 WASHOE COUNTY TEACHERS)
ASSOCIATION,)

6 Petitioner,)

7 vs.)

8 WASHOE COUNTY SCHOOL DISTRICT,)
Respondent.)

ITEM NO. 470C

CASE NO. A1-045678

DECLARATORY ORDER
& DECISION

9
10 For Petitioner: Sandra G. Lawrence, Esq.
Dyer, Lawrence, Cooney & Penrose

11 For Respondent: C. Robert Cox, Esq.
12 Walther, Key, Maupin, Oats, Cox, Klaich & LeGoy

13 STATEMENT OF THE CASE

14 On March 1, 2000, the WASHOE COUNTY TEACHERS ASSOCIATION
15 ("ASSOCIATION") filed a Petition For Declaratory Order with the Employee-Management
16 Relations Board ("Board"). The ASSOCIATION petitioned for a determination that a change in
17 the teachers' work schedule, which results in an increase in the number of hours that teachers are
18 required to work, is a subject of or is significantly related to a subject of mandatory bargaining under
19 NRS 288.150(2).

20 WASHOE COUNTY SCHOOL DISTRICT ("DISTRICT") filed its Response To Petition
21 For Declaratory Order on April 3, 2000, and a pre-hearing conference was conducted on September
22 6, 2000.

23 The Board held a hearing on September 26, 2000, noticed in accordance with Nevada's Open
24 Meeting Law.

25 Petitioner ASSOCIATION was represented by Sandra G. Lawrence, Esq. and Respondent
26 DISTRICT was represented by C. Robert Cox, Esq.

27 The Board heard oral argument from counsel, testimony from four (4) witnesses, received
28 and reviewed ten (10) exhibits (alphabetical designation A through J) from the DISTRICT, and five

1 (5) exhibits (numeric designation 1 through 5) from the ASSOCIATION. The Board's findings are
2 set forth as follows:

3 **DISCUSSION**

4 The ASSOCIATION and the DISTRICT are parties to a collectively bargained Professional
5 Negotiation Agreement (the "CBA"). (Exhibit A).

6 Article 18 of the CBA states in part that "[no] employees shall be required to be on a total
7 schedule including lunch of more than 7.5 consecutive hours"

8 Other articles supporting the 7.5 total work hours requirement include:

9 During the workdays at the beginning of the year, the equivalent of
10 one day (7.5 hours.) will be reserved exclusively for teachers to spend
11 time in their classrooms with no District/building meetings or
12 mandated in-services being held.

(CBA Article 17.1.)

13 The District will make every reasonable effort to continue to provide
14 at least forty-five (45) minutes per 7.5 hour workday to be used by
15 teachers for classroom preparation

(CBA Article 19.1.)

16 NRS 288.150(2)(g) provides that the "[t]otal hours of work required of an employee on each
17 workday or work week" is a mandatory subject of bargaining. NRS 288.150(3)(c)(2) provides that
18 "[t]he content of the workday, including without limitation work load factors, except for safety
19 consideration" is management prerogative.

20 Different categories of teachers in the DISTRICT (High School, Middle School, Elementary
21 School, Alternative Education) work a different total hour workday. (Tr. 79-80; Ex. F).

22 Washoe High School is an alternative school that is spread out over nineteen (19) different
23 locations (Tr. 13), with students at that school being determined at risk with "a variety of needs" (Tr.
24 24). For approximately the past 25 years, the contract has established the total number of hours in
25 the workday to be seven and one-half (7.5). (Tr. 11). Prior to 1993, the Washoe High School
26 teachers worked a six (6) hour, thirty (30) minute day rather than the negotiated seven and-a-half
27 (7.5) hour schedule. (Tr. 25-26). Since 1993, teachers at Washoe High have worked a six (6) hours
28 and fifteen (15) minutes schedule rather than the negotiated maximum of a seven and-a-half (7.5)
hour schedule. No negotiation took place between the DISTRICT and the ASSOCIATION regarding

1 this 1993 change. (Tr. 41). Annually, teachers are required to sign a contract, referencing and
2 incorporating the master agreement with its requirement of a maximum of 7.5 hours.

3 In a memorandum dated October 11, 1999, Jim Hagar, the Superintendent of the Washoe
4 County School District, summarized a plan to change the teaching schedule of Washoe High School.
5 (Exhibit D). The change would require the teachers to work for seven and-a-half (7.5) hours rather
6 than their previous work schedule of six (6) hours, fifteen (15) minutes.

7 The ASSOCIATION argues that the plan to reschedule the work hours of the teachers at
8 Washoe High is a mandatory subject of bargaining pursuant to NRS 288.150(2)(g). (Points And
9 Authorities In Support Of Petition For Declaratory Order). The DISTRICT maintains that it has the
10 management prerogative per NRS 288.150(3)(c) to change the content of the workday for Washoe
11 High teachers in a manner that does not change the total hours of work required under the negotiated
12 CBA. (Memorandum Of Points And Authorities In Support Response To Petition For Declaratory
13 Order).

14 At hearing, Virginia Doran, the executive director of the Washoe County Teachers
15 Association, testified as follows:

16 MR. DICKS: . . . Would it be a fair statement that each teacher in
17 the Association has obligated themselves for the salary provided in
18 the salary schedule to the District for seven and one-half hours of
19 productive work?

20 THE WITNESS: They could be required to be there for seven
21 and-a-half hours for a particular compensation package.

22 (Tr. 173).

23 Ms. Doran also testified "[i]t has been the position of the Association that the article that
24 deals with work hours and the CBA is that the maximum number of hours that anyone can be
25 required to work is seven and-a-half hours." (Tr. 128).

26 John Clark, the Principal of Washoe High School, testified that the teachers are going home
27 at 2:30 in the afternoon. (Tr. 184). Mr. Clark felt that since they were being paid seven and-a-half
28 hours they should work seven and-a-half hours. (Tr. 187).

29 However, the past practice for Washoe High School has been for less than 7.5 hours and such
30 practices of less than 7.5 hours has continued for quite a number of years and continues to this date.

FINDINGS OF FACT

1
2 1. The ASSOCIATION and the DISTRICT are parties to a collectively bargained
3 Professional Negotiation Agreement (the "CBA").

4 2. Article 18 of the CBA states in part that "[no] employees shall be required to be on
5 a total schedule including lunch of more than 7.5 consecutive hours"

6 3. Articles 17.1 and 19.1 support the 7.5 total work hours requirement bargained by the
7 parties.

8 4. Different categories of teachers in the DISTRICT (High School, Middle School,
9 Elementary School, Alternative Education), however, work a different total hour workday.

10 5. Washoe High School is an alternative school that is spread out over different
11 locations.

12 6. For approximately the past 25 years, the CBA has established the total number of
13 hours in the workday to be not more than seven and-a-half (7.5).

14 7. Prior to 1993, Washoe teachers worked a six (6) hour, thirty (30) minute day rather
15 than the negotiated maximum seven and-a-half (7.5) hour schedule.

16 8. Since 1993, teachers at Washoe High have worked a six hour, fifteen (15) minute
17 schedule rather than the negotiated maximum seven and-a-half (7.5) hour schedule.

18 9. No negotiation took place between the DISTRICT and the ASSOCIATION regarding
19 the 1993 change; rather each party appeared to have acquiesced in the 6 hour, 15 minute schedule.

20 10. The parties have not negotiated the instant schedule change proposed by the District.

21 11. The employer has the right to determine the content of a work day, but past practices
22 may allow contractual provisions to differ or to be modified, as in this case with the number of hours
23 worked during the term of a number of collective bargaining agreements.

24 12. This Board has previously found that a past practice of the parties may be evidence
25 that the employer waived a statutory or contractual right, but such waiver of a right must be clear and
26 unmistakable. See Ormsby Co. Educ. Assn. V. Carson City School Dist., Case No. A1-045527, Item
27 #311.

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1 13. The District has the right to require the contractually mandated maximum work day
2 of 7.5 hours, but when a different schedule has existed as a past practice, the employer has a duty
3 to negotiate in good faith any such change in the schedule in that it has become a term and/or
4 condition of employment.

5 14. NRS 288.150 specifies the management rights that need not be negotiated, and the
6 issue of safety considerations is not one of them.

7 15. The special circumstances of the Washoe High School may include safety
8 considerations contemplated by NRS 288.150, e.g., students with special needs, extended teacher-
9 student contact time, security concerns, and principal availability.

10 16. Should any finding of fact be more properly construed as conclusions of law, may
11 they be so deemed.

12 CONCLUSIONS OF LAW

13 1. The Local Government Employee-Management Relations Board has jurisdiction over
14 the parties and the subject matter of the ASSOCIATION's Complaint pursuant to the provisions of
15 NRS Chapter 288.

16 2. The DISTRICT is a local government employer as defined by NRS 288.060.

17 3. The DISTRICT has the management prerogative of determining the content of the
18 workday of Washoe High School teachers but not safety considerations, which requires negotiations.

19 4. The DISTRICT and the ASSOCIATION have already negotiated the maximum total
20 number of work hours under the CBA to be not more than seven and-a-half (7.5).

21 5. Past practices deviating from the CBA can become terms and conditions of
22 employment, which then require negotiations between the parties to effectuate change.

23 6. Teachers sign annually the "Contract Between Certificated Employee and the Board
24 of Trustees," which incorporates the master agreement between the District and the Association.

25 7. The negotiations regarding the change in the number of hours worked may not have
26 been required had the DISTRICT notified the ASSOCIATION that it reserved the right to change
27 the less than 7.5 hours back to the required 7.5 hours, but such notice was never succinctly provided
28 and/or reserved in the present situation.

1 8. Should any conclusion be more properly construed as a finding of fact, may they be
2 so deemed.

3 **DECISION AND ORDER**

4 IT IS, THEREFORE, THE DECISION OF THIS BOARD that the DISTRICT's proposed
5 modification of the content of the workday at Washoe High School is a management prerogative.
6 The length of the workday, however, is negotiable. The CBA's maximum of "not more than 7.5
7 hours" has been modified for Washoe High School teachers by the past practices of the parties. Any
8 proposed change in the number of hours required to be worked by Washoe High School teachers may
9 be made by the DISTRICT up to the maximum negotiated in the parties' CBA. However, the
10 DISTRICT must negotiate in good faith with the ASSOCIATION concerning the timing and method
11 effectuating the change and any safety concerns of the teachers.

12 IT IS FURTHER ORDERED that the parties are to bear their own fees and costs incurred
13 in this matter.

14 DATED this 16th day of January, 2001.

15 LOCAL GOVERNMENT EMPLOYEE-
16 MANAGEMENT RELATIONS BOARD

17 By: 
18 KAREN L. MCKAY, Chairman

19 By: 
20 JOHN E. HICKS, ESQ., Vice-Chairman

21 By: 
22 JAMES E. WILKERSON, SR., Member