

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

WASHOE COUNTY SCHOOL DISTRICT,
Petitioner,

vs.

NEVADA CLASSIFIED SCHOOL
EMPLOYEES ASSOCIATION, CHAPTER 2,
Respondent.

ITEM NO. 490A

CASE NO. A1-045701

DECISION

NEVADA CLASSIFIED SCHOOL
EMPLOYEES ASSOCIATION, CHAPTER 2,
Counter-Petitioner,

vs.

WASHOE COUNTY SCHOOL DISTRICT,
Counter-Respondent.

For Petitioner/Counter-Respondent:

Robert W. Story, Esq.
Bible Hoy & Trachok

For Respondent/Counter-Petitioner:

Michael E. Langton, Esq.

STATEMENT OF THE CASE

On March 5, 2001, the WASHOE COUNTY SCHOOL DISTRICT (hereafter "School District") filed a Petition for a Declaratory order from the Local Government Employee Management Relations Board (hereafter "Board"), requesting the Board to determine if certain employees of the Risk Management Department were confidential employees and must be excluded from the bargaining unit. Respondent is the NEVADA CLASSIFIED SCHOOL EMPLOYEES ASSOCIATION (hereafter "Association").

On April 17, 2001, the Association filed its response to the Petition for Declaratory Order and a Counter-petition for Declaratory Order in this matter, requesting that other employees in the Payroll Department and Personnel Division, presently excluded from the bargaining unit as

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1 confidential by agreement of the parties be determined non-confidential and placed in the
2 bargaining unit. On May 10, 2001, the School District filed its response to the counter-petition

3 Thereafter, the Association filed its "prehearing statement" and the School District filed
4 its opening brief. A prehearing conference was held between the parties and this matter
5 scheduled for hearing.

6 The Board heard this matter on August 2, 2001, and scheduled deliberations. The
7 deliberations were noticed in accordance with Nevada's Open Meeting Law for October 18,
8 2001.

9 The Board heard oral argument from the counsel, heard testimony from five (5)
10 witnesses, and received and reviewed numerous hearing exhibits. The Board's findings and
11 conclusions are set forth as follows:

12 DISCUSSION

13 The School District is a local government employer and the Association is the
14 representative of/bargaining agent for certain employees of the School District. There is a
15 Collective Bargaining Agreement (hereafter "CBA") between the parties, and the parties have
16 recently utilized "interest based bargaining." The parties negotiated that the "Personnel Division,
17 all positions and the Payroll Department, all positions" are "confidential employees," excluded
18 from the bargaining unit pursuant to NRS 288.170(6); and such is contained within the parties'
19 CBA at Section 4.2.3.

20 In approximately July 1999, the School District reorganized the Personnel Division,
21 placing the Risk Management Department into the Personnel Division. (School District's post
22 hearing brief.) At the time of the reorganization, the School District claimed all members of the
23 Risk Management Department should now be excluded from their bargaining unit as
24 "confidential employees." The Association disputed that determination. Whether these
25 employees are "confidential employees" pursuant to NRS 288.170(6) is the subject of the
26 hearing now before the Board. The School District contends that collective bargaining matters
27 are discussed at general Personnel Division staff meetings, at which all employees allegedly
28 attend and participate in the discussions, as well as conversations that are indiscriminately

1 conducted in the hallways permitting the employees to overhear such remarks which could
2 include sensitive bargaining information.

3 The School District further contends that all individuals in the Personnel Division gather
4 information necessary for bargaining with the Association, as well as have the opportunity to
5 review correspondence from the School District's counsel when sent via mail and may have
6 access to sensitive files (e.g., worker's compensation files, medical information on employees,
7 property liability claims). Additionally, the School District believes it is because of handling
8 "confidential information [that makes certain employees] confidential employee[s]." (School
9 District's post-hearing brief.) Lastly, the School District contends that the employees may
10 investigate grievances and complaints filed by the Association as well as research and process
11 arbitrations with the Association, and/or have access to such information. (School District's
12 post-hearing brief.)

13 The Association countered "regardless of the organizational structure of the District, only
14 positions that actually meet the legal requirements of NRS 288.170(6) are positions that must be
15 excluded from the bargaining unit as confidential employees. Specifically, the Association
16 requests a declaration that (1) classified risk management personnel are not confidential
17 employees, and [sic] (2) that declares that classified payroll personnel are not confidential
18 employees, and (3) that the classified positions in personnel are not confidential employees."
19 (Association's post-hearing brief, p. 4, l. 1-9.)

20 During the hearing, the duties of various employees at issue were discussed by the School
21 District representatives Laura Dancer, Tom Marshall and Thomas Strauss. More specifically, the
22 duties of Debbie Congdon, Kathy Hughes, Mike Jess, Nancy Young, Dayna Chapman, Pat
23 Hicks, Sharlet Comstock, Paula Edmonds, Marilynne Reihl, Jennifer Cameron, Brenda
24 Evangelista, Kathy Gilmore, and Nancy Huming were specified for the Board.

25 In addition to the above-described testimony, an organization chart was presented as a
26 hearing exhibit (Exhibit 1) as well as various job descriptions (Exhibits 3-11). The Risk
27 Management employees, under Tom Marshall, include Charlie Fong, Aaron Hardy, Jackie
28 James, Anne Huber, and secretaries Karen Shields, Joan Collins, Marilyn Danforth, and Deborah
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1 Mackert. Only the job descriptions for the Wellness Coordinator, Risk Management Technician
2 and Secretary I were provided for the Risk Management Department. Testimony was on y
3 provided as to the job descriptions of Environmental Compliance Officer (Tr. p. 62) and Anne
4 Huber, Risk Management Technician (Tr. p.125-28).

5 **FINDINGS OF FACT**

6 1. The School District is a local government employer.

7 2. The Association is the representative of/bargaining agent for certain employees of
8 the School District.

9 3. That "confidential employee" is defined in NRS 288.170(6).

10 4. A Collective Bargaining Agreement exists between the parties and was in effect at
11 the time the issues herein arose.

12 5. The parties negotiated that the Personnel Division, all positions, and the Payroll
13 Department, all positions, are confidential employees, excluded from the bargaining unit, and
14 such is contained within the parties' CBA at Section 4.2.3 (on page 4 of the CBA).

15 6. In approximately July 1999, the School District reorganized the Personnel
16 Division, placing the Risk Management Department into the Personnel Division.

17 7. At the time of the reorganization, some employees of the Risk Management
18 Department were members of the Association and, due to their placement in the Person
19 Division, the issue arose as to whether they should be excluded from the bargaining unit as
20 "confidential employees" pursuant to NRS 288.170(6).

21 8. Collective bargaining matters are discussed at general staff meetings, with
22 employees encouraged to attend and participate in such meetings.

23 9. Occasionally, conversations are indiscreetly conducted in the hallways and such
24 conduct may permit employees to overhear remarks, which may include sensitive bargaining
25 information.

26 10. Offices are provided to employees and the aforementioned conversations can be
27 conducted in the offices if the subjects are confidential and not for public disclosure.

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1 11. Duties of some individuals in the Personnel Division include gathering of
2 information necessary for bargaining with the Association.

3 12. Certain individuals in the Personnel Division may have the opportunity to review
4 correspondence from the School District's counsel when sent via mail and may have access to
5 sensitive files (e.g., worker's compensation files, medical information on employees, property
6 liability claims).

7 13. Lastly, the employees at issue may investigate grievances and complaints filed by
8 the Association as well as research and process arbitrations with the Association, and/or have
9 access to such information.

10 14. That the parties agreed to "interest based bargaining" and the parties utilized such
11 bargaining practice in recent negotiations; however, the process was not successful with the topic
12 of insurance.

13 15. That no evidence or witnesses were offered at the hearing in support of the
14 removal of the employees listed in Section 4.2.3 of the CBA to the category of non-confidential,
15 classified employees to be included in the bargaining unit.

16 16. That the duties of the Environmental Compliance Officer as offered by the School
17 District does not appear to be those of a "confidential employee."

18 17. That the duties of the Wellness Coordinator as offered by the School District does
19 not appear to be those of a "confidential employee."

20 18. That the duties of Anne Huber, Risk Management Technician, as discussed at the
21 hearing, do appear to be those of a "confidential employee" pursuant to NRS 288.170(6). An
22 Huber's duties were described as being "the team leader in charge of health insurance, health
23 benefits." More specifically, she "participates and serves as staff support to the insurance
24 committee, which does make recommendations on the design of plans. But she's not the sole
25 determiner of health benefits, no." (Tr. p. 45-6.) See also Exhibit 3.

26 19. That prior to the placing of the Risk Management Department in the Human
27 Resources Department, the employees of the Risk Management Department were not treated by
28 the parties as confidential employees pursuant to NRS 288.170(6).

20. That the ultimate decisions on collective bargaining issues are made by management, not the employees involved.

21. That the mere physical location of employees does not transform the employees to the status of confidential employee, nor does the management organizational structure.

22. That management cannot indiscriminately associate or expose other employees not necessary to the assisting or acting on collective bargaining issues to such a situation and expect them to be deemed confidential employees.

23. That there may or may not be other employees that should be considered confidential employees, but such issue is not before the Board at this time.

24. That this Board has entered two prior decisions on the subject of confidential employees, i.e., Item #21 and Item #322, which are relevant to this case.

25. That pursuant to Items No. 21 and 322, each matter must be reviewed case by case to determine if the employees at issue are confidential employees based upon a number of considerations, such as size of government employer and the actual duties performed.

26. Should any findings of fact be more properly construed as conclusions of law, may they be so deemed.

CONCLUSIONS OF LAW

1. The Local Government Employee-Management Relations Board has jurisdiction over the parties and the instant subject matter pursuant to the provisions of NRS Chapter 288.

2. The School District is a local government employer as defined by NRS 288.060.

3. The Association is an employee organization as defined by NRS 288.040.

4. That the parties' CBA contains a section identifying the agreed upon "confidential employees."

5. Court cases as early as 1956 have defined "confidential employees" to "embrace only those employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations." (Emphasis added.) B. F. Goodrich Co. v. Local No. 281, United Rubber, Cork, Linoleum & Plastic

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1 Workers of Am., AFL-CIO, 115 NLRB 722, 724 (1956). See also EMRB Item 21, quoting
2 Westinghouse Electric Corp. vs. NLRB, 398 F.2d 669 (4th Cir., 1968).

3 6. The U.S. Supreme Court has identified two categories of confidential employees
4 in the case of NLRB v. Meenan Oil Co., 139 F.3d 311, 317 (1998), as well as approved the
5 National Labor Relations Board's utilization of the "labor nexus" test as discussed in NLRE
6 Hendricks Co. Rural Elec. Membership Corp., 454 U.S. 170 102 S.Ct. 216 (1981), and in
7 Meenan, 139 F.3d at 317.

8 7. "Status as a confidential employee is a question of fact." NLRB v. Meenan Oil
9 Co., 139 F.3d 311, 317 (1998). Therefore cases should be reviewed individually. Information to
10 which an employee is exposed and/or size of the employer may have more relevance than
11 organizational structure or physical location.

12 8. Should any conclusion be more properly construed as a finding of fact, may it be
13 so deemed.

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1 **DECISION AND ORDER**

2 IT IS, THEREFORE, THE DECISION OF THIS BOARD that the only position deemed
3 confidential in the Risk Management Department is that of Risk Management Technician which
4 is currently assigned to Anne Huber. The School District's complaint for declaratory relief as to
5 other positions in the Risk Management Department is denied.

6 IT IS FURTHER ORDERED that the Association's request for declaratory relief is
7 denied.

8 Although there may exist job classifications that are currently identified as confidential
9 under the CBA by the parties which could be considered non-confidential positions, the Board
10 makes no finding whether these positions fall under NRS 288.170(6). NRS Chapter 288
11 provides no affirmative requirement to insert non-confidential employees in the bargaining unit
12 and therefore the parties may exclude or include them by mutual agreement.

13 DATED this 19th day of October, 2001.

14 LOCAL GOVERNMENT EMPLOYEE-
15 MANAGEMENT RELATIONS BOARD

16 BY: 
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JOHN E. DICKS, ESQ., Chairman

18 BY: 
19

JAMES E. WILKERSON, SR., Vice-Chairman

20 BY: 
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22 AMY TROST, ESQ., Member
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