

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

5 HUMBOLDT COUNTY SUPPORT STAFF
6 ORGANIZATION,)

7 Petitioner,

8 vs.

9 HUMBOLDT COUNTY SCHOOL
10 DISTRICT and NEVADA CLASSIFIED
11 SCHOOL EMPLOYEES ASSOCIATION,
12 CHAPTER 9,

13 Respondents.

ITEM NO. 493A

CASE NO. A1-045708

DECISION

14 For Petitioner: Sandra G. Lawrence, Esq.
15 Dyer, Lawrence, Cooney & Penrose

16 For Respondent (HCSD): Charles P. Cockerill, Esq.
17 Bischof & Cockerill

18 For Respondent (NCSEA): Michael E. Langton, Esq.

STATEMENT OF THE CASE

19 The NEVADA CLASSIFIED SCHOOL EMPLOYEES ASSOCIATION, CHAPTER 9
20 (hereafter the "Incumbent Association"), is the recognized exclusive bargaining agent for bus
21 drivers for the HUMBOLDT COUNTY SCHOOL DISTRICT (hereafter the "School District").
22 The HUMBOLDT COUNTY SUPPORT STAFF ORGANIZATION (hereafter "Organization")
23 is an affiliate of the Nevada State Education Association and currently represents certain support
24 staff employees, excluding bus drivers, of the School District. Both the Incumbent Association
25 and the Organization have collective bargaining agreements with the School District on behalf of
26 their respective members.

27 At the administrative hearing in this matter, the "Master Agreements" between the
28 Incumbent Association and the School District for the term 1998 through 1999 (Exhibit N-11)
and the term 1999 through 2001 (Exhibit 9) were provided, along with the "Negotiations

1 Agreement" for 1998 through 2001 for the School District and the Incumbent Association
2 (Exhibit N-12) and the "By-Laws" for the Incumbent Association, Chapter 9 (Exhibit 8).

3 On October 2, 2000, the Incumbent Association through Monica Standaert notified the
4 School District of its "intent to negotiate" and provided the School District with the "information
5 required to retain recognition" as well as its list of current officers and By-laws. (Exhibit N-1.)
6 The intent to negotiate was repeated in Ms. Standaert and the Incumbent Association's letter of
7 December 5, 2000 to the School District (Exhibits 5 and N-2), and also advised that it would
8 bargain "in good faith to open Article 14-3 'District Health Insurance Benefits'" due to the
9 financial problems of the School District's insurance program. The Organization also agreed to
10 bargain over the insurance issue "and to open negotiations on January 24, 2001." (Exhibit N-4.

11 The School District notified both the Incumbent Association and the Organization that
12 the first negotiation would occur on January 24, 2001, and that they would "postpone formal
13 negotiations until the medical insurance bargaining is completed." (Exhibit N-5.) Ground 1 s
14 for this "joint re-opener" on health insurance issues were agreed upon by the parties and signed
15 sometime in January 2001. (Exhibits 6 and N-10.) The parties entered into a "tentative
16 agreement re-opener negotiations" on February 8, 2001, signed by the School District, the
17 Organization, and the Incumbent Association. (Exhibit D-3.) The effective dates of the
18 agreement concerning health insurance were February 1, 2001 through June 30, 2002.

19 On April 2, 2001, Ms. Standaert and the Incumbent Association notified the School
20 District that since the medical issue was resolved, they should "immediately resume formal
21 negotiations on other bargaining agreement Articles." (Exhibit N-6.) Correspondence was also
22 written in July regarding the continued negotiations (Exhibits N-7 and D-25). Ultimately, the
23 negotiation meetings were scheduled for August 29, 2001; September 27, 2001; October 11,
24 2001; and November 7, 2001. (Exhibit N-8.) The ground rules for the "2001-2002 negotiations"
25 between the School District and the Incumbent Association were entered into on the first date of
26 negotiations, i.e., August 29, 2001. (Exhibit D-7.)

27 However, on May 7, 2001, the Organization "petitioned" the School District for
28 recognition of it as the bargaining agent for the School District's bus drivers and asked to be

1 placed on the School Board's next agenda. (Exhibit 2.) In that correspondence, Ms. Matheny
2 stated "the organization will present a list of Bus Drivers who have signed membership forms
3 and a copy of each membership form for verification of the employees eligible for membership."

4 (Exhibit 2.) On May 20, 2001, Monica Standaert as President of Chapter 9 of the Incumbent
5 Association requested the parent organization, Nevada Classified School Employees
6 Association, voluntarily withdraw as the bargaining agent for the bus drivers. (Exhibit 3.)

7 On or about June 8, 2001, the Organization filed an "Appeal for Recognition; Petition to
8 Withdraw Recognition" with the Local Government Employee-Management Relations Board
9 (hereafter "Board"). On June 13, 2001, the School District requested a hearing before this
10 Board. The School District filed its "Prehearing Statement" on August 14, 2001; the
11 Organization filed its "Prehearing Statement" on August 24, 2001; and the Incumbent
12 Association filed its "Prehearing Statement" on August 30, 2001. On October 23, 2001, the
13 Organization also filed a "Supplemental Prehearing Statement."

14 On November 5, 2001, a consolidated hearing was held before the Board, noticed in
15 accordance with Nevada's Open Meeting Law, at which time the Board heard oral arguments
16 from counsel, received evidence, and heard testimony from four (4) witnesses, namely, Sandra
17 Matheny, Monica Standaert, Charlotte Brothwell, and Michael Osborn.

18 DISCUSSION

19 The issues before this Board included (a) whether the request of the Organization for
20 recognition was timely filed pursuant to NAC 288.146(2)(a) and it should be the recognized
21 bargaining agent for the School District's bus drivers and (b) whether the recognition request
22 complied with NRS 288.160(2).

23 Ms. Matheny testified that she works for the School District and is the President of the
24 Organization. She testified that she never provided to the School District a "verified
25 membership list showing that it represents a majority of the employees in a bargaining unit" as
26 required by NRS 288.160(2), nor did she provide to the School District a copy of the
27 Organization's constitution and by-laws at the time of the request for recognition regarding the
28 bus drivers. A pledge not to strike was also not provided. She did testify, however, that the

1 members' applications were provided to the School District (Exhibit 1) in May 2001, and that it
2 has been her "past practice" not to resubmit the pledges not to strike. Furthermore, she stated
3 that such documents of the Organization are already on file with the School District. She stated
4 she did not provide such documentation when her Organization began representing the
5 secretaries, instructional aides, and maintenance individuals - - only the members' applications
6 were provided. No previous union or association, however, had represented these individual job
7 families. (Transcript of Hearing, p. 44.) Ms. Matheny further claimed that the School District
8 never raised the defect of not providing documents and that such documents could easily have
9 been provided.

10 Ms. Standaert is a bus driver with the School District and is currently the President of
11 Chapter 9 of the Incumbent Association. She cited as the reason she wished the Organization to
12 represent the drivers was the fact that she was not getting a lot of information and assistance
13 from the parent organization and just wanted a change of representation. She stated that 21 bus
14 drivers signed the application forms, out of the currently employed 26 bus drivers. Ms. Standaert
15 further admitted to being on the current bargaining team for Chapter 9 of the Incumbent
16 Association and that the parties are at the bargaining table for a successor agreement for the term
17 2001 through 2002.

18 At the time of the instant hearing, Ms. Standaert stated no bus driver has withdrawn their
19 membership from the Incumbent Association and yet no driver has paid his/her membership dues
20 to the Organization. Ms. Standaert also admitted that Charlotte Brothwell contacted her a
21 number of times telephonically as well as in writing regarding the driver's dissatisfaction with
22 Chapter 9 of the Incumbent Association. She acknowledged that it is her responsibility as
23 President of Chapter 9 to direct its activities and that she does have autonomy from the parent
24 association. She has not yet resigned as President of Chapter 9 of the Incumbent Association,
25 although she claims she has come "close" to it on several occasions; and she still pays dues to the
26 Incumbent Association. Sixteen (16) other bus drivers still pay dues to the Incumbent
27 Association. Association dues are only required during the months worked.

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1 Charlotte Brothwell is the Executive Director of the Nevada Classified School
2 Employees Association, the parent association of Chapter 9, and has held that position since
3 approximately 1994. That Association began representing the School District's bus drivers in
4 November 1997. The parent association has over 1500 members in Douglas, Lyon, Carson City,
5 Washoe, Mineral, Churchill, and Humboldt counties. The parent association had its annual
6 conference in March 2001 and after that conference, she made several attempts to contact Ms.
7 Standaert regarding the bus drivers' concerns.

8 During the Organization's cross examination of Ms. Brothwell, she stated it was her
9 understanding that the insurance issue was a reopener for the 2000-2001 agreement, but that it
10 would be incorporated into the agreement for 2001-2002. Neither Ms. Standaert nor Ms.
11 Brothwell are aware of who recommended Paragraph 12, page 3, of the ground rules for 2001-
12 2002 (Exhibit D-7); however, that paragraph states that "these ground rules address the
13 continuation and resumption of negotiations that were begun with the insurance reopener in
14 January, 2001." (Emphasis added.)

15 Ms. Brothwell further stated that members can only withdraw from her Association from
16 July 1 through July 15 of a calendar year, and referred to Exhibit N-12, p. 6, paragraph 6-2. She
17 further described Chapter 9 of her Association as a "members-ran" chapter and have great
18 leeway in negotiations on their own behalf.

19 Michael Osborn also testified. He is a labor representative for the Nevada Classified
20 School Employees Association and is assigned to Chapter 9. He has been in the labor relations
21 area for approximately 5 to 6 years. He stated the School District is deeply concerned with the
22 instability of which group it is to negotiate with. He believes the Organization's activities
23 issue have "slowed down" the negotiations with the School District. One current proposal with
24 the School District is the length of the collective bargaining agreement; the Incumbent
25 Association would like the term to be three-years.

26 In closing arguments, the Organization argued that the reopener of the insurance issue
27 was not the commencement of negotiations of a successor collective bargaining agreement as
28 contemplated by NAC 288.146(2)(a) and that notice of the recognized Incumbent Association to

1 commence negotiations was given in October 2000. Additionally, the parties involved in this
2 matter have not successfully completed negotiations for the School District's bus drivers. The
3 Organization, therefore, contends that it has complied with the window period within which to
4 seek recognition. Furthermore, the Organization contends that the documentation referred to in
5 NRS 288.160 had already been provided to the School District in satisfaction of those
6 requirements. The Organization requested that the Board grant its recognition as the bargaining
7 agent for the bus drivers in dispute, or order that an election be held.

8 The School District stated that it has "no dog in this hunt" but merely wishes clarification
9 as to which group it should negotiate with on behalf of the bus drivers. It does believe, however,
10 that the insurance issues were the beginning of the negotiations and that negotiations on all other
11 issues were postponed because of the dire need to resolve the insurance issues. It argued, too,
12 that the application form does not comply with NRS 288.160's requirement of "verified
13 membership list" and further that they failed to identify Humboldt County Support Staff
14 Organization as the potential representative of the bus drivers.

15 The Incumbent Association agreed with the closing statements made by counsel for the
16 School District, and classified the matter at hand as a "raid" by one organization against the
17 members of another organization. Citing to a previous EMRB decision, Item No. 313, Douglas
18 Co. Support Staff Organization v. Nevada Classified Sch. Employees Assn., the Incumbent
19 Association stressed the importance of stability in labor relations. Stability is required to assure
20 prompt and efficient negotiations resulting in ground rules and ultimately collective bargaining
21 agreements. It further argued that the applications for membership do not comply with the
22 requirements of verified membership lists found in NRS 288.160, nor was the proper
23 documentation provided to the School District by the Organization. It further argued that
24 negotiations began with the insurance issues and that Organization has, thus, not complied with
25 the window period found in NAC 288.146(2).

26 FINDINGS OF FACT

27 1. That the School District has recognized the Incumbent Association as the exclusive
28 bargaining representatives for the bus drivers at issue herein.

1 2. That the School District has recognized the Organization as the exclusive bargaining
2 representatives for certain other support staff.

3 3. That both the Incumbent Association and the Organization have collective bargaining
4 agreements with the School District for their respective members.

5 4. That the Incumbent Association's collective bargaining agreements were for the terms
6 of 1998 through June 30, 1999 and 1999 through June 30, 2001. (Exhibits N-11 and 9.)

7 5. That on October 2, 2000, the Incumbent Association notified the School District of its
8 intent to begin negotiations of a successor agreement and provided certain documents required
9 by NRS 288.160.

10 6. That due to the financial situation of the School District's insurance program, the
11 parties agreed to negotiate first regarding certain terms and conditions thereof.

12 7. That on January 3, 2001, the School District requested the Incumbent Association and
13 the Organization to "postpone formal negotiations until the medical insurance bargaining is
14 completed." (Exhibit N-5.)

15 8. That negotiations began in January 2001 on the insurance issues, culminating in
16 ground rules regarding the same in January 2001 (Exhibits 6 and N-10), and a tentative
17 agreement executed on February 8, 2001, with effective dates of February 1, 2001 through June
18 30, 2002.

19 9. That this agreement would include and be effective during the period of time for the
20 successor collective bargaining agreement between the Incumbent Association and the School
21 District, which agreement would end on June 30, 2002.

22 10. That on April 2, 2001, Ms. Standaert and the Incumbent Association requested that
23 the School District "immediately resume formal negotiations on other bargaining agreement
24 Articles." (Exhibit N-6.)

25 11. That ground rules were entered into on August 29, 2001 (Exhibit D-7) and various
26 dates were scheduled for the negotiations (Exhibit N-8).

27 12. That on May 7, 2001, the Organization "petitioned" the School District for
28 recognition of it as the bargaining agent for the School District's bus drivers. (Exhibit 2.)

13. That photocopies of the applications for membership with the Nevada State Education Association, National Education Association, were provided to the School District.

14. That the Organization did not provide a verified membership list to the School District, nor did it provide a pledge not to strike, a copy of its constitution, or a copy of its By-laws.

15. That although Ms. Standaert acknowledged that Chapter 9 of the Incumbent Association had autonomy, she did not withdraw her unit from the parent association.

16. That, instead, Ms. Standaert requested the parent association, Nevada Classified School Employees Association, to voluntarily withdraw as the bus drivers' bargaining agent.

17. That the School District did not place the issue of the Organization's recognition on the School Board's agenda because of the School District's uncertainty as to the timeliness and sufficiency of the request.

18. Should any finding 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 subject matters of the complaint on file herein pursuant to the provisions of NRS Chapter 288.

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

3. The Incumbent Association and the Organization are employee organizations as defined by NRS 288.040.

4. The School District, the Incumbent Association, and the Organization are parties to collective bargaining agreements, with the Incumbent Association's agreements ending on June 30th of each year.

5. That it is undisputed that the Incumbent Association requested on October 2, 2000 for contract negotiations to commence with the School District.

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1 6. That the parties agreed that the first subject of negotiation would be the School
2 District's insurance program due to its financial difficulties, and such negotiations began in
3 January 2001. See Exhibit D-3, i.e., the parties' agreement on the insurance issue.

4 7. That the parties agreed that the negotiations on the remaining issues for a successor
5 collective bargaining agreement would be resumed after the insurance issue was resolved.

6 8. That the negotiations on the insurance issue covered not only a period of time
7 currently covered by a collective bargaining agreement (i.e., the reopener) but included a period
8 of time involving the successor agreement between the Incumbent Association and the School
9 District; thus, negotiations had commenced for the successor agreement on at least one issue.

10 9. That should an employee group wish to be recognized as the proposed bargaining
11 agent for a specific unit of employees, such request must be made within the "window" periods
12 of time specified in NAC 288.146(2)(a) or (b); and the section at issue currently before this
13 Board is NAC 288.146(2)(a).

14 10. That this "window" period of time was discussed more fully in this Board's prior
15 decision in Item No. 313, Douglas Co. Support Staff Organization v. Nevada Classified Sch.
16 Employees Assn., and this decision is in conformity therewith.

17 11. That the application form for membership at issue in this matter did not constitute a
18 "verified membership list" pursuant to NRS 288.160(2) and fails to properly identify the
19 organization seeking to represent the bus drivers.

20 12. That substantial evidence was presented by way of testimony and exhibits presented
21 that the bus drivers had not begun paying dues to the Organization and were, therefore, not
22 members of that Organization. As a matter of fact, testimony was presented that certain bus
23 drivers were still paying dues to the Incumbent Association at the time of the hearing in this
24 matter.

25 13. Should any conclusion of law be more properly construed as a finding of fact, may it
26 be so deemed.

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DECISION AND ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Organization failed to meet its burden of proof for recognition as the representative organization for the bus drivers of the Humboldt County School District pursuant to NRS 288.160. Therefore, the Organization's appeal and petition are denied.

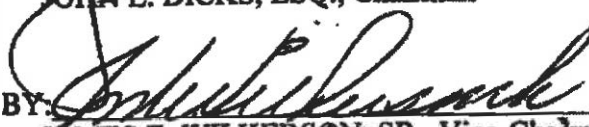
DATED this 15th day of November, 2001.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY:


JOHN E. DICKS, ESQ., Chairman

BY:


JAMES E. WILKERSON, SR., Vice-Chairman

BY:


JANET TROST, ESQ., Member