

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

LYON COUNTY EDUCATION
ASSOCIATION,

Complainant,

vs.

LYON COUNTY SCHOOL DISTRICT,

Respondent

ITEM NO. 510

CASE NO. A1-045717

DECISION

For Complainant: Thomas J. Donaldson, Esq.
Dyer, Lawrence, Penrose, Flaherty & Donaldson

For Respondent: Donald A. Lattin, Esq.
Walther, Key, Maupin, Oats, Cox & LeGoy

STATEMENT OF THE CASE

On August 6, 2001, Complainant Lyon County Education Association (hereafter "Association") filed its Complaint against Respondent Lyon County School District (hereafter "School District"), alleging prohibited labor practices as defined in NRS 288.270. On August 24, 2001, the School District filed its Answer.

On October 5, 2001, the School District filed its "Pre-hearing Statement" and on October 12, 2001, the Association filed its "Pre-Hearing Statement." A Pre-hearing Conference was held between the parties on December 18, 2001.

On January 30, 2002, a hearing was held before the Board, noticed in accordance with Nevada's Open Meeting Law, at which time the Board heard oral arguments from counsel, received evidence, and heard testimony from four (4) witnesses, namely, Richard Mesna, Leah Brady, Richard Newton, and Russ Colletti.

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1 Counsel for the parties made closing arguments on January 30, 2002 in lieu of filing post-
2 hearing briefs. The Board's findings are set for in its Discussion, Findings of Fact, and
3 Conclusions of Law, which follow.

4 DISCUSSION

5 The School District is a local governmental employer with the Association being the
6 representative and bargaining agent for the School District's employees at issue in this matter. A
7 collective bargaining agreement existed between the parties for the year 2000-2001 (Hearing
8 Exhibit K).

9 According to witness Richard Newton, a teacher at the Smith Valley High School, a pilot
10 program of the School Improvement Plan (hereafter "SIP") began in September 2000. He
11 testified the school "embraced" the program. He was allowed to choose his team to implement
12 various changes within the school with the goal to improve the academic achievements of the
13 students. He stated he attended numerous presentations and discussions regarding SIP, including
14 seminars in Carson City and Gardnerville. (See Transcript (hereafter "TR.") p. 92-93) Newton
15 went on to state that the meetings "took place, even though very few, the first thing in the
16 morning like at 7:00 o'clock, if we had some really needed things we had to get done in a hurry.
17 But most of them take place after school during the time between the school day was out for the
18 kids and the authorized - I think it's like 45 minutes that we had from the time the kids left
19 school to the time that the teachers were legally authorized to leave school." (TR. p. 94.) If the
20 meetings extended beyond the school day, teachers were free to leave. (TR. p. 102)

21 He stated the suggested improvements were made by the teachers and approved by the
22 on-site school administrators. The School District itself did not run the program. He stated he
23 felt "empowered" by participating in this program and that the students' tests scores showed
24 improvements. He further testified that the teachers on the team were not forced to participate
25 nor were they forced to work extra hours. He does not know of any teacher or Association
26 member who was denied the privilege of being on the team. He is not a member of the
27 Association.
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1 Mr. Newton stated his team was given the sum of \$5,000 to implement the program. The
2 team had discussed using the money as their compensation; however, the money eventually went
3 towards teaching different classes like such as photography, anthropology, a cooking class, small
4 engine repair, plus remediation and accelerated reading and math. (TR. p. 103) Newton was then
5 questioned if the teachers received any money as compensation and Newton replied, "No. That
6 was for supplies." (Transcript p. 104) His proposed plan was presented in either April or May
7 2001.

8 Richard Mesna testified he is a fourth grade teacher as well as the President of the
9 Association. He has been President for approximately four years. He received the "School
10 Improvement Plan" (Association's Exhibit B) in approximately March 2001, prior to the School
11 Board of Trustee's meeting. (Emphasis added.) He was the only one to receive the SIP since he
12 is the President of the Association. He testified that the SIP was not negotiated between the
13 School District and the Association. Exhibit "B," page 5 thereof, discussed the sum of money
14 each licensed staff member would receive if their School achieved its criteria, i.e., \$500 for the
15 first year, \$1,000 for the second year, and \$2,000 for the third year. The School District's
16 Exhibit 3 is the Lyon County School District's "School Improvement Process" adopted by the
17 School Board of Trustees on April 10, 2001. Exhibit "3" does not have the same sum of money
18 mentioned as Exhibit "B." More specifically, the adopted "School Improvement Process" stated
19 on page 9 that "[s]chools achieving this level of success will be given special recognition by the
20 board, and be provided an additional funding allocation . . . that can be allocated by the site team
21 for such purposes as: . . . [c]ompensation for staff development and training at the school site . .
22 [and] [e]quitable stipends to individual school staff members . . o ." (Emphasis added.)

23 The Association's Exhibit "F" is another version of the SIP entitled "School
24 Improvement Plan." It too stated it was adopted on April 10, 2001. In addition to the name
25 variation, other differences exist although both acknowledge being "adopted" on April 10, 2001.
26 Both versions, however, state that a special budget allocation will be determined by the School
27 District and provided to the schools to be used for costs associated with the plan including
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1 reimbursement to members of the teams for "their extra time and service to the team." See page
2 3 of Exhibit "3" and page 2 of Exhibit "F."

3 It is Mr. Mesna's understanding that the School District is requiring the teachers to use
4 their prep time (prior to commencement of classes and immediately after the classes) for
5 participation in the SIP. He stated he had "no in-put" into the plan other than relaying the same
6 to the Association's negotiation team, and he is not on his School's SIP team. He is also not on
7 the negotiation team at this time. He believes these plans were intended to circumvent
8 negotiations with the Association over a change in the required work hours and pay. He did not
9 attend the Board meeting on February 27, 2001, but did attend the meetings on March 13 and
10 March 27, 2001. Further, he stated to his knowledge no member of his Association has yet filed
11 a grievance.

12 Leah Brady testified on behalf of the Nevada State Education Association (hereafter
13 "NSEA") and indicated she is the chief negotiator for the Association's negotiation team with the
14 School District. She first heard of SIP from Mr. Mesna in March 2001. She also is not aware of
15 any negotiation efforts by the School District concerning this SIP. She claimed that the School
16 District refused to negotiate with her during the months of June and July. More specifically, on
17 or about June 11, 2001, she and the Association made an initial proposal to the School District
18 concerning the SIP (Association's Exhibit "9"). When the School District did not respond, a
19 counterproposal was sent on or about August 5, 2001 (Association's Exhibit "9"). Eventually
20 the School District did offer a proposal (School District's Exhibit "J") on or about August 17,
21 2001 (after the filing of the complaint with this Board). Such a "proposal" has since been
22 rescinded and the parties are proceeding to "arbitration." Ms. Brady pointed out that these
23 proposals are dated well after the SIP's adoption on April 10, 2001.

24 It is her belief that the School District unilaterally adopted the plan without the proper
25 negotiations with the Association. The School District's Exhibit "3" was discussed, and in
26 particular, the School District's control over the various teams. For example: (a) Page 2 thereof,
27 "[f]ollowing a review by the district administration, each school team will present their plan for
28 improvement to the board of trustees and make a report to the board" (b) Page 3 thereof,

1 the School District will allocate funds for the teams. (c) The teams must work within the
2 formulas defined by the School District for allocation of revenue and instructional material, and
3 (d) the involvement of the schools' principals in each team. See also page 5 of Exhibit "3," in
4 which the Board of Trustees must approve all plans prior to their implementation.

5 It is her understanding that certain members of some teams may have received
6 compensation for the extra time spent on the teams, while others have not. No grievances have
7 yet to be filed by any Association member, but possible violations of the parties' collective
8 bargaining agreement may have occurred if indeed some team members were paid while others
9 were not and were not provided the opportunity to earn the extra compensation. She does not
10 believe the team meetings are "mandatory" and she is not aware of any specific teacher being
11 required to work extra hours.

12 Upon questioning by the Board, Ms. Brady stated the plan has been "adopted" but has not
13 yet been implemented. Once it has been implemented, the Association's members will then be
14 affected and grievances will in all likelihood result. Ms. Brady also admitted that there is an
15 "extra duty" contract existing between the parties identifying ways teachers may receive
16 additional compensation, e.g., coaches, advisers, drill teams, etc. Being a member of the SIP
17 team was not negotiated for this extra duty contract. Because the Association has had no input
18 into the SIP, she believes the School District has "undermined" the Association, affecting its
19 relationship with the members and its effectiveness in negotiating on behalf of and representing
20 the Association members.

21 Russ Colletti testified on behalf of the School District. He is the Associate
22 Superintendent for the School District and has held that position for approximately 3 years. He
23 has been in the education field for 28 years, 21 of which have been with Lyon County. The
24 School District has about 70,000 students and has five different communities within the School
25 District. Those communities include but are not limited to Yerrington, Smith Valley, Fernley,
26 and Silver Springs.

27 Mr. Colletti discussed NRS 385.347 and NRS 385.351. He believes the initial act came
28 into existence in the mid-1990s, with substantial changes in 1997. Prior to the Schools'

1 Accountability Act, the Schools had data but did not use that information. The revisions will
2 allow the Schools to improve on student achievements by identifying the individual Schools'
3 strengths and weaknesses. He stated the goals were to identify what was to be achieved and have
4 teachers involved at the local levels at their own individual Schools. Smith Valley High School
5 was "exemplary" in its achievements.

6 He further stated it was a "delicate balancing act" between the Board of Trustees, the
7 various teams, school administrations, and approximately 4,000 teachers to achieve a plan. He
8 stated the School Board of Trustees' meetings are open to all and one meeting was actually a
9 workshop. He believes some teachers attended the School Board of Trustees' meetings, but did
10 not openly participate in any SIP discussions. The schools' administrators were instructed to
11 inform the staffs about SIP, thus the Association should have become aware of the SIP's
12 existence. He believes teachers should be allowed to make decisions on students' achievements
13 and called it "teacher empowerment."

14 Mr. Colletti stated the principal for each school was responsible for obtaining a team
15 appropriate for that school, and that the team should not be a mere reflection of management.
16 School District's funding was available for the teams, but distribution of that funding was left up
17 to the individual teams. He also feels that the only way the SIP has affected teachers is by
18 "empowering" them to become more efficient and effective.

19 He feels the SIP in place does not conflict with the parties' collective bargaining
20 agreement and referred to page 8 of the School District's Exhibit "3," that any plan must adhere
21 to all requirements of applicable State and Federal law and not violate negotiated agreements
22 with employee groups. He is not a member of the School District's negotiation team.

23 This Board questioned Mr. Colletti concerning NRS 385.347 and NRS 385.351. He
24 stated NRS 385.351 does not require the School District to cooperate with the Association;
25 however, he did admit that NRS 385.347 requires the Board of Trustee for the School District to
26 cooperate with the Association concerning the adoption of a program providing for the
27 accountability of the School District. He further admitted that the School District did not contact
28 the Association regarding the SIP, but that the School District was merely complying with the

1 requirements of the Nevada Department of Education under the Schools' Accountability Act. He
2 claims NRS 385.351 is divided into three parts, namely: NRS 385.351(1) is Part I; NRS
3 385.351(2) is Part II; and NRS 385.351(3) is Part III. An example of Parts I and II would be
4 Exhibit "G," the Lyon County School District Accountability Report Summary for t
5 1999/2000 School Year, which would fulfill the requirements of NRS 385.347. Exhibit "H" is
6 an example of Part III and complies with NRS 358.351. He felt it would be appropriate for the
7 Association to participate in the regulations for these statutes.

8 In reviewing NRS 358.347(1), it states quite plainly and unambiguously that the School
9 Districts in Nevada "in cooperation with associations" recognized by the state board as
10 representing licensed personnel in education in the district, shall adopt a program providing for
11 the accountability of the school district" (Emphasis added.) NRS 358.347(4)(c) further
12 mandates that the Superintendent of public instructions shall consult with a representative of the
13 Nevada State Education Association, among others, concerning the program and consider any
14 advice or recommendations submitted by the representatives with respect to the program. Such
15 consultation was not held with the Association or with its parent organization, NSEA.

16 He added, however, that there has been a "positive relationship" between the Association
17 and the School District over the past 21 years he has been associated with the School District.

18 In closing, the Association argued that the SIP contains subjects of mandatory bargaining,
19 or matters significantly related thereto (NRS 288.150(2)), i.e., hours of work and compensation,
20 yet no negotiations took place. As a matter of fact, the Association argued that the School
21 District refused to bargain over these subjects, even after the SIP's adoption. Inasmuch as the
22 SIPs have not yet been implemented, affecting the Association members, no grievances have
23 been filed. The School District's dealings directly with its employees undermined the
24 Association's representation of the employees and are also another unfair labor practice.

25 The School District, during closing arguments, argued teachers have not been required to
26 work overtime nor has their compensation been altered. The School District further argued it has
27 merely followed the laws as found in NRS 385.347 and NRS 385.351, and that NRS 385.351
28 does not require cooperation between the School District and the Association. It was further

1 argued that any changes in the content of the workday, staffing, or quality of service are
2 management's rights. It further argued that bad faith was not shown as a proposal was sent to
3 the Association, although after the plan was adopted, and that the parties are proceeding
4 arbitration. Concerning whether the School District sought "consultation" with the Association
5 or NSEA, it claimed its meetings were open to the public and the teachers and Association could
6 have attended and participated. In rebuttal, the Association stated that open public meetings are
7 simply not the negotiations as required in the parties' collective bargaining agreement and NRS
8 Chapter 288.

9 FINDINGS OF FACT

10 1. The School District implemented a pilot SIP with the Smith Valley High School in
11 approximately September 2000, with Richard Newton being a member of the School's team.

12 2. Mr. Newton's team was given the sum of \$5,000 by the School District to use as
13 compensation for the team's members or for other purposes as the team deemed appropriate; and
14 at one time, the team was considering the utilization of the money as compensation for their time
15 spent on the program.

16 3. According to Mr. Newton, some of the time spent working on the team was beyond
17 the normal workday and, it was possible that the teachers' prep time was reallocated to this
18 program.

19 4. Mr. Newton presented his team's proposed plan in either April or May 2001.

20 5. Richard Mesna was first notified of SIP in approximately March 2001, immediately
21 prior to the School Board of Trustees' meeting.

22 6. As President of the Association, he himself had not been approached by the School
23 District about the SIP, nor is he aware of any negotiations between the School District and the
24 Association concerning the SIP.

25 7. Mr. Mesna's concerns were the lack of negotiations over possible change of work
26 hours for the teachers and a differential pay scale existing between the teachers participating in
27 the SIP and those not participating.
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1 8. Mr. Mesna was also concerned with the existence of two different SIP, each claiming
2 to have been adopted on April 10, 2001; e.g., one being identified as a "plan" and another being
3 identified as a "process," with similar information being contained on different pages.

4 9. Mr. Mesna appeared concerned that the School District was attempting to circumv
5 negotiations with the Association over changes in work hours and compensation; even the plan
6 as adopted state that a special budget allocation will be determined by the School District and
7 provided to the schools to be used for costs associated with the plan including reimbursement to
8 members of the teams for "their extra time and service to the team." See page 3 of Exhibit "3"
9 and page 2 of Exhibit "F."

10 10. Ms. Brady, on behalf of NSEA, testified that she was the chief negotiator for the
11 Association and she had not been approached to negotiate any possible change in hour works f
12 the teachers relative to this SIP, nor was she approached regarding negotiations for a change in
13 compensation.

14 11. Upon notice of the SIP, Ms. Brady attempted to negotiate with the School District
15 during the months of July and July 2001, culminating in two proposals being sent to the School
16 District in August 2001 (Exhibit 9).

17 12. After the filing of the Association's complaint with this Board, the School District
18 did provide a counter-proposal on or about August 17, 2001.

19 13. According to Ms. Brady, this proposal and any other offers by the School District
20 have been rescinded, and all changes affecting the work hours of some teachers and
21 compensation have been unilaterally changed by the School District, undermining the
22 representation of the Association of its members.

23 14. Ms. Brady admitted that grievances have not yet been filed, but claims that is due to
24 the fact that the SIPs have not yet been implemented.

25 15. Russ Colletti, on behalf of the School District, argued that the SIPs were
26 implemented due to the Schools' Accountability Act and that the actions taken on behalf of the
27 School District were done to assure compliance with the statutory requirements of NRS 385.347
28 and 385.351.

1 16. Mr. Colletti claimed the School District was not required to contact the Association
2 regarding the SIP, nor was it required to negotiate with the Association.

3 17. Mr. Colletti, when questioned by the Board about the consultation language in NRS
4 385.347, merely replied that such language was not found in NRS 385.351; thus, there was no
5 obligation on the part of the School District to consult the Association.

6 18. Mr. Colletti does not feel the SIPs violate the parties' collective bargaining
7 agreement nor any provisions of NRS Chapter 288.

8 19. Mr. Colletti admitted that no consultations were held with the Association or its
9 parent organization, NSEA, prior to the adoption of the SIP.

10 20. Mr. Colletti stated that the Association and the School District have had a positive
11 relationship over the last 21 years, and this fact has been officially noted by this Board based on
12 the lack of prohibited practices complaints filed by the two parties to this matter.

13 **CONCLUSIONS OF LAW**

14 1. The Local Government Employee-Management Relations Board ("Board") has
15 jurisdiction over the parties and the subject matters of the complaint on file herein pursuant to the
16 provisions of NRS Chapter 288.

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

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

19 4. The School District and the Association are parties to a collective bargaining
20 agreement.

21 5. Representatives from the Association, SNEA, and the School District testifying at the
22 hearing all agreed no negotiations were conducted regarding the SIP prior to its adoption on
23 April 10, 2001.

24 6. The SIP involves matters affecting teachers' hours of work and compensation and a
25 pilot program was initiated as early as September 2000.

26 7. NRS 288.150(2) lists the mandatory subjects of bargaining and, in particular, "hours
27 of work" and "salary or wage rates or other forms of direct monetary compensation" are
28 mandatory subjects of bargaining.

1 8. Matters "significantly related" to the mandatory bargaining subjects are likewise
2 mandatory subjects of bargaining. Clark Co. Sch. Dist. v. Local Government Employee-
3 Management Relations Bd., 90 Nev. 442, 530 P.2d 114 (1974); Truckee Meadows F
4 Protection Dist. v. International Ass'n of Fire Fighters, 109 Nev. 367, 849 P.2d 343 (1993).

5 9. The parties were obligated under NRS 288.150 to negotiate certain terms of the SIP
6 (e.g., hours and compensation), which the School District failed to do. The adoption of the SIP
7 at issue could have been accomplished pursuant to NRS 385.347 and NRS 385.351 if the Scho
8 District had "consulted" or communicated with the Association, which communications may
9 have fulfilled the negotiations requirements of NRS Chapter 288.

10 9. When reviewing whether a party has acted in bad faith, NRS 288.270(2)(b) and NRS
11 288.270(1)(e) require a review of the "entire bargaining process" to determine if bad faith
12 bargaining did indeed exist.

13 10. In addition to the lack of negotiations prior to the adoption of the plan, the School
14 District did not make an attempt to resolve the issue by negotiation until at least August 17, 2001,
15 which date was after the filing of the Association's prohibited practices complaint with this Board
16 and after the Association sent two different proposals to the School District.

17 11. The eventual notification to teachers of the adoption of the SIP is not the same as
18 "consultation" or "negotiations" with the Association.

19 12. That the testimony of Mr. Colletti concerning NRS 385.347 and 385.351 was not
20 credible in discussing why the Association was not "consulted" at any time prior to the adoption of
21 the SIP on April 10, 2001 nor was it credible in explaining why the requirements of NRS Chapter
22 288 were not met.

23 13. Although teachers participated in the SIP, ultimate control over the plan and the
24 funding therefor were by the School District, and the School District's dealings directly with the
25 employees may indeed have undermined the Association's representation of those employees.

26 14. NRS 288.110(2) allows the Board to "hear and determine any complaint arising out
27 of the interpretation of, or performance under, the provisions of this chapter by any local
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1 government employer, local government employee or employee organization" and this hearing
2 was conducted pursuant to such authority.

3 15. The Association became aware of the existence of the SIP at least in March 2001,
4 prior to the School Board Trustees' meeting but apparently did not participate in discussions at
5 that meeting, and arguably, could have learned of the SIP at Smith Valley High School as early
6 as September 2000.

7 16. Although mentioned above, this Board does take official notice of the apparently
8 excellent relationship between the School District and the Association by the historical lack of
9 prohibited practices complaints filed by either party.

10 **DECISION AND ORDER**

11 Based upon the above, IT IS HEREBY ORDERED:

12 1. That the School District "refrain from the action complained of" by the Association
13 and negotiate with the Association concerning the SIP's affect on the employees' mandatory
14 bargaining subjects of, inter alia, working hours and compensation for the schools' teams
15 pursuant to NRS 288.110(2). Such negotiations and/or consultation would also fulfill the
16 statutory requirements of NRS 385.347(1).

17 2. That the Association be awarded no fees and costs due to the delay in its attempts to
18 negotiate with the School District.

19 DATED this 20th day of March, 2002.

20 LOCAL GOVERNMENT EMPLOYEE-
21 MANAGEMENT RELATIONS BOARD

22 BY: 
23 JOHN E. DICKS, ESQ., Chairman

24 BY: 
25 JAMES E. WILKERSON, SR., Vice Chairman

26 BY: 
27 JANET TROST, ESQ., Member
28