

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

5 NYE COUNTY SUPPORT STAFF  
6 ORGANIZATION,

7 Complainant,

8 vs.

9 NYE COUNTY SCHOOL DISTRICT,

10 Respondent.

ITEM NO. 559

CASE NO. A1-045754

DECISION

11 For Complainant: Francis C. Flaherty, Esq.  
12 Dyer, Lawrence, Penrose, Flaherty & Donaldson

13 For Respondent: Paul J. Anderson, Esq.  
14 Walther, Key, Maupin, Oats, Cox & LeGoy

STATEMENT OF THE CASE

15 On January 15, 2003, the Nye County Support Staff Organization (hereafter  
16 "Organization") filed a complaint with the Local Government Employee-Management Relations  
17 Board (hereafter "Board") alleging that the Nye County School District (hereafter "School  
18 District") unilaterally changed working conditions pertaining to school bus drivers and routes,  
19 affecting such employees' wages, hours and working conditions (insurance).

20 The School District filed its answer on February 7, 2003. On March 3, 2004, the  
21 Organization filed its prehearing statement on March 14, 2003, the School District filed its  
22 prehearing statement.

23 On August 26, 2003, the Board held a hearing in this matter, noticed in accordance with  
24 Nevada's Open Meeting Law, at which time the Board heard oral arguments from counsel,  
25 received evidence, and heard testimony from six (6) witnesses, namely, Tom Walker, Marcia  
26 Jackowski, Adrian Hill, Rodney Pekarek, Raymond Ritchie, and Cameron McRae.

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1 Post-hearing briefs were ordered from the parties. Both the Organization and School  
2 District filed their respective briefs on November 3, 2003. Although Mr. Dicks was absent from  
3 the hearing, he participated in deliberations after review of the transcript and file. The Board's  
4 findings, conclusions of law, and order are set forth as follow:

5 **DISCUSSION OF TESTIMONY AND EVIDENCE**

6 Tom Walker testified that he was a bus driver for the School District at the time in  
7 question. Beginning in February 2002, he worked 6-hour days (Transcript of Hearing (hereinafter  
8 "Tr."), p. 24), making him eligible for insurance. As of October 2002, his schedule was changed  
9 to 5.5 hour days, making him ineligible for insurance. (Tr., p. 25.) Without insurance, Mr.  
10 Walker testified he did not receive the typical discounts for medical treatment and medication for  
11 him and his family. Furthermore, his annual salary with the School District is \$12,000. (Tr., p.  
12 27.) Because of the importance of insurance to him and his family, he resigned from the School  
13 District and is currently an over-the-road truck driver, which takes him away from his family  
14 80% to 85% of the time. (Tr., p. 29.)

15 Marcia Jackowski testified on behalf of the Organization; and she is also a bus driver.  
16 (Tr., p. 36.) She stated her husband is retired, and she sought employment with the School  
17 District because of the additional money and, of course, the insurance coverage. (Tr., p. 38.) For  
18 the school year 2002/2003, she was not covered with insurance due to the fact that the School  
19 District reduced her hours to 5.5 hours per day. (Tr., p. 39.) She did not personally obtain  
20 insurance that year because of the costs and testified as to the problems of having no insurance.  
21 (Tr., p. 40-42.) Ms. Jackowski did testify that she did not apply for other positions with the  
22 School District, which could have made her eligible for insurance. (Tr., p. 45.)

23 Adrian Hill also testified concerning bus drivers. Mr. Hill has been the Vice President  
24 and President of the Organization, as well as the union representative for the bus drivers. He  
25 acknowledged he was present at the School Board meetings during which the transportation  
26 budget was discussed. (Tr., p. 49.) He denied, however, that the issues of cutting drivers' hours  
27 and insurance were discussed. (Tr., p. 49.) He also testified concerning the difference in a  
28 "reduction in force" and cutting the employees' work hours and benefits. (Tr., p. 49.) He did

1 receive a copy of the June 3, 2003 "RIF" memorandum from Cameron McRae to Tom Walker,  
2 Sue Murphy, and Lucinda Leseberg (Jt. Exhibit D); however, he did not believe that  
3 memorandum fulfilled the negotiation requirements set forth in the parties' collective bargaining  
4 agreement. (Tr., p. 50.) Article 9-6 of the parties' collective bargaining agreement states, "The  
5 School District agrees to consult with the Organization prior to a RIF, and shall make available  
6 to the Organization all relevant information upon request." (Tr., p. 51.)

7 Furthermore, Mr. Hill testified concerning Article 15-1, which states that "Changes in the  
8 terms and conditions of the present Nye County School District group insurance plan may only  
9 be made with mutual consent of: the Nye County School District Board of Trustees and the Joint  
10 Insurance Committee of the NCCTA Board of Directors and the Nye County Support Staff  
11 Organization Board of Directors." (Tr., p. 53-54.)

12 Mr. Hill did discuss the reduction in force with Mr. McRae of the School District on  
13 several occasions; but could not recall the specific dates. (Tr., p. 57-58.) He felt the termination  
14 of the three individuals met the required budget cut, and it was not necessary to cut the other  
15 drivers' hours and insurance eligibility. (Tr., p. 58.) He finally learned of the cut hours on  
16 August 28, when the drivers returned to the School District to bid on their bus routes. (Tr., p.  
17 59.) Mr. McRae allegedly had not mentioned the insurance or cut hours issues with Mr. Hill  
18 during the summer. He further felt the remarks made by Mr. McRae indicated union animus.  
19 (Tr., p. 63.) As a result of the reduction in work hours, only three of the drivers on the twenty-  
20 two (22) regular bus routes had insurance. (Tr., p. 64.) For the prior year, 2001/2002, only three  
21 drivers did not have insurance coverage. (Tr., p. 67.) He felt the drastic reduction in number of  
22 bus drivers being eligible for insurance had a "significant impact on the bargaining unit." (Tr., p.  
23 70.) He also believed the Organization had a better relationship with past administrators.

24 Mr. Hill did not recall if the parties' collective bargaining agreement required them to  
25 negotiate a reduction in force, although NRS Chapter 288 does require negotiations. (Tr., p. 90.)

26 At the public meeting on May 15, 2002, concerning the budget problems with Nye  
27 County, Mr. Hill did not discuss the problems with the insurance ineligibility of bus drivers, but  
28 perhaps discussed the 63-day coverage issue because certain schools in the District were year-

1 round and some were not. (Tr., p. 93-96.) At the May 29, 2002 School Board meeting, Mr. Hill  
2 was aware then that the School District wanted to extend the "walk zone," i.e., instead of picking  
3 up children who live a mile from school, the School District proposed to pick up only those  
4 children who reside two miles from the school to save costs. (Tr., p. 98.)

5 Rodney Pekarek testified next that he has been with the School District for 29 years, 15  
6 years of which were spent as Assistant Superintendent of Schools, in charge of services. (Tr., p.  
7 117.) He recalls that the School District was 2.8 million dollars short in its budget for the year  
8 2002/2003. (Tr., p. 118.) He testified that not only was \$105,000 cut from the transportation's  
9 budget, but an additional 10% had to be cut. (Tr., p. 120.) He further testified that more  
10 grievances were filed under former administrator Mulkey than were filed under Mr. McRae.  
11 (Tr., p. 122.)

12 Raymond Ritchie testified as the Business Service Manager for the School District. He is  
13 responsible for "payroll, accounts receivable, accounts payable, the budget - helping the  
14 [School] Board put together the budget for the District, also responsible for the bonds that the  
15 school has issued and responsible for working with the support services, both unions, on the  
16 health insurance." (Tr., p. 125.) He stated the additional 10% cut was to come from non-salaries  
17 and benefits, such as "services and supplies, capital outlay and other" things. (Tr., p. 127.)

18 Mr. Ritchie indicated that the School District was the actual insurance company for its  
19 employees. (Tr., p. 138.) They do have an insurance plan administrator; however, the School  
20 District is "self-insured." (Tr., p. 139.) Furthermore, he was unable to explain how being "self-  
21 insured" financially impacted the District or the plan operation.

22 Cameron McRae was the next witness at the hearing. He was the Director of  
23 Transportation for the School District. (Tr., p. 152.) He testified the School Board met  
24 frequently concerning the budget for 2002/2003. He authored a memorandum dated May 2,  
25 2002 to notify employees about potential reductions. He did so because he did not want the  
26 employees to receive the information through the news media that attended the School Board  
27 meetings. (Tr., p. 154.) The budget for the 2002/2003 year was adopted by the School Board at

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1 the May 29, 2002 meeting; and he was required to cut the transportation budget by a combined  
2 total of "approximately \$230,000." (Tr., p. 156.)

3 Mr. McRae described the bus routes during the 2001/2002 school year as inefficient. In  
4 additional to longer routes, the system required middle and high school students to ride together,  
5 resulting in middle school children riding on the buses an additional 30 minutes. (Tr., p. 158-  
6 160.) Complaints were received regarding this unproductive time. Adding to the budget  
7 problems, McRae stated an additional 148 middle school children elected to ride the buses in the  
8 2002/2003 school year than the previous year. (Tr., p. 162.) During the months of June and  
9 July, McRae "reconfigured" the bus routes to assure transportation was provided to the children  
10 in the most economical fashion, and he felt he had kept Mr. Hill apprised of the progress. (Tr., p.  
11 162-64.) He believed he talked with Hill approximately four or five times during this time  
12 frame. (Tr., p. 165.)

13 He received correspondence from Mr. Hill requesting information on July 18, 2002 (Jt.  
14 Exhibit G), and responded on July 24, 2002 (Jt. Exhibit H). (Tr., p. 170.) McRae provided  
15 another memo on August 1, 2002, to Mr. Hill concerning the routes (Jt. Exhibit I). (Tr., p. 171.)  
16 McRae stated Hill never requested to participate in restructuring the bus routes. (Tr., p. 173.)  
17 Once all bus route information was obtained to McRae's satisfaction, it was then disclosed to the  
18 drivers. (Tr., p. 173-4.)

19 According to McRae, the reduction of routes from 28 to 23 "was sufficient based upon  
20 attrition so that I did not have to, at that level, layoff any existing NCSSO or any classified  
21 employees because attrition took up that space and I did not need to." (Tr., p. 175.) Mr. McRae  
22 also stated he believed it is management's prerogative to operate the bus routes in the most  
23 efficient manner possible, without violating any terms of the parties' collective bargaining  
24 agreement and without sacrificing the safety of the children. (Tr., p. 176.) With his restructuring,  
25 he stated the School District "transported more students with less resources in the same amount  
26 in less amount of time for the [stacking] of the school calendars." (Tr., p. 177.)

27 McRae is on the School District's negotiation team along with Mr. Pekarek, Mr. Ritchie,  
28 and Don Broad (the maintenance supervisor director). (Tr., p. 177-78.) He stated that what Mr.

1 Mulkey simply did one year with the Organization concerning the bus routes and bidding did not  
2 establish a "past practice" in his opinion. (Tr., p. 181.)

3 Although the directive was to reduce the transportation budget by \$105,000 and to save  
4 an additional 10% from non-salary and benefits, McRae stated his almost "quarter of a million  
5 dollars [saved] was in salary and benefits." (Tr., p. 188.) McRae admitted that the savings were  
6 accomplished through "restructuring the routes, but the net effect or impact on the drivers were  
7 their hours were reduced and, of course, as a consequence of their hours being reduced, many of  
8 them lost insurance." (Tr., p. 190.) It was estimated that insurance costs the School District  
9 approximately \$4,300 per year per employee. (Tr., p. 185-86.) He also testified concerning the  
10 number of buses operated by the School District and what he believed was a lack of spare busses.

11 The parties filed post-hearing briefs. The Organization argued, in essence, that the  
12 restructuring of the bus routes significantly impacted drivers' hours of work, wages, and  
13 insurance; all mandatory subjects of bargaining pursuant to NRS 288.150 and Truckee Meadows  
14 Fire Protect. Dist. V. Int'l Assn. Of Firefighters, 109 Nev. 367, 849 P.2d 343 (1993); and that the  
15 School District failed to negotiate the changes. The Organization also noted that the right o  
16 speak at a public hearing does not rise to the level of negotiations required under NRS Chapter  
17 288, and cited other examples of what it alleged to be anti-union animus and unilateral change.  
18 The School District maintained the bus routes were restructured as a management prerogative to  
19 effectively and safely transport students, citing to NRS 288.150(3), NRS 288.150(5), and  
20 paragraphs 17-1 and 17-2 of the collective bargaining agreement. It further alleged that it did not  
21 refuse to bargain with the Organization, but instead, it kept the Organization apprised of all  
22 developments, verbally and through correspondence.

### 23 FINDINGS OF FACT

24 1. Certain bus drivers were terminated by the School District because of a reduction in  
25 force due to budget constraints during the school year 2002/2003.

26 2. The school bus drivers previously worked at least 30 hours per week and were eligible  
27 for insurance coverage by the School District.

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1        3. During the 2002/2003 school year, the bus routes were reconfigured and the hours  
2 were reduced to 5.5 per day, resulting in the loss of insurance benefits to drivers.

3        4. Certain drivers testified that they sought employment with the School District because  
4 of the insurance coverage.

5        5. The School District suffered budgetary problems, and the transportation department  
6 was ordered to cut \$105,000 from its budget as well as cut an additional 10% from non-  
7 salary/benefits expenditures.

8        6. There were at least two School Board meetings in May 2002, in which the budget  
9 problems were discussed, and Adrian Hill of the Organization was present for the meetings.

10       7. There was written communication between Mr. Hill and Mr. McRae concerning the  
11 budgetary problems, as well as verbal communication.

12       8. The School District is self-insured, but has an insurance plan administrator.

13       9. Testimony was offered that the transportation services offered by the School District  
14 for the year 2001/2002 was inefficient, and complaints were received.

15       10. The bus routes were reconfigured for the 2002/2003 school year, and the middle  
16 school children were no longer riding with the high school children. Additionally, only children  
17 residing two miles from school were allowed to ride the buses.

18       11. The Organization had previously participated in the bus route determination and  
19 bidding process with former administrator Mulkey for one school year.

20       12. The bus routes were reduced from 28 to 23.

21       13. In addition to the \$105,000 saved by the transportation department of the School  
22 District, the required additional 10% savings improperly came from the drivers' salary and  
23 benefits.

24       14. The School District did not negotiate with the organization concerning the  
25 restructuring of the bus routes.

26       15. The restructuring of the bus routes significantly affected the drivers' insurance  
27 benefits and the total hours of daily work required of the employees, which are mandatory  
28 subjects of bargaining.

16. Certain matters are reserved to the management of the School District which are not subject to mandatory bargaining, including but not limited to staffing levels, content of the workday, the quality and quantity of services, and the means and methods of offering those services.

17. Should any finding of fact be more properly construed as a conclusion of law, may it 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 Organization is an employee organization as defined by NRS 288.040.

4. Due to budgetary problems, the School District restructured bus routes during the 2002/2003 school year.

5. This restructuring was not negotiated with the School District as required by NRS 288.150(1).

6. As a result of the route restructuring the drivers' insurance benefits and total hours required of the employees per day were significantly impacted. These are matters requiring mandatory bargaining per NRS 288.150(2).

7. It is a prohibited labor practice for a local government employer to refuse the bargain in good faith with its employees' representative pursuant to NRS 288.270(2) regarding changes to the employees' insurance benefits and work hours per day.

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

#### **DECISION AND ORDER**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the School District immediately bargain in good faith with the organization regarding the impact on hours and benefits to drivers of the restructuring of the bus routes. The parties are to report to the Board in



1 forty-five (45) days concerning the status of their negotiations on these two mandatory matters of  
2 bargaining.

3 The Organization is awarded attorney fees and costs and is to submit an accounting for  
4 the Board's consideration within thirty (30) days.

5 DATED this 9<sup>th</sup> day of December, 2003.

6 LOCAL GOVERNMENT EMPLOYEE-  
7 MANAGEMENT RELATIONS BOARD

8 BY:   
9

JANET TROST, ESQ., Chairman

10 BY:   
11

TAMARA E. BARENGO, Vice-Chairman

12 BY:   
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14 JOHN E. DICKS, ESQ., Board Member  
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