

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

5 ELKO COUNTY CLASSROOM TEACHERS
6 ASSOCIATION,

7 Complainant,

8 vs.

9 ELKO COUNTY SCHOOL DISTRICT and
10 ELKO COUNTY BOARD OF SCHOOL
11 TRUSTEES,

12 Respondents.

ITEM NO. 603B

CASE NO. A1-045815

ORDER

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

14 For Respondents: Charles P. Cockerill, Esq.
15 Bischof & Cockerill

16 **I. PROCEDURAL HISTORY**

17 On August 20, 2004, Complainant ELKO COUNTY CLASSROOM TEACHERS
18 ASSOCIATION ("Association") filed a Verified Complaint with the LOCAL GOVERNMENT
19 EMPLOYEE-MANAGEMENT RELATIONS BOARD ("Board").

20 On September 15, 2004, Respondents ELKO COUNTY SCHOOL DISTRICT and
21 ELKO COUNTY BOARD OF SCHOOL TRUSTEES ("District") filed a Motion to Dismiss
22 Verified Complaint or for Deferral of Proceedings. On October 12, 2004, a Stipulation was filed
23 by the parties agreeing to extend the time period for the District to file a responsive pleading
24 until after receipt of the arbitrator's award in Grievance #0304-3.

25 On January 21, 2005, the Arbitrator granted an Award denying the Association's
26 Grievance as untimely. On February 10, 2005, the District filed a Second Motion to Dismiss
27 Verified Complaint. The Association filed their opposition on February 25, 2005 and on March
28 8, 2005, the District filed their response.

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1 The Board held deliberations on said Motion on March 30, 2005, noticed in accordance
2 with Nevada's Open Meeting Law. Based upon the Board's deliberations the Motion was
3 denied. The District filed their Answer on April 14, 2005.

4 On May 12, 2005 both the Association and the District filed their Pre-Hearing
5 Statements. A Motion to Conduct Hearing in Elko, Nevada was filed on August 22, 2005. The
6 Association filed their Response to the Motion to Conduct Hearing in Elko, Nevada on August
7 31, 2005. The Board denied the Motion on October 19, 2005 and sent a Notice of Hearing to the
8 parties on December 30, 2005. A Pre-Hearing Telephone Conference was held on January 19,
9 2006.

10 On February 1, 2006, a hearing was held before the Local Government Employee-
11 Management Relations Board, noticed in accordance with Nevada's Open Meeting Law, at
12 which the Board heard oral arguments from counsel. The Board's findings as to the
13 Association's Complaint are set forth in its Discussion, Findings of Fact and Conclusions of
14 Law, which follow:

15 **II. DISCUSSION**

16 Statements by counsel for the parties established that Article 16 of the Master Agreement
17 ("Agreement") between the Association and the District provides the following:

- 18 1. The Board may purchase credit for service (as defined by NRS 286.300)
19 for a teacher when it has been requested by the teacher and it has been
20 found to be of advantage to the District to do so. The teacher must have
21 been employed in the District a minimum of eight (8) years and must
22 agree to retire upon the completion of the purchase. A request to purchase
retirement credit may be advantageous to the District financially,
instructionally, and/or programmatically.
- 23 2. The District may purchase a maximum of two (2) years service credit.
24 The maximum amount which the District shall contribute is that amount
25 determined by the Nevada Public Employee's Retirement System which is
26 necessary to affect the purchase of two (2) years credit for service. If the
27 employee has an existing purchase agreement with the Public Employee's
Retirement System, the District shall utilize the above limitation to
determine its obligation and may then participate in the existing purchase
agreement up to the maximum allowed.

- 1 a. If the teacher shall have reached the age of 60 or older at the
2 proposed date of retirement, the District may purchase up to two
3 (2) years of service credit to make the total years eligible at the
4 time of retirement not greater than ten (10) years.
5 b. If the teacher shall be eligible to retire with the purchase of service
6 credit but has not reached the age of 60 at the proposed date of
7 retirement, the District may purchase up to two (2) years of service
8 credit to make the total eligible years at the time of retirement not
9 greater than thirty (30) years.
c. The District may purchase a maximum of two (2) years service
credit if the District is reducing the number of teachers or it is in
the best interest of the District so as to encourage a teacher to
retire. The teacher must be eligible to retire or be made eligible to
retirement with the purchase of service credit.

10 3. When purchasing service credit for retiring employees, the District shall
11 use the following guidelines:

- 12 f. The ECSD will budget a set amount each year during the budget
13 process for potential buyouts. This amount will be based upon the past
14 history of the plan, projected number of buyouts and the District's
15 ability to pay. The District reserves the right to fund buyouts in the
current or succeeding fiscal year. The Board will consider all
prospective buyouts that meet the requirements of paragraph 2.

16 Further it was established that on April 13, 2004, the School Board considered fifteen
17 (15) requests, nine (9) from teachers and six (6) from administrators, for the purchase of
18 retirement service credit totaling \$458,000. Six (6) of the requests were made pursuant to
19 Article 16(2)(b) in the amount of \$207,267 and included the requests made by the teachers
20 identified in Paragraph V of the Verified Complaint, Sue Fox, James McVey, Lucille Pryor and
21 Karen Kump. These four (4) teachers were the only members of the Association who submitted
22 Section 2(b) requests.

23 Further presentation by counsel disclosed that at the School Board meeting held on April
24 13, 2004, Jeff Zander, the District's Chief Financial Officer, had stated that for Fiscal Year 2004-
25 2005 the District had budgeted \$300,000 for potential retirement buyouts. However, the School
26 Board did not approve any of the retirement buyout requests at that meeting for the reasons set
27 forth in the minutes from that meeting listed in the Joint Exhibits, Exhibit 5.

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1 Counsel represented that the School Board considered the buyout requests for a second
2 time at a meeting held on April 27, 2004 and again denied all of the requests as evidenced in the
3 minutes from that meeting which are set forth in Exhibit 7 of the Joint Exhibits. The District
4 informed the teachers that the School Board had voted not to purchase any retirement service
5 credit for employees for that year in letters dated May 14, 2004.

6 It was further revealed that the Association then filed a grievance on behalf of the four (4)
7 teachers on June 10, 2004 challenging the District's denial of the retirement buyout requests.
8 Article 6 of the Agreement, in relevant part, provides the procedures for filing grievances as
9 follows:

10 **2. Procedures**

- 11 c. If written notice is not filed at each level of the grievance
12 procedure within the time limit specified, the grievance is waived.
Failure of the District to timely respond to the grievance causes the
grievance to automatically proceed to the next step.

13 **3. Level One – Immediate Supervisor**

- 14 a. A grievance must be filed in writing, specifying which provisions
15 of the agreement have allegedly been violated to the appropriate
supervisor or designee, within 20 days of the teacher's knowledge
of the grievance or the facts which gave rise to the grievance.

16 In continued presentation of counsel it was disclosed that on June 18, 2004, the
17 Superintendent of the School Board denied the grievance as untimely and therefore void in that it
18 had not been filed within the required 20 day time period pursuant to Article 6(2) and 6(3). On
19 January 14, 2005 the parties submitted the matter to Arbitration and on January 21, 2005 the
20 Arbitrator granted an award denying the grievance as untimely without reaching the merits.

21 The Board was informed that in the interim, Mr. McVey and Ms. Pryor purchased two (2)
22 years of PERS service credit and retired at the end of the 2003-2004 school year. Ms. Sanchez
23 and Ms. Kump continued their employment and submitted their Section 2(b) requests to the
24 District in the 2004-2005 school year. On April 12, 2005 the School Board approved the
25 purchase of one (1) year of PERS service credit for both Ms. Sanchez and Ms. Kump.

26 **III. FINDINGS OF FACT**

27 1. That Article 16 of the Agreement contains clear and unambiguous language
28 granting the District discretion when deciding whether to purchase retirement service credits.

2. That the parties to this matter were signatories of the Agreement and are therefore bound by its terms.

3. That the District had in the past declined to purchase requested retirement service credits pursuant to its grant of discretion in Article 16 of the Agreement.

4. That the Association filed its grievance 27 days after it had received written notice that the District had declined to purchase the requested retirement service credits.

5. That both the District Superintendent and the Arbitrator determined that the Association's grievance was untimely.

IV. CONCLUSIONS OF LAW

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

2. The Elko County 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 Association has the burden of proving its allegations that the District did not have the discretion to decline to payout the requested retirement service credits pursuant to Article 16.

5. That the Association has the burden of proving its allegations that the District had a proven past practice of consistently and without exception approving retirement buyout requests over a substantial period of time that created a term or condition of employment which is subject to negotiation and must be continued and that such practice supersedes the negotiated language of Article 16 of the Agreement and/or that said contractual language has been extinguished by Article 17(2).

6. That the Association has the burden of proving its allegations that the District committed a prohibited practice under NRS 288.270 by denying the requests for early retirement buyouts by the Complainants.

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1 7. That the Association has the burden of proving its allegations that it timely a
2 grievance in this matter.

3 8. That the Board heard argument from counsel for the parties, that they reviewed
4 the minutes of the School Board meetings, and reviewed all evidence presented by the s
5 and it has determined that that the Association failed to establish that the District did not ha e
6 discretion to decline to payout requested retirement service credits pursuant to Article 16.

7 9. That the clear and unambiguous language of Article 16.1 of the Agreement
8 entered into between the instant parties grants the District the discretion to purchase retir ent
9 service credits and does not create a mandatory requirement to make such purcha f
10 retirement service credits.

11 10. That the Association has failed to set forth evidence that the District had a p en
12 past practice of consistently and without exception approving retirement buyout requests a
13 substantial period of time that created a term or condition of employment which is subj to
14 negotiation and must be continued and that such practice supersedes the negotiated langu f
15 Article 16 of the Agreement and/or that said contractual language has been extinguish y
16 Article 17(2).

17 11. That the Association has failed to meet its burden of establishing that the D st
18 committed a prohibited practice under NRS 288.270 by denying the requests for early retir ent
19 buyouts by the Complainants.

20 12. That the Association has failed to establish that it timely filed its grievance i s
21 matter.

22 13. That the District did not act in bad faith, nor did it abuse its discretion in dec lining
23 to make the requested buyouts pursuant to Article 16, as they clearly acted within the param s
24 of the discretionary authority granted to them in Article 16.

25 14. That the District did not commit an unfair labor practice nor was their coi ct
26 arbitrary or capricious.

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1 **V. DECISION AND ORDER**


2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Association's
3 prohibited practice Complaint is not well-grounded and therefore the Association is not entitled
4 to its requested relief.

5 IT IS FURTHER ORDERED that reasonable fees and costs should be awarded to the
6 District and that the District is hereby ORDERED to submit its documents and records in support
7 of its request for fees and costs and documenting the amount due within ten (10) days from the
8 date of this order.

9 That it is FURTHER ORDERED that the Association shall have ten (10) days after
10 service of the documents and records in support of the District's request for fees and costs within
11 which to respond to the District's request.

12 DATED this 4th day of April, 2006.

13 LOCAL GOVERNMENT EMPLOYEE-
14 MANAGEMENT RELATIONS BOARD

15 BY: 
16 JOHN E. DICKS, ESQ., Vice-Chairman

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18 BY: JANET FROST, ESQ., Board Member
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