

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

5 UNITED WE STAND – AFT,
6 Petitioner,

7 vs.

8 WASHOE COUNTY SCHOOL DISTRICT
9 and WASHOE EDUCATION SUPPORT
10 PROFESSIONALS,
11 Respondents.

ITEM NO. 623C

CASE NO. A1-045875

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

12 For Petitioner: Michael E. Langton, Esq.

13 For Respondents: Rick R. Hsu, Esq.
Maupin, Cox & LeGoy

14 Sandra G. Lawrence, Esq.
15 Dyer, Lawrence, Penrose, Flaherty & Donaldson
16

17 This matter having come on for hearing before the State of Nevada Local Govern^{ment}
18 Employee-Management Relations Board ("Board") for deliberations and decision on March 7
19 and 8, 2007, noticed pursuant to NRS and NAC Chapters 288, NRS Chapter 233B, as well as
20 Nevada's Open Meeting Laws, finds, concludes, and orders as follows:

21 I. History of Case.

22 On November 30, 2005, UNITED WE STAND – AFT ("United We Stand") filed a
23 complaint with the Board challenging the recognition of WASHOE EDUCATION SUPPORT T
24 PROFESSIONALS ("WESP") as the proper employee organization for the employees at issue
25 United We Stand also requested an election. Petitioner's identity was changed in a notice date d
26 February 5, 2007 to "United We Stand - AFT."

27 An errata was filed by the Petitioner and WESP filed an answer on or about December
28 19, 2005. WESP also filed a Motion to Dismiss, or in the Alternative, Motion to Strike. Th e

1 motion was denied, and the parties filed their respective prehearing statements. WESP filed a
2 Motion to Strike the prehearing statement filed by United We Stand, which the Board granted.
3 More specifically, the Board ordered that the issues not raised in the Petition were stricken as
4 matters not properly before it.

5 WESP then filed a Motion for Summary Judgment. The motion was denied. A
6 Stipulation was entered into by the parties as to the issues to be presented to the Board. This
7 matter proceeded to hearing.

8 **II. Testimony at Hearing/Relevant Facts**

9 Richard Gitthens, Jr. ("Gitthens") and Cindy Quaglia ("Quaglia") testified at the hearing
10 Gitthens is the President of United We Stand, whereas Quaglia is President of WESP. Quaglia
11 testified that there are 2,773 total employees, and 985 employees pay dues to WESP.

12 WESP has alleged that it disaffiliated with the Nevada Classified School Employees
13 Association in December 2004. United We Stand claims the Washoe County School District
14 should have withdrawn recognition of WESP because of the disaffiliation and that WESP no
15 longer represents the majority of the employees in the bargaining unit.

16 In the prehearing conference, the parties narrowed their issues for consideration by the
17 Board. The issues for consideration by the Board were:

- 18 1. Whether United We Stand – AFT is an employee organization as defined in NRS
19 288.040.
- 20 2. Whether United We Stand – AFT has standing to petition the Board.
- 21 3. Whether United We Stand -- AFT has standing to challenge Washoe County
22 School District's, recognition of Washoe Education Support Professionals ("WESP"), as the
23 exclusive bargaining representative for the school district's employees.
- 24 4. Whether United We Stand -- AFT has standing to petition for an election to select
25 the appropriate bargaining representative for the school district's employees.
- 26 5. Whether WESP has ceased to be supported by a majority of the eligible classified
27 school employees in the bargaining units for which it is recognized by WCSD.

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1 The School District withdrew its two issues. WESP identified four issues most
2 pertaining to whether United We Stand enjoyed the support of the majority of employees in the
3 bargaining unit and what evidence did it have evidencing the majority.

4 United We Stand presented issues pertaining to its right to challenge WESP before the
5 Board, whether it has standing to request an election, and whether WESP no longer had the
6 support of the majority of the bargaining unit at issue.

7 In addition to the Board's consideration of the testimony of the witnesses, it reviewed the
8 documents on file herein, including exhibits, and considered the closing arguments of counsel.
9 All attorneys waived the right to Post-hearing briefs and asked for a bench decision without the
10 benefit of a transcript.

11 FINDINGS OF FACT

12 1. That both United We Stand and WESP are employee organizations and defined in
13 NRS 288.040.

14 2. That United We Stand has standing to bring this administrative matter before the
15 Board.

16 3. That United We Stand has standing to challenge WESP's representation of the
17 bargaining unit at issue. As a matter of fact, United We Stand alleged in its complaint that it
18 obtained over 480 signatures of school employees "who have indicated they do not wish to be
19 represented by" WESP. See complaint, Paragraph 9, p. 3.

20 4. That United We Stand has demonstrated a credible interest in representing the
21 bargaining unit employees.

22 5. That United We Stand has standing to petition this Board for an election.

23 6. That although a serious question has been raised that WESP may not be supported by
24 a majority of the employees, United We Stand has failed to demonstrate that it has majority
25 support. Mr. Gitthens admitted in his testimony that United We Stand does not have the majority
26 support and the Board finds it does not have a good faith doubt as to which organization should
27 represent the employees at issue, requiring an election.

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1 Given the apparent legislative intent of NRS Chapter 288 to promote labor peace and
2 certainty, under the circumstances of this case and in light of the incumbent association being
3 historically in place, the existence of a credible collective bargaining agreement and the good
4 faith recognition of WESP by the employer, the Board finds it should not exercise its discretion
5 to order an election under NRS 288.160, Paragraph 4.

6 7. That the Board finds this resolves all issues of the Petition and renders any other
7 matters moot.

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

10 **CONCLUSIONS OF LAW**

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

14 2. The Washoe County School District is a local government employer as defined in
15 NRS 288.060.

16 3. United We Stand and WESP are employee organizations as defined in NRS 288.040.

17 4. Pursuant to NRS 288.160, an employee organization "may apply to
18 government employer for recognition." If the employee organization is recognized by local
19 government employer, it shall be the exclusive bargaining agent for the employee
20 bargaining unit.

21 5. NRS 288.160(4) allows the Board to order an election if the Board has a good
22 faith doubt "whether any employee organization is supported by a majority of the local gov
23 ernment employees in a bargaining unit." Alternatively, NRS 288.160(3) provides that the local
24 government employer "may" withdraw recognition of a bargaining unit.

25 6. The Board concludes that United We Stand has not demonstrated that it
26 has the support of the majority of the employees in the bargaining units and that the Board simply
27 does not have a "good faith doubt" upon which to order an election.

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1 7. Because of the use of the word "may" in NRS 288.160(3), the Washoe County School
2 District has the discretion to withdraw its recognition of WESP as the representative for the
3 employees in the bargaining unit at issue with written permission of the Board. Since the statute
4 provides the Washoe County School District with discretion, it would exceed this Board's
5 statutory authority to order the Washoe County School District to withdraw its recognition of
6 WESP under the facts presented in this case.

7 8. The Board concludes further that each party shall pay their own fees and costs.

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

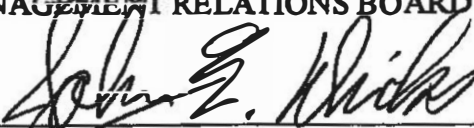
10 **DECISION AND ORDER**

11 Based upon the above, the Board hereby orders as follows:

12 1. IT IS HEREBY ORDERED that this Board will not order an election; that the Washoe
13 County School District "may" withdraw it's recognition of WESP should it decide to use its
14 discretion, however, the Board does not have statutory authority to order such a withdrawal; and
15 each party is to bear their own fees and cost incurred herein.

16 DATED this 12th day of March, 2007.

17 LOCAL GOVERNMENT EMPLOYEE-
18 MANAGEMENT RELATIONS BOARD

19 BY: 
20 JOHN E. DICKS, ESQ., Chairman

21 BY: 
22 JANET TROST, ESQ., Vice-Chairman

23 BY: 
24 JAMES E. WILKERSON, SR., Board Member
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27
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