

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

5 WASHOE COUNTY SCHOOL DISTRICT,)

6 Petitioner,)

ITEM NO. 626A

7 vs.)

CASE NO. A1-045878

8 WASHOE EDUCATION ASSOCIATION
9 and WASHOE EDUCATION SUPPORT
10 PROFESSIONALS,)

DECISION

11 Respondents.)

12 For Petitioner:

C. Robert Cox, Esq.
Rick R. Hsu, Esq.
Maupin, Cox & LeGoy

13 For Respondents:

Sandra G. Lawrence, Esq.
Dyer, Lawrence, Penrose, Flaherty & Donaldson

14 STATEMENT OF CASE

15
16 Washoe County School District ("Petitioner") initiated this action by filing a Petition for
17 Declaratory Order on February 13, 2006 seeking an order determining that their decision to
18 implement direct deposit as the method for payment of employee salary and wages is not within
19 the scope of mandatory bargaining pursuant to NRS 288.110, NAC 288.100, and NAC 288.380.

20 On March 27, 2006, Washoe Education Association and Washoe Education Support
21 Professionals ("Respondents") filed their Response to Petition for Declaratory Order seeking a
22 declaratory ruling that a mandatory direct deposit payroll system is a subject of mandatory
23 bargaining as part of the subject of salary or wage rates or other forms of direct monetary
24 compensation, or because it is significantly related to salary or wage rates or other forms of
25 direct monetary compensation under NRS 288.150(2)(a).

26 On April 7, 2006 Petitioner filed their Reply Points and Authorities in Support of Petition
27 for Declaratory Order. On May 2, 2006 the Board entered an order (Item #626), stating that
28 additional information was needed and ordered a hearing to be scheduled. The Board further

1 ordered that the parties file pre-hearing statements in accordance with NAC 288.250. On May
2 24, 2006 Petitioner filed their Pre-Hearing Statement. On May 26, 2006 Respondents filed their
3 Pre-Hearing Statement.

4 The Board issued a Notice of Hearing in the matter dated June 2, 2006 and held a hearing
5 on June 20, 2006.

6 At the hearing, five witnesses testified: Jill Murdock (RT 11-119), Virginia Doran (RT
7 120-165), Louella Thomas (RT 166-190), Carol Cook (RT 191-205), and Amanda McNulty (RT
8 206-227). At the conclusion of the hearing the matter was taken under submission by the Board.
9 RT 238.

10 FACTUAL BACKGROUND/SUMMARY OF EVIDENCE

11 Testimony at Hearing

12 A. Testimony of Jill Murdock

13 Jill Murdock testified that she is the Senior Accountant and Payroll Manager for the
14 Washoe County School District. RT 12, L1 1-3. She testified that her main responsibilities are to
15 ensure that the employees are paid in accordance with their respective contracts, that they are
16 paid timely and accurately, that the proper taxes and deductions are remitted to the appropriate
17 agencies, that she handles employee complaints, reconciliation of the general ledger accounts,
18 and that she is involved with changes in policies and procedures. RT 12, L1 20-25, RT 13 L1 1-9.
19 She then described how the direct deposit system works. RT 13, L1 10-25, RT 14, L1 1-25, RT
20 15 L1 1-25, RT 16, L11-6. She also described what a pay card is and how that system would
21 work; the differences between pay cards, checks and direct deposit; the types of information
22 required by the school district and the bank; the associated fees with pay cards; the fact that the
23 school district would be requiring all employees to select to receive their paychecks via direct
24 deposit or to be involuntarily required to use a pay card; the problems of fraud, theft, expense,
25 etc. with "live checks"; the locations of Wells Fargo Banks in Northern Nevada; ATM - type
26 transactions vs. credit-type transactions with the pay cards; "live check" wage statements vs.
27 direct deposit wage statements; how employees learned about the intended transfer to a "100
28

1 percent" direct deposit system; and whether this issue had been the subject of negotiation or
2 collective bargaining or just mentioned at an employee informational meeting. RT 16 – 119.

3 B. Testimony of Virginia Doran

4 Virginia Doran testified that she has been the Executive Director of the Washoe
5 Education Association for sixteen years. RT 120, Ll 13-17. She testified that in the past they
6 had collectively bargained for payment by check for a variety of extra duty assignments. RT
7 120-124. She testified that the Association believed that the mandatory change from receiving a
8 paycheck to using direct deposit or a pay card should have been negotiated for and bargained for
9 RT 125 – 127. She also testified that under the current article of the collective bargaining
10 agreement relating to salary, numerous items that do not necessarily just impact the amount
11 someone gets paid had been the subject of negotiation. RT 133-135. Ms. Doran testified that an
12 additional impetus for negotiation relates to the ancillary fees associated with the pay cards. RT
13 135-136. She objected during her testimony to the "employer suggesting that you must go here
14 and you may in fact have fees related because this is where we're putting your money." RT 140
15 Ll 2-5. She testified that there is no current provision that says that employees will be paid for
16 their services by check or direct deposit. RT 142 – 144. She further testified that if a regulation
17 that the school district intended to implement impacted a mandatory subject of bargaining, that
18 the association would demand to bargain over that issue. RT 145, Ll 15-25. She also testified
19 that the Association never raised the issue for negotiation prior to this current issue being raised
20 because the district's former policy allowed for a choice by the employee. RT 145, L 25, RT
21 146, Ll 1-9.

22 C. Testimony of Louella Thomas

23 Louella Thomas testified that she is a School Secretary and that she is a member and Vice
24 President of WESP. RT 166, Ll 17 – 25, RT 167, Ll 1-2. She described how the school
25 distributes the payroll and what the difficulties have been. RT 167 – 169. She testified that she is
26 not in favor of the pay card because of the lack of choice of banks and because of the associated
27 fees. RT 169-170. She testified that she attended the November 22, 2005 meeting, that she
28 raised concerns over the change at that time, and believes that such a change should be subject to

1 negotiation. RT 170 - 171. She testified regarding the amount of time it currently takes to
2 distribute and handle issues related to the payroll checks. RT 174-177. She testified regarding
3 the issue of interpretation of information to non-English speaking employees. RT 177-180
4 Then she testified that even if the paychecks were to be changed to direct deposit transfers, that
5 she would still have to take the time to distribute employee wage statements. RT 181-182.

6 D. Testimony of Carol Cook

7 Carol Cook testified that she is a Teacher's Aide. RT 191, L117-25. She testified that she
8 preferred to receive "live checks" rather than have her payment made by direct deposit because
9 she could not afford to maintain a minimum checking balance with a bank. RT 192-194. She
10 also testified that she only works nine months out of the year, so she had to close her bank
11 account for inactivity during the three months when she did not receive a paycheck. RT 194,
12 L110-13. She testified that she informed WESP of her concerns regarding the change to the
13 direct deposit system and the associated bank fees. RT 195 - 201.

14 E. Testimony of Amanda McNulty

15 Amanda McNulty testified that she is a Physical Education Teacher. RT 207, L1 1-5.
16 She testified that she does not like direct deposit because she wants to control where her money
17 goes, she wants to make sure that the check is correct and that appropriate amounts are being
18 deducted for taxes, etc. RT 207-208. She also stated that she does not like the pay card concept
19 nor does she like Wells Fargo as a bank. RT 211 -213. She also testified that the first time she
20 had been informed that there was an alternative to the direct deposit system, that being the pay
21 card, was at the time of this hearing. RT 214-215.

22 **FINDINGS OF FACT**

- 23 1. Respondents are organizations as defined by NRS 288.040.
24 2. Petitioner and Respondents were at all times relevant herein parties to collective
25 bargaining agreements.
26 3. That Petitioner unilaterally determined that it was in their best interests to change
27 the way in which its' employees would be paid.

28 ///

1 4. That Petitioner intends to unilaterally change the payment system from one that
2 consisted of a choice of receiving a paycheck or having the monies deposited into a checking
3 account via direct deposit; into a system where the employees have no choice other than to
4 receive their pay via direct deposit, or be subject to having their monies placed onto a pay card.

5 5. That Petitioner has to date not fully informed its employees about the system, its
6 requirements, associated fees, etc.

7 6. That the Petitioner has not negotiated this unilateral change with the Respondents.

8 **CONCLUSIONS OF LAW**

9 1. The Local Government Employee Management Relations Board ("the Board")
10 has jurisdiction over this matter, as the dispute is between a local government employee and an
11 employee organization and alleges prohibited practices under NRS 288.150/breach of duty to
12 negotiate in good faith.

13 2. NRS 288.150 requires that an employer negotiate with a recognized employee
14 organization, specifically NRS 288.150 (2)(a) requires that "every local government employer
15 shall negotiate in good faith through one or more representatives of its own choosing concerning
16 the mandatory subjects of bargaining set forth in subsection 2 with the designated representatives
17 of the recognized employee organization, if any, for each appropriate bargaining unit among its
18 employees. If either party so requests, agreements reached must be reduced to writing. 2. The
19 scope of mandatory bargaining, *inter alia*, is limited to: (a) Salary or wage rates or other forms of
20 direct monetary compensation.

21 3. That the Board has unanimously determined that the Petitioner's mandatory direct
22 deposit payroll system is a subject of mandatory bargaining as part of the subject of salary or
23 wage rates or other forms of direct monetary compensation, or because it is significantly related
24 to salary or wage rates or other forms of direct monetary compensation under NRS
25 288.150(2)(a).

26 4. That in the matter of *Truckee Meadows Fire Protection District vs. International*
27 *Association of Fire Fighters, Local 248*, 109 Nev. 367, 849 P. 2d 343 (1993) the Nevada

1 Supreme Court held that it was proper for the Board to apply the "significantly related" test to
2 determine whether a particular subject was a mandatory subject of collective bargaining.

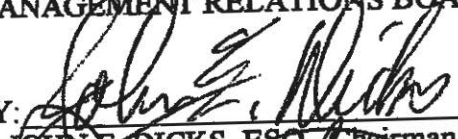
3 **DECISION AND ORDER**

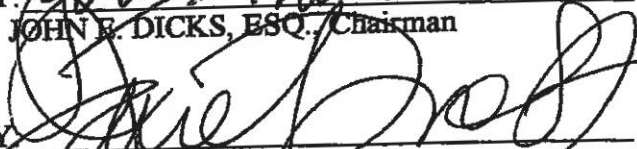
4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that after consideration of
5 the testimony and evidence presented at the hearing, it is the Board's determination that the
6 District's direct deposit and pay card systems are mandatory subjects of bargaining under NRS
7 288.150(2)(a) and the Board encourages the parties in accordance therewith to negotiate any
8 matters related to it.


9 IT IS FURTHER ORDERED that each side shall bear their own attorney's fees and
10 costs.

11 DATED this 22nd day of August, 2006.

12 LOCAL GOVERNMENT EMPLOYEE-
13 MANAGEMENT RELATIONS BOARD

14 BY: 
15 JOHN E. DICKS, ESQ., Chairman

16 BY: 
17 JANET TROST, ESQ., Vice-Chairman

18 BY: 
19 JAMES E. WILKERSON, SR., Board Member
20
21
22
23
24
25
26
27
28