

FEB 23 2016

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

EDUCATION SUPPORT
EMPLOYEES ASSOCIATION

Complainant,

v.

CLARK COUNTY SCHOOL
DISTRICT,

Respondent.

CASE NO. 2015-008

ORDER**ITEM NO. 813**

On December 10, 2015, the members of the Local Government Employee Management Relations Board (the "Board") conducted an evidentiary hearing to address allegations that Respondent Clark County School District (the "District") engaged in a prohibited labor practice in violation of NRS 288.150 and NRS 288.270(1)(e). Complainant Education Support Employees Association (the "ESEA") is the public sector union that represents certain persons employed in the classified service of the District. These persons consist of bus drivers and non-teacher support staff.

The District was represented by Carrie S. Bourdeau, Esq., with the District's Office of the General Counsel. The ESEA was represented by Jessica C. Prunty, Esq., with the law firm of Dyer, Lawrence, Flaherty, Donaldson & Prunty.

At the hearing on December 10, 2015, the Board received in evidence Joint Exhibits 1 through 21, and took official notice of the collective bargaining agreement entitled "Negotiated Agreement between the Clark County School District and the Education Support Employees Association 2013-2015" (the "Agreement"). Additionally, the Board heard sworn witness testimony from two witnesses and adopted a set of stipulated facts.

Following the hearing on December 10, 2015, the Board accepted and reviewed post-hearing briefs. On February 9, 2016, the Board reconvened, deliberated, and verbally announced its decision. Pursuant to NRS 233B.125, the Board now issues written findings of fact and conclusions of law as follows:

FINDINGS OF FACT

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2 1. Pursuant to NRS 288.110 and NRS 288.280, the Board has jurisdiction to adjudicate this
3 matter.

4 2. The District employs school bus drivers and support staff on a full-time basis during
5 each school year. These persons are employed in the classified service of the District. This means that
6 they accrue sick leave, enjoy a measure of job security, and receive certain employment benefits.

7 3. As members of the ESEA, the District's bus drivers and support staff are covered by the
8 terms of the Agreement. The terms of the Agreement address enumerated employment benefits that are
9 mandatory subjects of collective bargaining.

10 4. Pursuant to NRS 288.150(2), sick leave is a mandatory subject of collective bargaining.
11 This means that the District must negotiate in good faith with the ESEA concerning any proposed
12 modifications to the District's policies governing the accrual and use of sick leave by the District's
13 classified employees.

14 5. The school year does not include the summer months. During the summer months, the
15 District's school bus drivers do not receive a regular pay check.

16 6. To give school bus drivers an opportunity to work and receive a pay check during the
17 summer months, the District created several part-time jobs that it refers to as "temporary summer
18 assignments."

19 7. Persons employed in temporary summer assignments do not accrue sick leave and do not
20 receive other benefits associated with classified employment during the school year.

21 8. Temporary summer assignments include positions washing school buses, assisting with
22 the repair and maintenance of school buses, and answering telephones.

23 9. Until the summer of 2013, the District offered temporary summer assignments to school
24 bus drivers on the basis of their seniority within the classified service of the District. In other words,
25 the District prioritized offers of employment to the temporary summer assignments according to the
26 length of time in which each of the applicants had served in the classified service of the District.

27 10. Beginning in the summer of 2013, the District added additional criteria for prioritizing
28 offers of employment to persons seeking temporary summer assignments. The additional criteria

1 included consideration of recommendations from an applicant's supervisor, performance evaluations of
2 the applicant, disciplinary actions taken against the applicant, and the applicant's use of sick leave
3 during the preceding school year.

4 11. At issue in this case is the criterion relating to the applicant's usage of sick leave. This
5 criterion pertained to applicants who had used 6 or more days of sick leave during the preceding school
6 year. Applicants in this category lost their priority status in the hiring process.

7 12. The ESEA alleges that the District engaged in a prohibited labor practice by virtue of
8 having failed to negotiate with the ESEA in regards to the District's consideration of sick leave usage as
9 a criterion for hiring bus drivers to temporary summer assignments.

10 13. The District maintains that it has the right, as set forth at NRS 288.150(3), to make
11 hiring decisions without submitting its associated hiring criteria to collective bargaining. The District
12 further maintains that the decision to place one of its classified employees in a temporary summer
13 assignment is a hiring decision.

14 CONCLUSIONS OF LAW

15 1. The District is a "local government employer" as that term is defined by NRS 288.060.
16 The ESEA is a recognized "employee organization" as that term is defined by NRS 288.040.

17 2. Pursuant to NRS 288.150(1), a local government employer must negotiate in good faith
18 with a recognized employee organization regarding enumerated subjects of mandatory bargaining. The
19 enumerated subjects of mandatory bargaining include changes or modifications to an employer's
20 policies and procedures governing the accrual and use of sick leave by its employees. NRS 288.150(2).

21 3. Notwithstanding the provisions NRS 288.150(1) & (2), a local government employer has
22 no obligation to negotiate with an employee organization in regards to its hiring decisions. NRS
23 288.150(3). In this regard, the local government employer enjoys "the right to hire, direct, assign or
24 transfer an employee, but excluding the right to assign or transfer an employee as a form of discipline."
25 Id.

26 4. Additionally, it should be noted that a local government employer has no obligation to
27 negotiate with an employee organization regarding positions or employees not covered by the collective
28 bargaining agreement between the employer and the organization. In other words, the scope of the

1 collective bargaining agreement ultimately defines the rights and responsibilities of the parties to the
2 agreement. *See* NRS 288.033.

3 5. Here, it is not clear whether certain of the positions designated as temporary summer
4 assignments are covered by the terms of the Agreement. At least one of the positions, namely the
5 position designated as Vehicle Maintenance Technician Assistant, appears to be covered by the terms of
6 the Agreement. This suggests that persons employed in this position may be entitled to employment
7 benefits notwithstanding the designation of the position as a temporary summer assignment.

8 6. Conversely, it appears that other positions may not be covered by the Agreement.
9 Accordingly, employees outside the scope of the Agreement would appear to include those hired to
10 wash busses and answer telephones during the summer months.

11 7. At any rate, the parties have not addressed the scope of the Agreement, nor taken a
12 position regarding the various temporary summer positions that may or may not be covered by the
13 terms of the Agreement. In summary, the parties have confined their arguments to the meaning and
14 application of NRS 288.150. Accordingly, the Board will address these arguments only.

15 8. Given the facts of this case, it is the opinion of the Board that NRS 288.150(3)
16 supersedes the provisions of NRS 288.150(1) & (2). In other words, it is the opinion of the Board that
17 the District enjoys an absolute right to make hiring decisions free from any obligation to negotiate with
18 the ESEA regarding the District's hiring criteria.

19 9. In closing, the District may adopt whatever reasonable criteria it deems appropriate to
20 facilitate its hiring decisions. These criteria are not subject to collective bargaining. In making its
21 hiring decisions for temporary summer assignments, the District reasonably considered sick leave usage
22 as a criterion for ranking applicants in order of priority.

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1 DECISION

2 NOW, THEREFORE, in light of the foregoing Findings of Fact and Conclusions of Law, the
3 Board finds in favor of Respondent Clark County School District. Complainant Education Support
4 Employees Association shall take nothing by its Complaint. Each party shall bear its own costs and
5 attorney's fees.

6 DATED the 23rd day of February, 2016.

7 LOCAL GOVERNMENT EMPLOYEE-
8 MANAGEMENT RELATIONS BOARD

9
10 BY:


PHILLIP E. LARSON, Chairman

11
12 BY:


BRENT C. ECKERSLEY, ESQ.
Vice-Chairman

13
14 BY:


SANDRA MASTERS, Board Member

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Local Government Employee-Management
3 Relations Board, and that on the 23rd day of February 2016, I served a copy of the foregoing ORDER
4 by mailing a copy thereof, postage prepaid to:

5 Jessica Prunty, Esq.
6 Dyer, Lawrence, Flaherty, Donaldson & Prunty
7 2805 Mountain Street
8 Carson City, NV 89703

9 Carrie Bourdeau, Esq.
10 Office of the General Counsel
11 Clark County School District
12 5100 W. Sahara Avenue
13 Las Vegas, NV 89146

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15 _____
16 MARISU ROMUALDEZ ABELLAR
17 Executive Assistant
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