

FILED

DEC 27 2016

**STATE OF NEVADA
E.M.R.B.**

**STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD**

NEVADA STATE EDUCATION
ASSOCIATION,

Complainant,

v.

SILVER STATE CHARTER SCHOOLS,

Respondent.

Case No. 2016-012

ORDER

ITEM NO. 819

On December 12, 2016, this matter came before the State of Nevada, Local Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Local Government-Management Relations Act (the "Act"); NAC Chapter 288 and NRS Chapter 233B.

On November 8, 2016, an Amended Notice of Oral Argument and Briefing Schedule was issued as the parties agreed, at the pre-hearing conference previously conducted on August 10, 2016, that there were no material facts in dispute and that the matter could be resolved upon the submittal of briefs, to be followed by oral argument if either party requested. Neither party requested oral argument.

The parties also submitted a Stipulation and Motion for Issues for Briefing and Argument. The Board approved said Stipulation and Motion at the properly noticed meeting pursuant to Nevada's open meeting laws and Administrative Procedures Act. As such, the Board confines its order to the following stipulated issues by the parties:

1. Did NSEA give timely notice to SSCS of its intent to negotiate pursuant to NRS 288.180(1)?
2. Does NRS 288.180(1) require a newly recognized bargaining agent for teachers or educational support personnel to provide notice of intent to bargain by January 1st?
3. Did SSCS bargain in good faith as required by NRS 288.280(1)(e)?

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1 Nevada State Education Association (“NSEA”) is an employee organization recognized as the
2 exclusive representative and bargaining agent of the teachers of Silver State Charter Schools (“SSCS”).
3 NSEA was recognized as the bargaining agent for the teachers of SSCS on December 17, 2015. On
4 January 8, 2016, NSEA’s Director submitted written notice to SSCS requesting that the two entities
5 engage in collective bargaining discussions for the 2016 fiscal year. No collective bargaining
6 negotiations have taken place between SSCS and NSEA since the recognition of NSEA as the
7 bargaining agent for the teachers.

8 Senate Bill 241 (“SB 241”) amended NRS 288.181 in 2015. Prior to said amendment, NRS
9 288.180(1) stated as follows:

10 Whenever an employee organization desires to negotiate concerning any
11 matter which is subject to negotiation pursuant to this chapter, it shall give
12 written notice of that desire to the local government employer. Except as
13 otherwise provided in this subsection, if the subject of negotiation requires
the budgeting of money by the local government employer, the employee
organization shall give notice on or before February 1.

14 Neither party disputes that the current amended version of NRS 288.180(1) applies. NRS
15 288.180(1) currently states:

16 Whenever an employee organization desires to negotiate concerning any
17 matter which is subject to negotiation pursuant to this chapter, it shall give
18 written notice of that desire to the local government employer. Except as
19 otherwise provided in this subsection, if the subject of negotiation requires
20 the budgeting of money by the local government employer, the employee
21 organization shall give notice on or before February 1. If an employee
22 organization representing teachers of educational support personnel desires
23 to negotiate concerning any matter which is subject to negotiation pursuant
24 to this chapter, it shall give the notice required by this subsection on or
25 before January 1.

26 Neither party disputes that NSEA represents teachers or educational support personnel.

27 Our Supreme Court stated in *Del Papa v. Bd. of Regents of the Univ. & Community College Sys. of*
28 *Nevada*, 114 Nev. 388, 392, 956 P.2d 770, 774 (1998), that when “the language of a statute is plain and
unambiguous, and its meaning is clear and unmistakable, there is no room for construction, and the courts
are not permitted to search for its meaning beyond the statute itself.” *See also Alsenz v. Clark Co. Sch.*
Dist., 109 Nev. 1062, 1065, 864 P.2d 285 (1993) (“This Court has long held that statutes should be given

1 their plain meaning.”); *Building & Const. Trades Council v. State Public Works Bd.*, 108 Nev. 605, 610,
2 836 P.2d 633 (1992) (“When a statute is susceptible to but one natural or honest construction, that alone is
3 the construction that can be given.”); *Hartz v. Mitchell*, 107 Nev. 893, 897, 822 P.2d 667 (1991) (“When
4 the language of a statute is plain and unambiguous, a court may not add to or extend its ordinary
5 meaning.”). In further support of the “plain and unambiguous” doctrine, in *Worldcorp. v. State, Dept. of*
6 *Taxation*, 113 Nev. 1032, 1035-36, 944 P.2d 824, 826 (1997), the court stated, “[I]t is well settled in
7 Nevada that when statutory language is clear on its face, its intention must be deduced from such
8 language.” Furthermore, in *State Indus. Ins. Sys. v. Bokelman*, 113 Nev. 1116, 1122, 946 P.2d 179, 183
9 (1997), the court added, “[W]hen the language of a statute is plain and unambiguous, such that the
10 legislative intent is clear, a court should not ‘add to or alter the language to accomplish a purpose not on
11 the face of the statute”

12 NRS 288.180(1) (**emphasis added**) states that “[i]f an employee organization representing
13 teachers of educational support personnel desires to negotiate concerning **any matter** which is subject
14 to negotiation pursuant to this chapter, its shall give the notice required by this subsection **on or before**
15 **January 1.**” The Board finds that the statute is plain and unambiguous, and its meaning is clear and
16 unmistakable. The amended statute clearly provides that if an employee organization representing
17 teachers desires to negotiate concerning **any matter** then it must give written notice on or before
18 January 1. *See also Nev. Comm'n on Ethics v. JMA/Lucchesi*, 110 Nev. 1, 9–10, 866 P.2d 297, 302
19 (1994) (stating that “[i]t is a well-settled principle of statutory construction that statutes using the word
20 ‘may’ are generally directory and permissive in nature, while those that employ the term ‘shall’ are
21 presumptively mandatory.”).

22 Here, it is undisputed that NSEA did not provide notice of its intent to negotiate until January 8,
23 2016, after the deadline imposed by NRS 288.180(1) had passed. As such, SSCS is generally correct in its
24 contention that it was under no obligation to engage in negotiation as NSEA’s notice was untimely. *See*
25 *generally Mason Valley Firefighters Ass’n, IAFF, Local 4642 v. Mason Valley Fire Prot. Dist.*, EMRB
26 *Case No. 2015-015, Item No. 806 (2015)*; *Clark County Public Employees Ass’n, SEIU Local 1107 v.*
27 *Housing Auth. Of the City of Las Vegas*, EMRB *Case No. A1-045478, Item No. 270 (1991)*; *see also*
28 *United Elec., Radio & Mach. Workers of Am. (UE) v. N.L.R.B.*, 986 F.2d 70, 76 (4th Cir. 1993).

1 However, NSEA argues that the January 1 deadline is inapplicable in the instant case due to the
2 fact that NSEA was recently recognized. NSEA primarily relies on two prior board decisions and argues
3 that those decisions support its argument. The Board disagrees.

4 On page 6 of NSEA's Opening Brief in this matter, it cites to the 1991 decision of the Board in the
5 matter of *Clark County Public Employees Ass'n, SEIU Local 1107 v. Housing Auth. of the City of Las*
6 *Vegas*, EMRB Case No. A1-045478, Item No. 270 (1991). In that matter, an issue before the Board was
7 whether a notice of an intent to negotiate was timely due to the association's recognition occurring after
8 the deadline to provide notice. The Board explained, in pertinent part:

9 Application of that part of NRS 288.180(1) requiring the employee
10 organization to give notice of its desire to negotiate concerning subjects
11 which will necessitate the budgeting of money on or before February 1, is
12 somewhat different for employee organizations with existing labor
13 agreements, as compared to newly certified and/or recognized employee
14 organizations filing notice of their desire to negotiate an initial labor
15 agreement, such as the instant case. In the former case, NRS 288.180(1)
16 operates as a statutory bar to prevent the employee organization from
17 reopening negotiations during mid-term. This is to enable the local
18 government employer to actuate budgeting processes mandated by the
19 statute to provide for any additional funding which may be required as a
20 result of negotiations. To interpret this requirement as precluding an
21 employee organization, newly certified and/or recognized **subsequent to**
22 **February 1**, from requesting negotiations concerning matters requiring the
23 budgeting of money, would render said certification and/or recognition
24 essentially meaningless until the fiscal year which follows said certification
25 and/or recognition. Such interpretation would be unreasonable and contrary
26 to the purpose of NRS 288.180(1).

27 *Clark County Public Employees Ass'n*, EMRB Case No. A1-045478, at 16 (underline in original, **bold**
28 added).

29 While this case dealt with the prior version of NRS 288.180(1), its analysis is applicable in the
30 instant matter. In that case, *Clark County Public Employees Ass'n*, the Board held that the deadline did
31 not apply as the newly certified and/or recognized association was recognized "subsequent to February 1"
32 – the deadline for notice required for negotiation which requires the budgeting of money. Here, it is
33 undisputed that that NSEA was recognized prior to the January 1 deadline, not subsequent thereto. As
34 indicated above, the statute is plain and unambiguous on its face and requires an employee organization
35 representing teachers to give notice on or before January 1 if it desires to negotiate "concerning any

1 matter”. As it is undisputed that NSEA was recognized as the bargaining agent for the teachers of
2 SSCS on December 17, 2015, prior to the January 1 deadline, that deadline applied to NSEA, and the
3 Board’s prior cases are in harmony with this determination, in addition to the plain language of the
4 statute itself.

5 The Board’s more recent decision of *Mason Valley Firefighters Ass’n, IAFF, Local 4642 v.*
6 *Mason Valley Fire Prot. Dist.*, EMRB Case No. 2015-015, Item No. 806 (2015), also advanced by both
7 parties, further supports this conclusion. As in the matter of *Clark County Public Employees Ass’n*, the
8 association seeking to negotiate with the employer was certified after the February 1 deadline for
9 negotiation requiring the budgeting of money. As such, these cases support the proposition that if an
10 organization is recognized **after** the deadline required per the subject statute, that deadline could be
11 inapplicable as “the Association had not been recognized and thus there was no basis to request
12 negotiations.” *Mason Valley Firefighters Ass’n*, EMRB Case No. 2015-015, at 2.

13 As such, not only do these prior cases not conflict with the Board’s determination that the plain
14 language of the statute applies in the instant matter, these cases support this determination as here
15 NSEA had been recognized and thus there was a basis to request negotiations. *See id.*

16 Therefore, the Board finds that NSEA did not give timely notice to SSCS of its intent to
17 negotiate pursuant to NRS 288.180(1). In regards to the second stipulated issue before the Board, the
18 Board finds that NRS 288.180(1) does require a newly recognized bargaining unit for teachers or
19 educational support personnel to provide notice of intent to bargain by January 1 if the unit was
20 recognized prior to that date. Finally, the Board finds that SSCS was not required to bargain in good
21 faith as the notice was untimely.

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1 **FINDINGS OF FACT**

2 1. NSEA is an employee organization recognized as the exclusive representative and
3 bargaining agent of the teachers of SSCS.

4 2. NSEA was recognized as the bargaining agent for the teachers of SSCS on December 17,
5 2015.

6 3. On January 8, 2016, NSEA's Director submitted written notice to SSCS requesting that
7 the two entities engage in collective bargaining discussions for the 2016 fiscal year.

8 4. If any of the foregoing conclusions is more appropriately construed as a conclusion of
9 law, it may be so construed.

10 **CONCLUSIONS OF LAW**

11 1. The Board is authorized to hear and determine complaints arising under the Local
12 Government Employee-Management Relations Act.

13 2. The Board has exclusive jurisdiction over the parties and the subject matters of the
14 Complaint on file herein pursuant to the provisions of NRS Chapter 288.

15 3. NRS 288.180(1) is plain and unambiguous, and its meaning is clear and unmistakable,
16 and provides that if an employee organization representing teachers desires to negotiate concerning any
17 matter then it must give written notice on or before January 1.

18 4. NSEA did not give timely notice to SSCS of its intent to negotiate pursuant to NRS
19 288.180(1).

20 5. NRS 288.180(1) does require a newly recognized bargaining unit for teachers or
21 educational support personnel to provide notice of intent to bargain by January 1st if the unit was
22 recognized prior to that date.

23 6. SSCS was not required to bargain in good faith as the notice was untimely.

24 7. If any of the foregoing conclusions is more appropriately construed as a finding of fact, it
25 may be so construed.

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ORDER

Based on the foregoing, it is hereby ordered that the Board finds in favor of Respondent Silver State Charter Schools as set forth above. Complainant Nevada State Education Association shall take nothing by way of its Complaint.

DATED this 27th day of December 2016.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: 
PHILIP LARSON, Chairman

By: 
BRENT ECKERSLEY, ESQ., Vice-Chairman

By: 
SANDRA MASTERS, Board Member

