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OPINION NO. 2017-13

SCHOOL DISTRICTS (PUBLIC); COLLECTIVE BARGAINING; PLACEMENT OF TEACHERS:
Local school precincts have the ability to select their own teachers pursuant to section 16(2) of Assembly Bill (AB) 469, 79th Session of the Nevada Legislature (2017). The obligation of a school district to negotiate with union representatives in regards to "the policies for the transfer and reassignment of teachers" does not limit the local precinct's right to select its own teachers.

Steve Canavero, Ph.D.
Superintendent of Public Instruction
State of Nevada Department of Education
700 E. Fifth Street
Carson City, Nevada 89701

Dear Superintendent Canavero:

You have requested an opinion from this office regarding a large school district's ability to place teachers in a school despite the objection of the school principal. More specifically, your question concerns the extent to which collective bargaining rules may limit the principal's autonomy to make teacher placement decisions for a local school precinct within the large school district.

Although legislative enactments in 2015 and 2017 contemplate significant autonomy for local school precincts, these enactments have not expressly modified or amended the collective bargaining rules set forth at NRS 288.150. Of interest here is a rule which states that the school district, as opposed to local school precincts, must negotiate in good faith with union representatives in regards to "the policies for the transfer and reassignment of teachers." NRS 288.150(2)(u). As discussed below, this rule is not in conflict with recent legislation that grants to local school precincts the authority to make certain teacher placement decisions.

BACKGROUND

Assembly Bill No. 394 of the 78th Session of the Nevada Legislature (2015) created an advisory committee of legislators to develop a plan and recommendations to reorganize the Clark County School District into local school precincts. Act of June 11, 2015, ch. 543, § 25, 2015 Nev. Stat. 3847 (A.B. 394). It further directed the State Board of Education to adopt regulations for the implementation of the plan. *Id.* at § 28(4), p. 3850. The regulations were adopted and became effective on September 9, 2016 as LCB file R142-16. Section 14(2) of R142-16 required the Clark County Superintendent to transfer to each local school precinct the authority to select teachers for the precinct. The legislature subsequently incorporated this provision of R142-16 into Assembly Bill No. 469 of the 79th Session of the Nevada Legislature (2017). Act of May 8, 2017, ch. 11, § 16, 2017 Nev. Stat. 43 (A.B. 469).

In counties with a population of 100,000 or more pupils, the Superintendent of Public Instruction is charged with taking such actions as deemed necessary and appropriate to ensure that each large school district carries out the reorganization as specified in A.B. 469. *Id.* at § 33, p. 55. Accordingly, on October 12, 2017, the Superintendent of Public Instruction informed the Superintendent of Clark County School District that:

> Sec 16 (3) of AB 469 requires CCSD to negotiate the salaries, benefits and other conditions of employment of administrators, teachers and other staff necessary for the operation of the local school precinct. While the authority to negotiate the contract remains central, AB 469 clearly states that the principal of a local school precinct has

> authority over the selection of teachers, other administrators, and other staff under the direct supervision of the principal, as well as input on the placement of central service staff assigned to their school (e.g., Sec. 24 (2); Sec. 16 (2) (4) (6)). Therefore, any contract approved after AB 469 became effective on May 8, 2017 must include provisions complying with AB 469. This direction, in other words, mandated that school principals hold and exercise authority to hire teachers in their respective schools.

Letter from Steve Canavero, Ph.D., Superintendent of Public Instruction to the Superintendent of Clark County School District (October 12, 2017).

As noted above, however, there is tension between section 16 of A.B. 469, which requires that placement decisions be made by local school precincts, and NRS 288.150(2)(u), which requires the school district to negotiate in good faith with designated representatives of the recognized employee organizations regarding "the policies for the transfer and reassignment of teachers." The Superintendent of Public Instruction now seeks clarification regarding whether NRS 288.150(2)(u) allows the Superintendent of Clark County to place a teacher in a school without the consent of a local school precinct.

QUESTION

Can a school district with a population of 100,000 or more pupils negotiate an agreement with the representatives of its teachers that would allow the district to assign a teacher to a local school precinct without the consent of the local school precinct?

ANALYSIS

When two statutes are clear and unambiguous but conflict with each other when applied to a specific factual situation, an ambiguity is created and a court will attempt to reconcile the statutes. *Szydel v. Markman*, 121 Nev. 453, 457, 117 P.3d 200, 202-03 (2005). In doing so, the court will attempt to read the statutory provisions

in harmony, provided that this method of interpretation does not violate legislative intent. *City Council of Reno v. Reno Newspapers*, 105 Nev. 886, 892, 784 P.2d 974, 978 (1989). Additionally, courts consider "the policy and spirit of the law and will seek to avoid an interpretation that leads to an absurd result." *City Plan Dev. v. State, Labor Comm'r*, 121 Nev. 419, 435, 117 P.3d 182, 192 (2005). Consequently, section 16 of A.B. 469 should be read in harmony with NRS 288.150(2)(u) if possible.

In addition to the transfer and reassignment of teachers, NRS 288.150 provides an extensive list of topics that must be the subject of collective bargaining between a local government employer and recognized employee organizations. Many of the categories that are subject to collective bargaining under NRS 288.150 are also subject to other state or federal laws that narrow the permissible scope of negotiations. For instance, while safety of the employee must be bargained, Chapter 618 of the Nevada Revised Statutes (NRS) establishes significant health and safety minimums that apply to local government employers. NRS 288.150(2)(r), 618.095. Additionally, while holidays must be collectively bargained, certain holidays must be taken by public schools in Nevada. NRS 288.150(2)(d), 236.015. That these statutory obligations operate independently of the collective bargaining process has been recognized in Nevada with regard to workers' compensation: "[t]he obligation to pay compensation benefits and the right to receive them exist as a matter of statute independent of any right established by contract." *MGM Grand Hotel-Reno, Inc. v. Insley*, 102 Nev. 513, 518, 728 P.2d 821, 824 (1986). Thus, NRS 288.150's mandate to bargain certain items does not require unlimited bargaining, but bargaining within the confines of other applicable laws. *Id.* Accordingly, a law that restricts the ability of the parties to collectively bargain a specific aspect of the employment relationship is not necessarily in conflict with NRS 288.150 so long as some ability to collectively bargain remains.

A.B. 469 requires the Superintendent of a large school district to relinquish the authority to select teachers for a local school precinct. However, NRS 288.150(2)(u) requires the parties to collectively bargain policies of transfer and reassignment of teachers. So the question that must be answered is, "are there areas of reassignment or transfer of teachers that do not impact a local school precinct's ability to select its teachers?" According to A.B. 469, the local school precinct must have the ability to select the teachers who will be assigned to the precinct. This grant of limited autonomy to the school precinct does not conflict with the collective

bargaining responsibilities of the school district so long as teachers are employed by the district in positions other than assignment to a local school precinct. Under these circumstances, the school district retains some of its collective bargaining responsibilities under NRS 288.150(2)(u), while the local school precinct acquires the ability to select the teachers who will be assigned directly to the precinct.

Though teachers most often work in classrooms teaching students, teachers do enjoy greater job diversity. In addition to assigning teachers to work with students in classrooms, many districts, including large school districts in Nevada, use teachers in ways other than assignment to a specific classroom. These teachers are referred to by many names such as Teachers on Special Assignment (TOSAs), instructional coaches, or project facilitators. Clark County School District currently employs some 1,255 of these teachers, while Washoe County employs 417.[1] They may be assigned to local school precincts, or more importantly for the purpose of this opinion, to the district itself.[2] A.B. 469 does not require the superintendent of a large school district to transfer the authority to select teachers employed as TOSAs, instructional coaches, or project facilitators assigned to the District, so NRS 288.150(2)(u) still applies to transfer and reassignment into those positions.

Notably, the legislature has created multiple exemptions to NRS 288.150(2)(u) and may choose to do so again in the future, indicating a legislative intent to abrogate this collective bargaining provision when other legislative initiatives conflict with it.[3] While both NRS 288.150(2)(u) and A.B. 469 implicate the ability to decide which teacher is placed in a specified school, A.B. 469 creates a special set of responsibilities and prerogatives that must be transferred to local school precincts. NRS 288.150(2)(u) applies more generally to collective bargaining for all teachers. When a general and a special statute, each relating to the same subject, are in conflict and they cannot be read together, the special statute controls. *See Western Realty Co. v. City of Reno*, 63 Nev. 330, 344, 172 P.2d 158, 165 (1946);

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[1] Each District within the state is required to submit to the Department information regarding the designated assignment of each licensed employee by NRS 391.120.

[2] Department records indicate Clark County has 530 teachers assigned to the District itself while Washoe County has 309.

[3] Exemptions for turnaround schools and achievement school district schools have been created previously. NRS 288.150(7) and (9).

Ronnow v. City of Las Vegas, 57 Nev. 332, 365, 65 P.2d 133, 146 (1937); *State ex rel. Nevada Tax Commission v. Boerlin*, 38 Nev. 39, 45, 144 P. 738, 740 (1914). Additionally, when statutes are in conflict, the one more recent in time controls over the provisions of an earlier enactment. *See Marschall v. City of Carson*, 86 Nev. 107, 115, 464 P.2d 494, 500 (1970); *State ex rel Nevada Douglass Gold Mines, Inc. v. District Court*, 51 Nev. 330, 333, 275 P. 1, 1 (1929); *Thorpe v. Schooling*, 7 Nev. 15, 17 (1871). For these reasons, even if the two provisions could not be read in harmony, A.B. 469 would govern the selection of teachers for assignment to local school precincts. But since there is no actual conflict, A.B. 469 is properly construed as having narrowed the scope of collective bargaining on the subject of teacher transfer and reassignment.

CONCLUSION

Based on the foregoing, Nevada's statutes do not allow a district to assign a teacher to a local school precinct without the consent of the local school precinct. A.B. 469 delegates to local school precincts the authority to select teachers for assignment to those precincts, and large school districts have no ability to bargain that authority away. Any provision in a collective bargaining agreement executed after the effective date of A.B. 469 which would waive or modify a local school precinct's authority to select teachers for assignment to the precinct would be unenforceable against the precinct. *See MGM Grand Hotel-Reno*, 102 Nev. at 518.

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