

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1285,)	
)	
Appellant, ¹)	
)	No. 87304
vs.)	
)	
CITY OF LAS VEGAS, NEVADA, a municipal corporation,)	
)	
Respondent.)	

DECISION

This appeal was filed seeking an order of the Board directing the respondent to recognize the appellant as the exclusive negotiating representative for a supervisory negotiating unit composed of the Battalion Chiefs, Drillmasters, Fire Alarm Superintendents and Fire Equipment Mechanics in the Las Vegas Fire Department.

By letter dated September 9, 1973, the appellant notified the respondent of its desire to represent the four categories of supervisory personnel in a separate negotiating unit within the appellant; the appellant is currently recognized as the exclusive negotiating representative for a non-supervisory unit within the Department. Attached to the letter were signature cards as proof that the individuals holding these positions were members of the appellant and had been such for several years. The appellant also

1. The legal documents filed in this case employed the terms "complaint" and "complainant"; these designations have been changed to "appeal" and "appellant" to reflect the statutory language of NRS 288.170(2) that the aggrieved employee organization may "appeal" to the Board.

stated that the recognition documentation required by NRS 288.160 was on file with the respondent, but, would, if necessary, be duplicated for this unit. The request was reiterated by letter dated October 9, 1973.

The respondent, through the Mayor Pro Tem, replied to the request on October 17, 1973, stating that the City had been advised against taking any action on the matter as the issue was currently the subject of litigation. Through counsel, the appellant, on October 23, 1973, again requested recognition of the separate supervisory unit in conformity with this Board's decision in In the Matter of Local 731 of I.A.F.F. and the City of Reno for Determination of Bargaining Unit, Decision #4. rendered March 6, 1972.

On November 13, the appellant filed written notification of intent to negotiate regarding wages, hours and conditions of employment as required by NRS 288.180. The respondent's chief negotiator responded on November 19 with a proposed date and location for the commencement of negotiations.

After the negotiations had started, on December 21, the appellant was notified by the respondent that it would not recognize the appellant as the exclusive negotiating representative for the supervisory unit composed of Battalion Chiefs, Drillmasters, Fire Alarm Superintendents and Fire Equipment Mechanics.

This appeal was filed immediately thereafter; the matter was heard before the Board on July 12, 1974, and submitted after the filing of post-hearing statements.

Since the filing of the appeal, a restructuring within the Las Vegas Fire Department has caused some changes in the four categories of personnel sought to be placed in the supervisory unit. The position of Drillmaster has been reclassified as

Battalion Chief grade and is now held on a rotating basis by the Battalion Chiefs within the Department. The Fire Alarm Superintendent is now of Battalion Chief grade and holds the title of Technical Services Division Chief. Both parties stipulated that the Fire Equipment Mechanic has been reclassified and would be an appropriate member of the non-supervisory unit presently recognized thus withdrawing this position from our consideration.

Neither party disputes the fact these Battalion Chief grade positions would be deemed supervisory and that membership of these individuals in the non-supervisory unit would be inappropriate.

The evidence presented at the hearing disclosed that all of the supervisory positions in question are a standard and recognized part of fire departments of similar size and that such positions are generally acquired by pursuing a career path which commences with the position of firefighter. Further testimony indicated that the individuals holding these positions are viewed in the community as firefighters and that they view themselves as firefighters despite their supervisory responsibilities. Fire personnel through the rank of Battalion Chief are generally considered line combat or hazardous duty personnel as they take command of a fire scene, all engine companies and firemen there, and retain command until relieved by a higher ranking officer.

Battalion Chief grade individuals do possess the power to make recommendations to the Fire Chief on grievances and receive notice of the Chief's decisions on each matter. They also have the authority to make recommendations on the hiring of new employees within the Department.

Each witness at the hearing testifying for the

establishment of the supervisory unit indicated his longstanding membership in the appellant.

The respondent has presented numerous defenses to the appeal, principal among them that supervisory personnel and the individuals they supervise would in effect be within the same negotiating unit if there were two units within the same employee organization. It is also asserted that the structure of the Las Vegas Fire Department is such that the positions in question are confidential as in privy with grievance determinations, negotiating matters and other management decisions.

The statutory scheme of Chapter 288 of the Nevada Revised Statutes, particularly NRS 288.160 and NRS 288.170, provides the procedures for the recognition of employee organizations and the establishment of negotiating units. These statutes recognize a distinction between a recognized employee organization with bargaining powers and the establishment of negotiating units within the organization.² The statutory language does not foreclose the creation of one or more negotiating units within the single employee organization. It does, however, limit the composition of negotiating units by requiring that three basic criteria be met: (1) the determination of which employees shall be within a negotiating unit shall be primarily based upon a "community of

2. NRS 288.170(1) provides in part:

Each local government employer which has recognized one or more employee organizations shall determine, after consultation with such recognized organization or organizations, which group or groups of its employees constitute an appropriate unit or units for negotiating purposes. The primary criterion for such determination shall be community of interest among the employees concerned. ... A local government department head, administrative employee or supervisory employee shall not be a member of the same negotiating unit as the employees under his direction. ... In all cases, confidential employees of the local government employer shall be excluded from any negotiating unit.

interest" among the employees concerned, (2) supervisory personnel may not be within the same negotiating unit as the individuals they supervise, and (3) confidential employees are excluded from any negotiating unit.

The community of interest among these supervisory employees was graphically portrayed by the testimony. All consider themselves firefighters and are viewed in the community as such. All follow a similar career path; all were members of the appellant and expressed a desire to remain such and be represented by the appellant. Further, Battalion Chief grade personnel are classified as line combat and may participate directly in the hazardous duty of fighting fires.

These elements of the unique status of firefighters fulfill the requirement that a "community of interest" be shown among the employees concerned. It is also appropriate, in further compliance with the statute, that these employees be placed in a separate negotiating unit which reflects their supervisory status.

We are not persuaded by the evidence that these individuals are "confidential employees"³ and therefore excluded from any negotiating unit.

Battalion Chief grade personnel may make recommendations to the Fire Chief, but, the final decision on all matters within the Department lies with the Fire Chief, ultimate responsibility for all decisions resting with the City Manager.

3. NRS 288.035 provides:

"Confidential employee" means an employee who is privy to decisions of management affecting employee relations, including all employees of the personnel department or its equivalent.

In the case of Westinghouse Electric Corporation v. N.L.R.B., 398 F.2d 669 (4th Cir. 1968), the appellate court discussed the status of a "confidential employee" at length: "...employees who 'assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations' are deemed confidential employees. ... The Board (N.L.R.B.) thus attempts to strike a balance between the rights of the employees to be represented in the collective bargaining process with the right of the employer to formulate, determine and effectuate its labor policies with the assistance of employees not represented by the union with which it deals." Id at 670-671. The Court further stated that mere access to confidential information not related to labor relations does not form an adequate basis for determining an employee to be confidential, nor, are department or division heads who handle labor relations matters to the extent that their own area of managerial responsibilities are affected rather than on a company-wide basis deemed confidential employees.

The essence of confidential status is the relationship of the employee to labor relations decisions of management. From the evidence presented in this case, in light of the statutory definition of the term "confidential employee" and the guidelines of the Westinghouse decision, supra, we cannot find the employees in question to be confidential. Their relationship to management decisions affecting employee relations is so tangential that we do not deem them to be "confidential employees" in "privy" with such decisions.

Neither are we persuaded that the statutes require that supervisory and non-supervisory personnel must be members of

separate and distinct employee organization. Having complied with the statutory prerequisites, these Battalion Chief grade employees are entitled to recognition as a separate negotiating unit within the appellant.

FINDINGS OF FACT

1. That the appellant is a local government employee organization duly recognized by the respondent City of Las Vegas as the exclusive negotiating representative for a negotiating unit composed of the non-supervisory personnel of the Las Vegas Fire Department.

2. That the respondent City is a local government employer.

3. That on September 9, 1973, the appellant notified the respondent by letter of its desire to represent a supervisory negotiating unit in the Las Vegas Fire Department composed of four categories of personnel: Battalion Chiefs, Drillmasters, Fire Alarm Superintendents and Fire Equipment Mechanicis.

4. That attached to the letter of September 9, 1973, were signature cards as proof that the individuals in the four categories were members of the appellant and wished to be represented by it.

5. That after extensive correspondence between the parties, and after the commencement of negotiations, the respondent notified the appellant on December 21, 1973, that it would not recognize the appellant as the exclusive negotiating representative for a supervisory unit within the Las Vegas Fire Department.

6. That after the filing of this appeal, the position of Drillmaster was reclassified as Battalion Chief grade and is now held on a rotating basis by Battalion Chiefs within the Department.

7. That the Fire Alarm Superintendent position has been reclassified to Technical Services Division Chief and is now of the same grade as a Battalion Chief.

8. That the parties stipulated to withdraw from our consideration the position of Fire Equipment Mechanic, agreeing that any individual or individuals holding such position could be within the presently recognized non-supervisory negotiating unit.

9. That the Battalion Chiefs, Technical Services Division Chief and the Battalion Chief acting as Drillmaster share a community of interest which warrants their designation as a separate negotiating unit within the appellant.

10. That the Battalion Chiefs, Technical Services Division Chief and the Battalion Chief acting in the capacity of Drillmaster possess supervisory powers warranting their designation as a negotiating unit separate from the presently existing non-supervisory unit.

11. That the evidence does not disclose that the personnel in question are confidential employees.

CONCLUSIONS OF LAW

1. Under Chapter 288 of the Nevada Revised Statutes, the Local Government Employee-Management Relations Board possesses original jurisdiction over the parties and subject matter of this appeal.

2. That the appellant is a local government employee organization within the definition of NRS 288.040.

3. That the respondent is a local government employer within the term as defined in NRS 288.060.

4. That the appellant complied with the provisions of NRS 288.160(1) and NRS 288.160(2) in seeking recognition as the exclusive negotiating representative for a unit composed of the

Battalion Chiefs, Technical Services Division Chief and the Battalion Chief acting in the capacity of Drillmaster.

5. That the Battalion Chiefs, Technical Services Division Chief and the Battalion Chief acting as Drillmaster are supervisory employees within the definition of NRS 288.075.

6. That the Battalion Chiefs, Technical Services Division Chief and the Battalion Chief acting as Drillmaster are not confidential employees within the term as defined in NRS 288.035.

7. That these supervisory employees share a community of interest which warrants their designation as a negotiating unit under the provisions of NRS 288.170(1).

8. That the majority of the individuals holding these positions are members of the appellant.

9. That the respondent improperly determined that the appellant could not represent a supervisory unit composed of the Battalion Chiefs, Technical Services Division Chief and the Battalion Chief acting as Drillmaster in addition to the non-supervisory unit currently recognized within the Las Vegas Fire Department.

It is ORDERED that the respondent shall recognize the appellant as the exclusive negotiating representative for a supervisory negotiating unit composed of the Battalion Chiefs, Technical Services Division Chief and the Battalion Chief acting as Drillmaster.

Dated this 16th day of December, 1974.


Harriet Trudell, Chairman


John T. Gojack, Vice Chairman