

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

PAUL L. DUCLERCQUE and LOCAL 1265)
of the INTERNATIONAL ASSOCIATION)
OF FIREFIGHTERS, Sparks, Nevada,)
Complainants,)
vs.)
CITY OF SPARKS,)
Respondent.)

Case No. A1-045305

DECISION

As the result of an article appearing in the Reno Evening Gazette on April 28, 1976, the individual complainant, Paul DuClercque, was suspended from his employment for one day, docked that day's pay and the letter of suspension made a permanent part of his personnel file. Through this complaint, it is asserted that the suspension of Mr. DuClercque was in violation of NRS 288.270 (1) (a), (c) and (d) in that the action discriminated against him because of his membership in, and presidency of, I.A.F.F. Local 1265.

The factual situation which gave rise to the suspension began on April 1, 1976, when members of the Local met with the Ninth District Vice President of the International Association of Firefighters. At that time, various matters relating to the negotiations between the Local and the City were discussed. During the course of these discussions, the question of manning within the Sparks Fire Department was raised. It was agreed at this meeting that at an appropriate time in the future, when the Local felt that undermanning at a fire constituted a safety factor, a press release on the subject would be issued. The issuance of such a press release was approved by the membership at that time.

In the period of time between April 1st and April 28th of 1976, there were numerous calls to the Department, however, no

fire was of significant magnitude to warrant a general alarm and the call back of off-duty personnel.

Just after midnight on April 28th, a fire broke out in a two story apartment building on "C" Street in Sparks. That fire necessitated the sending out of a general alarm. After the fire had been extinguished, at approximately 9:30 a.m. on the 28th, Mr. DuClercque and the other members of the Local's Board of Directors, Bob Jackson and Tom Clewell, met to discuss whether the fire earlier that day had in fact jeopardized the safety of firefighting personnel because of undermanning and thus warranted the issuance of a press release as approved April 1st. The circumstances were deemed appropriate so Mr. Jackson called Reno Evening Gazette reporter Phil Barber and read a statement to him. Since Mr. Barber wished to speak to an official spokesman for the Local, Mr. DuClercque spoke briefly to Mr. Barber, but, requested that no names be included in the article. Mr. Barber was approaching the 11 a.m. deadline for his paper at the time of these conversations and the article which ultimately appeared in the Gazette identified Mr. DuClercque as a "spokesman for Firefighters Local 1265." The portion of that article which appears to have resulted in the disciplinary action against Mr. DuClercque was the twelfth paragraph:

"Had the fire department had additional fire-power on the initial response," DuClercque said, "the loss of property might not have been so severe."

The following day, April 29th, Mr. DuClercque received a letter from the Sparks Fire Chief stated that he was requesting that the City Manager suspend DuClercque for 3 days for violation of certain Rules and Regulations of the Sparks Fire Department. City Manager Thomas J. Milligan, on May 6, 1976, suspended complainant for 1 day and directed that the letter of suspension become a permanent part of his personnel file.

On June 2nd the Local submitted to the City a statement signed by 37 members of the Local stating that the press release was pre-approved by the Local and that it was released by Mr. DuClercq as a spokesman for the Local and not as an individual fireman.

The City Manager's suspension was appealed through the Civil Service procedures of the City, and, after a formal hearing, the suspension was upheld on August 9, 1976.

While the Civil Service proceedings were in progress, Mr. DuClercq filed a grievance with his immediate supervisor pursuant to the collective bargaining agreement in existence between the Local and the City. On August 27, 1976, the complainant's immediate superior found him aggrieved and adopted his suggested solution: that the letter of suspension be removed from his personnel file and that the City and its representatives cease and desist from interfering with the complainant's membership and leadership of Local 1265. The grievance determination was forwarded to the City Manager.

On October 5th Mr. Milligan proceeded pursuant to the Civil Service Commission's determination and ordered complainant suspended for the day of October 13th. Since that date was a regularly scheduled holiday for complainant, he lost 35.75 hours of pay, as opposed to losing 24 hours of pay on a regular work day. The letter of suspension was made a permanent part of complainant's personnel file.

This complaint followed.

The initial filing in this case named only the individual complainant, Paul DuClercq. However, at the suggestion of the Board, the parties stipulated to join as a real party in interest the Local. We directed this joinder in light of the provisions of NRS 288.110(2) which provide that a complaint may be filed by any local government employer or employee organization, but, fail

to mention the right of an individual local government employee to file before the Board.

A large portion of the complaint deals with the proceedings before the Sparks Civil Service Commission. We ruled during the hearing that in our opinion the proceedings before that Commission were not properly matters within our jurisdiction. NRS 288.110 vests us with jurisdiction to "hear and determine any complaint arising out of the interpretation of, or performance under, the provisions of this chapter... ." The Civil Service Rules of the City of Sparks and the action taken thereunder do not arise because of the Dodge Act. It is certainly advisable that Civil Service Rules and individual departmental rules in entities that have recognized employee organizations be considered in light of collective bargaining agreements executed pursuant to the Dodge Act. However, it is not within the jurisdiction of this Board to review or consider any action taken under such rules except as that action affects a specific provision of NRS Chapter 288. See, Reno Police Protective Association vs. City of Reno, et al., Case No. 18273, Item #16, order filed August 16, 1974, and the authority cited therein.

The question we believe to be properly before us is whether or not the conduct of the City in suspending complainant for one day violated the complainant's rights under NRS 288.270(1)(a), (c) and (d).

A substantially similar situation was considered by this Board in North Las Vegas Police Officers Association, Inc., et al., vs. City of North Las Vegas, Case No. A-001673, Item #18, decision rendered November 4, 1974. In that case, the North Las Vegas Police Officers Association prepared and issued an open letter to the citizens of North Las Vegas. Ultimately, Mr. Jones, the President of the Association, was reprimanded for the issuance of the letter. In finding the reprimand improper, the Board

stated:

Chapter 238 of the Nevada Revised Statutes delineates in its prohibited practices provisions three principal types of conduct on the part of a local government employer or its representatives which constitute a violation of the individual employee's rights to join, refrain from joining or participating in an employee organization. The thrust of all three provisions is that the conduct of the employer is improper if it is taken against the employee because of his activities relative to an employee organization as opposed to actions taken as an individual local government employee and unrelated to any such organization.

We must therefore make an initial determination whether Mr. Jones' conduct was that of an individual employee of the respondent City or as a spokesman for the employee organization of which he was President.

The article which appeared in the Reno Evening Gazette specifically stated that Mr. DuClercq was a "spokesman for Firefighters Local 1265." The June 2nd statement from the Local's members also specified that the press release has been authorized by the Local and was issued by Mr. DuClercq as President of and spokesman for the Local - not as an individual local government employee. The record and testimony reflect that the City was aware, during the course of events that led to the suspension, that the press release was prepared by the Board of Directors of the Local and issued at the direction of the Local's membership.

We believe the record supports our finding that Mr. DuClercq's statements were not those of an individual local government employee in his capacity as an individual local government employee, but rather, were statements of a spokesman for an employee organization in his capacity as the President of the organization and a member of its Board of Directors. As such, his conduct is protected by NRS 288.270(1).

We would encourage the parties to attempt to open more lines of communications in the future so that situations such as this will arise less frequently. We would also encourage the

parties to attempt to bring into harmony the Fire Department Rules, the Civil Service Rules and the procedures under the collective bargaining agreement executed pursuant to NRS Chapter 288. The concurrent procedures under the Civil Service Rules and the collective bargaining agreement in this particular case point out this need. Bringing the various procedures into harmony would save both parties time, paper work and confusion.

FINDINGS OF FACT

1. That Paul DuClercq is a local government employee employed by the City of Sparks, Nevada, as a Pump Driver Operator.
2. That the International Association of Firefighters Local 1265 is a local government employee organization.
3. That Paul DuClercq is the President of I.A.F.F. Local 1265.
4. That the City of Sparks, Nevada, is a local government employer.
5. That on April 1, 1976, during the course of discussions with the Ninth District Vice President of the International Association of Firefighters, the members of the Local approved the release, at an appropriate time, of a press release regarding manning in the Sparks Fire Department as it related to the safety of firefighting personnel.
6. That in the early morning hours of April 28, 1976, a fire occurred in the City of Sparks which necessitated the sending out of a general alarm recalling off-duty personnel.
7. That at approximately 9:30 a.m. on April 28, 1976, the Board of Directors of I.A.F.F. Local 1265 met to determine if the fire that occurred that morning was a situation which warranted a press release regarding the safety of firefighting personnel and undermanning at the fire scene.
8. That the Board of Directors of I.A.F.F. Local 1265 is

composed of Paul DuClercq, Tom Clowell and Bob Jackson.

9. That Mr. Jackson called Reno Evening Gazette reporter Phil Barber just before his paper's deadline at 11 a.m. on April 28, 1976, and read the press release that had been prepared.

10. That Mr. Barber asked to speak to a spokesman for the Local.

11. That Mr. DuClercq spoke to Mr. Barber on the phone regarding the fire.

12. That the article which appeared in the Reno Evening Gazette of April 28, 1976, identified Mr. DuClercq as a "spokesman for Firefighters Local 1265."

13. That Mr. DuClercq was quoted in the article as saying, "[h]ad the fire department had additional firepower on the initial response, ... the loss of property might not have been so severe."

14. That on April 29, 1976, Mr. DuClercq received a letter for the Sparks Fire Chief stating that he was requesting that the City Manager suspend him for 3 days for violation of certain Departmental Rules and Regulations.

15. That on May 6, 1976, City Manager Thomas J. Milligan directed that Mr. DuClercq be suspended for one day and that the letter of suspension be made a permanent part of his personnel file.

16. That the City Manager's decision to suspend Mr. DuClercq was appealed to the Sparks Civil Service Commission which upheld the suspension on August 9, 1976.

17. That Mr. DuClercq filed a grievance with his immediate supervisor pursuant to the collective bargaining agreement in effect between the Local and the City of Sparks.

18. That on August 27, 1976, Mr. DuClercq's immediate supervisor found him aggrieved and adopted Mr. DuClercq's suggested solution: that the letter of suspension be removed from

his personnel file and that the City and its representatives cease and desist from interfering with his membership in and leadership of the Local.

19. That the grievance determination was forwarded to the City Manager of Sparks.

20. That on October 5, 1976, the City Manager ordered Mr. DuClercque suspended for the day of October 13, 1976, without pay and further directed that the letter of suspension be made a permanent part of his personnel file.

21. That pursuant to the collective bargaining agreement in effect between the Local and the City, October 13, 1976, was a regularly scheduled holiday for Mr. DuClercque resulting in his loss of 35.75 hours of pay as opposed to losing 24 hours of pay on a regular work day.

CONCLUSIONS OF LAW

1. That pursuant to the provisions of Nevada Revised Statutes Chapter 288, the Local Government Employee-Management Relations Board possesses original jurisdiction over the parties and subject matter of this complaint.

2. That the complainant, I.A.F.F. Local 1265, is a local government employee organization within the term as defined in NRS 288.040.

3. That complainant Paul DuClercque is a local government employee within the term as defined in NRS 288.050.

4. That the City of Sparks is a local government employer within the term as defined in NRS 288.060.

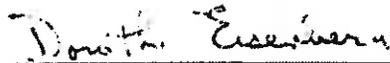
5. That the press release of April 28, 1976, was issued by Paul DuClercque and others at the direction of I.A.F.F. Local 1265 and as representatives of and spokesmen for that Local, not in their capacities as individual local government employees.

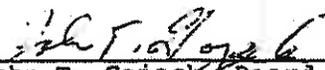
6. That the suspension of Paul DuClercque was in violation

of the provisions of NRS Chapter 288.

We direct that the letter of suspension to Paul DuClercq from City Manager Thomas J. Milligan be removed from the personnel file of Paul DuClercq along with any accompanying documents relating to this suspension. We further direct that Paul DuClercq be reimbursed for the 35.75 hours of pay he was docked for the day of October 13, 1976.

Dated this 10th day of March, 1977.


Dorothy Eisenberg, Board Chairman


John T. Gojack, Board Vice Chairman


Marvin Kratter, Board Member