LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

Reno Municipal Employees Association, Complainant	)	
vs.	)	Case No. AI-045326
City of Reno, Nevada, Respondents	)	

D E C I S I O N

On November 8, 1979, The Local Government Employee-Management Relations Board held a hearing in the above matter; the hearing was properly noticed and posted pursuant to Nevada's Open Meeting Law.

This written decision is prepared in conformity with NRS 233 B 125 which requires that the final decision contain findings of fact and conclusions of law separately stated.

By complaint and amended complaint filed August 23, 1979 and August 27, 1979 respectively, The Reno Municipal Employees Association (hereafter Association) alleges that the Respondent City of Reno (hereafter City) engaged in bad faith bargaining.

Prior to hearing testimony on the complaint itself, the Board acknowledged the Association's withdrawal of its motion for summary judgement because a genuine factual dispute existed which precluded the granting of said motion. The Board then heard argument on the City's motion to dismiss. The Board denied the motion and proceeded to hear testimony on the complaint.

The bad faith charge is twofold: first, that the City reneged on an "agreement" at the Governor's binding fact-finding hearing of April 4, 1979, to eliminate the insurance issue from further negotiation; and second, that the City

thereafter negotiated with the Association on the basis that the Association would have to take a particular offer or negotiate the following year.

Turning to the first claim, the Board unanimously agrees that the parties reached no agreement at the Governor's hearing of April 4, 1979, to discontinue or cease negotiations with respect to the insurance issue. Initially, the Board notes that NRS 288.190 requires both parties to discuss the procedures to be followed in the event they are unable to agree on one or more issues. In the instant case, the parties established the RULES TO GOVERN THE NEGOTIATIONS PROCESS BETWEEN THE RENO MUNICIPAL EMPLOYEES ASSOCIATION AND THE CITY OF RENO, NEVADA which were agreed upon February 23, 1979. The Board takes particular note of paragraph 2-12 of those rules which states the following: "As negotiation teams reach tentative agreement, they shall be reduced to writing and initialed by each party."

The Board finds no evidence of a written and initialed agreement concerning the issue of insurance and therefore concludes that no agreement was reached to discontinue or cease negotiations on that subject. The Board does find that a gross misunderstanding occurred due to a lack of communication between the parties. However, the subsequent events surrounding the April 4th hearing do not reflect bad faith bargaining on the part of the City. The City was entirely justified to continue to negotiate the insurance issue.

With respect to the second claim, the Association has directed the Board's attention to its belief that the City really did not alter its basic offer throughout the negotiations.

This particular area resulted in this split decision. The majority of the Board relied upon two previous Board decisions: In the Matter of the White Pine Association of Classroom Teachers vs White Pine County Board of School Trustees, White Pine County School District, and John Orr, Superintendant, Case No. Al-045288, Item No. 36, decision rendered May 30, 1975, and In the Matter of the Clark County Classroom Teachers Association v. Clark County School District and Board of Trustees of the Clark County School District, Case No. Al-045302, Item No. 62, decision rendered December 10, 1976. In those decisions the Board noted, as it does in the instant matter, that adamant insistence on a bargaining position is not sufficient to warrant a finding that a party refused to bargain collectively in good faith. It is necessary to review the totality of the collective bargaining process in order to make such a determination. See, National Labor Relations Board v. Algoma Plywood and V. Co., 121 F2d 602 (7th Cir 1941).

The City not only participated in numerous negotiation sessions, it agreed to utilize the services of a mediator. NRS 288.190 provides that the services may be used if the parties mutually agree; the City was not obliged to participate in the mediation, it did so voluntarily.

The Association also stressed that it altered its requests several times and seemed to be "the only side with any imagination" while the City remained firm. A similar situation was discussed by the Sixth Circuit Court in their decision in National Labor Relations Bd. v. United Clay Mines Corp., 291 F 2d 120 (6th Cir. 1955), at page 126:

> The Board (referring to the National Labor Relations Board) stresses the

> fact that the Union had already made many concessions while the Company had made very few and that in fairness to the Union it should have made this concession (relating to a grievance procedure). But the concessions made by the Union were not concessions of rights which the employees had possessed. Actually, the Union gave up nothing; it merely abandoned certain demands which had never been agreed to, many of which involved increased labor costs, which the Company would not agree to on ground not shown by the record to be unreasonable. We find nothing in the Act which requires an employer to abandon a settled position on a certain issue because of either the quantity or quality of concessions offered by the Union in the hope of securing such abandonment. It is still a matter of bargaining.

NRS 288.033 defines collective bargaining as the method of determining conditions of employment by negotiations and entailing the mutual obligation of the local government employer and employee organization to meet at reasonable times and bargain in good faith. The obligation under the statute does not compel either party to agree to a proposal nor does it require the making of a concession. NRS 288.270 (1) (e) is the enforcing statute for this obligation and requires good faith negotiations process, including mediation.

No provision of The Dodge Act mandates that the parties must reach an agtrement.

Under these circumstances, the majority of the Board cannot find that the City failed or refused to negotiate in good faith.

FINDINGS OF FACT

1. That the Complainant, Reno Municipal Employees Association, is a local government employee organization.

2. That the Respondent, City of Reno, Nevada, is a local government employer.

3. That the parties established "The Rules to Govern the negotiations process between The Reno Municipal Employees Association and The City of Reno, Nevada" on February 23, 1979.

4. That the parties commenced negotiations in early 1979 which included, among other items, the issues of salary, insurance, and length of contract.

5. That the parties met in several negotiation sessions including an April 3, 1979 meeting, prior to the Governor's hearing on April 4, 1979.

6. That the dispute remained unsettled and the Association requested binding factfinding from Governor List, pursuant to NRS 288.200.

7. That the Association withdrew its request for binding factfinding at the Governor's hearing on April 4, 1979.

8. That there was no agreement by the parties at the April 4, 1979 Governor's hearing to discontinue or cease negotiations on the insurance issue.

9. That the Association resubmitted their request for binding factfinding to the Governor on April 24, 1979, but the request was denied.

10. That the parties participated in at least seven negotiating sessions between April 4, 1979 and July 18, 1979.

11. That at the suggestion of the Association, the City agreed to use a mediator pursuant to NRS 288.190.

12. That the City raised its offer above the 7% guideline which the City Council had established in conjunction with the presidential guidelines on wage and price controls.

13. That the negotiating teams reached a tentative mediated agreement on July 18, 1979.

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14. That the Association's membership rejected the tentative mediated agreement at a meeting shortly after July 18, 1979.

15. That subsequent to the Association's rejection of the mediated agreement the parties unsuccessfully continued negotiation efforts into August in an attempt to reach a contract settlement.

16. That notwithstanding the bad faith charge the parties continued to negotiate up until and beyond the November 8, 1979 hearing before the EMRB.

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, Reno Municipal Employees Association is a local government employee organization within the term as defined in NRS 288.040.

3. That the respondent, City of Reno, Nevada, is a local government employer within the term as defined in NRS 288.060.

4. That the parties commenced collective bargaining in early 1979 in conformity with their existing contract and pursuant to NRS Chapter 288.

5. That "the rules to govern the negotiations process between Reno Municipal Employees Association and The City of Reno, Nevada" established the manner in which the negotiation teams would reach tentative agreement.

6. That the City of Reno voluntarily participated in mediation of July, 1979, when it was not required to do so by the provisions of NRS 288.190.

7. That the provisions of NRS 288.033 state that a party to negotiations need not make a concession.

8. That the provisions of NRS 288.033 state that a party to negotiations need not agree to a proposal.

9. That no provision of NRS Chapter 288 mandates that the parties to collective bargaining must reach agreement upon any issue.

10. That the City's steadfast maintenance of a contract position does not constitute a refusal to negotiate in good faith.

11. That the failure of the parties to reach a settlement as of July 11, 1979 created an impasse.

12. That the impasse was broken by the tentative mediated agreement reached by the negotiating teams on July 18, 1979.

13. That another impasse was created on or about August 21, 1979, when the parties were unable to reach a negotiated contract settlement.

14. That there is no duty on the part of either party to bargain after impasse is reached.

15. That despite continued negotiation efforts the impasse created with the Association's rejection of the tentative mediated agreement still exists.

16. That neither the current impasse or the impasses that occurred prior to the current impasse was created by bad faith bargaining on the part of the City.

17. That the evidence fails to disclose that the City refused to bargain collectively in good faith in violation of the provisions of NRS Chapter 288.

The Board deplores the lack of communications which led to this complaint. While the Board hopes that the parties will continue to negotiate in an atmosphere of good will, it cannot say in this particular factual setting that the City of Reno refused to bargain collectively in good faith.

The requested relief is denied and the Complaint dismissed.

Each party shall bear its own costs and attorney's fees.

Dated this 11th day of January, 1990.

Dorothy Eisenberg, Board Chairman

Carole Vilardo, Board Vice-Chairman

Earl L. Collins, Board Member, concurring in part and dissenting in part.

With respect to the Governor's hearing of April 4, 1979, I join the majority's opinion and rationale in concluding that the parties reached no agreement to discontinue or cease negotiations with respect to the insurance issue. In that regard I find no evidence of bad faith bargaining on the part of the City, and also conclude that the City was justified to continue negotiating insurance.

Further, I find no evidence of bad faith bargaining up to and including the tentative mediated agreement which the negotiating teams reached on July 18, 1979.

The point on which I do differ and would find that the City failed to bargain in good faith is in its failure to meet and bargain with the Association after the membership rejected the mediated agreement.

While the majority believes that negotiation efforts continued into the month of August and, arguably, through the time of the Board's hearing on the complaint, I respectfully disagree.

To meet the requirement of good faith bargaining there must be some semblance of negotiation that characterizes collective bargaining. This cannot be accomplished by writing memos or sending correspondence through the mails, as was the case in the present situation.

I strongly believe that the parties should be willing to sit down at reasonable times and exchange nonconfidential information, views, and proposals on subjects that are within the scope of bargaining. In my opinion, at the very minimum, good faith bargaining in collective negotiations requires <u>meetings</u> between the negotiating parties at reasonable times and places.

Following the Association's rejection of the tentative mediated agreement the record is barren of any effort on the part of the City to establish meetings with the Association, notwithstanding many and varied attempts by the Association to establish such meetings.

In my view this, in and of itself, is a failure to bargain in good faith.

Earl L. Collins, Board Member

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