Item No. 120

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

In the Matter of the RENO POLICE PROTECTIVE ASSOCIATION, Complainant,	)	
vs.	)	Case No. A1-045338
The CITY OF RENO, Respondent.	)	

D E C I S I O N

On November 21, 1980 the Local Government Employee-Management Relations Board held a hearing in the above entitled matter; the hearing having been duly noticed and posted pursuant to provisions of Nevada's Opening Meeting Law, NRS Chapter 241.

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

STATEMENT OF CASE

On September 26, 1980, Complainants RENO POLICE PROTECTIVE ASSOCIATION (hereinafter RPPA) filed a Complaint alleging that Respondent CITY OF RENO (hereinafter CITY) on September 22, 1980, unlawfully withdrew recognition from the RPPA as exclusive bargaining representative for units of certain supervisory and administrative-supervisory employees (sergeants, jailer IIs and lieutenants), and at the same time unilaterally granted recognition to another employee association, the Reno Police Supervisory and Administrative Employees Association (hereinafter RPSAE) for those same units at, and during, the time collective bargaining agreements existed between the RPPA and the CITY which established wages, hours and working conditions for employees in those units and which agreements expressly recognized the RPPA as the exclusive bargaining representative for the units.

The RPPA contends such withdrawal of recognition not only breaches express contract provisions but is practice prohibited by provisions of NRS Chapter 288, specifically 288.270(1) (a) (b) (e) and (f).

The CITY responded by admitting it engaged in the conduct complained of, but asserted as defense and justification that recognition was withdrawn from the RPPA and granted to the RPSAE because RPSAE had requested recognition and presented documentation of organization and majority status in accordance with NRS 288.160 and to deny recognition would be violation of that statute.

FACTS

The RPPA is an employee organization to whom the CITY had previously granted recognition as exclusive bargaining representative for several bargaining units, including the supervisory and administrative-supervisory units here involved, and had for several past years entered into negotiations with the CITY over wages, hours and conditions resulting in collective bargaining agreements being executed between the parties.

Negotiations over successor labor agreements for the bargaining units had been completed in Spring 1980, resulting in agreements which became effective July 1, 1980, and had three year duration until June 30, 1983. The agreements were executed between the RPPA and CITY July 3, 1980, having been approved by City Council June 23, 1980.

Article 2 of the labor agreements entitled Recognition, provided in pertinent part:

> "The City recognizes the Association as the exclusive negotiation agent, for the purposes of establishing salaries, wages, hours and other conditions of employment for all of its classified employees within the supervisory law enforcement officer position class of:
>
> Sergeant
> Jailer II ....."
>
> in one, and "Lieutenant ....." in another.

On September 9, 1980, the RPSAE wrote to the CITY requesting recognition for certain employees including the supervisory and administrative-supervisory employees in the bargaining units represented by the RPPA. Later supporting documentation conforming to that listed in NRS 288.160 was presented to the CITY.

Since exclusive recognition was sought by the RPSAE, it presented as evidence of majority status, "signed ballots" of employees. At no time was any "election" conducted.

Following receipt of the RPSAE request the CITY administration conducted a review of documents submitted and recommended to the City Council that recognition as requested be granted the RPSAE which required in part that recognition be withdrawn from the RPPA for the bargaining units of sergeants, jailers IIs, and lieutenants.

On September 22, 1980, the City Council took action withdrawing recognition from the RPPA for the bargaining units, and granted recognition to the RPSAE for those units.

The CITY did not bargain with, or inquire of the RPPA prior to taking action. The RPPA did not consent to such withdrawal and change of recognition.

At the time of withdrawal computer information showing current membership and dues check-off, available to the CITY but not reviewed by the CITY, would have shown that a majority of employees in the bargaining units were dues paying members of the RPPA. Further one member of each unit was an officer in the RPPA. There was no evidence of loss of majority of RPPA in the units.

During negotiations of the existing successor labor agreements the employees in the bargaining units were offered opportunity not to be represented by the RPPA but that option was refused and rejected by employees in these particular units.

Finally, testimony suggests that assistance and advice was sought by the RPSAE and given by the CITY regarding the manner

and method of obtaining recognition and required documentation under NRS 288.160.

Previously in January 1980, the CITY had denied a request for recognition made by an employee organization based upon documentation submittals under NRS 288.160 which included signed authorization/membership cards. At that time, the CITY asserted doubts of the validity of majority status as evidenced by signed cards.

DISCUSSION

The RPPA claims the CITY violated the Act in breaching the labor agreements and withdrawing recognition; conduct it says, is prohibited by NRS 288.270(1)(a) and (e) particularly. The RPPA also suggests the CITY unlawfully assisted the RPSAE and discriminated against the RPPA in violation of NRS 288.270 (1)(b) and (f).

To the first claim of breach of conduct and bad faith bargaining, the CITY says it was faced with a valid claim and request for recognition under NRS 288.160 which claim and request the CITY could not lawfully deny. In short, the CITY contends it was caught on the horns of a dilemna, exposed to violation of the Act in either case, and its withdrawal - grant of recognition was legally justified.

The case presents this Board with several issues, most notably the question of whether, and in what instances, the existence of a collective bargaining agreement bars withdrawal or change of recognition. The case requires analysis and evaluation of what has come to be known as the "contract bar" doctrine and its application to Nevada public employment relations law.

The RPPA asserts that the existing collective bargaining agreements operate as a "contract bar" to unilateral change in recognition. The RPPA asks this Board to adopt and apply the

"contract bar" doctrine in this case.

In the circumstances of this case, this Board agrees that the existing labor agreements should and do operate as a bar to any change in recognition during the term of the agreements. Thus, we here adopt and apply the "contract bar" doctrine to recognition considerations in public employment relations in Nevada, in accordance with our statutory authority. See NRS 288.110(1).

We find the "contract bar" doctrine consistent with the policy and purpose of NRS Chapter 288. In our opinion, not only does the doctrine as here applied promote stability in bargaining relationships and agreements fostered by NRS Chapter 288, but because recognition is a mandatory subject of bargaining under the Act, and also contractual, the mutual obligations arising should not, and cannot be avoided by unilateral withdrawal of recognition during the term or duration of existing labor agreements.

There is no precedent in this jurisdication directly on point to which this Board can look.

A recent decision in Nevada Classified School Employees Assn.: Carson City Chapter No. 4 vs. Carson City School District, Case No. A1-045328 Item No. 99 (May 1980) involved withdrawal of recognition but did not reach "contract bar" consideration.

In the Carson City case, the School District withdrew recognition from the recognized employee organization under authority of NRS 288.160 as did the CITY OF RENO here. Moreover, at the time of withdrawal of recognition, the employee organization had an existing contract, as here.

The Carson City case is however, distinguishable from the present for a number of reasons. One critical distinction between the Carson City case and the instant case is that the School District withdrew recognition prospectively, i.e., it refused to negotiate a successor labor agreement with an employee organization

who at the time of demand to negotiate had in fact, lost majority status. In short, the withdrawal did not affect the existing labor agreement or representation under that agreement. In fact, no issues were raised concerning the existing agreement and recognition thereunder.

Further, in the Carson City case, this Board found that testimony and documentary evidence introduced established that the employee organization in fact, did not have majority status at the time of the withdrawal of the recognition. In this case, while claim of majority status was made by the RPSAE, there is no evidence of loss of majority status in RPPA. Indeed, from computer information regarding current RPPA membership and dues, available to the CITY at the time of withdrawal of recognition, majority status of RPPA would appear evident. The CITY acknowledged it did not review this information at the time of withdrawal. Also, the CITY argues that membership was for purposes other than NRS Chapter 288. We reject that argument on the record of this case, since the evidence warrants finding that at least one of the purposes of membership was for NRS Chapter 288 in light of negotiations, ratification and execution of agreements. Moreover, the evidence in the instant case establishes that during negotiations that resulted in agreement employees in the units specifically refused and rejected opportunity to withdraw or change recognition by the RPPA, although another unit (Captains) did accept the opportunity.

The question of majority status of the RPPA is not the issue. The CITY has not urged loss of majority as a basis for withdrawal, nor would the record support such contention.

We hold that given the existence of a labor agreement covering a given bargaining unit, an employer should not, and cannot, entertain claims or requests for recognition from another employee organization,except during the "window period".

Our decision here to apply the "contract bar" doctrine is consistent with the Carson City case. In that case, we in effect, recognized a "window period" for withdrawal of recognition under NRS 288.160(3) from an employee organization who had an existing contract and who had in fact lost majority status at the time of its demand to bargain.

The open time for determination of recognition arises when within the statutory period the recognized organization seeks to open negotiations for a future labor agreement to succeed the agreement whose term is expiring at the end of the current fiscal year.

In reaching our decision, we have reviewed precedent from other jurisdictions cited by counsel for the RPPA. And by so doing, we are aware that other circumstances may arise in which an employer during the term of an existing labor agreement may have to consider other recognition issues, for example in cases in which there is clear evidence of express abandonment or disclaimer of the agreement or rights, duties, and obligations thereunder by the recognized employee organization, or clear evidence of dissolution of the employee organization or appropriate determination of certain violations of provisions of NRS 288.160(3).

However, since none of those circumstances are before us, we do not express opinion on appropriate conduct and we reserve ruling for later determination as cases arise.

The CITY contends that NRS 288.160 compelled its action when confronted with request for recognition and submittals by the RPSAE. We find nothing in provisions of NRS 288.160(3) or the facts of this case which justify withdrawal of existing recognition from the RPPA, let alone compel recognition of the RPSAE. See Teamsters Local No. 14 vs. City of Las Vegas and Las Vegas City Employee Protective and Benefit Association, Case No. A1-045307

Item No. 76 (March 1978) in which we expressly state that:

> "All members of the Board agree that in the absence of a basis under NRS 288.160(3) for withdrawing recognition; the City cannot withdraw all or a portion of the City Employees Associations recognition so neither employee organization may be recognized as the exclusive bargaining agent for those employees."

The CITY would have us adopt a literal interpretation of NRS 288.160 in light of the RPSAE claim and demand for recognition in this case. Yet in January 1980, some eight months prior to its action here in question, when confronted with claims and demand for recognition by an employee organization involving other units, the CITY denied the requested recognition, asserting its doubt as to majority status evidenced by signed employee authorization/membership cards. Those signed "cards" do not appear to be significantly distinquishable from the signed "ballots" here involved. There were no election proceedings which produced the "ballots" in this case.

We decline to accept the literal interpretation of NRS 288.160 offered by the CITY, that as an employer it was required to grant recognition to the RPSAE in this case. If the Act, as interpreted by the CITY, required it in September 1980 to grant recognition, it is curious why such compulsion did not exist in January 1980 for the Act was unchanged. See e.g. Teamsters Local 14 vs. City of Las Vegas and Las Vegas City Employees Protective and Benefit Association, supra; Retail Clerks Local 1434 vs. Carroll Ogren and Washoe Medical Center, Case No. A1-045312 Item No. 82 (May 1978); In Re Operating Engineers Local 501 vs. Las Vegas Convention and Visitors Authority, Case No. A1-045323 Item No. 96 (May 1980).

In this case the existence of collective bargaining agreements prevent the utilization of provisions of NRS 288.160 to withdraw existing recognition from one employee organization and

grant the same to another organization.

Finally, we are troubled by the apparent assistance and advice given by the CITY to the RPSAE in advance of its request for recognition. The City Attorney's Office was even consulted. The CITY apparently chose to review recognition procedures with the RPSAE but did not do so at any time with the incumbent RPPA.

The disparity in treatment of the situations, coupied with the CITY'S previous response to recognition demand under NRS 288.160 is evidence of the CITY'S intentions in offering advice and assistance to the RPSAE in relation to recognition held by RPPA. In this case, such conduct is a violation of the Act.

FINDINGS OF FACT

Based on the foregoing discussion and record in this case, we find the following material facts:

1. Complainant RENO POLICE PROTECTIVE ASSOCIATION (hereinafter RPPA) is a local government employee organization as defined in the Act, NRS Chapter 288.
2. Respondent CITY OF RENO (hereinafter CITY) is a local government employer, as defined in the Act, NRS Chapter 288.
3. Collective bargaining agreements exist between the RPPA and the CITY covering TWO (2) bargaining units:
   (A) Supervisory: consisting of sergeants and jailers II's.
   (B) Administrative-Supervisory: consisting of lieutenants.
4. The collective bargaining agreements were effective July 1, 1980, and have three (3) year duration.
5. The Collective bargaining agreements in Article 2 (Recognition) expressly recognize RPPA as the "exclusive negotiation agent, for the purposes of establishing salaries, wages, hours and other conditions of employment for all its classified employees within the supervisory" and "administrative supervisory law

enforcement officer position(s)".

6. On September 22, 1980, the collective bargaining agreements were in full force and effect.
7. On September 22, 1980, the CITY unilaterally withdrew recognition from the RPPA in both bargaining units.
8. The RPPA did not consent to withdrawal of recognition or modification of the existing bargaining agreements prior to, on, or after September 22, 1980.
9. The CITY did not consult with, bargain with, or inquire of the RPPA concerning withdrawal of recognition prior to, on, or after September 22, 1980.
10. A majority of employees in both bargaining units are members of the RPPA, and were on September 22, 1980.
11. A majority status of employee membership in RPPA in both bargaining units on September 22, 1980, was knowledge available to, and imputed to the CITY inasmuch as the CITY has membership dues authorization cards from those employees and on a monthly basis by computer print-out copy and dues check to the RPPA, and did so for the months of August amd September, 1980.
12. The CITY did not review RPPA membership in the bargaining units prior to, or on September 22, 1980.
13. On September 22, 1980, there was no evidence of loss of majority membership status of RPPA in bargaining units, in fact, majority status existed on that date.
14. On September 22, 1980 there was no factual basis under provisions of NRS 288.160(3) for withdrawal of recognition from the RPPA.
15. On January 28, 1980, the CITY denied request for recognition made by Joint Council of Teamsters Local 995 and Stationary Engineers Local 39 for representation of classified city employees in supervisory and non-supervisory units, which request was made pursuant to provisions of NRS 288.160(1) in which the Union presented (1) copy of Articles of Incorporation, (2) roster of representatives, (3) written No-Strike Pledge,

and (4) because request was made for exclusive bargaining agent status, authorization cards of a majority of employees in each unit verified as such.

16. On September 22, 1980, the CITY, at the time it withdrew recognition to an entity known as the Reno Police Supervisory and Administrative Employees (hereinafter RPSAE) which had requested recognition pursuant to NRS 288.160(1) and submitted documents of (1) constitution and by-laws, (2) roster of officers, (3) mandatory No-Strike pledge, and (4) in addition signed "ballots" of majority of employees.

17. The CITY, on January 28, 1980, rejected signed "authorization cards" as evidence of majority or membership status for purposes of recognition, but on September 22, 1980, accepted signed "ballots" as evidence of majority status or membership for purposes of recognition.

18. On September 22, 1980, a majority of employees in the bargaining units were members of the RPPA for whom the CITY was deducting membership dues for payment to the RPPA.

19. During negotiations of collective bargaining agreements prior to, and at the time of ratification, and prior to their effective date, July 1, 1980, employees in the bargaining units were offered the opportunity to not be represented by the RPPA but those employees rejected that option and chose to be represented by the RPPA.

20. Bargaining unit of captains chose not to be represented by the RPPA during negotiations prior to July 1, 1980, and their agreement so reflects.

21. At least one employee from each of the bargaining units in negotiation is presently an officer or director of the RPPA.

22. The CITY gave assistance and advice, including that cleared by City Attorney, to RPSAE regarding request for recognition.

CONCLUSIONS OF LAW

Based on the foregoing the Board concluded as a matter of law as follows:

1. Pursuant to provisions of NRS Chapter 288, this Board possesses original jurisdiction over the parties and subject matter of this action. NRS 288.110, NRS 288.280.
2. Complainant RENO POLICE PROTECTIVE ASSOCIATION (hereinafter RPPA) is an employee organization within the meaning of Nevada Revised Statutes Chapter 288, NRS 288.040.
3. The Respondent CITY OF RENO (hereinafter CITY) is a local government employer within the meaning of Nevada Revised Statutes Chapter 288, NRS 288.060.
4. Collective bargaining agreements exist between the RPPA and the CITY covering TWO (2) bargaining units:

   (1) Supervisory: consisting of sergeants and jailers II's.

   (2) Administrative supervisory: consisting of lieutenants, as defined in provisions of NRS 288.028.
5. Collective bargaining agreements were effective July 1, 1980, and have three (3) year duration, as executed by the parties consistent with provisions of NRS 288.033, NRS 288.150 and NRS 288.155.
6. Collective bargaining agreements in Article 2 (Recognition) expressly recognize RPPA as the "exclusive negotiation agent, for the purposes of establishing salaries, wages, hours and other conditions of employment for all its classified employees within the supervisory" and "administrative supervisory law enforcement officer position(s)", all as contemplated by NRS 288.025, NRS 288.027, 288.067 and 288.150.
7. On September 22, 1980, the collective bargaining agreements were in full force and effect. On September 22, 1980 the CITY unilaterally attempted withdrawal of recognition from the RPPA in both bargaining units pursuant to NRS 288.160.

8. A majority of employees in both bargaining units are members of the RPPA and were on September 22, 1980 as contemplated by NRS 288.160.

9. The majority of employee membership in RPPA in both bargaining units on September 22, 1980, was knowledge available to, and imputed to the CITY inasmuch as the CITY has membership dues authorization cards from those employees and on a monthly basis by computer print-out listed all members of the RPPA and transmitted a print-out copy and dues check to the RPPA and did so for the months of August and September, 1980.

10. The CITY did not review RPPA membership in the bargaining units prior to, or on September 22, 1980, the date of withdrawal of recognition as contemplated by NRS 288.160.

11. On September 22, 1980, there was no evidence of loss of majority membership status of RPPA in bargaining units, in fact, majority status existed on that date. NRS 288.160.

12. On January 28, 1980, the CITY OF RENO denied request for recognition made by Joint Council of Teamsters Local 995 and Stationary Engineers Local 39 for representation of classified city employees in supervisory and non-supervisory units, which request was made pursuant to provisions of NRS 288.160(1) in which the Union presented (1) copy of Articles of Incorporation, (2) roster of representatives, (3) written No-Strike Pledge, and (4) because request was made for exclusive bargaining agent status, authorization cards of a majority of employees in each unit verified as such. NRS 288.160.

13. On September 22, 1980, the CITY, at the time it withdrew recognition from the RPPA, granted recognition to an entity known as the Reno Police Supervisory and Administrative Employees (hereinafter RPSAE) which had requested recognition

pursuant to NRS 288.160(1) and submitted documents of (1) constitution and by-laws, (2) roster of officers, (3) mandatory No-Strike pledge, and (4) in addition signed "ballots" of employees. NRS 288.160.

14. The CITY, on January 28, 1980, rejected signed "authorization cards" as evidence of majority or membership status for purposes of recognition, but on September 22, 1980, accepted signed "ballots" as evidence of majority status or membership for purposes of recognition under NRS 288.160.

15. On September 22, 1980, a majority of employees in the bargaining units were members of the RPPA for whom the CITY was deducting membership dues for payment to the RPPA, as contemplated by NRS 288.160.

16. During negotiations of collective bargaining agreements prior to and at the time of ratification, and prior to their effective date, July 1, 1980, employees in the bargaining units were offered the opportunity to not be represented by the RPPA but those employees rejected that option and chose to be represented by the RPPA as contemplated by NRS 288.160.

17. The CITY'S withdrawal of recognition from the RPPA on September 22, 1980, is a violation of provisions of NRS 288.160(3) and 288.270(1)(a) and (e) and is void and of no legal effect.

18. The CITY'S grant of recognition to the RPSAE on September 22, 1980, was done in violation of NRS 288.160, NRS 288.270(1)(a) and (e), and is void and of no legal effect.

19. The CITY gave assistance and advice, including that cleared by City Attorney, to RPSAE regarding request for recognition in violation of NRS 288.270 (1)(b) and (f).

ORDER

Based on the foregoing we enter the following Order:

1. That the CITY OF RENO (hereinafter CITY) recognize and

bargain with the RENO POLICE PROTECTIVE ASSOCIATION (hereinafter RPPA) as the exclusive collective bargaining representative for bargaining units of (1) supervisory employees (sergeants and jailer II's) and (2) administrative-supervisory employees (lieutenants) for purposes of NRS Chapter 288 and the collective bargaining agreements covering those units effective July 1, 1980.

2. That the CITY rescind recognition granted to the Reno Police Supervisory and Administrative Employees (hereinafter RPSAE) for units of (1) supervisory employees (sergeants and jailer II's) and (2) administrative-supervisory employees (lieutenants).

3. That the CITY cease and disist from conduct herein declared to be the practices prohibited by NRS Chapter 288.

4. That each party shall bear its own costs and attorney's fees.

Dated this 3rd of September, 1981.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

Carole Vilardo

Carole Vilardo, Board Chairman

Dorothy Eisenberg

Dorothy Eisenberg, Board Member

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I respectfully dissent.

The facts of the case were never contested. Certain members of the RPPA disassociated themselves from that organization and requested recognition of a new organization, RPSAE, as their exclusive bargaining agent. The new organization (RPSAE) met all of the requirements of NRS 288.160, including submission of actual signed ballots from their bargaining unit members. The administration properly scheduled hearings before the City Council and noticed these hearings to the RPPA. RPPA did not choose to attend the Council hearings.

The Administration and City acted in the only way possible under the provisions of NRS 288.160. They had to withdraw recognition of RPPA and recognize the RPSAE as the new exclusive bargaining agent.

In my opinion it is not necessary for the members of the new bargaining unit to withdraw membership in the RPPA in order to form and join the RPSAE, and to designate the RPSAE as their new bargaining agent.

This Board is charged with the responsibility of upholding the provisions of NRS 288 and of hearing and determining complaints arising out of the interpretation of, or performance under, those provisions. NRS 288.110(1) allows the board to make rules, but only such rules governing proceedings before it and procedures for fact findings. Regarding the recognition of employee organizations and determining of bargaining units, this board may only issue guidelines.

Turning to the key issue of the case, the RPPA maintains that the Administration can not withdraw recognition nor recognize a new exclusive bargaining agent during the existence of a labor agreement. NRS 288 is silent on this issue, nor does it allow this board leeway to establish rules on this matter. Very Importantly, there is no restriction in the act against withdrawal

of recognition or a change in exclusive bargaining agent, during the life of an existing agreement.

Regardless of the majorities belief that there should be provisions for a "contract bar" or a "window period", during which questions of exclusiveness of bargaining agents can not be raised, the facts remain that the authors did not include those provisions in NRS 288. This board does not have the authority, at this point, to rewrite NRS 288.160, nor add substantially to that section. That authority rests soley with the legislature or with an appropriate court of law. See Nevada Classified School Employees Association, Carson City Chapter No.4 vs. Carson City School District, A1-045328, Item No. 99, (May 30, 1980).

I would remind my fellow board members that the existing labor agreement is unchanged in substance. The only change occurs in the name of the exclusive bargaining agent. Any action the board takes in this case in favor of RPPA will only result in the RPPA continuing to represent certain members who no longer wish that organization to represent them. In other words the Board would be forcing those members into an association that they do not want. The agreement is between the employees and the City. The RPPA (or RPSAE for that matter) acts only as an agent for those employees. To refuse the employees an opportunity to change agents at whatever point in the life of an agreement is similiar to not allowing a client to discharge his attorney during the life of an agreement which that attorney had negotiated for that client. I would therefore uphold the actions of the City in this dispute.

Earl Collins

Earl Collins, Board Vice-Chairman