

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

STATE OF NEVADA

IN THE MATTER OF INTERNATIONAL)
ASSOCIATION OF FIRE FIGHTERS,)
LOCAL 1908,)

Complainant,)

VS.)

Case No. A1-045357

CLARK COUNTY, NEVADA,)

Respondent.)

DECISION

The Local Government Employee-Management Relations Board held a hearing in the above matter on Tuesday and Wednesday, June 8, 1982 and June 9, 1982 respectively; the hearing was properly noticed and posted pursuant to Nevada's Open Meeting Law.

This written decision is prepared in conformity with NRS 233B.125 which requires that the final Decision contain Findings of Fact and Conclusions of Law separately stated.

The International Association of Fire Fighters, Local 1908, (hereinafter Union) and the County of Clark (hereinafter County) had entered into a collective bargaining agreement covering the period from July 1, 1979 through June 30, 1982.

In the latter part of 1980 the Assistant Fire Chief for the County began to compile and modify certain rules and regulations governing the County Fire Department.

Informally the assistant Fire Chief notified officials of the Union of the proposed modifications and distributed copies of the proposed rules and regulations to members of the Fire Department in November of 1980.

Several informal discussions followed between representatives of the Fire Chief and the Union concerning the proposed changes.

In December of 1980, the Fire Department posted the proposed departmental rules on certain bulletin boards pursuant to past practice and to provide the Union the required ten day notice prior to implementation pursuant to Article XXIV of the current collective bargaining agreement.

On December 18, 1980, the Union advised the County Fire Department in writing in a memorandum entitled "Informal Grievance" of its position that Promotional Examinations and a portion of the 1981 Departmental Rules and Regulations were negotiable items. Additionally the Union contended these items could possibly reopen the current contract for negotiation of wages.

The Assistant Fire Chief responded informally to the Union's memorandum expressing a willingness to discuss the matter with the Union. The parties met to discuss certain portions of the proposed rules and regulations, resulting in further modifications prior to January 1, 1981, the date of implementation.

On March 17, 1981, the Assistant Fire Chief responded formally in writing to the Union reiterating his willingness to discuss the Union's continued concern regarding the 1981 Rules and Regulations. The parties met again on March 27 and April 7, 1981. During these meetings the Union insisted upon reopening the current collective bargaining agreement for negotiation based upon the changes to the 1972 Rules and Regulations.

At the second meeting the Assistant Fire Chief expressed his opinion that he was without authority to negotiate alleged contractual matters and left the meeting. He referred the Union to the Chief Negotiator for the County.

Over the next four months numerous meetings and correspondence between the County and the Union failed to resolve the matter and on August 19, 1981 the Union notified the County that

it would not recognize the 1981 Rules and Regulations of the Fire Department.

By complaint filed September 2, 1981 the Union alleges the County refused to negotiate the changes in the rules and regulations although the Union had submitted its written notice of its desire to negotiate. The Union contends the actions of the County were in violation of its duty to bargain collectively in good faith under NRS 288.033 and constitute prohibited practices pursuant to NRS 288.270(1)(e).

In response to these allegations the County denies it was properly noticed by the Union of its desire to negotiate; that in fact, no bargaining had ever commenced, and that the Union has failed to bring its complaint within the statutory time limits as set forth in NRS 288.110.

By counterclaim filed September 22, 1981, the County contends that it deems Rules and Regulations to be a non-mandatory subject of bargaining and has promulgated the 1981 Rules and Regulations pursuant to past practice and the requirements of the existing agreement. It further contends that Complainant's attempt to renegotiate wages as a condition to obeying the rules, refusing to recognize such rules in disciplinary proceedings and failure to provide specific examples of substantive changes in the rules that allegedly relate to a mandatory subject of bargaining has amounted to an interruption of County operations as defined in NRS 288.070 and therefore constitutes an illegal strike as defined in NRS 288.230.

The Union alleges the memorandum of December 18, 1980 initiated negotiation procedures under NRS 288.180 and that the meetings that followed were indeed negotiating sessions while the County maintains that the memorandum did not constitute a formal request for negotiations as required by NRS 288.180(1) therefore technically, negotiations had never commenced.

It is evident that the language contained in the memorandum was dissimilar to previous requests submitted by the Union to the County to commence negotiations on other matters but did express the Union's concern that certain changes of the rules and regulations covered mandatory subjects of bargaining and could reopen the contract for negotiation between the parties.

There are no specific requirements delineated within the cited section of the statute as to form or style other than the express requirement that it be in writing.

Even in light of this lack of statutorily mandated requirements, the Union's memorandum can only be loosely construed as a notice or request to negotiate, although it must be concluded that the Union desired to bargain since the Union's entire course of conduct offered no other reasonable deduction.

It still remains questionable that negotiations, if any at all, ever got off the ground.

The Assistant Fire Chief met with representatives of the Union to discuss the changes in December at a local hospital. These meetings resulted in modifications to the proposed changes at the Union's request. At subsequent meetings when it became apparent to the Assistant Chief that the Union intended to open the contract to negotiate new contractual terms, he demurred, stating he could not negotiate such matters as he did not have the authority.

For four months the parties met and corresponded. The Union at one point during these meetings contended that it desired to negotiate only those rule changes that impacted on hours, wages, and working conditions. It then proffered its contention that the changes required negotiations of all the rules and regulations. Additionally it further contended the bargaining agreement must be reopened to negotiate wages. The County repeatedly requested a statement from the Union listing those portions of

the Rules and Regulations in the Union's opinion were mandatory subjects of bargaining. The Union never complied.

This constant fluctuation by the Union of its position and its failure to provide the County with a clear and unequivocal statement as to its desires raises the question whether the actions of the Union following the meetings with the Assistant Fire Chief were in the nature of seeking only to block the proposed actions of the County to delay implementation of the proposed rules and regulations for the Fire Department.

Public employers have the right to promulgate and enforce administrative rules and regulations governing the operation of a department.

Rules and regulations in and of themselves do not constitute a mandatory subject of bargaining but if they include matters which relate to a mandatory subject of bargaining as delineated in NRS 288.150(2) then such rule or regulation would be negotiable.

Adjustments and modifications of such rules and regulations may become necessary between periods of negotiation of a collective bargaining agreement as in the present case before the Board.

If any proposed change to a rule or regulation would be in conflict with the terms of the negotiated agreement between the parties only then would both parties be obligated to enter negotiations on these matters, but absent a mutual agreement to do otherwise negotiations would be limited to only those areas in conflict with the terms previously agreed to.

The Union contended that the change in Regulation #2, "Acting Officers", would reopen the contract to renegotiate wages. This contention is without merit and is erroneous.

The modification did not change the intent of the old rule, it only made semantic changes in the guidelines. The new regulation did not address compensation nor did the 1972 regulation. The matter of compensation or wages is incorporated into

the collective bargaining agreement between the parties as it rightfully should be.

Testimony during the hearing demonstrated that the proposed 1981 Rules and Regulations were composed of various general orders, memos, amendments, etc. that were already in effect combined with a clarification and restatement of the 1972 Rules and Regulations.

On the face of the evidence submitted, the proposed rules and regulations reflect no substantial, albeit semantic, change from the previous rules and do not appear to conflict with the terms of the 1979-1982 collective bargaining agreement between the parties.

The Union then raised the argument during the hearing that since the parties had negotiated the 1972 Rules and Regulations pursuant to 1970 contractual obligations and had continued to agree to do so in succeeding contracts in effect May 15, 1975, the County was obligated to continue the negotiation of rules and regulations because of the "grandfather" clause under NRS 288.150(7).

In 1975 the Legislature amended NRS Chapter 288 to specifically delineate those subjects mandatorily negotiable between a local government employer and an employee organization. Not wishing to destroy "good labor relations" between those parties that had already negotiated contracts and had agreed to incorporate other than those items now delineated as bargaining subjects, the Legislature allowed those parties to continue to negotiate in good faith in future by insertion of an addendum to NRS 288.150.

"Contract provisions presently existing in signed and ratified agreements as of May 15, 1975, at 12 p.m. shall remain negotiable."

Such is not the case in the complaint before this Board.

Since 1973 that parties had begun to disagree upon the mandatory negotiability of rules and regulations as evidenced by

Governor O'Callaghan's response to the Union's request for binding factfinding in his letter of March 30, 1973:

"As to the following issues which the county contends are not mandatory subjects of bargaining under the provisions of NRS 288.150, I hereby order that the finding and recommendations of the factfinder be final and binding on each issue or issues determined by competent authority to be mandatory subjects of bargaining.

1. Work rules, ... as currently set forth Article VII of the existing contract".
(Emphasis added)

Also it is further evidenced by the arbitrator's award of Reginald Alleyne, Jr., dated November 16, 1973.

"Following the statutory procedure, the Governor, on March 30, 1973, ordered final and binding factfinding in respect to certain salary, fringe-benefit and non-economic issues and as to other of such issues, the Governor designated final and binding factfinding only if the matters involved were determined by "competent authority to be mandatory subjects of bargaining". To that end, the parties have agreed that the Nevada Employee-Management Relations Board is the proper authority to determine whether any of the contingency final and binding matters are mandatory subjects of bargaining..."

No evidence was presented that any authority had ruled on the mandatory negotiability of "work rules".

The lack of contractual obligation to negotiate rules and regulations is further evidenced by the minutes of the Clark County Commission of December 5, 1973 wherein the provisions of the agreement between the parties were delineated for ratification by the County Commission. It did not contain a provision for the negotiation of "work rules".

By resolution in June 1974 the County Commission adopted and approved a settlement reached by the County and the Union during negotiations for a contractual agreement for the years 1974 through 1976. No provision for the negotiation of work rules was addressed by this settlement. It is obvious that the parties continued to disagree as to the negotiability of "work rules".

By agreement, negotiations in 1975 were limited to wage rates

for fiscal year 1975-1976.

The Union has failed to prove that the County had relinquished its position on the non-mandatory negotiability of "work rules", as promulgated during negotiations in 1973 and 1974, in a signed and ratified agreement as of May 15, 1975. This is further evidenced by the continued disagreement of the parties in the 1979-82 contractual agreement under Article "F". It is the opinion of this Board that there is no contractual or statutory obligation pursuant to NRS 288.150(7) for the County to negotiate the 1981 Departmental Rules and Regulations unless such changes alter the terms of the agreement between the parties and such changes reflect upon mandatory subjects of bargaining pursuant to NRS 288.150(2)(a) through (t).

The County has raised the argument that the Union has failed to bring this action within the statutory time limitations. The Board disagrees with the County's assertion that the memorandum sent by the Union to the Assistant Fire Chief dated December 18, 1980 serves as the occurrence which is the subject of the complaint.

Within its Complaint the Union alleges the actions of the Assistant Fire Chief at the meeting of April 7, 1981 violated the provisions of NRS Chapter 288. The Board finds that the Union has complied with the six month time limit established under NRS 288.110(4).

The County additionally raises the argument that the Union has waived its right to bargain any change to the rules and regulations as they failed to negotiate changes that were implemented in 1975 and 1978 therefore they are estopped from negotiating the 1981 changes to the departmental rules and regulations.

The failure of the Union to contest the amendments or to demand negotiations in 1975 and 1978 does not amount to a waiver

of its right to bargain at a future date as the County's earlier actions worked in favor of the firemen and its action four years later is deemed unfavorable by the Union. A waiver of a right to bargain must be clear and unmistakable, therefore the Union is not estopped from raising its objection to the changes in the 1981 Rules and Regulations. See International Brotherhood of Teamster's Local 444 vs. The City of Winter Haven, Florida Public Employees Relations Commission, Case Nos. CA-78-002, CA-78-040. Order No. 79U-066 (1979) PEB paragraph 41,113.

The County in its counterclaim alleged the behavior of the Union constituted an illegal strike as defined in NRS 288.230.

The Union agreed to abide by the 1972 Departmental Rules and Regulations although refusing to abide by the proposed 1981 Rules. There was insufficient evidence presented during the hearing to find the actions of the Union caused any interruption of County services or had any adverse impact upon the County to constitute an illegal strike. The County's allegation is unfounded.

The final issue which remains for the Board's determination is whether the subjects contained in Article "F" of the existing collective bargaining agreement for 1972 through 1982 between the parties are mandatory subjects of bargaining.

The County no longer disputes that discipline and procedures relating to a reduction in force are mandatory subjects of bargaining. The remaining subject matters under Appendix "F", Safety and Health, Departmental Rules and Regulations, Shift and Duty Station Vacancies, Hiring Procedures, Emergency Operation Assignment, Promotional Exam Procedures, still remain in contention between the parties.

The 1975 legislature substantially limited the broad scope of mandatory bargainable subjects by amending the language of NRS 288.150(2) to delineate twenty subjects. All matters not

made expressly negotiable by this amendment are subject to discussion only.

The rights reserved to the public employer without negotiations are expressly delineated under NRS 288.150(3)(a). Shift and Duty Vacancies, Hiring Procedures and Emergency Operation Assignments fall within the purview of this subsection therefore are not mandatory bargainable subjects.

The public employer's right to determine which employee shall be promoted and the requirements and procedures relating thereto are outside the scope of mandatory bargaining. The Board has previously ruled on this subject matter in The City of Sparks vs. International Association of Fire Fighters, Local No. 1265, Item No. 103, (1980). Promotional Examinations are not mandatory subjects of negotiations.

As stated previously in this decision Departmental Rules and Regulations are not mandatorily negotiable per se nor are the procedures to promulgate or modify them as the Board has previously ruled in the City of Sparks, supra. The County has voluntarily agreed to negotiate and include in the collective bargaining agreement with the Union certain procedures to be followed when rules and regulations are changed. The County was not required to do so pursuant to NRS 288.150(3). The County never agreed to negotiate all rules and regulations but limited it to:

"(a)ny proposed change ... which relates
to a mandatory subject of bargaining
under NRS 288 is subject to negotiations
between the parties

Safety is a mandatory subject of bargaining but not where it would infringe upon the public employer's management prerogatives and rights.

It is management's discretion to determine the number of fire fighters it will hire or retain, the total number of employ-

ees reporting to a fire and the minimum number of employees to be assigned to each piece of apparatus and are not subjects of mandatory bargaining. See International Association of Fire Fighters, Local 699 vs. City of Scranton 1981-83 PBC paragraph 37,424 (Pennsylvania Commonwealth Court No. 2325 C.D. 1981, City of East Orange vs. Local 23 East Orange Firemens Mutual Benevolent Association 1981-83 PBC paragraph 42,135 (New Jersey Public Employment Relations Commission 1980).

As the court in City of New Rochelle vs. Crowley 403 NYS 2d 100 (1978) stated, the word "safety" will not always transform a non-mandatory subject of negotiation into one requiring negotiation.

FINDINGS OF FACT

1. That the Complainant, International Association of Fire Fighters, Local 1908 is a local government employee organization.
2. That the Respondent, Clark County, is a local government employer.
3. That the Union and the County had entered into a collective bargaining agreement covering the period from July 1, 1979 through June 30, 1982.
4. That Rules and Regulations governing the Fire Department had been implemented by the County in 1972.
5. That certain amendments to the 1972 rules and regulations were implemented in 1975 and 1978.
6. That under the current bargaining agreement the parties agreed to recognize the existence of the Departmental Rules and Regulations and the procedures to be utilized upon modification.
7. That the parties have disagreed since 1973 upon the negotiability of "rules and regulations" as well as other subject matters and have incorporated their disagreement under Appendix "F" in the current and previous collective bargaining agreements.

8. That the Assistant Fire Chief informally notified the Union of certain proposed modifications to the Rules and Regulations in November, 1980.

9. That in December, 1980, the proposed modifications to the rules and regulations were posted on departmental bulletin boards pursuant to past practice to serve as the notice required under the collective bargaining agreement.

10. That on December 18, 1980, the Union sent a memorandum entitled "Informal Grievance" to the Assistant Fire Chief stating their position that Promotional Exams and portions of the Rules and Regulations were negotiable items and could serve to reopen the current contract to negotiate wages.

11. That the Assistant Fire Chief met with the Union informally to discuss the proposed modifications prior to their implementation on January 1, 1981.

12. That the Union continued to express concern as to the modifications and their negotiability following the implementation of the rules.

13. That the Assistant Fire Chief formally responded in writing to the Union on March 17, 1981 expressing a willingness to discuss their concerns.

14. That the Union met with the Assistant Fire Chief on March 27, 1981 and April 7, 1981.

15. That the Union adamantly insisted upon negotiating contractual provisions with the Assistant Fire Chief.

16. That the Assistant Fire Chief on April 7, 1981, refused to continue the meeting expressing his opinion that he was without authority to negotiate contractual matters and referred the Union to the County Chief Negotiator.

17. That the County continued to willingly meet with the Union but the parties failed to resolve the matter.

18. On August 19, 1981, the Union notified the County that

it would not recognize the 1981 Rules and Regulations.

CONCLUSIONS OF LAW

1. That pursuant to the provisions of the Nevada Revised Statutes Chapter 288, the Local Government Employee-Management Relations Board possesses original jurisdiction over the parties and subject matter of this complaint. NRS 288.110, NRS 288.280.
2. That the Complainant, International Association of Fire Fighters, Local 1908 is an employee organization within the meaning of Nevada Revised Statutes Chapter 288. NRS 288.040, NRS 288.027.
3. That Respondent, County of Clark is a local government employer within the meaning of Nevada Revised Statutes Chapter 288. NRS 288.060.
4. That the actions of the County during the meeting of April 7, 1981 or further subsequent meetings do not constitute a violation to bargain in good faith pursuant to NRS 288.150(1) or a prohibited practice under NRS 288.270(1)(e).
5. That the memorandum of December 18, 1980, can only be loosely construed as the required notice of a desire to negotiate pursuant to NRS 288.180(1).
6. That actual negotiations between the parties were never initiated pursuant to NRS 288.180.
7. That the actions of the Union do not constitute an illegal strike as defined in NRS 288.070(3).
8. That the actions of the Union do not violate the provisions of NRS 288.230.
9. That Rules and Regulations per se are not a mandatory subject of bargaining pursuant to NRS 288.150(2).
10. That the County is not required to negotiate all Departmental Rules and Regulations pursuant to NRS 288.150(7).
11. That the County has no obligation to negotiate Shift

and Duty Station Vacancies, Hiring Procedures, Emergency Operation Assignments, as they encompass rights reserved to the local government employer pursuant to NRS 288.150(3)(a).

12. That Promotional Examinations are not a mandatory subject of bargaining pursuant to NRS 288.150(2).

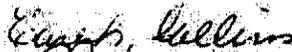
13. That Safety is a mandatory subject of bargaining pursuant to NRS 288.150(2)(r).

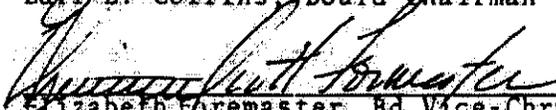
The Union shall comply with the provisions of NRS 288.180 and until just cause be given to raise a formal complaint the Union shall recognize and abide by the 1981 Departmental Rules and Regulations.

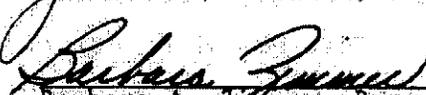
The requested relief is denied and the Complaint and Counterclaim dismissed. Each party shall bear its own costs and fees.

Dated this 29th day of October, 1982.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD


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