

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

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TRUCKEE MEADOWS FIRE
PROTECTION DISTRICT,
Petitioner,

CASE NO. A1-045400

-vs-

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 2487,
Respondent.

DECISION

For the Petitioner: I. HOWARD REYNOLDS
For the Respondent: PAUL D. ELCANO, JR., Esq.
For the EMRB: SALVATORE C. GUGINO, Esq., Chairman
TAMARA BARENGO, Vice-Chairman
JEFFREY L. ESKIN, Esq., Member

STATEMENT OF THE CASE

On August 1, 1985, the TRUCKEE MEADOWS FIRE PROTECTION DISTRICT ("TRUCKEE") filed its Complaint for Violation of duty To Bargain Collectively in Good Faith with this Board alleging that Respondent INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 2487 ("IAFF") had submitted four (4) subjects for negotiations which were outside the scope of mandatory bargaining. The four subjects included a staffing proposal under an Article entitled "Safety and Health", a proposal on "Rules and Regulations", a proposal on "Prevailing Rights", and a proposal for a "Successor Clause".

Although Petitioner made formal requests that Respondent remove the above subjects from negotiations, the Respondent continued to attempt to

1 engage in bargaining discussions on said topics to the point of impasse. As
2 a result, the instant action was brought in which the Petitioner has asserted
3 that the above-named topics were outside the scope of mandatory bargaining
4 and that the Respondent, by insisting to the point of impasse on negotiating
5 over said subjects, was refusing to bargain in good faith.

6 Petitioner has also alleged that Respondent acted in bad faith
7 when it submitted four (4) additional proposals to the factfinder which had
8 been introduced just prior to the factfinding process.

9 10 D I S C U S S I O N

11 I

12 THE BOARD RELIES UPON THE "SIGNIFICANT RELATIONSHIP" TEST IN ANALYZING THE NEGOTIABILITY OF A TOPIC

13 As pointed out in County of Washoe v. Washoe County Employees'
14 Association, Case No. A1-045365, Item No. 159 (1984),

15 "(I)t appears that decisions of this Board sub-
16 sequent to the 1975 legislative amendments have
17 approached analysis of negotiability under NRS 288.
18 150(2), subsections (a) through (t), as being whether
19 or not from the facts presented, the subject matter
20 involved is directly and significantly related to any
21 one of the subjects specifically enumerated in NRS
288.150(a) through (t) under a broad construction of
the particular listed subject." Id. at 8. See also
Henderson Police Officer Association v. City of Hen-
derson, Item No. 83 (1978); In Re IAFF Local 1908 v.
Clark County, Item No. 146 (1982).

22 II

23 SAFETY AND HEALTH PROPOSAL

24 Respondent's proposed Article 29 is primarily concerned with recom-
25 mended manning levels on service engines, water tenders (tankers), and brush
26 trucks. There is no question that firefighting is a very hazardous job and
27 that the safety of firefighters can be affected by the number of men assigned
28 to a unit. See International Association of Firefighters, Local 314, C-61-83;

1 CA A29314 (Ore. 1984). Although NRS 288.150(3)(c) (1) gives management the
2 right to determine appropriate staffing levels and work performance standards,
3 it contains one important exception, and that is for "safety considerations."

4 As pointed out in the Oregon case, cited supra,

5 "(The) decision recognizes that, at some point,
6 reductions in personnel levels present safety concerns
7 which are as critical to the conditions of employment
8 as are monetary benefits, hours, vacations, sick leave
9 and grievance procedures...The evidence presented estab-
lishes that personnel levels and safety concerns are
interrelated. ERB's decision that safety concerns
outweigh management policy in this instance is supported
by substantial evidence." IAFF, Local 314 at 6.

10 The Board finds that the Respondent has sufficiently established
11 the relationship between staffing levels and the safety of the employee and
12 accordingly holds that Article 29 relating to "Safety and Health" is within
13 the scope of mandatory bargaining pursuant to NRS 288.150(2)(r) and NRS 288.
14 033(1).

15 III
16 RULES & REGULATIONS CLAUSE

17 In the instant litigation, both parties have agreed that any rule
18 or regulation which significantly relates to a mandatory subject of bargaining
19 would have to be negotiated. (See County of Washoe, cited supra.)

20 However, subject to the above proviso, the Board concludes that
21 "rules and regulations", in and of themselves, do not constitute a mandatory
22 subject of bargaining. The union's proposal, as written, encompasses all
23 existing rules and regulations of the District and would impinge upon the
24 subject matters which are reserved to the local government employer without
25 negotiation as set forth in NRS 288.150(3).

26 IV
27 PREVAILING RIGHTS CLAUSE

28 Using the same analysis, the Board observes that Article No. 36,

1 relating to "Prevailing Rights", obviously deals with benefits and working
2 conditions of employment and therefore rules that the issue of prevailing
3 rights is not, per se, barred as a subject of negotiations, as it may include
4 negotiable items under NRS 288.150(2), particularly in light of NRS 288.150(2)
5 (q) which relates to the "duration of collective bargaining agreements". See
6 Fibreboard Paper Products v. NLRB, 85 S.Ct. 398, 379 U.S. 203 (1964).

7 However, as a matter of observation, Article 36, as presently con-
8 stituted, is so overly broad that it appears to intrude upon management prerog-
9 atives under NRS 288.150(3).

10 V
11 SUCCESSOR CLAUSE

12 On the issue of Respondent's proposed Article 43 which is the
13 "Successor" clause, it is the position of the Board that this provision is
14 significantly related to the areas described in NRS 288.150(2). It is clear
15 that the replacement of an existing employer by another employer may signifi-
16 cantly impinge upon wages, hours and conditions of employment, and also matters
17 such as sick leave, vacation leave, insurance benefits and other employment
18 benefits made negotiable pursuant to statute.

19 VI
20 THE ALLEGATIONS OF BAD
21 FAITH AGAINST THE IAFF

22 Petitioner has alleged that Respondent has acted in bad faith,
23 first by insisting on negotiating to impasse the above-described contract pro-
24 posals. It also alleges that an additional four (4) proposals were introduced
25 just prior to or during factfinding.

26 Regarding the former, this Board observes the language of the U.S.
27 Supreme Court in Fibreboard, supra, which states:

28 "Read together, these provisions establish the
obligation of the employer and the representative of

1 its employees to bargain with each other in good
2 faith with respect to 'wages, hours, and other
3 terms and conditions of employment . . .'. The
4 duty is limited to those subjects, and within
that area neither party is legally obligated to
yield." Id. at 402.

5 The Board, in light of its reasoning, supra, does not find that
6 the Respondent has acted in bad faith with regard to its insistence on nego-
7 tiating any of the items heretofore mentioned to impasse.

8 With regard to the four new proposals, it is observed that the
9 Petitioner felt these items were not negotiable and the factfinder rendered
10 them inappropriate to consider at that point in time. The Board agrees with
11 the conclusion of the factfinder. NRS 288.200 and NRS 288.205 presuppose
12 that an issue has actually been an item of negotiation by and between the
13 parties prior to its submission to a factfinder. Under the facts of this
14 case, the four items submitted by Respondent at the time of factfinding could
15 not, in good faith, be considered by the factfinder.

16 Accordingly, the decision of Respondent to submit the above-men-
17 tioned proposals at factfinding was a bad faith prohibited act pursuant to
18 NRS 288.270(2)(b).

19
20 F I N D I N G S O F F A C T

- 21 1. That the TRUCKEE MEADOWS FIRE PROTECTION DISTRICT is a local
22 government employer.
- 23 2. That the INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL
24 2487, is a local government employee organization.
- 25 3. That during the course of 1985 negotiations concerning the
26 Agreement between the parties, there were disagreements between them regarding
27 whether certain proposals were the subject of mandatory bargaining.
- 28 4. That the parties negotiated to impasse on proposals related

1 to the issues of safety and health, rules and regulations, prevailing rights
2 and successors.

3 5. That during factfinding between the parties, the Respondent
4 IAFF attempted to introduce new issues for consideration by the factfinder
5 which had not been previously negotiated.

6
7 C O N C L U S I O N S O F L A W

8 1. That the Local Government Employee-Management Relations Board
9 possesses original jurisdiction over the parties and subject matter of this
10 Complaint and/or Petition pursuant to the provisions of NRS Chapter 288.

11 2. That the TRUCKEE MEADOWS FIRE PROTECTION DISTRICT is a local
12 government employer within the term defined in NRS 288.060

13 3. That the INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 2487
14 is a local government employee organization within the term as defined in NRS
15 288.040.

16 4. That the proposal of Respondent IAFF concerning safety and
17 health is a mandatory subject of bargaining pursuant to NRS 288.150(2)(r) and
18 NRS 288.033(1).

19 5. That the proposal of Respondent IAFF concerning rules and
20 regulations, as written, is not within the scope of mandatory bargaining and
21 impinges upon management prerogatives as set forth in NRS 288.150(3).

22 6. That the proposal of Respondent IAFF concerning prevailing
23 rights, as written, is not within the scope of mandatory bargaining in that it
24 impinges upon management prerogatives as set forth in NRS 288.150(3). However,
25 the issue of prevailing rights is not, per se, barred as a subject of negoti-
26 ability, as it may include negotiable items under NRS 288.150(2), particularly
27 in light of NRS 288.150(2)(q).

28 7. That the proposal of Respondent IAFF concerning successors

1 is a mandatory subject of bargaining pursuant to NRS 288.150(2)(q) and NRS
2 288.033(1).

3 8. That the Respondent IAFF did not act in bad faith by bargaining
4 to impasse on the above items and issues set forth in paragraphs 4 through 7.

5 9. That there is sufficient evidence to support the conclusion
6 that Respondent IAFF failed to bargain in good faith by introducing new issues
7 before the factfinder. Said action constitutes a violation of the duty to
8 bargain in good faith pursuant to NRS 288.270(2)(b).

9 10. That each party is to bear its own costs and fees in the above-
10 entitled matter.

11 DATED this 21st day of September, 1987.

13 LOCAL GOVERNMENT EMPLOYEE-
14 MANAGEMENT RELATIONS BOARD

15 By *Salvatore C. Gugino*
16 SALVATORE C. GUGINO, Esq.
Chairman

17 By *Tamara Barengo*
18 TAMARA BARENGO
19 Vice Chairman

20 By *Jeffrey L. Eskin*
21 JEFFREY L. ESKIN, Esq.
Member of the Board

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27 cc: BOARD MEMBERS & Deputy A.G.
28 John Hussong, IAFF president
Other Interested Parties
File