CASE NO. A1-045418 ITEM NO. 204

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

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WATER EMPLOYEES ASSOCIATION, Complainant-Counterdefendant, vs. BOARD OF DIRECTORS, LAS VEGAS VALLEY WATER DISTRICT, Defendant-Counterclaimant.	**D E C I S I O N**

For the Complainant-Counterdefendant: Christopher G. Gellner, Esq.

For the Defendant-Counterclaimant: Gregory E. Smith, Esq.

For the EMRB Board: Salvatore C. Gugino, Esq.
Tamara Barengo
Jeffrey L. Eskin, Esq.

STATEMENT OF THE CASE

This dispute arose upon the filing of a complaint by the Water Employees Association (hereinafter referred to as the "WEA") against the Board of Directors of the Las Vegas Valley Water District (hereinafter referred to as "Water District"), alleging that the Water District committed a prohibited practice by refusing to negotiate with the WEA's combined negotiating team consisting of members of both a supervisory bargaining unit and a non-supervisory bargaining unit represented by the WEA, thereby interfering with the right of employees represented by the WEA to

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select who shall sit at the bargaining table and negotiate on their behalf, interfering with the administration of the WEA and refusing to bargain collectively in good faith, all within the meaning of NRS 288.270(1)(a)(b) and (e).

The Water District filed a counterclaim in which it alleged that the WEA committed prohibited practices by refusing to bargain collectively in good faith within the meaning of NRS 288.270; by failing to negotiate in good faith within the meaning of NRS 288.160; by attempting to change the composition of the bargaining units represented by it in violation of NRS 288.160; by attempting to force supervisory employees to become members of the same bargaining unit as employees under their discretion in violation of NRS 288.170. Based thereon, the Water District requested written permission to withdraw recognition from the WEA or, in the alternative, that the WEA be ordered to bargain in good faith for two collective bargaining agreements, each covering a properly recognized bargaining unit, with a negotiating team for each bargaining unit that does not include members of the other bargaining unit.

The parties filed a pre-hearing statement in which the parties stipulated and agreed that the issues presented to the Board were as set forth in the complaint and counterclaim allegations.

A hearing on these disputes was held before the Local Government Employee-Management Relations Board in which both parties submitted evidence in support of their respective positions and after which both parties submitted post-hearing briefs for consideration by the Board. The hearing was continued

until the date set for the filing of briefs on November 2, 1987. The parties did file their briefs on that date and the hearing was closed immediately thereafter.

Based upon the testimony of witnesses, the evidence submitted by the parties, the post-hearing briefs and arguments of counsel, the EMRB concluded that the WEA, when negotiating on behalf of two bargaining units, one of which consists of supervisors and the other which does not, may not select members of one such bargaining unit to negotiate on behalf of the other bargaining unit, and that the Water District did not, therefore, commit a prohibited practice by refusing to negotiate with such a mixed bargaining team. In making this ruling, the EMRB overrules In the Matter of the Request for a Declaratory Ruling by the City of Reno, Case No. A1-045315, Item No. 86. Because the WEA acted in reliance upon Item No. 86, however, it will not be assessed a prohibited practice under NRS 288.160 by attempting to change the composition of the bargaining units represented by it or under NRS 288.170 by effectively forcing supervisory employees to become members of the same bargaining unti as employees under their direction. The WEA did, however, fail to negotiate in good faith, violating NRS 288.160 and 288.270(2)(b) by withdrawing the 1986 supervisory negotiation proposals from the table and indicating that it would resume negotiations for the supervisory unit only in tandem with negotiations for the non-supervisory unit. The Board also concluded that the Water District may not receive the Board's permission to withdraw recognition from the WEA for the supervisory bargaining unit pursuant to NRS 288.160(3). Finally, the Board concluded that neither party is

entitled to an award of attorneys fees or costs assessed against the other and that each party should bear its own costs and fees.

DISCUSSION

1. Local Government Employee Associations, When Representing Two Bargaining Units One of Which Is Comprised of Supervisors And The Other Which Is Not, Must Represent Those Two Units in Negotiations with a Local Government Employer with Separate Bargaining Teams, Neither of Which are Permitted to Include Members of the Other Bargaining Unit.

NRS 288.170 provides that a supervisor "shall not be a member of the same bargaining unit as the employees under his direction." There is no question that the purpose and intent of that statute is to protect both the supervisors and employees from conflicts of interest inherent in having both of them in the same bargaining unit. We concur with the reasoning of the New Hampshire Supreme Court in City of Concord v. Public Employee Labor Relations Board, 407 A.2d 363 (N.H. 1979) which found, in construing a statute similar to ours, that the members must not only in separate bargaining units but also, as a logical consequence, that they must not be allowed to co-mingle on each other's negotiating teams. In our view, to hold otherwise, would permit the existence of the very conflicts of interest the legislature intended to prohibit.

In making this ruling, we recognize the principle that both bargaining parties are normally allowed to select bargaining representatives of their own choosing. That is a strong principle in both public sector and private sector labor management relations. Our Decision should not be interpreted to

prevent bargaining units from selecting separate or mutually appointed negotiators who are not memebers of a bargaining unit for purposes of conducting negotiations. These negotiators must not, however, insist on co-mingling the bargaining teams of the negotiating sessions where separate individual units are involved.

2. Both the Water District and Association Violated NRS 288.160 And 288.170(2)(b) During the Course of the 1986 Supervisory Negotiations.

The record reveals that, throughout the course of negotiations involving the supervisory unit in 1986, neither the Water District or the Association appeared willing to resolve anything but the most minor of issues. Eventually, the parties requested a binding factfinding panel to consider the merits of thirty-four (34) unresolved issues. After hearing the presentations of both parties on January 13, 1987, the panel sent the issues back to the bargaining table on January 20, 1987 with the following statements:

> In reviewing the testimony presented during the hearing, the panel was unable to find any evidence that the negotiation process has not worked or will not work in the absence of binding factfinding. This panel will not permit the powers granted to it by NRS 288.200(6) to be used as a substitute for good faith bargaining by either party.
>
> In light of the absence of any previous bargaining history between the parties and based upon the evidence and testimony presented, it is hereby, by the panel,
>
> "ORDERED that the thirty-four (34) unresolved issues be remanded back to the parties and the parties promptly resume negotiations. The panel also strongly suggests the use of a mediator to aid in reaching resolution."

There is additional evidence that the District intended to "sit" on the supervisory contract "until hell froze over." (TR 58, 59). Ground rules proposed by both parties were bickered over endlessly (TR 67 - 71), and it wasn't until the meeting on May 7, 1986 that substantive issues were even addressed (TR 71).

In light of the above, and in reviewing the totality of circumstances surrounding the collective bargaining activity in 1986, this Board finds that both parties acted in bad faith with regard to negotiations on behalf of the supervisory unit in 1986. See Clark County Classroom Teachers Ass'n v. Clark County School District and Board of Trustees of the Clark County School District, Case No. A1-045302, Item No. 61 (Dec. 10, 1976).

3. The WEA Violated NRS 288.160 and 288.270(2)(b) In 1987 By Withdrawing All of Its Proposals For The 1986 Supervisory Negotiations And Refusing to Continue Negotiations Except in Tandem with The Negotiations for The Field And Clerical Bargaining Contract.

After the panel hearing in January 1987, the panel issued an order refusing to send any of the 34 unresolved items to binding arbitration and, instead, ordered the parties back to the bargaining table. That action by the panel was entirely appropriate even though challenged by the WEA as being beyond the scope of its authority.

After the panel's order in late January 1987, the WEA withdrew all of its bargaining proposals and refused to participate in further negotiations except in tandem with its recently opened negotiations for the field and clerical contract. We find that both the withdrawal of proposals and the refusal to

obey the panel's order constitute prohibited practices within the meaning of NRS 288.160 and NRS 288.270(2)(b). If the WEA believed that the panel had exceeded its authority, it could have challenged that panel's ruling by an appeal to this Board or by appropriate legal action. It had no authority to decide for itself that the panel exceeded its authority and to simply refuse to obey it.

4. <u>The Patterns or Practices of the Water District In Dealing With the Supervisory Unit Constitute a Failure to Bargain In Good Faith</u>.

This Board is extremely concerned with the testimony and evidence it received concerning the patterns or practices engaged in by the Water District in dealing with the supervisory unit. As mentioned supra, there is evidence that Pat Mulroy, general manager for management systems at the Water District, stated in a negotiating session in 1985, that "they would sit on the supervisory contract until hell froze over." (TR 58). Although Ms. Mulroy attempted to explain her remarks, the Board finds her statements unpersuasive (See TR 238, 239). As early as September 24, 1985, Brad Smith, deputy district attorney assigned to the Water District, was questioning whether or not the WEA had a majority of the supervisors (TR 62). The Water District spent months in negotiations quibbling over ground rules for supervisory negotiations (TR 67 - 71).

On January 27, 1987, when the WEA tried to withdraw 1986 proposals from the table in order to begin multi-unit negotiations with the Water District, the employer specifically retaliated against the front-line supervisor's unit, although the

field and clerical unit was clearly orchestrating this bargaining tact. In January of 1987, two months prior to the filing of the Association's Complaint, the Water District's representative, Pat Mulroy, made her decision to file charges before the EMRB (TR 245). Although she disclaims any consideration to seek decertification at that time (TR 245), she does admit that by the February 17, 1987 meeting with the Board of Directors, decertification was "tossed around as an idea." (TR 246). After the WEA filed its complaint against the Water District on March 17, 1987, the Water District responded with a counterclaim of its own on April 1, 1987 seeking, in Count 7, a withdrawal of recognition of the WEA. This decertification was actually directed against the supervisory unit only (See Conclusion, Post-Hearing Brief of Las Vegas Valley Water District, page 54, requesting withdrawal of the WEA as reprsentative of the front-line supervisors only).

Subsequently, on July 1, 1987, the date of the expiration of the contract with the WEA field and clerical unit, the General Manager of the Water District sent a letter to each employee unit, explaining the Water District's position regarding why it was refusing to negotiate (UX - 2, UX - 3). Although Mr. Pine states that the Water District is "eager to get back to bargaining on the real issues," he does not mention that the employer had been actively trying to decertify the WEA for the past three (3) months.

The Board views the totality of the circumstances surrounding the Water District's activities and finds that, from its inception, the front-line supervisory unit has been subjected

to the District's stalling tactics during negotiations, decertification actions and an employer communication which says more by omission than comission. See Teacher's Assocation of F.A.D. No. 40 v. Board of Directors of M.S.A.D., No. 49, Maine Labor Relations Board, Case No. 80-49 (November 18, 1980).

Under NRS 288.160(3)(d), a local government employer may withdraw recognition from an employee organization which fails to negotiate in good faith with the local government employer. That employer, however, must first seek the written permission of the Board. NRS 10530.

The Board will not withdraw recognition under NRS 288.160(3)(d) where a local government employer has engaged in an ongoing campaign to decertify the bargaining unit. Such activity, under the circumstances, constitutes a prohibited act on the part of the employer pursuant to NRS 288.270(b) and (e).

FINDINGS OF FACT

1. That the Water Employee's Association is the local government employee organization.

2. That the Board of Directors, Las Vegas Valley Water District, is the local government employer.

3. That in August of 1985, the WEA demanded recognition as the representative of a supervisory bargaining unit for front-line supervisors.

4. That the employer recognized the WEA as the bargaining representative for the front-line supervisors on October 30, 1985.

5. That the WEA requested a start of negotiations for ground rules on January 10, 1986.

6. That it took nine (9) meetings for the parties to agree upon and execute such rules, which were eventually completed on April 21, 1986.

7. That the parties negotiated from May 7, 1986 to September 17, 1986 on substantive issues, with little progress having been made by either side.

8. That on January 13, 1987, the parties submitted to a formal panel hearing to determine whether thirty-four (34) unresolved issues would be subject to binding factfinding.

9. That the factfinding panel on January 20, 1987, ordered that the thirty-four (34) unresolved issues be remanded back to the parties and that the parties resume negotiations.

10. That on January 27, 1987, the WEA informed the Water District that it was withdrawing its proposals on behalf of the supervisory bargaining unit for the 1986-87 negotiating session and notified the Board of Directors of the Water District of its intent to commence multi-unit negotiations simultaneously for supervisory and non-supervisory bargaining units for the 1987-88 contract.

11. That the WEA was proposing a single contract to cover both bargaining units.

12. That, since Water District officials had indicated that they would resist the successful negotiation of a contract by the WEA on behalf of the front-line supervisors.

13. That as early as September 24, 1985, the Water District was questioning whether or not the WEA had a majority of the supervisors in order to act as bargaining representative.

14. That the Water District was considering decertification of the bargaining unit of front-line supervisors as early as February 17, 1987.

15. That on March 17, 1987, the WEA filed its complaint against the Water District and the Water District responded with a counterclaim against the WEA on April 1, 1987 seeking a withdrawal of recognition of the WEA supervisory unit.

16. That, on July 1, 1987, the general manager of the Water District sent communications to members of both bargaining units concerning his views on the negotiation process.

CONCLUSIONS OF LAW

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

2. That the Water Employee's Association is a local government employee organization within the term as defined in NRS 288.040.

3. That the Board of Directors, Las Vegas Valley Water District is a local government employer within the term as defined in NRS 288.060.

4. That an employee association, when negotiating on behalf of two bargaining units, one of which consists of supervisors and the other which does not, may not select members of one such bargaining unit to negotiate on behalf of the other bargaining unit.

5. That both the Water District and the WEA violated NRS 288.160 and 288.170(2)(b) during the course of their negotiations

in 1986 by their refusal to bargain with each other in good faith and by their unnecessary submission of thirty-four (34) unresolved issues to a factfinding panel.

6. That the WEA violated NRS 288.160 and 288.270(2)(b) in 1987 by withdrawing all of its proposals for the 1986 supervisory negotiations and by refusing to continue negotiations except in tandem with the negotiations for the field and clerical bargaining contract.

7. That the patterns or practices of the Water District in dealing with the supervisory unit constitute a failure to bargain in good faith pursuant to NRS 288.270(b) and (e).

DATED this 16th day of March, 1988.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By _____
SALVATORE C. GUGINO, ESQ.
Chairman

By _____
TAMARA BARENGO
Vice-Chairman

By _____
JEFFREY L. ESKIN, Esq.
Member

Certified copies:
Christopher G. Gellner, Esq.
Gregory E. Smith, Esq.

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Board of Directors, Las Vegas Valley Water District
Board Members
Interested Parties
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