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**STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD**

LAS VEGAS POLICE PROTECTIVE
ASSOCIATION METRO, INC., as
Collective Bargaining Agent for
Commissioned Personnel of the
CITY OF LAS VEGAS,

Complainant,

-vs-

CITY OF LAS VEGAS, NEVADA, a
Municipal corporation,

Respondent.

ITEM NO. 248

CASE NO. A1-045461

DECISION

12 For the Complainant: Aubrey Goldberg, Esq.
GREENMAN, GOLDBERG, RABY & MARTINEZ

13 For the Respondent: Larry G. Bettis, Esq.
14 LAS VEGAS CITY ATTORNEY'S OFFICE

15 For the EMRB: Salvatore C. Gugino, Chairman
16 Tamara Barengo, Vice Chairman
Howard Ecker, Board Member

17 **STATEMENT OF THE CASE**

18 On November 14, 1989, Complainant, Las Vegas Police
19 Protective Association - Metro, Inc. ("Union") brought this
20 complaint against Respondent, City of Las Vegas ("City"). The
21 Union alleges that the City unilaterally reduced eight (8)
22 Senior Corrections Officers in rank and pay grade status
23 thereby depriving the officers of a negotiated pay raise on
24 July 1, 1990. The Union further alleges that any such
25 alteration in pay grade requires negotiations between the
26 parties pursuant to NRS 288.150 and that the action by the
27 City constituted a failure to bargain in good faith.

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1 In response, the City concedes that it reduced the
2 employees with the rank and pay grade of Senior Corrections
3 Officer. The City contends, however, that the change in the
4 officers' employment status was a transfer done after the City
5 had determined the appropriate staffing levels for the
6 Detentions Department and that such action is a right reserved
7 to the City pursuant to NRS 288.150(3).

8 At a prehearing conference on May 10, 1990, the City
9 stipulated:

10 1. That on or about September 6, 1989, the
11 City reached a determination that the job duties
12 of the eight (8) Senior Corrections Officers were
13 the same as those of the sixty (60) Corrections
14 Officers and accordingly, the City unilaterally
15 changed the status of the officers in the Senior
16 Corrections Officer position to Corrections
17 Officers.

18 2. That the City "red-lined" or froze the
19 wage rate of the eight (8) former Senior
20 Corrections Officers until such time as the
21 Corrections Officer wage rate reached the same
22 rate as the red-lined rate and that red-lining
23 caused the eight (8) officers to suffer the loss
24 of a 5.5% wage increase scheduled for July 1,
25 1990.

26 The Board conducted a hearing on the matter on May 18,
27 1990 in Las Vegas. The issue for determination before the
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1 Board was:

2 Whether the City's unilateral reduction in
3 rank and in pay grade of the eight (8) Senior
4 Corrections Officers was a prohibited practice in
5 that the City refused to negotiate the mandatory
6 item of bargaining pursuant to NRS 288.150(2).

7 Based upon due deliberation of the papers and pleadings
8 on file, the testimony of the witnesses and the evidence and
9 arguments presented by the parties and their counsel, the
10 Board has concluded the City engaged in a prohibited practice.

11 **DISCUSSION**

12 I

13 **THE ACTION BY THE CITY WAS NOT A**
14 **RIGHT PROTECTED UNDER NRS 288.150(3).**

15 The Board rejects the City's argument that the action of
16 the City was a transfer and therefore, permitted by NRS
17 288.150(3).

18 NRS 288.150(3) provides:

19 Those subject matters which are not within
20 the scope of mandatory bargaining and which are
reserved to the local government employer without
negotiation include:

21 (a) Except as otherwise provided in paragraph
22 (u) of subsection 2, the right to hire, direct,
assign or transfer an employee, but excluding the
right to assign or transfer an employee as a form
of discipline.

23 (b) The right to reduce in force or lay off any
24 employee because of lack of work or lack of money,
subject to paragraph (v) of subsection 2.

25 (c) The right to determine:

26 (1) Appropriate staffing levels and work
performance standards, except for safety
considerations;

27 (2) The content of the workday, including
28 without limitation work load factors, except for
safety considerations;

1 (3) The quality and quantity of services to
2 be offered to the public; and

3 (4) The means and methods of offering those
4 services.

(d) Safety of the public.

(Emphasis added.)

5 The action by the City on September 6, 1989 resulted in
6 a reduction in rank for eight (8) employees from Senior
7 Corrections Officer to Corrections Officer and their placement
8 on lower pay schedule causing a reduction in salary of some
9 \$1,900 each during the 1990-91 contract year. The eight (8)
10 officers, however, remained in the same department at the same
11 job site doing the same job.

12 Although the City argued that the action was a transfer,
13 the manager responsible for the action, Michael Sheldon,
14 Director of the Department of Detention and Enforcement,
15 testified that it was a reclassification (Transcript at 48).
16 In his memo of September 6, 1989 to all Senior Corrections
17 Officers, Sheldon stated:

18 "Effective this date, all senior corrections
19 officer positions have been re-classified to
20 corrections officer positions. Your salaries have
21 been redlined as discussed in our previous
22 meetings.

23 Please have all rank insignia removed from
24 uniforms two weeks from this date."

(Respondent Exhibit "3")

25 To further compromise the City's characterization of the
26 action, no evidence was presented that the City Personnel
27 Department had implemented its reclassification procedure in
28 this matter. To the contrary, the City made no attempt to
change the job description of the Senior Corrections Officer

1 prior to September 6th, even though the City believed the
2 Senior Corrections Officers were performing the same duties as
3 the Corrections Officers for at least one (1) year
4 (Respondent's Exhibits "1" and "2", Transcript at 55).
5 Further, as late as one month before the September 6, 1989
6 action, the City had publicly posted a recruiting flyer for
7 the promotional position of Senior Corrections Officer
8 requiring a minimum of two (2) years of service as a
9 Corrections Officer which included training and supervision
10 duties greater than those of Corrections Officers
11 (Petitioner's Exhibit "B").

12 The City insisted the position of Senior Corrections
13 Officer had not been eliminated by the September 6th action
14 and although no officer would presently occupy the position,
15 it might be filled sometime in the future (Transcript at 43,
16 50). Witnesses for the City further testified that the action
17 could not be considered a demotion in that demotion is a form
18 of discipline according to the labor contract and was not
19 applicable in this situation. Mr. Sheldon further testified
20 that the City had considered, but chose not to use, the lay
21 off procedure to resolve this matter. The Board notes,
22 however, that the staffing level of corrections officers,
23 senior and regular, remained unchanged at sixty-eight (68).

24 In summary, the City failed to establish that there was
25 a bona fide reason for downgrading the Senior Corrections
26 Officers. The evidence is clear that the City's decision was
27 motivated by a desire to save money (Transcript at 47). This
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1 was not because of the City's lack of money as contemplated in
2 NRS 288.150(3)(b), but simply to equalize the pay between the
3 two corrections officer grades by downgrading the smaller
4 group instead of upgrading the larger group (Transcript at
5 54).

6 From all the above, the Board does not find that the
7 downgrade of the Senior Corrections Officers was a transfer or
8 an assignment as contemplated by NRS 288.150(3). See in this
9 regard: I.A.F.F., Local 2423 v. City of Elko, EMRB Case No.
10 A1-045377, Item 160 (March, 1984).

11 II

12 UNILATERAL CHANGES OF WAGE RATES
13 CONSTITUTES A PROHIBITED PRACTICE.

14 The obligation to bargain collectively is not limited to
15 the negotiation of an agreement. In some instances,
16 bargaining can be and must be carried on during the term of an
17 existing agreement. In the words of the U.S. Supreme Court:
18 "Collective bargaining is a continuing process involving,
19 among other things, day-to-day adjustments in the contract and
20 working rules, resolution of problems not covered by existing
21 agreements and protection of rights already secured by
22 contract." Conley v. Gibson, 355 U.S. 41, 46, 41 LRRM 2089
23 (1957).

24 In the instant case, the City believed that the
25 employees in the two corrections officer positions performed
26 very similar duties for more than a year before the action
27 complained of herein. The City knew of the situation while
28 the existing labor contract was being negotiated, but failed

1 to raise this matter during the collective bargaining process
2 (Transcript at 55). The City also failed to assign duties
3 commensurate with the job description during the same time
4 period. There is no evidence that the Senior Corrections
5 Officers resisted assignments of supervision or training. The
6 City is therefore responsible for the erosion of the
7 distinction between the two positions and cannot use that
8 erosion to justify its unilateral downgrading of one of the
9 positions.

10 Further, if the erosion of the position of Senior
11 Corrections Officer was so great as to necessitate
12 downgrading, the City was obligated to seek out the Union to
13 resolve the matter through collective bargaining. In NLRB v.
14 Jacobs Manufacturing Co., the Second Circuit Court held that
15 an employer is not relieved of the duty to bargain "as to
16 subjects which were neither discussed nor embodied in any of
17 the terms and conditions of the contract." The Court's
18 decision was premised upon the general purpose of the National
19 Labor Relations Act, like Nevada's Local Government
20 Employee-Management Relations Act, is to encourage peaceful
21 resolution of disputes through collective bargaining. NLRB v.
22 Jacobs Manufacturing Co., 196 F.2d 680, 30 LRRM 2098 (1952).
23 To permit unilateral changes in pay grades without
24 negotiations would defeat the intent of NRS Chapter 288.
25 Torreyson v. Board of Examiners, 7 Nev. 19, 22 (1871).

26 Unilateral changes by an employer during the course of a
27 collective bargaining relationship concerning matters which
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1 are mandatory subjects of bargaining are regarded as "per se"
2 refusals to bargain. NLRB v. Katz, 369 U.S. 736, 50 LRRM 2177
3 (1962). In the instant case, the unilateral change in pay
4 grade is a stipulated matter of record.

5 NRS 288.150 provides in pertinent part:

6 1. Except as provided in subsection 4, every
7 local government employer shall negotiate in good
8 faith through one or more representatives of its
9 own choosing concerning the mandatory subjects of
10 bargaining set forth in subsection 2 with the
11 designated representatives of the recognized
12 employee organization, if any, for each
13 appropriate bargaining unit among its employees.
14 If either party so requests, agreements reached
15 must be reduced to writing.

16 2. The scope of mandatory bargaining is
17 limited to:

18 (a) Salary or wage rates or other forms of
19 direct monetary compensation.

20 (Emphasis added.)

21 NRS 288.270(1)(e) provides:

22 It is a prohibited practice for a local
23 government employer or its designated representa-
24 tive willfully to:

25 (e) Refuse to bargain collectively in good faith
26 with the exclusive representative as required in
27 NRS 288.150.

28 This Board, in Reno Police Protective Association v.
City of Reno, EMRB Case No. A1-045390, Item No. 175 (February,
1985) citing Wasco County, held that "any attempt to
unilaterally implement changes prior to the exhaustion of
procedures promulgated under the public bargaining statute
constitutes a prohibited practice." Wasco County v. AFSCME,
46 Or.App. 859, 613 P.2d 1067 (1980). See also: Moreno
Valley Unified School District v. Public Employment Relations
Board, 142 Cal.App.2d 191 (1983).

1 execution of the existing contract on July 1, 1988 and the
2 unilateral adjustment on September 6, 1989.

3 9. That the record, when considered in its entirety,
4 demonstrates that the City refused to bargain the subject of
5 pay grades for the Senior Corrections Officers.

6 CONCLUSIONS OF LAW

7 1. That the Local Government Employee-Management
8 Relations Board possesses original jurisdiction over the
9 parties and subject matter of this complaint pursuant to the
10 provision of NRS Chapter 288.

11 2. That the Las Vegas Police Protective Association -
12 Metro, Inc. is a local government employee organization within
13 the term as defined in NRS 288.040.

14 3. That the City of Las Vegas is a local government
15 employer within the term as defined by NRS 288.060.

16 4. That the downgrade of the Senior Corrections
17 Officers was not a right reserved to the City as contemplated
18 by NRS 288.150(3).

19 5. That the unilateral change of a mandatory bargaining
20 subject by an employer is a prohibited practice pursuant to
21 NRS Chapter 288.

22 6. That the City's unilateral adjustment in pay grades
23 for Senior Corrections Officers constituted a refusal to
24 bargain pursuant to NRS Chapter 288.

25 7. That the City engaged in a prohibited practice in
26 violation of NRS 288.270(1).

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ORDER

Upon decision rendered by the Board at its meeting on May 18, 1990, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

- 1. That the Union's Complaint, be and hereby is, upheld;
- 2. That the City shall cease and desist from the prohibited practice complained of herein;
- 3. That the City shall reinstate the Senior Corrections Officers to the rank and pay grade in effect prior to the September 6, 1989 action complained of herein with back pay for any lost wages; and
- 4. That each party is to bear its own costs and fees in this action.

DATED this 15th day of August, 1990.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By Salvatore C. Gusino
SALVATORE C. GUSINO, Chairman

By Tamara Barengo
TAMARA BARENGO, Vice Chairman

By Howard Ecker
HOWARD ECKER, Member