STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CITY OF RENO, Complainant, -vs- INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 731, Respondent.	ITEM NO. 253-A CASE NO. A1-045472 **DECISION**

For the Complainant: Randy K. Edwards, Esq.
RENO CITY ATTORNEY'S OFFICE

For the Respondent: Paul D. Elcano, Jr., Esq.

For the EMRB: Tamara Barengo, Chairman
Salvatore C. Gugino, Member

STATEMENT OF THE CASE

On May 11, 1990, Complainant, City of Reno ("City"), filed this complaint with the Local Government Employee-Management Relations Board ("Board") against Respondent, International Association of Firefighters, Local 731 ("Union"), alleging that the Union engaged in bad faith bargaining by insisting upon the presence of a court reporter in negotiations, by failing to meet to negotiate at reasonable times, and by the totality of conduct, frustrating the bargaining process.

In response, the Union contends that the ground rules negotiated by the parties allowed the use of a court reporter, that either party has an inherent right to take the best notes possible during negotiations including transcription and

further, that this dispute is a matter of interpretation of the ground rules and accordingly, a matter in which this Board has no jurisdiction.

Negotiation between the parties began with an exchange of written proposals in January, 1990. The Union proposed changes to 34 items; the City proposed 32.

On February 23, 1990, the parties met for the first time and agreed to four ground rules.

The second meeting was scheduled for March 1, 1990, but was cancelled the day before the meeting was to take place by the Union because the City would not provide free parking. On March 19, 1990, the second meeting was convened and the parties discussed certain proposals, but no tentative agreements were reached.

The third meeting took place on March 26, 1990. The parties discussed several proposals, but no agreements were reached.

The fourth meeting took place March 30, 1990. The Union brought a court reporter to transcribe the proceedings. The City objected to the verbatim transcription of the meeting and the meeting ended.

On April 20, 1990, the Union declared impasse and requested a list of factfinders pursuant to NRS 288.200.

On May 31, 1990, the City filed a Motion to Stay the Factfinding requested by the Union. On September 14, 1990, the Board heard arguments by the parties on the motion and denied the motion for stay with the intent that the parties

should return to the bargaining table.

Previously, the Union filed a Motion to Dismiss the Complaint alleging the Board had no jurisdiction on the matter. The motion was taken under advisement and is dealt with infra.

On November 16, 1990, the Board conducted a hearing on the complaint in Reno, Nevada. The issues for determination by the Board were:

1. Whether the Board has jurisdiction in this matter;

2. Whether the Union violated its duty to bargain in good faith pursuant to NRS Chapter 288 by insisting upon the presence of a court reporter to make a verbatim record during negotiations;

3. Whether the Union violated its duty to bargain in good faith by engaging in conduct which frustrated the bargaining process; and

4. Whether the City violated its duty to bargain in good faith pursuant to NRS Chapter 288 by engaging in conduct frustrating the bargaining process.

The Board took the testimony of witnesses, examined evidence, heard argument by the parties and reviewed the papers and pleadings on file. From all the above, the Board concludes that the Union engaged in prohibited practices in violation of NRS 288.270(2).

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DISCUSSION

I

ALLEGATIONS OF UNILATERALLY IMPOSED PRECONDITIONS TO BARGAINING ARE PROPERLY BEFORE THIS BOARD.

As a preliminary matter, the Board rejects the Union's argument that disputes over ground rules must be submitted to a factfinder pursuant to NRS 288.205(1) which provides:

> If the parties have not reached agreement by April 10, either party may submit the dispute to an impartial factfinder at anytime for his findings.

The Board recognizes that most parties establish bargaining ground rules and that such guidelines serve as a helpful device to streamline the negotiations process and to avoid petty disputes and unfair surprises. Nonetheless disputes over the interpretation of these guidelines cannot be permitted to detour the negotiations of mandatory subjects of bargaining. If negotiations were allowed to breakdown over mere threshold issues, those who wish to impede the collective bargaining process would have a "tool of avoidance" to wield at the expense of those willing to bargain in good faith. See NLRB v. Bartlett-Collins Co., 639 F.2d 652 (10th Cir. 1981), cert denied 252 U.S. 961 (1981).

Further, ground rules are not mandatory subjects of bargaining pursuant to NRS 288.150. Accordingly, they may not be unilaterally submitted to factfinding. Also, ground rules cannot be implemented except by mutual agreement. No party can unilaterally impose a ground rule as a precondition bargaining. Allegations of such occurrences are issues of

good faith bargaining and therefore, properly before this Board pursuant to NRS 288.280.

II

INSISTENCE UPON THE PRESENCE OF A STENOGRAPHER IN NEGOTIATIONS IS A PROHIBITED PRACTICE.

The Union exceeded permissible bounds when it insisted that a court reporter be present in negotiations to make a verbatim record of the proceedings.

The Board is in accord with the National Labor Relations Board (NLRB) in Reed & Prince Mfg. Co., 96 NLRB 850, 28 LRRM 1608 (1951), enf'd on other grounds 205 F.2d 131, (CA 1 1953) cert. denied 346 U.S. 887 (1953):

> The presence of a stenographer at such negotiations is not conducive to the friendly atmosphere so necessary for the successful termination of negotiations, and it is a practice condemned by experienced persons in the industrial relations field. Indeed the business world itself frowns upon the practice in any delicate negotiations where it is so necessary for the parties to express themselves freely. The insistence by the respondent in this case upon the presence of a stenographer at the bargaining meeting is, in our opinion, further evidence of its bad faith.

The NLRB further considered the issue and concluded that the demand by a party for the presence of a court reporter is not a mandatory subject of bargaining and that insistence to impasse on a non-mandatory subject is an unfair labor practice regardless of whether it was committed in bad faith. Bartlett-Collins Co., supra.

The presence of a stenographer can surely stifle the spontaneous, frank, no-holds-barred exchange of ideas and

persuasive forces that successful bargaining often requires. One party's insistence upon the presence of a stenographer, over the objection of the other, creates an uncooperative and repressive climate for collective bargaining. NRS Chapter 288 does not require a party to negotiate under such inequitable circumstances and accordingly, the City did not commit a prohibited practice when it refused to bargain in the face of the Union's insistence on the presence of a court reporter.

The City immediately raised its objection to the court reporting at the meeting of March 30, 1990 (Petitioner's Exhibit "A", page 2). The City further articulated its objection in a letter of April 6, 1990 from Clay Holstine, Assistant City Manager, to Paul Elcano, Union Spokesman:

> In this case, we believe that the presence of a court reporter will increase posturing and inhibit rather than promote the exchange of facts and arguments. Court reporters do not take "notes" as you have characterized it. Rather, verbatim transcripts of all proceedings are reported. This defeats the entire idea of spontaneity and conciliation, even more so than tape recording. The fact that you have mentioned as a justification for a court reporter your concern that accurate "notes" can be presented to the EMRB indicates that you are entering these "negotiations", if they can be so characterized at this point, more with the idea of building a case against the City than in engaging in the type of dialogue and discussion necessary to hammer out a mutually agreeable contract. (Respondent's Exhibit "25").

Even in the face of this objection, the Union continued to maintain that stenographic recording was a condition to further bargaining, further evidence of bad faith.

The Board rejects the Union's argument that the making of a verbatim record by a stenographer is simply a form of

note-taking and is allowed under one of the ground rules agreed upon by the parties which provides:

> Each party shall be responsible for keeping its own notes. Tape recording of the negotiating sessions is prohibited.

It is unreasonable, in fact, absurd, to conclude that there is no distinction between note-taking and making a verbatim record. Any reliance upon the ground rule on note-taking as license to use a stenographer is, in itself, evidence of bad faith.

The Board also finds without merit, the Union's argument that it was justified in its action because no one on the Union's bargaining team could take notes as proficiently as the person taking notes on the City's team.

We also reject the Union's argument that the Nevada Open Meeting Law, NRS Chapter 241, permits recording of bargaining sessions. Indeed, the Nevada Legislature has recognized that the fundamental nature and characteristics of collective bargaining are distinct from those of other meetings involving public employers by excluding such bargaining sessions from coverage under NRS Chapter 241. NRS 288.220(1) provides:

> The following proceedings, required by or pursuant to this chapter, are not subject to any provision of NRS which requires a meeting to be open or public:
>
> 1. Any negotiations or informal discussion between a local government employer and an employee organization or employees as individuals, whether conducted by the governing body or through a representative or representatives.

Also, see Washoe County Teachers Assn. v. Washoe County School District, EMRB Item No. 54, Case No. A1-045295 (May, 1976).

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Lastly, the Union argues that it simply desires recording of the truth as in judicial proceedings and that no harm can come from such an action. The Board disagrees. The Union's analogy is misplaced. The purposes of collective bargaining and those of the judicial process are not the same.

Collective bargaining cannot be equated with an academic search for truth - or even with what might be thought to be the ideal of one. NLRB v. Insurance Agent's International Union, 361 U.S. 488 (1970). The pursuit of truth and justice is not always the guiding beacon in collective bargaining. The goal of ascertaining with 100 percent accuracy what was said in negotiations may be subordinate to other concerns, such as ensuring peaceful resolution of industrial disputes. NLRB v. Bartlett-Collins Co., supra 657.

Finally, the Board notes that the number of cases in which bargaining parties resort to adjudication, and in which resolution depends upon an accurate record of the bargaining process, is small in comparison to the number of labor contracts negotiated. This fact supports the reasonableness of the Board's conclusion that any advantages from stenographic recording of negotiations are outweighed by its chilling effect on the bargaining process.

III

THE TOTALITY OF THE UNION'S CONDUCT IN BARGAINING CONSTITUTES A PROHIBITED PRACTICE.

A party's conduct at the bargaining table must evidence a sincere desire to come to an agreement. The determination

of whether there has been such sincerity is made by "drawing inferences from conduct of the parties as a whole". NLRB v. Insurance Agents Union, supra. Also, see Stationary Engineers, Local 39 v. Lyon County, EMRB Item No. 241, Case No. A1-045457 (June, 1990) and Clark County Classroom Teachers Assn. v. Clark County School District, EMRB Item No. 62, Case No. A1-045302 (December, 1976).

In the instant case, the Union engaged in numerous acts which when viewed as a whole, constitute a violation of it's duty to bargain in good faith pursuant to NRS 288.270(2)(b).

Bargaining Meeting Cancelled

On February 28, 1990, the Union cancelled a scheduled negotiations session with less than one day's notice using the feeble excuse that free parking was not provided (Petitioner's Exhibit "16"). Cancelling a previously scheduled meeting without good cause is evidence of bad faith. W.R. Hall Distributor, 144 NLRB 1285 (1963).

Refusal to Designate Representatives

Testimony from witnesses for both parties stated that the Union refused to designate the members of its bargaining team (Transcript at 119, 143, 179).

NRS 288.150(1) provides in pertinent part:

> Except as provided in subsection 4, every local government employer shall negotiate in good faith through one or more representatives of its own choosing concerning the mandatory subjects of bargaining set forth in subsection 2 with the designated representatives of the recognized employee organization, if any, for each appropriate bargaining unit among its employees. (Emphasis added.)

Notwithstanding the Union's obligation to designate its bargaining representatives pursuant to statute, the refusal to do so is also further evidence of the Union's intent to frustrate the bargaining process.

Refusal to Provide Information

The refusal of the Union to provide documentation or even discuss how it arrived at its 15% cost figure for its salary proposal at the March 26, 1990 meeting (Transcript at 128, 183, 192) is contrary to the intent of NRS 288.180(2) which provides in pertinent part:

> . . . the employee organization or the local government employer may request reasonable information concerning any subject matter included in the scope of mandatory bargaining which it deems necessary for and relevant to the negotiations. The information requested must be furnished without delay.

Failure to provide reasonable information is a prohibited practice. Additionally, the Union's flippant response to the City that the request was "simply an attempt to avoid doing your own homework" (Petitioner's Exhibit "12") is further evidence of the Union's lack of sincere desire to reach agreement.

Premature Impasse Declared

Finally, we note the Union declared impasse and requested factfinding after only two bargaining sessions involving mandatory subjects. The parties had only limited discussion on eleven items in two meetings and they had not reached agreement on any of the sixty-six items on the tabl when the Union requested factfinding on April 20, 1990

(Petitioner's Exhibit "28"). This action is the most blatant in the Union's series of actions in contravention to its duty to bargain in good faith. This Board has consistently sent the parties back to the table where requests for factfinding have been premature. See Water Employees Assn. v. Las Vegas Valley Water District, EMRB Item No. 204, Case No. A1-045418 (March, 1988) and I.A.F.F., Local 1265 v. City of Sparks, EMRB Item No. 136, Case No. A1-045362 (August, 1982).

The parties are required to make every effort to reach agreement. Engaging in surface bargaining as the Union has in this case, is a violation of the very intent of NRS Chapter 288 and it will not be permitted by this Board.

In summary, the Board finds the Union's conduct in these negotiations reprehensible. All evidence leads to the reasonable conclusion that the Union never intended to bargain in good faith and that it was simply posturing for factfinding and arbitration. Such conduct is clearly in violation of NRS 288.270(2)(b).

Accordingly, the Union is ordered to cease and desist from the actions complained of herein and to return to the bargaining table in a sincere effort to resolve the sixty-six items on the table.

FINDINGS OF FACT

1. That during January, 1990, the Union and the City opened negotiations with an exchange of proposals on sixty-six items.

2. That on February 23, 1990, the parties met to

discuss ground rules. The parties agreed to four ground rules, among them, a rule allowing each party to take notes, but not to tape record the meetings.

3. That at the February 23, 1990 meeting, the Union made a summary rejection of the City's proposal on ratification procedures.

4. That at the February 23, 1990 meeting, the Union refused to designate its representatives at the bargaining table.

5. That on February 28, 1990, the Union cancelled a negotiations session scheduled for the next day because the City would not provide free parking.

6. That on March 19, 1990, the parties met for the second time and discussed five proposals. No agreements were reached.

7. That on March 26, 1990, the parties met for the third time and discussed six items. No agreements were reached.

8. That at the March 26, 1990 meeting, the Union refused to provide certain information regarding the cost of its salary proposal.

9. That on March 30, 1990, the parties met for the fourth time. No proposals were discussed.

10. That at the March 30, 1990 meeting, the Union insisted that a court reporter be present to record the bargaining session as a precondition to any further bargaining. The City objected the verbatim transcription of

the meeting and the meeting ended.

11. That on April 20, 1990, the Union declared impasse and requested factfinding.

12. That the making of a verbatim record and the taking of notes are distinctly different and that agreements regarding note-taking do not necessarily apply to stenographic recording.

13. That the presence of a stenographer in negotiations over the objections of one of the parties is disruptive and frustrating to the bargaining process.

CONCLUSIONS OF LAW

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

2. That Complainant, City of Reno, is a local government employer within the meaning of NRS 288.060.

3. That Respondent, International Association of Firefighters, Local 731, is an employee organization within the meaning of NRS 288.040.

4. That disputes regarding unilateral implementation of ground rules are matters of good faith bargaining properly before this Board pursuant to NRS 288.270 and 288.280.

5. That ground rules are not mandatory subjects of bargaining pursuant to NRS 288.150(2) and accordingly, disputes over ground rules are not matters for factfinding pursuant to NRS 288.205.

6. That insistence upon the use of a stenographer t make a verbatim record of bargaining sessions is a violation of the Union's duty to bargain in good faith pursuant to NRS 288.270(2)(b).

7. That the City did not commit an unfair labor practice when it refused to continue bargaining in the face of the Union's insistence upon the presence of a court reporter.

8. That the Union's cancellation of a bargaining session with one day's notice because of the City's failure to provide free parking is evidence of bad faith bargaining pursuant to NRS 288.270(2)(b).

9. That the Union's refusal to designate representatives for bargaining violates the intent of NRS 288.150(1) and is evidence of failure to bargain in good faith pursuant to NRS 288.270(2)(b).

10. That the Union's refusal to provide information regarding the cost of its salary proposal is a prohibited practice pursuant to NRS 288.270(2)(d).

11. That the Union's declaration of impasse and its request for factfinding after only two negotiation sessions on substantive items, during which only eleven (11) of sixty-six (66) were discussed and no items were agreed upon, was violation of the Union's duty to bargain in good faith pursuant to NRS 288.270(2)(b).

12. That the totality of the Union's conduct in the negotiations referred to herein constitutes a prohibit practice pursuant to NRS 288.270(2)(b).

ORDER

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

ORDERED, ADJUDGED AND DECREED as follows:

1. That the City's Complaint be, and the same hereby is, upheld;

2. That the Union's Counterclaim and its Motion to Dismiss be, and the same hereby are, denied;

3. That the Union shall cease and desist and in the future, shall refrain from engaging in the prohibited practices complained of herein;

4. That the parties shall return to the bargaining table to negotiate the unresolved issues in good faith, the first meeting to be not later than twenty (20) days from receipt of this Order;

5. That this Decision and Order shall be publicly posted by the City at work sites of employees affected by this decision for a period of sixty (60) days; and

6. That the Union shall pay the City for fees and costs in the sum of $500.00.

DATED this 8th day of February, 1991.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By Tamara Barengo
TAMARA BARENGO, Chairman

By Salvatore C. Gugino
SALVATORE C. GUGINO, Member

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