STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1285, Complainant, -vs- CITY OF LAS VEGAS, NEVADA, Respondent.	**ITEM NO. 317** CASE NO. A1-045529 **DECISION**

For the Complainant: Norman Ty Hilbrecht, Esq.
HILBRECHT & ASSOCIATES

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

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

STATEMENT OF THE CASE

In a pre-hearing conference held on April 13, 1993, the Complainant, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1285 (hereinafter referred to as "the Association"), and the Respondent, CITY OF LAS VEGAS, NEVADA (hereinafter referred to as "the City"), narrowed the issues to the following:

a. Whether the conduct of the "classification/compensation study" involves direct contact and discussion by Ralph Andersen & Associates' representatives and/or City personnel with members of the City firefighters bargaining units represented by Local 1285.

b. Whether the direct contacts and discussions between Ralph Andersen & Associates' representatives and/or City personnel and members of the City firefighters bargaining units represented by Local 1285 include the solicitation of those firefighters' opinions on prospective changes in wage and monetary compensation and job

and salary classifications.

c. Whether the direct contacts and discussions between Ralph Andersen & Associates' representatives and/or City personnel and members of the City firefighters bargaining units represented by Local 1285, include the solicitation of those firefighters' opinions concerning comparative wages and job tasks assigned to persons inside and outside the firefighter bargaining units.

d. Whether the City furnished Local 1285 with a request, pursuant to Article 30 (Article 29 of Supervisory Contract) of the parties' Collective Bargaining Agreement, to negotiate, discuss, or reopen any wages, job tasks or wage or job classifications.

e. Whether the City sought permission of Local 1285 for the City or its agent, Ralph Andersen & Associates or their representatives to contact members of the City firefighters bargaining units represented by Local 1285 directly to solicit those firefighters' opinions on prospective changes in wages and monetary compensation and/or job and salary classifications.

f. Whether the City was obliged by NRS Chapter 288 and Article 30 (Article 29 of Supervisory Contract) of the Collective Bargaining Agreement to discuss or negotiate with Local 1285 concerning prospective wages, job tasks or wages or job classifications, rather than soliciting the opinions of members of the bargaining units directly on those subjects.

g. Whether the City was obliged by NRS 288.150(2)(a) to request permission from Local 1285 to permit its agent, Ralph Andersen & Associates or their representatives to directly contact members of the City firefighters bargaining units represented by Local 1285 to solicit those firefighters' opinions on prospective changes in wages and monetary compensation and/or job and salary classifications.

h. Whether the City's conduct constitutes a prohibited practice under NRS 288.270(1)(b).

i. Whether the City's actions circulating a document on or about October 1, 1992, entitled "Job Analysis Questionnaire" to all of its

employees, including its firefighters and other Fire Department personnel, amounts to a failure of the City to bargain in good faith with Local 1285 in violation of NRS 288.270(1)(e).

j. Whether the representatives of Ralph Andersen & Associates, the author of the Questionnaire, or employees of the City contacted Local 1285 members directly and discussed subjects of mandatory bargaining under NRS Chapter 288; including, but not limited to, solicitation of opinion from Local 1285 members on prospective changes in internal and external wage relationships and job tasks assigned to said bargaining unit classifications during the training sessions on how to fill out the Questionnaire, or during follow-up sessions.

k. Whether any representatives of the City or its agent Ralph Andersen & Associates made any position statement, threat of reprisal, or promise of benefit based on the results of the Questionnaire or as the result of information received, if any, from the training sessions on how to fill out the Questionnaire or follow-up sessions.

l. Whether members of Local 1285 were required to fill out the Questionnaire or be in attendance at training sessions regarding completion of the Questionnaire.

The parties also stipulated to the following facts:

1. A collective bargaining agreement currently exists between the City and Local 1285, which commenced July 1, 1992, and expires June 30, 1994.

2. During October 1992, the City circulated to all its employees a job analysis questionnaire entitled "CITY OF LAS VEGAS JOB ANALYSIS QUESTIONNAIRE".

3. Said Questionnaire was prepared by Ralph Andersen and Associates on behalf of the City.

4. The City and Local 1285 were not involved in labor contract negotiations during any period of time the Questionnaire and training sessions or follow-up meetings in connection therewith were being conducted.

On May 6, 1993, the Local Government Employee-Management Relations Board ("EMRB" and "Board") conducted a hearing on

the instant Complaint. The Board's Discussion, Findings o Fact, Conclusions of Law, Decision and Order are set forth below:

DISCUSSION

During October 1992, the City circulated a job analysis questionnaire to all its employees (classified, non-classified, appointive and confidential), including supervisory and non-supervisory employees represented by the Association. This questionnaire was prepared by Ralph Andersen and Associates on behalf of the City. Allegedly, the City's purpose in circulating the questionnaire was to gain an overview of the City's work force and determine the duties and responsibilities assigned this work force, according to the perception(s) of the individual employees. At the time saic questionnaire was being circulated, training sessions and follow-up meetings held, there were no contract negotiations being conducted between the City and the Association.

The Association's objection to the questionnaire appears to arise from speculation that the information gathered will be used by the City to support its position(s) in collective bargaining regarding proposed reductions in pay for certain classifications of employees. The premise for the complaint appears to be that by soliciting input directly from the employees on matters which may be related to mandatory bargaining subjects, the City is engaging in a practice which is tantamount to direct dealing with the employees or "end-run bargaining".

In its meeting of May 13, 1993, conducted pursuant to Nevada's Open Meeting Law, the Board determined, after due deliberation on the testimony and evidence of record, that the Complaint is without merit. The Board's determination is based on the following:

I.

THE CITY'S SOLICITATION OF INPUT FROM ITS EMPLOYEES (VIA A JOB ANALYSIS QUESTIONNAIRE) AS PART OF A CLASSIFICATION AND COMPENSATION STUDY, WITHOUT THE PERMISSION OF THE ASSOCIATION, WAS PROPER AND APPROPRIATE UNDER NRS 288.150(3). (See Issues a, b, c, d, e, f, g, j, k and l.)

NRS 288.150(3) reads as follows:

> 3. Those subject matters which are not within the scope of mandatory bargaining and which are reserved to the local government employer without negotiation include:
>
> (a) Except as otherwise provided in paragraph (u) of subsection 2, <u>the right to hire, direct, assign or transfer an employee</u>, but excluding the right to assign or transfer an employee as a form of discipline.
>
> (b) <u>The right to reduce in force or lay off any employee because of lack of work</u> or lack of money, subject to paragraph (v) of subsection 2.
>
> (c) <u>The right to determine</u>:
>
> (1) <u>Appropriate staffing levels and work performance standards</u>, except for safety considerations;
>
> (2) <u>The content of the workday, including without limitation work load factors</u>, except for safety considerations;
>
> (3) <u>The quality and quantity of services to be offered to the public</u>; and
>
> (4) <u>The means and methods of offering those services</u>.
>
> (d) Safety of the public.
>
> (Emphasis added.)

The testimony and evidence of record clearly established that the City was acting in accordance with its prerogative(s), pursuant to NRS 288.150(3), above, when it

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solicited input from all its employees [not just thos employees who are members of the bargaining unit(s) represented by the Association] for the purpose of gathering information to be used in a classification and compensation study. The solicitation of input from employees regarding their duties and responsibilities is not per se tantamount to dealing directly with the employees for collective bargaining purposes. It appears that this information was being gathered by the City in order to assist it in determining matters such as appropriate staffing levels and work performance standards; the content of the workday, including without limitation work load factors; the quality and quantity of services to be offered to the public and the means and methods of offering those services. These subjects clearly fall within the ambit of matters which are not within the scope of mandatory bargaining and which are reserved to the local government employer without negotiation, pursuant to NRS 288.150(3).

The Board's findings are further supported by the following facts:

(1) There was no testimony or evidence introduced to indicate that any of the other organizations representing the City's employees objected to the subject job analysis questionnaire or classification and compensation study, and all such employee organizations, as well as the Association, were given advance notice of the study.

(2) The City made it clear that participation by the employees in the classification and compensation study (by completing the job analysis questionnaire) was entirely voluntary.

(3) The City made it clear to the Association that any changes in classifications or compensation which might be recommended as a result of the study, would be subject to approval of the Civil Service Board and any changes involving mandatory bargaining subjects would also be subject to collective bargaining; i.e., such changes would not be implemented unilaterally.

While it is true that pursuant to NRS 288.150(1) local government employers are limited to <u>negotiating</u> with the designated representative of the recognized employee organization for each bargaining unit, in the instant case the City's solicitation of its employees for input as to their duties and responsibilities can be considered as neither "negotiating" pursuant to NRS 288.150(1) nor as "interrogation of employees" as inferred by the Association. As indicated previously, participation in the study (by completing the job analysis questionnaire) was entirely voluntary. There was no threat of reprisal or force or promise of benefit contained therein. Accordingly, under the prevailing facts and circumstances, the subject job analysis questionnaire can be considered as nothing more than the City's effort to

communicate with its employees pursuant to its constitutional right of free speech. Ormsby County Teachers Association vs. Carson City School District, EMRB Case No. A1-045339, Item No. 114 (April 22, 1981).

In view of that stated above and under the particular facts of this case, the Board finds that the classification and compensation study conducted by the City was proper and appropriate pursuant to NRS 288.150(3).

II.

THE CITY'S CONDUCT IN CIRCULATING THE JOB ANALYSIS QUESTIONNAIRE NEITHER AMOUNTED TO A FAILURE TO BARGAIN IN GOOD FAITH NOR WAS IT IN VIOLATION OF NRS 288.270(1)(b) or (e). (See Issues h and i.)

NRS 288.270(1)(b) and (e) read as follows:

> 1. It is a prohibited practice for a local government employer or its designated representative willfully to:
>
> . . .
>
> (b) Dominate, interfere or assist in the formation or administration of any employee organization.
>
> . . .
>
> (e) Refuse to bargain collectively in good faith with the exclusive representative as required in NRS 288.150. Bargaining collectively includes the entire bargaining process, including mediation and factfinding, provided for in this chapter.

An objective review of the testimony and evidence of record will clearly show that there was nothing that transpired in the City's conduct of the subject classification and compensation study (including circulation of the job analysis questionnaire) which could reasonably be construed as domination or interference in the administration of the Association. Likewise, the Board finds no basis for

concluding that the City's conduct in circulating the job analysis questionnaire (thereby soliciting the input of the employees regarding their duties and responsibilities) constituted a failure to bargain in good faith. The only witness to testify regarding his participation in the study (completion of the job analysis questionnaire) testified to the effect that he felt neither intimidated nor coerced by being asked to provide the information requested.

Further, the Association's contention that the City's conduct constitutes direct dealing with bargaining unit members (or so-called "end-run bargaining"), appears to be based entirely on speculation as to the City's intent; i.e., that the information gathered via the questionnaire will be used by the City to support positions which it will advance during collective bargaining that certain positions should be reclassified and compensated at a lower rate of pay. However, the testimony clearly established that the information gathered via the questionnaire might also show that some positions should be reclassified for the purpose of <u>increasing</u> the rate of pay. Accordingly, under the facts and circumstances of this case, the Board finds no basis for concluding that the City's classification and compensation study (including solicitation of employee input via the job analysis questionnaire) should be construed as either direct dealing with bargaining unit members or a failure to bargain in good faith. <u>Ormsby County Teachers Association</u>, <u>supra</u>.

For the reasons set forth above, the Board finds no

violation of NRS 288.270(1)(b) and/or (e) in the City's conduct of the subject classification and compensation study (which included solicitation of employee input via the job analysis questionnaire).

FINDINGS OF FACT

1. That the Complainant, International Association of Fire Fighters, Local 1285, is a local government employee organization.

2. That the Respondent, City of Las Vegas, Nevada, is a local government employer.

3. That a collective bargaining agreement currently exists between the City and the Association, which commenced July 1, 1992 and expires June 30, 1994.

4. That during October 1992, the City circulated to all its employees a job analysis questionnaire (entitled "City of Las Vegas Job Analysis Questionnaire"), requesting input as to their duties and responsibilities.

5. That the above-referred to questionnaire was prepared by Ralph Andersen & Associates on behalf of the City.

6. That the City and the Association were not involved in labor contract negotiations during the time that the questionnaire, training sessions and follow-up meetings in connection therewith were being conducted.

7. That the Association was the only employee organization representing City employees which objected to the City's solicitation of input from employees via the job analysis questionnaire.

8. That participation by the employees in the classification and compensation study (by completing the job analysis questionnaire) was voluntary.

9. That as of the date of the hearing, no recommendations as to any changes in classifications or compensation as a result of the study, had been made.

10. That, in the event any changes are recommended as a result of the study, said changes will be subject to approval of the Civil Service Board (before which the Association will have an opportunity to appear and provide input prior to any action being taken), and any changes involving mandatory bargaining subjects will also be subject to collective bargaining.

CONCLUSIONS OF LAW

1. That the Local Government Employee-Management Relations Board has jurisdiction over the parties and the subject matter of this Complaint, pursuant to the provisions of NRS Chapter 288.

2. That the Complainant, International Association of Fire Fighters, Local 1285, is a recognized employee organization as defined by NRS 288.040.

3. That the Respondent, City of Las Vegas, Nevada, is a recognized local government employer as defined by NRS 288.060.

4. That, under the facts and circumstances of this Complaint, the City's solicitation of input from its employees (via job analysis questionnaire) as part of a classification

and compensation study, without the permission of the Association, was proper and appropriate under NRS 288.150(3).

5. That, under the facts and circumstances of this Complaint, the City's conduct in circulating the job analysis questionnaire neither amounted to a failure to bargain in good faith nor was it in violation of NRS 288.270(1)(b) or (e).

DECISION AND ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Association's Complaint is denied, without prejudice, with each side to bear its own costs and attorney's fees.

DATED this 15th day of June, 1993.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By _____
SALVATORE C. GUGINO, Chairman

By Tamara Barengo
TAMARA BARENGO, Vice Chairman

By _____
HOWARD ECKER, Member