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2 STATE OF NEVADA  
3 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
4 RELATIONS BOARD

4 CARSON CITY FIRE FIGHTERS )  
ASSOCIATION, I.A.F.F. LOCAL #2251, )

5 Complainant, )

6 vs. )

7 CARSON CITY and THE CARSON CITY )  
8 BOARD OF SUPERVISORS, )

9 Respondents. )

ITEM NO. 345-A

CASE NO. A1-045569

SUPPLEMENTAL  
DECLARATORY ORDER

10 For Complainant: Sandra G. Lawrence, Esq.  
11 DYER, MCDONALD, & LAWRENCE

12 For Respondents: Charles P. Cockerill, Esq.  
13 BISCHOF, HUNGERFORD, & WITTY

14 STATEMENT OF THE CASE

15 On November 29, 1994, the Board issued a Declaratory  
16 Order in the instant Case, designated as Item No. 345. The  
17 Board stated on Page 7 thereof, in pertinent part, as follows:

18 "For the reasons set forth herein, the Board hereby  
19 ORDERS AND DECLARES that Petitioner's proposals  
20 regarding staffing of the Hazmat Unit and payment  
21 of ambulance fees of employees and their dependents  
are subjects of mandatory bargaining, and the  
placement of union emblems and flags is not a  
subject of mandatory bargaining."

22 On December 12, 1994, the Board received Petitioner's  
23 "MOTION FOR A DETERMINATION ON THE ISSUE OF GENERAL ORDER  
24 #24", which reads as follows:

25 \\\

26 \\\

27 \\\

1 "COMES NOW, the Carson City Fire Fighters  
2 Association (CCFFA) and requests that the Employee  
3 Management Relations Board (EMRB) consider the  
4 issue in the above-captioned matter regarding  
5 General Order #24. Included among the issues in  
6 CCFFA's Petition for Declaratory Order; Complaint  
7 for Prohibited Practices was a request for a  
8 determination as to whether the City's action of  
9 refusing to negotiate General Order #24 was a  
10 failure on the part of the City to bargain in good  
11 faith with CCFFA on an issue which is a subject of  
12 mandatory bargaining.

13 The parties briefed the negotiability of General  
14 Order #24 and whether the City committed an unfair  
15 labor practice by refusing to negotiate in both  
16 their prehearing and posthearing briefs. In  
17 addition, the parties stipulated that this issue  
18 was in dispute. Further, testimony regarding the  
19 City's refusal to negotiate regarding General Order  
20 #24 was admitted at the hearing on this matter.

21 This Board entered a Declaratory Order on November  
22 29, 1994, which addressed all the other issues  
23 before the Board except the issue regarding General  
24 Order #24. Through some inadvertent error the  
25 Board did not consider and made no provision in its  
26 Declaratory Order for the issue regarding General  
27 Order #24. This issue is, as yet, unresolved.  
28 Therefore, CCFFA submits this matter to the Board  
for its determination and requests that the Board  
consider the issue regarding General Order #24.  
Dated this 12 day of December, 1994."

On December 21, 1994, the board received Carson City's  
Response to Petitioner's Motion Regarding General Order #24,  
contending that said motion was untimely and should be denied  
for that reason. Additionally, Respondent contended that if  
the Board reached the merits of Petitioner's motion, that  
portion of the original petition dealing with the Fire Chief's  
issuance of General Order #24 should be dismissed for the  
reason(s) that the City's refusal to enter into "after-the-  
fact" negotiations regarding the Fire Chief's issuance of  
General Order #24 allegedly did not involve a prohibited

1 practice since (allegedly) it: (1) did not involve the  
2 unilateral amendment of Article 25 (5); (2) did not involve  
3 a mandatory bargaining subject; (3) merely was a written  
4 restatement of current and past administrative policy of the  
5 Carson City Fire Department; and (4) even if found to involve  
6 a mandatory bargaining subject (which the City expressly  
7 denied), the issuance of General Order #24 did not involve any  
8 unilateral change of the status quo.

9  
10 DISCUSSION

11 Petitioner's Motion is factually correct; ie., the issue  
12 regarding General Order #24 was included in the original  
13 petition, the parties stipulated that it was an issue in  
14 dispute, the issue was briefed and testimony was admitted at  
15 the hearing regarding said issue. The issue was simply  
16 overlooked in the Board's previous deliberations on the  
17 instant case and, consequently, was not addressed in the  
18 Board's Declaratory Order, designated as Item No. 345, issued  
19 November 29, 1994.

20 The Respondents' contention that Petitioner's Motion for  
21 Determination on the Issue of General Order #24 was untimely  
22 (and should be denied for that reason) is moot under the  
23 prevailing facts and circumstances. The issue is still in  
24 dispute, could be raised again and was not addressed in the  
25 Board's previous decision (Item No. 345) due solely to the  
26 Board's oversight or error. Under such circumstances, it  
27 would have been (and is) entirely appropriate and within the

1 Board's discretion for the Board to address the issue in a  
2 supplemental or amended order without requiring either party  
3 to file a motion requesting same. In the interest of judicial  
4 economy, therefore, the Board hereby corrects its oversight by  
5 addressing sua sponte, the issue as stipulated to by the  
6 parties; ie., "Whether the City committed a prohibited  
7 practice by refusing to negotiate . . . . the issuance of  
8 General Order #24."

9 I.

10 RESPONDENT'S ISSUANCE OF  
11 GENERAL ORDER #24 INVOLVED  
12 A SUBJECT OF MANDATORY BARGAINING

13 General Order No. 24 was issued by the City's Fire Chief  
14 on April 12, 1994, and reads, in pertinent part, as  
15 follows:

16 "Purpose:

- 17 1. To provide direction to employees as related to returning  
18 to the workforce after having been released from work by  
19 a physician for an illness or injury.  
20 2. To prevent an employee from returning to work  
21 prematurely there-by aggravating an existing  
22 condition, or infecting other employees.

23 Any employee who is released from duty by a physician for  
24 illness or injury (on or off the job) is required to provide  
25 a physician's statement authorizing the employee to return to  
26 work. The release must include the following information:

- 27 1. It must state that the employee is again  
28 fit for duty.  
2. The date eligible to return.  
3. Any conditions of return.  
4. The physician's signature with date.

This release must be provided to the on duty Battalion Chief  
prior to re-instatement to the duty schedule."

\\

1 On September 2, 1994, the parties stipulated to certain  
2 facts surrounding the issues to be addressed by the Board.  
3 The facts stipulated to regarding General Order #24 are quoted  
4 below:

5  
6 "11. General Order 24 solely covers employees who  
7 were released from work based on a physicians  
8 release.

9  
10 12. General Order 24 reflects the current and past  
11 unwritten administrative policy of the CCFD that  
12 employees released from duty based on a physician's  
13 release must have a physician's release back to  
14 duty.

15  
16 13. Article 25(5) does not apply to the situation  
17 where the employee was not originally released from  
18 duty based on a physician's release."

19 Subsection (5) of Article 25 - Sick Leave of the  
20 collective bargaining agreement is quoted below:

21  
22 "5. Certificate of Illness: The Fire Chief may  
23 require in writing a physicians certificate of  
24 illness when the absence is in excess of three  
25 consecutive shifts and/or whenever there is a  
26 reason to believe sick leave is being abused."

27 Notwithstanding the Respondent's protestations to the  
28 contrary, it is clear from the foregoing that the matters  
addressed by General Order #24 are significantly related to  
the mandatory bargaining subject listed in NRS 288.150 (2)  
(b); ie., "Sick Leave." Matters bearing a significant  
relationship to the subjects listed in NRS 288.150 (2) are  
mandatorily negotiable. Truckee Meadows v. Int'l  
Firefighters, 109 Nev. Adv. Op. 57, 859 P.2d 343 (Nev. 1993);  
Clark County School District v. Local Gov't and Washoe County

1 Teachers Assn. vs. Washoe County School District, 90 Nev. 442,  
2 530 P.2d 114 (1974).

3 Public employers have the right to promulgate and enforce  
4 administrative rules and regulations governing the operation  
5 of a department. Such rules and regulations in and of  
6 themselves do not constitute a mandatory subject of  
7 bargaining, however, if they include matters which relate to  
8 a mandatory bargaining subject, as in the instant case, then  
9 the related rule or regulation is mandatorily negotiable.

10  
11 II.

12 THE CITY COMMITTED A PROHIBITED  
13 PRACTICE BY REFUSING TO NEGOTIATE  
14 REGARDING THE MATTERS ADDRESSED  
BY GENERAL ORDER NO. 24

15 The Board finds that the City's refusal to negotiate  
16 regarding the matters addressed by General Order #24 (on the  
17 premise that General Order #24 allegedly did not involve the  
18 unilateral amendment of Article 25; did not involve a  
19 mandatory bargaining subject; merely was a written restatement  
20 of current and past administrative policy; and, even if found  
21 to involve a mandatory bargaining subject, did not involve any  
22 unilateral change of the status quo) constitutes a prohibited  
23 practice. Notwithstanding the employer's motive, a refusal to  
24 bargain regarding a mandatory bargaining subject is "per se"  
25 a violation of NRS 288.270 (1) (e), which requires that local  
26 government employers bargain collectively in good faith  
27 regarding the mandatory bargaining subjects set forth in  
28 subsection 2 of NRS 288.150. Mineral County Public Safety

1 Dispatchers Association vs. Board of County Commissioners of  
2 Mineral County and Mineral County, Nevada, Case No. A1-045482,  
3 Item No. 265 (1991).  
4

5 CONCLUSIONS OF LAW

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

10 2. That the Petitioner, Carson City Fire Fighters  
11 Association, I.A.F.F. Local #2251, is a recognized employee  
12 organization as defined by NRS 288.040.

13 3. That the Respondents, Carson City and The Carson  
14 City Board of Supervisors, are local government employers as  
15 defined by NRS 288.060.

16 4. That the matters addressed by General Order #24  
17 involve a mandatory bargaining subject by virtue of being  
18 significantly related to NRS 288.150 (2) (b), "Sick Leave".

19 5. That Respondents' refusal to negotiate regarding the  
20 issuance of General Order #24 constitutes a refusal to bargain  
21 in good faith and a violation of NRS 288.270 (1) (e).

22 ORDER

23 For the reasons set forth herein, the Board hereby ORDERS  
24 AND DECLARES the matters addressed by General Order #24  
25 involve a subject of mandatory bargaining; ie., "Sick Leave",  
26 therefore, the issuance of General Order #24 constitutes a  
27 prohibited practice pursuant to NRS 288.270 (1) (e).  
28

1 IT IS FURTHER ORDERED that each party shall bear its own  
2 costs and attorney's fees in the above-captioned matter.

3  
4 DATED this 31<sup>st</sup> day of January, 1995.

5 LOCAL GOVERNMENT EMPLOYEE-  
6 MANAGEMENT RELATIONS BOARD

7  
8  
9 By *Salvatore C. Gugno*  
SALVATORE C. GUGINO, Vice Chairman

10  
11  
12 By *Tamara E. Barengo*  
13 TAMARA BARENGO, Board Member