

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

RENO POLICE PROTECTIVE)
ASSOCIATION,)
Complainant,)
vs.)
CITY OF RENO,)
Respondents.)

ITEM NO. 366

CASE NO. A1-045584

DECISION

For Complainant: Michael E. Langton, Esq.
LANGTON & KILBURN

For Respondent: Carol Cooke, Esq.
RENO CITY ATTORNEY'S OFFICE

For EMRB: Christopher Voisin, Chairman
Tamara Barengo, Vice Chairman
David Goldwater, Member

STATEMENT OF THE CASE

During negotiations for the 1994-95 collective bargaining agreement between the parties, which initially included a proposal by the Reno Police Protective Association (hereinafter referred to as the "Association") for a vision care plan, the City maintained an inability-to-pay position. This position was based on an alleged insufficient unreserved ending fund balance. A factfinder subsequently affirmed the City's inability to pay.

In late November, 1994, after factfinding had closed, the City was informed that there would be a surplus in the Self-Funded Insurance Program. In December, 1994, the City notified the employee organizations representing its various bargaining units (except those not covered by this program), including the Association, that there would be a surplus and that a one-year vision care program would be offered as a result thereof.

1 (Employees enrolled in the Self-Funded Insurance Program were
2 offered vision care at no cost, while employees enrolled in the
3 Hospital Health Care Plan were required to pay a premium of
4 \$2.36 per pay period for vision care.) The Association
5 (Complainant herein) belatedly rejected the City's offer and
6 demanded that the vision care premiums be reduced and/or
7 refunded to the Association's members. The City countered by
8 offering to reduce the premiums under both funds (Self-Funded
9 Insurance Program and Hospital Health Care Plan) by the same
10 amount. Instead of responding to the City's counter-proposal,
11 the Association filed the instant Complaint, alleging that the
12 City knew during negotiations that it had the ability to pay for
13 a vision care program, and that the City's alleged unilateral
14 implementation of vision care coverage was an unfair labor
15 practice.

16 All other employee organizations which were offered the
17 one-year vision care program, accepted said program.

18 DISCUSSION

19 I.

20 THE CITY DID NOT COMMIT AN UNFAIR LABOR
21 PRACTICE BY CONTENDING DURING NEGOTIATIONS
22 (AND BEFORE THE FACTFINDER) THAT IT LACKED
23 THE ABILITY TO PAY FOR ADDITIONAL WAGES OR
24 BENEFITS

25 From the testimony and other evidence of record, it is
26 clear that the City could not have known that there would be a
27 surplus in the Self-Funded Insurance Program until after
28 factfinding had closed. The City's inability-to-pay position
throughout negotiations and factfinding was based on the fact
that, pursuant to NAC 354, its unreserved ending fund balance

1 was too low to provide additional wages or benefits. Also, it
2 is not practical to project a surplus in the Self-Funded
3 Insurance Program, inasmuch as one or two catastrophic events in
4 a short period of time can cause the program to go over-budget.
5 Accordingly, the City could not be certain that the Self-Funded
6 Insurance Program would have a surplus until it had closed its
7 books in October and the actuary had come back with the results
8 of its audit in late November. Promptly upon learning of the
9 surplus, the City commenced discussions with the employee
10 organizations representing the affected bargaining units,
11 including the Association. This is not evidence of a failure to
12 disclose the ability to pay additional wages or benefits during
13 negotiations. Rather, it appears to be evidence of a good faith
14 attempt on the part of the City to provide its employees with an
15 opportunity to share in a surplus which had accrued as a result
16 of said employees being required to utilize the Self-Funded
17 Insurance Program substantially less than actuarially projected;
18 i.e., by offering them the one-year vision care program which
19 was rejected by the Association.

20 For the above reasons, the Board finds that the City did
21 not commit an unfair labor practice by contending during
22 negotiations (and before the factfinder) that it lacked the
23 ability to pay for additional wages or benefits.

24 II.

25 THE CITY DID NOT UNILATERALLY IMPLEMENT THE
26 ONE-YEAR VISION CARE PLAN

27 The vision care plan which the City offered its employee
28 organizations clearly is an "insurance benefit" and therefore a

1 mandatory bargaining subject, pursuant to NRS 288.150 (2) (f).
2 Accordingly, if the City had unilaterally imposed the vision
3 care plan on the employees represented by the Association, it
4 would have violated its obligation to bargain in good faith,
5 pursuant to NRS 288.270 (1)(e). Reno Police Protective
6 Association vs. City of Reno, Case No. A1-045390, Item No. 175
7 (1/30/85). However, the City did not unilaterally impose the
8 vision care plan on any of its employees. Pursuant to the
9 provisions of the collective bargaining agreement, the City had
10 the right to set the rates for insurance benefits received by
11 the employees represented by the Association. (Although, in the
12 instant Case the \$2.36 attributable to the cost of the vision
13 care under the Hospital Health Plan was set by the provider, not
14 by the City.) Further, it is clear from the testimony and other
15 evidence of record that the City made a good-faith effort to
16 resolve the instant dispute to no avail. After the Association
17 finally rejected the vision care plan and demanded that the
18 premiums be reduced and/or refunded to the employees represented
19 by the Association, the City countered by offering to reduce the
20 premium for the Self-Funded Insurance Program as well as
21 rebating the premium for vision care under the Hospital Health
22 Care Plan. The Association did not respond to the City's offer,
23 choosing to file the instant Complaint instead.

24 The instant Complaint borders on being frivolous, inasmuch
25 as it appears that the City offered the Association
26 substantially everything it had demanded in lieu of the vision
27 care plan. This dispute could (and should) have been resolved
28 by the parties without in anyway jeopardizing or undermining the

1 integrity of their relationship. Instead, this Board was
2 required to expend its time and limited resources on a matter
3 which was readily amendable to resolution by the Association
4 simply responding to the City's last offer.

5 Notwithstanding that stated above, the Board concludes that
6 the City's offer of April 5, 1995, to reduce the premium for the
7 Self-Funded Insurance Program and rebate the premium for vision
8 care under the Hospital Health Care Plan is an appropriate
9 resolution of the dispute and should be implemented,
10 retroactively, as soon as possible.

11 FINDINGS OF FACT

12 1. That the Complainant, Reno Police Protective
13 Association, is a local government employee organization as
14 defined in NRS 288.040.

15 2. That the Respondent, City of Reno, is a local
16 government employer as defined in NRS 288.060.

17 3. That during negotiations for the 1994-95 collective
18 bargaining agreement the City did not know that there would be
19 a surplus in the Self-Funded Insurance Program (from which
20 additional benefits could be funded), and the City's "inability-
21 to-pay" position throughout negotiations and factfinding was
22 based on the status of its unreserved ending fund balance.

23 4. That the City did not unilaterally implement a one-
24 year vision care plan, but rather offered the vision care plan
25 to all bargaining unit employees who were eligible for the Self-
26 Funded Insurance Program.

27 5. That the Complainant, Reno Police Protective
28 Association, rejected the vision care plan offered by the City

1 and demanded that the premiums be reduced and/or refunded to the
2 employees it represents.

3 6. That the City's offer to reduce the premiums for the
4 Self-Funded Insurance Program, as well as to rebate the premiums
5 for vision care under the Hospital Health Care Plan,
6 substantially met the Association's demand(s).

7 CONCLUSIONS OF LAW

8 1. That the Local Government Employee-Management
9 Relations Board has jurisdiction over the parties and the
10 subject matter addressed by this Decision, pursuant to the
11 provisions of NRS Chapter 288.

12 2. That, in maintaining throughout negotiations and
13 factfinding an "inability-to-pay" stance, the City did not
14 commit an unfair labor practice pursuant to NRS 288.270 (2)(e)
15 or any other provision of NRS 288.

16 3. That, during negotiations, the City did not withhold
17 information from the Association regarding a surplus in the
18 Self-Funded Insurance Program, and did not commit an unfair
19 labor practice under NRS 288.270 (2)(e) or any other provision
20 of NRS 288 as a result thereof.

21 4. That the City did not unilaterally implement a vision
22 care plan in violation of NRS 288.270 (2)(e) or nay other
23 provision of NRS 288, but rather offered the plan to all
24 bargaining units who are eligible for the Self-Funded Insurance
25 Program, and implemented said plan only for the employee
26 organizations that accepted it.

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1 DECISION AND ORDER

2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that

- 3 1. The City did not commit an unfair labor practice by
4 maintaining an "inability-to-pay" stance throughout
5 negotiations and factfinding.
- 6 2. The City did not unilaterally implement a vision care
7 plan or commit an unfair labor practice by offering a
8 one-year vision care plan to bargaining unit employees
9 when a surplus developed in the Self-Funded Insurance
10 Program.

11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED,
12 notwithstanding that stated above, that the City shall reduce
13 the premium for the Self-Funded Insurance Program and rebate the
14 premiums for vision care under the Hospital Health Care Plan,
15 retroactively, for bargaining unit employees represented by the
16 Association, as soon as possible.

17 DATED this 10th day of January, 1996.

18 Local Government Employee-Management
19 Relations Board

20 By: Christopher Voisin
21 CHRISTOPHER VOISIN, Chairman

22 By: Tamara Barengo
23 TAMARA BARENGO, Vice Chairman

24 By: David Goldwater
25 DAVID GOLDWATER, Member