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

5 INTERNATIONAL ASSOCIATION OF)
6 FIREFIGHTERS, LOCAL 731)

7 Complainant,)

8 vs.)

9 CITY OF RENO,)

Respondent.)

ITEM NO. 370

CASE NO. A1-045573

DECISION

10 For Complainant: Lawrence P. Digesti, Esq.

11 For Respondent: Carol Cooke, Esq. and
12 Carolyn Cramer, Esq.
RENO CITY ATTORNEY'S OFFICE

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

15 STATEMENT OF THE CASE

16 The Complaint sets forth four (4) causes of action; i.e.,

- 17 1. The City's contracting for managed care services for
18 the worker's compensation program without negotiating
19 same with the Association;
20 2. The City's appointment of bargaining unit member Ron
21 Jones to the position of Internal Affairs Investigator
22 without negotiating same with the Association;
23 3. The Association's desire for an increase in the number
24 of payroll deduction slots (issue settled); and
25 4. The parties agreement not to negotiate through the
26 media, which agreement was allegedly violated by the
27 City.

28 In each cause of action which remains to be adjudicated by
the Board, the Association contends that the City failed to
negotiate in good faith and/or violated various provisions of
NRS 288.

1 managed care services to administer the worker's compensation
2 program) has already been disposed of, res judicata.
3 Consolidated, supra.

4 II.

5 THE CITY'S UNILATERAL RECLASSIFICATION
6 AND/OR ASSIGNMENT OF BARGAINING UNIT MEMBER
7 RON JONES TO CONDUCT INTERNAL
8 INVESTIGATIONS OF FELLOW BARGAINING UNIT
9 MEMBERS WAS (IS) CONTRARY TO THE PROVISIONS
10 OF NRS 288.

11 The Association's second cause of action (the City's
12 appointment of bargaining unit member Ron Jones to the position
13 of Internal Affairs Investigator without negotiation with
14 negotiation) was the subject of both grievance arbitration and
15 non-binding factfinding. The arbitrator, Andria S. Knapp, Esq.,
16 found that the appointment was not a breach of the parties
17 collective bargaining agreement, but commented, in pertinent
18 part, as follows:

19 ...
20 The Union's concerns are well-founded, but, as with
21 the issue of the initial assignment of internal
22 investigators duties, there is no real relief to be
23 had from the contract. The issues of freedom of
24 expression and the freedom to meet and associate
25 freely are appropriately addressed through the
26 statutory framework available to the parties in NRS
27 Chapter 288 rather than through the arbitration
28 process...

29 The factfinder, William Eaton, recommended that Article
30 XVIII of the collective bargaining agreement be amended to
31 include language to prohibit any member of the bargaining unit
32 from conducting internal affairs investigations concerning
33 fellow bargaining unit members. The City has offered to seek a
34 "clarification" of Arbitrator Knapp's award as it pertains to

1 internal affairs investigations conducted by bargaining unit
2 members, however, the City has not offered to negotiate language
3 to prohibit a bargaining unit member from conducting internal
4 investigations of other bargaining unit members, as recommended
5 by Factfinder Eaton. It does, however, contend that no internal
6 affairs investigations of fellow bargaining unit members have
7 been conducted by Mr. Jones subsequent to Factfinder Eaton's
8 recommendation of May 12, 1994.

9 After due deliberation as to the testimony and other
10 evidence of record, the Board finds that the provisions of NRS
11 288.170 (4) preclude confidential employees from being included
12 in the bargaining unit. The duties assigned bargaining unit
13 employee Ron Jones (to investigate fellow members of the
14 bargaining unit) are certainly of a confidential nature. Also,
15 while the provisions of NRS 288.150 (3) were construed by
16 Arbitrator Knapp as reserving to the employer the right to
17 assign job duties to individual employees, the method used to
18 classify employees in the bargaining unit is a mandatory
19 bargaining subject, pursuant to the provisions of NRS 288.150
20 (2)(k). It is clear that the effect of the City's act of
21 unilaterally changing the title of Ron Jones' position to
22 Internal Affairs Investigator and assigning him duties of a
23 confidential nature concurrent therewith, was to "reclassify"
24 his position. The "method" used to classify (or reclassify)
25 this position was not negotiated, in view of which the act
26 (changing the title of Ron Jones' position and assigning him
27 duties of a confidential nature) must be considered as a failure
28 to bargain in good faith regarding a mandatory bargaining

1 subject in violation of NRS 288.270 (1)(e). Las Vegas Police
2 Protective Association Metro, Inc. vs. City of Las Vegas,
3 Nevada, Case No. A1-045461, Item No. 248 (8/15/90).

4 III.

5 THE EVIDENCE IS INSUFFICIENT TO ESTABLISH
6 THAT THE CITY DISCLOSED CONFIDENTIAL
7 INFORMATION TO THE MEDIA CONCERNING ITS
8 NEGOTIATIONS WITH THE ASSOCIATION

9 The testimony adduced at the hearing, as well as other
10 evidence of record, clearly establishes that an understanding
11 existed between the parties to the effect that they would not
12 negotiate through the media. The fact that said understanding
13 was not reduced to writing (not made a part of the ground rules)
14 does not in any way mitigate against the validity or
15 enforceability of said understanding. A verbal agreement should
16 be and is a sufficient basis on which parties of good faith may
17 conduct collective bargaining. Stationary Engineers, Local 39,
18 International Union of Operating Engineers vs. County of Lyon,
19 Case No. A1-045457, Item No. 241 (6/11/90).

20 Notwithstanding that stated above, the Board finds that the
21 testimony adduced at the hearing, as well as other evidence
22 introduced by the Association, is not sufficient to form a
23 reasonable basis for concluding that the City's chief negotiator
24 (Robert Latchow) breached the aforementioned understanding or
25 verbal agreement by disclosing to the media details of a
26 confidential nature concerning the negotiations, as alleged by
27 the Association.

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/ / /

1 FINDINGS OF FACT

2 1. That the Complainant, International Association of
3 Firefighters, Local 731, is a local government employee
4 organization as defined by NRS 288.040.

5 2. That the Respondent, City of Reno, is a local
6 government employer as defined by NRS 288.060.

7 3. That the City's decision to enter into a managed care
8 provider contract for the worker's compensation program was (is)
9 a management prerogative, pursuant to NRS 288.150 (5).

10 4. That the City offered to discuss its decision to enter
11 into a managed care provider contract with the Complainant,
12 pursuant to NRS 288.150 (6), but the Complainant refused to
13 participate.

14 5. That the City's unilateral reclassification and/or
15 assignment of bargaining unit member Ron Jones to conduct
16 internal investigations of fellow bargaining unit members was
17 (is) contrary to the provisions of NRS 288.170 (4) and NRS 288
18 (2)(k), and constitutes a failure to bargain in good faith as
19 required by NRS 288.270 (1)(e).

20 6. That a verbal agreement or understanding existed
21 between the parties to the effect that the parties would not
22 negotiate through the media.

23 7. That the City's chief negotiator did not breach the
24 aforementioned verbal agreement or understanding by disclosing
25 to the media the details of the factfinder's report, including
26 the Complainant's bargaining proposals, as alleged by the
27 Association.

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2 CONCLUSIONS OF LAW

3 1. That the Local Government Employee-Management
4 Relations Board has jurisdiction of the parties and the subject
5 matter addressed by this Decision.

6 2. That the City's decision to enter into a managed care
7 provider contract for the worker's compensation program was (is)
8 a management prerogative, pursuant to NRS 288.150 (5).

9 3. That the City offered to discuss its decision to enter
10 into a managed care provider contract with the Complainant,
11 pursuant to NRS 288.150 (6), but the Complainant refused to
12 participate.

13 4. That the City's unilateral reclassification and/or
14 assignment of bargaining unit member Ron Jones as Internal
15 Affairs Investigator to conduct internal investigations of
16 fellow bargaining unit members was (is) contrary to the
17 provisions of NRS 288.170 (4) and NRS 288 (2)(k), and
18 constitutes a failure to bargain in good faith as required by
19 NRS 288.270 (1)(e).

20 5. That the City's chief negotiator did not breach the
21 verbal agreement or understanding between the parties not to
22 negotiate through the media, in view of which there was not a
23 failure to bargain in good faith in violation of NRS 288.270
24 (1)(e), as concerns that cause of action.

25 DECISION AND ORDER

26 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that

27 1. The City did not commit an unfair labor practice by
28 unilaterally entering into a managed care provider contract for
the worker's compensation program.

