STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

LAS VEGAS – CLARK COUNTY LIBRARY DISTRICT, Petitioner, vs. GENERAL SALES DRIVERS, DELIVERY DRIVERS AND HELPERS, TEAMSTERS LOCAL UNION NO. 14 AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL – CIO. Respondent.	ITEM NO. 635A CASE NO. A1-045886

For Petitioner: Gregory J. Kamer Esq.
Scott M. Abbott, Esq.
Jen J. Sarafina, Esq.
Kamer, Zucker & Abbott

For Respondent: Brooke D. Pierman, Esq.
Weinberg, Roger & Rosenfeld

FINDINGS OF FACT, CONCLUSIONS OF LAW,

AND DECLARATORY ORDER

This matter having come on before the State of Nevada Local Government Employee-Management Relations Board ("Board") for deliberations and decision, noticed pursuant to NRS and NAC Chapters 288, NRS Chapter 233B, as well as Nevada's Open Meeting Laws, finds, concludes, and orders as follows:

DISCUSSION

I. Procedural History

On June 2, 2006, Petitioner Las Vegas-Clark County Library District ("Library District") filed a complaint with the Board alleging prohibited labor practices, bad faith bargaining, by the Respondent, General Sales Drivers, Delivery Drivers & Helpers, Teamsters Local Union No. 14, affiliated with the International Brotherhood of Teamsters, AFL-CIO ("Teamsters").

The Library District filed a motion for an expedited review and hearing of this matter on or about June 2, 2006; and the Teamsters filed their answer to the complaint. Thereafter, the Library District filed a motion for the recusal of a Board Member. The motion for an expedited hearing and the recusal of Board Member Wilkerson were granted in an order dated September 18, 2006. A pre-hearing statement was filed by the Library District on July 10, 2006, and the Teamsters filed their pre-hearing statement on July 17, 2006. A proposed "stipulation of facts" was offered by the Library District, and was admitted as the parties' Joint Exhibit 35.

This matter was noticed for hearing on December 7, 2006. After the hearing, the parties filed their Post-Hearing Briefs.

II. Statement of Facts/Testimony/Exhibits.

This matter came on for hearing before the Board on December 7, 2006. Three (3) witnesses were called, i.e., Scott M. Abbott, Esq., Bud Pierce, and Dana Phillips. The parties' first collective bargaining agreement ("CBA") was offered as Joint Exhibit 34, and was effective from 1998 until 2001. The second CBA, for various units, were offered as Joint Exhibits 1, 2, 3, and 4. These agreements started in 2001 and expired June 30, 2006. Transcript of hearing ("Tr."), p. 13. According to the parties, numerous tentative agreements were reached. Tr. p. 13; Exhibit 5. The issues for consideration by the Board were whether "selection and order of filling vacancies" are significantly related to the mandatory subjects of bargaining found in NRS 288.150. Tr. p. 16. Section 8.5(d) of the parties' CBA pertains to selection and Section 8.5(a) pertains to filling vacancies.

Scott Abbott ("Abbott") was the first witness. He is employed with the law firm of Kamer, Zucker & Abbott, and has represented the Library District, which included the representation of the Library District during the CBA negotiation. Tr. p. 21-2. The negotiation team for the Library District consisted of Mr. Abbott, Gregory Kamer, and Bud Pierce. Tr. p. 22. Mr. Kamer was the lead negotiator; and Mr. Pierce provided "guidance and support in terms of proposals and responses to proposals that the union may have made . . . ." Tr. p. 23. Abbott stated his role was to take notes and then draft the proposals and tentative agreements. Id. Abbott identified Exhibits 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19 as his notes from

the various negotiation sessions. Tr. p. 27-8. He then stated that Exhibits 22 through 28, inclusive, are the proposals he prepared. Tr. p. 30. He also identified Exhibits 29 through 33, inclusive, as the proposals prepared by the Teamsters. Tr. p. 30. He did admit that the Teamsters did not have any input into the contents of the notes. Tr. p. 32.

Bud Pierce ("Pierce") was the next witness. He is the Human Resource Director for the Las Vegas-Clark County Library District. Tr. p. 34. He stated his duties included "development and implementation of personnel policies for the district as well as taking care of all the records of the employment aspect, recruitment, labor and employee relations, contract, administration on a daily basis, among other things." Tr. p. 35. He also stated the Library District has approximately 700 employees; 300 of whom are in the collective bargaining units at issue in this matter. Id. He further stated that he is responsible for administering the CBA on a day-to-day basis and that he is involved in the grievance process. Tr. p. 37.

The Library District rejected the Teamsters' proposal concerning Section 8.5(a), filling vacancies, stating it was not a mandatory subject of bargaining. This section, however, was previously included in the parties' CBAs. Additionally, the Library District management had concerns with Article 8.5(d) of the CBA, and more specifically that the Library District "shall apply seniority as a determining factor when two or more employees possess equal qualifications, provided that such judgment as to individuals' qualifications to do the job are judged fairly and in good faith." Tr. p. 41. He stated that two grievances have been filed as a result of this language. Id. He stated that by providing the job to the individual with the most seniority would not allow the Library District to hire the "best qualified for the job." Tr. p. 41-2. He also offered that this "tie-breaking" language differed between the CBAs for the 4 different units. Tr. p. 44. Pierce further offered that "seniority would be irrelevant as [to] the district's interpretation of who's best qualified for the job." Tr. p. 47.

Several proposals were provided to the Teamsters for changes to this article; however, the Teamsters rejected the same. Tr. p. 48-51. Pierce was questioned about a situation involving a librarian with15 years experience "from outside" of the Library District versus a person with only three months experience as a librarian, but had actually been with the Library District for

some time. Tr. p. 59-60. Pierce stated under that scenario, the Library District would have to hire the new librarian with only 3 months experience because he/she had seniority with the Library District. Id. He also stated that in a situation where one person has a bachelor's degree but has worked for the Library District for 10 years, he/she would receive a transfer whereas the competitor may have a doctorate degree but only four years employment with the Library District. Tr. p. 60-1.

Pierce stated that the Library District felt these two issues (selection and filling vacancies) were management rights, and were not mandatory subjects of bargaining; whereas, the Teamsters believed these two issues significantly related to mandatory subjects of bargaining. Tr. p. 53.

The Teamsters proposed to "limit the use of part-time employees," which the Library District rejected. Tr. p. 55. Eventually, the Teamsters withdrew that proposal. Tr. p. 57. Teamsters, however, did not "retract from its position with regard to vacancies and transfers" as well as the selection process discussed above. Tr. p. 58.

On cross-examination, Pierce agreed that "the library district is in control if two people are put in a situation where this tie-breaker language is needed." Tr. p. 68. More specifically, he stated, that the Library District "has the right to establish qualifications for candidates or for positions." Tr. p. 83. He explained, however, that this was "still a grievable issue" if the Library District did not select the individual with the most seniority. Tr. p. 68. He also admitted that during the August negotiations, the Teamsters did agree to one of the Library District's proposals for selection. Tr. p. 77. Additionally, the Teamsters did not make any proposals "which affected the library district's ability to set [the applicant's] qualifications" for promotions. Tr. p. 83. He repeated that the issue of part-time employees had "been resolved" and was not an issue before the Board. Tr. p. 78. He admitted that the Teamster's proposal regarding vacancies did not "in any way affect the library district's . . . [determination on] how the applicants meet those qualifications to fill these vacancies" once those qualifications were set. Tr. p. 87. On re-direct, Pierce stated that the Teamsters' proposals regarding seniority did put a "limitation" on the Library District's ability to select the most qualified candidate. Tr. p. 90. He further stated that,

there "had been times when we have awarded a promotion to persons who weren't our first choice based on seniority" to avoid the filing of grievances. Tr. p. 98. He stated that the Library District would like the unreviewable right to select individuals for promotions and vacancies. Tr. p. 99.

Pierce did admit that upon a promotion and even a transfer, an employee may earn a different wage rate, may have to work different hours as well as work at a different library, and may have to work different days of the week. Tr. p. 80-2.

Dana Phillips ("Phillips") was the last witness. Phillips testified that she is a business agent for Teamsters and has been for approximately four years. Tr. p. 107-08. Previously, she was a shop stewart for Teamsters for approximately 15 years while employed with the North Las Vegas Library District; and has approximately a total of 20 years of negotiation experience. Tr. p. 108. She participated in the negotiations at issue in this matter, and attended every session. Tr. p. 109-10. She testified that the Teamsters:

> wanted discussion on the selection process, because it is a question we get, as a union, a lot about how the process happens, why does the district seem to want to keep it a secret, although I don't necessarily feel that it is. But it is a view of the membership that it is kind of a process that's kind of cloaked in darkness and not readily shared with the employees on how that process moves.

Tr. p. 112.

She also stated that the Teamsters' proposal was to "clarify transfers within the bargaining unit itself and that the bidding, to do bidding across the bargaining units" as the members felt that they should not have to "compete open competitively with those on the outside." Tr. p. 113-14. Phillips stated the Library District rejected the proposal. Tr. p. 114. She stated that the "unreviewable" decisions by the Library District added to the members' concern that the processes for promotions and transfers were "cloaked in darkness." Tr. p. 117. Phillips states that she believes procedures for selection and filling vacancies do relate to salaries, hours worked, places worked, and days worked. Tr. p. 121.

Phillips also stated that she does not recall the Library District tying the economic proposals to any of their other proposals, e.g., selection and transfers/vacancies. Tr. p. 130. On cross-examination, Phillips admits that the proposals concerning Article 8.5(d) do affect who is

selected/hired, do affect transfers, and do affect how the Library District is "going to assign duties to employees." Tr. p. 132. In response to a question from the Board, Phillips states that they are not seeking to control who the Library District hires or promotes or transfers, but they want involvement in the "system of selection" or the "process of [the] applicant pools." Tr. p. 135-36.

As indicated above, the parties filed post-trial briefs. Teamsters cited to numerous cases in support of its position that "selection" and "filing vacancies" significantly relate to wages, salary, and other mandatory subjects of negotiation. For example, Teamsters cited Southwestern Bell Telephone Co. v. N.L.R.B., 247 NLRB 171, 173 (1980), for the argument that the NLRB has held that promotions and transfers do involve wage changes, which are mandatory subjects of bargaining; and Health Care & Retirement Corp. of Am. V. District 1199P Service Employees Intern. Union, 317 NLRB 1005 (1995), that the NLRB has ruled that an employer had to negotiate over selection where selection resulted in a change of bargaining units. It argues that the two controlling cases in this matter are: Clark Co. Sch. Dist. v. Local Gov't/Washoe Co. Teachers Assn., 90 Nev. 442, 530 P.2d 114 (1974), and Truckee Meadows Fire Protection Dist. v. Intern. Assoc. of Firefighters, 109 Nev. 367, 849 P.2d 343 (1993). Lastly, Teamsters argue that a past practice/pattern exists because of the prior labor agreements containing Sections 8.5(a) and 8.5(d).

The Library District argued that the right to hire, direct, assign or transfer an employee is a management right not subject to negotiations pursuant to NRS 288.150(3)(a), and when the statute is plain and unambiguous, you must apply the plain meaning. The Library District cited prior Board cases which indicated that promotions and the procedures/requirements therefore are outside the scope of bargaining. See e.g., Intern. Assoc. of Fire Fighters v. Clark County, Case No. A1-45357, Item No. 146 (1982). The Library District also argued that the right to hire, direct, assign or transfer employees are specifically enumerated in NRS 288.150 as management rights, not subject to negotiations, which complies with the Court ruling in Truckee Meadows Fire Protection Dist. v. Intern. Assoc. of Firefighters, 109 Nev. 367, 849 P.2d 343 (1993); and based thereon, the Library District should not be found in bad faith bargaining.

FINDINGS OF FACT

1. That the parties have entered into collective bargaining agreements for four different units (Managers, Supervisors I, Supervisors II, and Non-supervisors).

2. Pursuant to the parties' stipulated facts, the Library District was notified of the Teamsters' intent to reopen negotiations for the CBAs; that the parties met on various and numerous occasions; that the parties have reached a total of thirty-four tentative agreements as a result of their negotiations; and that the parties have tentatively agreed to a complete economic package inclusive of wage and benefits.

3. The issues before the Board are Articles 8.5(a)("order of filling vacancies") and 8.5(d)("selection"), and whether the subjects of such articles are significantly related to mandatory subjects of bargaining requiring the parties to negotiate the same. Article 8.5(a) pertain to the order in which vacancies are filled, and Article 8.5(d) pertain to selection of candidates with the sole discretion resting with the Library District. The Board has previously adopted the "significantly related" test, and such has been approved by the Nevada Supreme Court.

4. The issue pertaining to the Library District's use of part-time employees has been resolved, and the Board makes no finding on such an issue.

5. NRS 288.150 reserves certain rights to a local governmental employer, and such includes the right to hire, direct, assign or transfer an employee; however, the proposals at issue do not interfer with management rights if one reviews the contents of the proposals and such proposals appear to prevent the corruption of the bargaining units at issue and/or protects the rights of employees in the specific bargaining units.

6. Although the terms "order of filling vacancies" and "selections" are not used in NRS 288.150, however, the Board thus finds that both of these subjects are "significantly related" to mandatory subjects of bargaining in the context of this case, which subjects include, but are not limited to, NRS 288.150(2)(a),(g),(h), and (k).

7. Should any finding of fact be more properly construed as a conclusion of law, may it be so deemed.

CONCLUSIONS OF LAW

1. The Local Government Employee-Management Relations Board ("Board") has jurisdiction over the parties and the subject matters of the complaint on file herein pursuant to the provisions of NRS Chapter 288.

2. The Las Vegas-Clark County Library District is a local government employer as defined in NRS 288.060.

3. The General Sales Drivers, Delivery Drivers & Helpers, Teamsters Local Union No. 14, Affiliated with the International Brotherhood of Teamsters, AFL-CIO, is an employee organization pursuant to NRS 288.040, and is the representative for the employees at issue in this matter.

4. The Board concludes that the Teamsters' proposals "significantly relate" to mandatory subjects of bargaining, requiring negotiation by the parties to the collective bargaining agreement.

5. Should any conclusion be more properly construed as a finding of fact, may it be so deemed.

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DECISION AND DECLARATORY ORDER

Based upon the above, the Board hereby ORDERS as follows:

1. The Teamsters 14's proposals concerning "order of filing vacancies" and "selection" are "significantly related" to the mandatory subjects of bargaining found in NRS 288.150(2);

2. The Teamsters did not engage in bad faith bargaining in this matter; and

3. Each party shall bear their own attorneys' fees and costs.

DATED this 13th day of March, 2007.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: _____
JOHN E. DICKS, ESQ., Chairman

BY: _____
JANET TROST, ESQ., Vice-Chairman