STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

CITY OF RENO, Complainant, vs. RENO POLICE PROTECTIVE ASSOCIATION, Respondent.	ITEM: 790 CASE NO. A1-046096 **ORDER**

For Complainant: City of Reno and their attorney Donald L. Christensen, Esq.

For Respondent: Reno Police Protective Association and their attorney Michael E. Langton, Esq.

This matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board"), for consideration and decision pursuant to the provisions of the Local Government Employee-Management Relations Act ("the Act"); NAC Chapter 288, NRS chapter 233B, and was properly noticed pursuant to Nevada's administrative procedures act. A hearing was held in this matter on October 9, 2013 in Reno, Nevada.

NRS 288.270(2)(b) states than an employee organization must negotiate in good faith with a local government employer if it has been recognized by that employer. Respondent in this matter, Reno Police Protective Association ("RPPA"), has been recognized by Complainant City of Reno as the bargaining agent for the bargaining unit of non-supervisory police officers.

The City and the RPPA were parties to a collective bargaining agreement that extended from July 1, 2011 to June 30, 2013. On January 22, 2013 the RPPA notified the Reno City Manager of its desire to commence negotiations on a successor agreement. The City likewise expressed a desire to commence negotiations with the RPPA by way of a letter dated January 25,

2013 from the City's Director of Finance and Administration to Jason Soto, President of the RPPA.

Thereafter the first attempt to schedule a meeting to begin negotiations was made by the RPPA. On February 2, 2013 Ronald Dreher, the chief negotiator for RPPA, sent a letter to the City advising that he was available the entire month of February to begin negotiations and asked the City to advise him what dates would be acceptable to the City's negotiating team. Despite this early attempt to schedule a negotiating session, the parties did not actually meet until seven full weeks had passed. That first meeting took place on March 28, 2013.

At the hearing, the City explained this delay by claiming that since the City Council must approve a negotiated agreement under NRS 288.153, the negotiations team first had to meet with the City Council to gauge the Council's stance on the negotiations. The City argued that this meeting with the City Council was especially important because the 2012 elections had placed four new members on the City Council. But this only explains part of the delay. The meeting with the City Council occurred on February 27, 2013. No explanation was given by either party for the additional month that elapsed before the first meeting on March 28, 2013 other than the City's assertion that having only one meeting during the month of March was consistent with prior negotiations.

Once the parties finally met on March 28, the negotiations immediately soured. The purpose of the initial meeting was to establish the ground rules that would govern the negotiations, however the parties were not able to agree on the ground rules. At this session the RPPA took the position that the City's negotiating team should have a member of the City Council on it. RPPA explained at the hearing that based upon its experience in previous negotiating sessions the negotiating process works much better when a member of the City

Council is involved, as the final negotiated agreement must be approved by the City Council. The City astutely pointed out that nothing mandates that a member of the City Council be on the negotiating team, and instead the City is entitled to select its own negotiating team under NRS 288.150(1). This initial meeting was very short and lasted only half an hour, according to the testimony of Mr. Soto. The proposed ground rules were never adopted.

Mr. Soto testified that he was surprised at the first negotiating meeting by what he described as the unprofessional conduct by the lead negotiators for both sides. (Tr. p. 134). Mr. Soto recalled that something was said at this first meeting that "almost shut down communications" between the parties, although Mr. Soto could not recall exactly what was said. (Tr. p. 134).

More than a month would pass before the parties actually held another meeting. A meeting had been scheduled to occur the afternoon of April 18, 2013, but that meeting was cancelled by the RPPA. The reason given for this cancelation was that the RPPA's Chief Negotiator had another matter arise, involving a hearing with the Mineral County School Board. No other meetings were scheduled by either side during the month of April. Mr. Soto testified that no meetings occurred in April because the City was not prepared to meet in April. This is corroborated by the testimony of the City's chief negotiator Mark Ricciardi who testified that he anticipated that the parties would "pound the pavement in June and July." (Tr. p. 31).

A negotiating session did occur on May 9, 2013, and another on May 29, 2013. Each of these meetings lasted less than 2 hours, although testimony at the hearing indicated that some progress toward an agreement was made. Following the May 29th meeting the parties did not meet again until August.

At the May 9, 2013 meeting the parties scheduled two future meetings: the May 29th meeting which did occur and a meeting scheduled for June 25, 2013 which did not. At that meeting the RPPA proposed meeting on June 18, 2013, however the City did not accept this date as its Chief Negotiator would be on vacation during that time.

The meeting that had originally been scheduled for June 25, 2013 was canceled due to scheduling conflicts on the RPPA's negotiating team, including the vacation of RPPA President Jason Soto. The RPPA verbally notified the City of the cancelation on May 20, 2013. The June 25th meeting was not rescheduled and there was no other meeting scheduled or held during the month of June. Nor was there any meeting held during the entire month of July due to conflicts with the vacation schedule of the RPPA's Chief Negotiator. It was also at this time that the City filed its prohibited labor practices complaint with the Board on June 24, 2013.

The parties resumed meeting in August, and met on August 2, 13 and 20, 2013. Each of these meetings was brief, ten to fifteen minutes apiece according to the testimony of Ron Dreher (Tr. p. 199) and nothing substantive was accomplished. Mr. Soto testified that he wanted to work out a deal but that in his opinion the City wasn't interested in doing so. It is apparent that these meetings were held simply to satisfy the minimum requirement to hold six meetings before declaring impasse.

Based upon these facts the City asserts that the RPPA failed to negotiate in good faith.

It is a prohibited labor practice for a local government employer or an employee organization to refuse its obligation to bargain in good faith. NRS 288.270(1)(e) and (2)(b). The Act defines collective bargaining to include "...a mutual obligation of the local government employer and the representative of the local government employees to meet at reasonable times and bargain in good faith..." NRS 288.033.

A charge that one party has failed to bargain in good faith does not turn on a single isolated incident; rather the Board looks at the totality of conduct throughout the negotiations to determine "whether a party's conduct at the bargaining table evidences a real desire to come into agreement." Int'l Brotherhood of Electrical Workers, Local 1245 v. City of Fallon, Item No. 269, EMRB Case No. A1-045485 (1991); N.L.R.B. v. Insurance Agents' Union, 361 U.S. 477, 498 (1960). The City, as the complainant in this matter, bears the burden to show that a violation of the Act has occurred. Laborers Int'l Union of North America, Local 169 v. Washoe Medical Center, EMRB Item No. 1 (1970).

The City's argument is that the RPPA's negotiations lacked good faith because the RPPA did not meet at reasonable times to bargain in good faith, and that the RPPA was responsible for furnishing a negotiating team that could do so. The City points to the RPPA's cancelations of the April 18 and June 25th scheduled meetings as well as the RPPA's unavailability during the month of July. The City argues that the busy schedule of a negotiator does not relieve the RPPA from its obligation to meet at reasonable times in order to bargain in good faith.

By way of the affirmative defense of unclean hands, the RPPA has also placed the issue of the City's own conduct before the Board and asserted that the City's own conduct prevents a finding of bad faith against the RPPA.[1] We do not condone the RPPA's actions, but we agree that the City's conduct during these negotiations prevents a finding of bad faith against RPPA.

The evidence presented in this case does not indicate that either party negotiated in earnest to reach a new successor agreement. There appeared to be strong feeling of mutual

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[1] The N.L.R.B. has also found that a charging party's own conduct in a complaint of bad faith bargaining can eliminate the possibility of genuine negotiations and thus preclude an analysis of whether a respondent acted in good faith. Chicago Tribune Co., 304 N.L.R.B. 259 (1991). As that board has stated in such circumstances, "[i]f [good faith] cannot be tested, its absence can hardly be found." Times Publishing Co., 72 N.L.R.B. 676, 683 (1947).

dislike between the chief negotiators on either side that manifested itself at the first negotiation session on March 28, 2013 and clouded the entire process that followed. That mutual dislike was evident during the testimony of Mark Ricciardi and Ron Dreher on the stand. The Board considered not only the substance of the testimony of these two witnesses, but also their demeanor while testifying at the hearing.

It is true that the RPPA canceled two meetings, but there was no evidence to suggest that the City took any initiative to try to reschedule these meetings, or to schedule any meeting at all. Rather the City was content to place all the initiative to schedule meetings on the RPPA.

It is also true that the RPPA was not available during the month of July due to the vacation schedule of its chief negotiator. However, it is also true that the City sacrificed great stretches of time as well, requiring nearly the entire month of February to meet with the City Council before beginning negotiations, and according to the testimony of Mr. Soto forgoing nearly the entire month of April because it wasn't ready to negotiate and a good portion of the month of June due to the City's own scheduling conflicts, including the vacations of it's negotiating team.

When it came to possibly meeting in June, Mr. Soto testified that there were "several issues that were going on both sides" that prevented the sides from meeting. He did testify that the RPPA was available for most of June, but the City was not able to assemble its negotiation team to meet for most of June primarily due to vacations. (Tr. p. 137). In July the opposite occurred – the City was able to meet, but the RPPA was not able to assemble its negotiating team, also due to vacations. After the RPPA had cancelled the June 25th meeting and advised the City that it would not be available in July, the City pounced and filed its complaint with this Board on June 24, 2013.

Mr. Soto also testified that when meetings were actually held there was a lack of dialogue with the City, which was frustrating to him. He testified that he would spend a great deal of time preparing for the meetings and was baffled to go the meetings and find out there was nothing the City wanted to talk about. (Tr. p. 141). The Board finds his testimony to be credible on these points. Because the testimony and demeanor of Mr. Soto on the stand indicated that he was genuinely interested in reaching an agreement, the Board gives his testimony significant weight.

Given this toxic environment that was tainted at the outset by the mutual personal dislike of the chief negotiators it appears to the Board that genuine negotiations were never going to happen due to the conduct of both parties. In this situation the evidence does not support the conclusion that it was the RPPA that lacked good faith. The City's own conduct during these negotiations precludes such a finding.

The City also complained at the hearing about the fact that March and May meetings began in the afternoon, apparently due to commitments that Mr. Dreher had at the Nevada Legislature. However, Renee Rungis, the City's Director of Human Resources testified that this did not present an obstacle for the City. Therefore this charge has no credence.

Finally, while we do not make a finding of bad faith negotiations in this case, we remind both parties that when entering future negotiations the Act requires each of them to approach negotiations in good faith with a real desire to reach an agreement.

Based upon the forgoing, the Board makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The City of Reno and the Reno Police Protective Association were parties to a collective bargaining agreement that ran through June 30, 2013.

2. On February 2, 2013 the RPPA, though its chief negotiator, approached the City to attempt to schedule a meeting during the month of February.

3. No meeting occurred in February because the City desired an opportunity to first meet with the City Council regarding the negotiations before meeting with RPPA.

4. The parties first negotiating sessions was held on March 28, 2013 and lasted approximately half an hour.

5. At the March 28th meeting, the RPPA requested that the City include a member of the City Council on its negotiating team; the City refused citing its authority to choose its own bargaining representatives.

6. The next scheduled meeting was for April 18, 2013.

7. The April 18th meeting was canceled due to Mr. Dreher's need to attend a hearing with the Mineral County School Board.

8. The April 18th meeting was not rescheduled and no meeting was held during April.

9. The City was not prepared to meet during the month of April according to the testimony of Jason Soto, which the Board finds to be credible.

11. A negotiating session occurred on May 9, 2013, which lasted approximately two hours.

12. At the May 9th meeting, the parties scheduled two future sessions, one for May 29, 2013 and another for June 25, 2013

13. At the May 9th meeting, the RPPA proposed meeting on June 18, 2013 but the City rejected this proposal due to the scheduled vacation of its chief negotiator.

14. On May 20, 2013 the RPPA notified the City that it was canceling the June 25th meeting. The cancelation was due to the vacation schedule of RPPA President Jason Soto.

15. The parties held a negotiating session on May 29, 2013.

16. No negotiating sessions were held during the month of June. Neither the City nor the RPPA attempted to reschedule any of the meetings that had been canceled.

17. The City was unavailable for a significant portion of the month of June due to scheduling conflicts, including vacations of its negotiating team members according to the testimony of Jason Soto, which the Board finds to be credible.

18. The RPPA was unavailable for the entire month of July due to the vacation schedule of its chief negotiator.

19. The parties held negotiating sessions on August 2, 13 and 20. Each of these meetings lasted approximately ten to fifteen minutes apiece according to the testimony of Ron Dreher.

20. The entire negotiations were negatively affected by a strong mutual dislike between the parties' chief negotiators.

21. Beginning negotiating sessions in the afternoon did not adversely affect negotiations pursuant to the testimony of Renee Rungis, which the Board finds to be credible.

22. If any of the foregoing findings is more appropriately construed a conclusion of law, it may be so construed.

CONCLUSIONS OF LAW

1. The Board is authorized to hear and determine complaints arising under the Local Government Employee-Management Relations Act.

2. The Board has exclusive jurisdiction over the parties and the subject matters of the Complaint on file herein pursuant to the provisions of the Act.

3. The Act imposes a mutual duty to bargain in good faith upon local government employers and upon bargaining agents.

4. A charge of failing to bargain in good faith is based upon a consideration of the totality of the circumstances during bargaining.

5. The mutual dislike of the chief negotiators, which manifested itself at the first negotiating session, removed any possibility of effective negotiations.

6. Based upon the totality of the circumstances throughout the bargaining process, the City's conduct during these negotiations precludes a finding of bad faith against the RPPA.

7. An award of costs and fees is not warranted in this case.

8. If any of the foregoing conclusions is more appropriately construed a finding of fact, it may be so construed.

ORDER

It is hereby ordered that the Board finds that the complaint filed in this matter is not well-taken.

It is further order that each party shall bear its own fees and costs incurred in this matter.

DATED the 27th day of November, 2013.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: _____
PHILIP E. LARSON, Chairman

BY: _____
SANDRA MASTERS, Vice-Chairman

BY: _____
BRENT C. ECKERSLEY, ESQ. Board Member

STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

CITY OF RENO, Complainant, vs. RENO POLICE PROTECTIVE ASSOCIATION, Respondent.	)	CASE NO. A1-046096 **NOTICE OF ENTRY OF ORDER**

To: City of Reno and their attorney Donald L. Christensen, Esq.

To: Reno Police Protective Association and their attorney Michael E. Langton, Esq.

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on November 27, 2013.

A copy of said order is attached hereto.

DATED this 27th day of November, 2013.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY Yvonne Martinez
YVONNE MARTINEZ, Executive Assistant

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 27th day of November, 2013, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

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