LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

LOCAL 1908, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, NEVADA FEDERATED FIREFIGHTERS & GARRY HUNT, Complainants, vs. COUNTY OF CLARK, Respondent.	Case No. 003486
LOCAL 1908 of the INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, duly recognized bargaining agent of the CLARK COUNTY FIREFIGHTERS, Complainant, vs. CLARK COUNTY, A Political Subdivision of the State of Nevada; ROBERT BROADBENT, MYRON LEAVITT, JACK R. PETTIT; R. J. RONZONE, JAMES RYAN, THOMAS WEISNER, Chairman; AARON WILLIAMS, County Commissioners of Clark County; COUNTY ADMINISTRATOR OF CLARK COUNTY, NEVADA; DOES I THROUGH 50, Respondents.	Case No. A1-045270

DECISION

These cases were heard before us on April 7th and 8th, 1975. Because the majority of the issues raised in the two complaints have been resolved and the same local government employer and employee organization are involved in both cases, we are rendering a consolidated decision on the complaints.

Basically two issues from the original complaints remain for our determination: (1) whether the respondents committed a prohibited practice when, in 1973, they refused to bargain with the complainant employee organization regarding the rights of the battalion chiefs in the Clark County Fire Department, and, (2) whether the battalion chiefs may properly be recognized as a separate bargaining unit within the complainant which is currently recognized as the

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bargaining agent for the non-supervisory personnel of the Department.

Complainants have raised an additional issue in a motion to amend their complaint filed with their post-hearing statement. They request that we direct the respondents to pay Chief Mechanic Morrie Johnson on the same scale as a battalion chief and that such pay be given retroactively to February of 1973.

We shall initially consider the propriety of a separate bargaining unit within the complainant Local composed of the Department's battalion chiefs.

From the inception of the Dodge Act (NRS Chapter 288) in 1969, until 1973, the I.A.F.F. Local was recognized as the exclusive bargaining agent for the battalion chiefs, captains and other fire fighting personnel of the Clark County Fire Department. The Local negotiated for these groups in 1970, 1971 and 1972. When collective bargaining commenced in 1973 for the ensuing contract year, the County's bargaining representative refused to bargain with the battalion chiefs through the Local. During the course of that bargaining period, in the Spring and Summer of 1973, the battalion chiefs were offered a $220.00 monthly raise with the loss of some benefits directly by the County through this bargaining representative. On August 1, 1973, a letter of resignation was submitted to the Board of Directors of the Local by a majority of the battalion chiefs in the Department.

At no time did the Board of County Commissioners take any formal action to terminate the right of the Local to act as the exclusive bargaining agent for the battalion chiefs.

The first decision of this Board to consider whether supervisory and non-supervisory personnel of a fire department may be members of a single employee organization was In the Matter of Local 731 of I.A.F.F. and the City of Reno for Determination of Bargaining Unit, Item #4, decision rendered March 6, 1972. The Board therein stated:

> ...[T]he community of interest demonstrated to exist among those employees of the Reno Fire Department represented by the International Association of Fire-fighters seems to be the most appropriate community of interest among the employees concerned. Those employees are identified each as an employee of a particular local government employer, they share a

> bond of hazardous duty, their past history of bargaining has been that of a united membership, the stability of the labor relationship with the City has been proven over the years, there is an identity of career paths, there is a unified public view of these employees, and there exists a personal desire and view of the employee of himself as a firefighter. Thus, there are in existence unusual circumstances to allow this local government employer to recognize and negotiate with only one employee organization for personnel in the fire department with, however, recognition of appropriate bargaining units to reflect both a distinction between non-supervisory personnel and supervisory personnel as well as a community of interest pursuant to the terms of N.R.S. 288.170 (as amended.)

The holding in the Reno Firefighters case was reaffirmed by the Board in International Association of Firefighters, Local 1285 vs. City of Las Vegas, Nevada, a municipal corporation, Case No. 87304, Item #21, decision rendered December 16, 1974.

The respondents argue that these two decisions, rendered by two separate Boards of different composition, must be overruled because of the reference in NRS 288.170 to supervisory personnel in school districts. They contend that the specific reference to supervisory school district personnel exempts from the operation of the statute all other local government employees who possess supervisory status.

The provisions of NRS 288.170 were amended by the 1975 Nevada State Legislature. See Stats. of Nev., 1975, ch. 539, § 17, pps. ____.[1] The new amendments to the statute make no substantive change in the provisions, merely substituting the term "bargaining" for "negotiating" in the statutory language.

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1. NRS 288.170, as amended, provides:

> 1. Each local government employer which has recognized one or more employee organizations shall determine, after consultation with such recognized organization or organizations, which group or groups of its employees constitute an appropriate unit or units for negotiating purposes. The primary criterion for such determination shall be community of interest among the employees concerned. A principal, assistant principal or other school administrator below the rank of superintendent, associate superintendent or assistant superintendent shall not be a member of the same bargaining unit with public school teachers unless the school district employs fewer than five principals but may join with

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A single sentence in subsection 1 of the statute makes specific reference to supervisory personnel of school districts; the remainder of the provisions employ the general terminology "local government employer", "employee organization", "administrative employee", "supervisory employee" and "confidential employee." None of these terms are given restrictive definitions in the preliminary portion of Chapter 288 which would indicate they are intended to refer only to school district personnel. The general language of the statute is intended to have general application to all entities, employee organizations and employees who are subject to the Act. Even the language upon which respondents rely supports the conclusion that multiple unit employee organizations are legally permissible - the sentence specifies that certain school district personnel may not be within the same bargaining unit as teachers, it does not state that these individuals are excluded from membership in the same employee organization.

The reasoning upon which our two prior decisions rest is applicable to the battalion chiefs in this particular department and a similar determination is warranted.

We turn to a consideration of the alleged prohibited practice.

NRS 288.160(3) as amended by Stats. of Nev., 1975, ch. 539, §16, pps._____, sets forth four grounds for the withdrawl of recognition of an employee organization. Except for a slight change in nomenclature, these four grounds remain the same today as they were in 1973. The subsequent section of

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1. NRS 288.170, continued:

> other officials of the same specified ranks to negotiate as a separate bargaining unit. A local government department head, administrative employee or supervisory employee shall not be a member of the same bargaining unit as the employees under his direction. Any dispute between the parties as to whether an employee is a supervisor shall be submitted to the board. In all cases, confidential employees of the local government employer shall be excluded from any bargaining unit.
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> 2. If any employee organization is aggrieved by determination of a bargaining unit, it may appeal to the board. Subject to judicial review, the decision of the board is binding upon the local government employer and employee organizations involved. The board shall apply the same criterion as specified in subsection 1.

the statute (NRS 288.160(4)) permits an employee organization aggrieved by the withdrawal of recognition to appeal to this Board. The respondents, however, foreclosed such an immediate appeal by never formally withdrawing the recognition of the Local in whole or in part. Instead, they contacted the battalion chiefs and offered them a salary and benefit package which can reasonably be inferred to be contingent upon their withdrawing from the Local and so presented as to entice the battalion chiefs to leave the Local. There could hardly be a clearer violation of NRS 288.270(1)(b), which prohibits interference in the administration of an employee organization, or, NRS 288.270(1)(c), which prohibits discrimination in regard to terms of conditions of employment to encourage or discourage membership in an employee organization.

The conduct of the County also constitutes a refusal to bargain collectively in good faith. NRS 288.270(1)(e). The respondents were aware of our two prior decisions regarding other metropolitan fire departments in this State; there were several avenues under the law by which the respondents could have taken action and rendered the matter ripe for appeal. Instead, they simply refused to negotiate with the Local on behalf of the battalion chiefs and subsequently enticed them to withdraw from the employee organization.

Our final consideration is the complainants' request that we direct the respondents to pay Chief Mechanic Morrie Johnson on the same scale as battalion chiefs and that such pay increase be granted retroactively to February of 1973.

It would seem a necessary correlative of such a finding that Mr. Johnson possesses the requisite community of interest with the battalion chiefs and would be an appropriate member of their bargaining unit.

Since the thrust of the testimony and evidence presented in these cases was directed to the two issues previously discussed, very little evidence was presented on the plight of Mr. Johnson. However, the record does disclose that at the time of the $220.00 offer by the respondents, Mr. Johnson was not offered the raise and was apparently reclassified, at that approximate time, out of the battalion chief category. Also, it may be inferred from the evidence presented that Chief Mechanic Morrie Johnson is

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currently a member of the recognized non-supervisory bargaining unit in the Department.

The Reno Firefighters case, supra, discusses at length the community of interest which warrants several bargaining units existing within a single employee organization. We have no doubts that Mr. Johnson possesses the requisite community of interest to be represented, if he so chooses, by the existing I.A.F.F. Local. Our concern is that he appears to be an inappropriate member of either the non-supervisory unit or the battalion chiefs unit which may be established. Unlike individuals holding the rank of firefighter through battalion chief, the chief mechanic is not called upon to participate in the direct combat of fires; he, therefore, lacks the "bond of hazardous duty" referred to in the Reno case. Likewise, the career path of the chief mechanic is dissimilar to that of other fire department personnel who progress through the ranks from firefighter to possibly reach the position of battalion chief. A necessary position in this progression is NOT chief mechanic. Although a chief mechanic could commence his career as a firefighter and transfer into maintenance, Mr. Johnson was hired directly for the position of mechanic. The "identity of career paths" is absent in Mr. Johnson's case. See, Reno Firefighters, supra.

The record also reflects that Mr. Johnson, as chief mechanic, directs the activities of two mechanics and may report directly to management concerning the functioning of his particular area of concern. The overall evidence in the record supports a conclusion that Mr. Johnson is a supervisory employee within the term as defined in NRS 288.075, as amended by Stats. of Nev., 1975, ch. 539, §12, pps._____.

The status and community of interest of Mr. Johnson is so unique that his inclusion in either the non-supervisory or battalion chiefs unit is not warranted. We, therefore, direct that a separate bargaining unit composed solely of Mr. Johnson be established within the Local should Mr. Johnson wish to be so represented. Should Mr. Johnson wish to be represented by the Local, his salary would be a legitimate subject of negotiation pursuant to Stats. of Nev., 1975, ch. 539, §15(2)(a), which amends NRS 288.150.

Our determination, of course, does not foreclose the parties from reaching an accommodation by which Mr. Johnson would be included within either the existing non-supervisory unit or the battalion chief unit which may be established.

The evidence at the hearing was insufficient for us to make any determination whether Chief Mechanic Johnson should be upgraded to battalion chief's pay or retroactively paid at battalion chief level.

FINDINGS OF FACT

1. That the complainant, Local 1908 of the International Association of Firefighters, is a local government employee organization recognized by the respondents as the exclusive bargaining agent for the captains and non-supervisory personnel in the Clark County Fire Department.

2. That the complainant, Garry Hunt, is a local government employee.

3. That Morris Johnson is a local government employee employed by the respondents as the Chief Mechanic for the Clark County Fire Department.

4. That the respondent, Clark County, is a local government employer.

5. That the individuals respondents constituted the governing body of the respondent Clark County at the time of the filing of the complaint.

6. That when collective bargaining commenced in 1973 for the ensuing contract year the respondent County's bargaining representative refused to bargain with the complainant Local for the battalion chiefs.

7. That in the years 1970, 1971 and 1972 the complainant Local had negotiated with the respondent County on behalf of the battalion chiefs, captains and non-supervisory personnel in the Clark County Fire Department.

8. That during the course of collective bargaining in the Spring and Summer of 1973, the respondents, through their bargaining representative, offered the battalion chiefs a $220.00 monthly raise.

9. That Chief Mechanic Morrie Johnson was advised by the management of the Clark County Fire Department that he was not being offered the $220.00 monthly raise.

10. That Morrie Johnson is currently not paid at the same salary level as battalion chiefs and is not classified as a battalion chief by the Clark County Fire Department.

11. That the evidence supports a finding that the monthly raise was offered to entice the battalion chiefs to terminate their membership in the complainant Local.

12. That on August 1, 1973, the majority of the battalion chiefs employed by the Clark County Fire Department submitted a letter to the Board of Directors of the complainant Local stating that they were terminating their membership in the Local.

CONCLUSIONS OF LAW

1. That under the provisions of Chapter 288 of the Nevada Revised Statutes the Local Government Employee-Management Relations Board possesses original jurisdiction over the parties and subject matter of these complaints.

2. That the complainant, Local 1908 of the International Association of Firefighters, is a local government employee organization within the term as defined in NRS 288.040 as amended by Stats. of Nev., 1975, ch. 539, §11, pps.____.

3. That the complainant, Garry Hunt, is a local government employee within the term as defined in NRS 288.050.

4. That Morrie Johnson is a local government employee within the term as defined in NRS 288.050.

5. That the respondent, County of Clark, is a local government employer within the term as defined in NRS 288.060.

6. That pursuant to the provisions of NRS 288.075 as amended by Stats. of Nev., 1975, ch. 539, §12, pps.____, the battalion chiefs employed by the Clark County Fire Department are supervisory employees.

7. That pursuant to the provisions of NRS 288.075 as amended by Stats. of Nev., 1975, ch. 539, §12, pps.____, Morrie Johnson is a supervisory employee of the Clark County Fire Department.

8. That no provision of NRS 288.170 as amended by Stats. of Nev.,

1975, ch. 539, §17, pps.____ forecloses the establishment of more than one bargaining unit within the recognized employee organization at the Clark County Fire Department.

9. That the battalion chiefs possess the requisite community of interest to warrant their constituting a separate bargaining unit.

10. That in compliance with the statutory law and our prior decisions, the battalion chiefs at the Clark County Fire Department are entitled to be designated as a separate bargaining unit within the complainant Local if they so desire.

11. That the conduct of the respondents' bargaining representative in refusing to negotiate with the Local on behalf of the battalion chiefs and in enticing the battalion chiefs to withdraw their membership in the Local constitutes a prohibited practice in violation of NRS 288.270(1)(b), (c) and (e).

12. That Morrie Johnson possesses a unique community of interest which warrants his designation as a separate and distinct bargaining unit within the complainant Local, should he desire to be so represented.

13. That insufficient evidence was presented upon which any determination as to whether or not Morrie Johnson should be upgraded to a battalion chief's salary or retroactively paid at the battalion chief level could be made.

Upon compliance with the provisions of NRS 288.160(1) and (2), as amended by Stats. of Nev., 1975, ch. 539, §16, pps.____, the complainant Local shall be recognized by the respondent County as the exclusive bargaining agent for the battalion chiefs in the employ of the Clark County Fire Department. The battalion chiefs, should they wish to be represented by the Local, shall constitute a separate bargaining unit within the Local reflecting their supervisory status and community of interest.

The respondent County is directed to cease and desist from interfering with the relationship of the complainant Local and the battalion chiefs in the employ of the Clark County Fire Department and afford the

battalion chiefs the opportunity to determine for themselves whether or not they wish to be represented by the Local.

Unless the parties reach an accommodation that provides otherwise, Mr. Morrie Johnson, if he wishes to be represented by the I.A.F.F. Local, upon compliance with NRS 288.160(1) and (2), shall be designated as a separate bargaining unit within the complainant Local.

The parties shall proceed in conformity with this decision.

Dated this 19th day of August, 1975.

Christ N. Karamanos, Board Chairman

John T. Gojack, Board Vice Chairman

Dorothy Eisenberg, Board Member