ITEM # 76

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

GENERAL SALES DRIVERS, DELIVERY DRIVERS and HELPERS, TEAMSTERS LOCAL NO. 14 of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN and HELPERS OF AMERICA, Appellant, vs. CITY OF LAS VEGAS, Respondent, and LAS VEGAS CITY EMPLOYEES PROTECTIVE AND BENEFIT ASSOCIATION, INC., Intervenor.	Case No. A1-045307

D E C I S I O N

Pursuant to Nevada's Open Meeting Law, we deliberated to a decision on this case in an open meeting held January 12, 1978. This written decision is prepared in conformity with the provisions of the Administrative Procedures Act which requires that our final decision include findings of fact and conclusions of law separately stated.

In January of 1977, the appellant Teamsters Local sought recognition from the respondent City of Las Vegas to represent, for the purposes of collective bargaining, a unit composed of certain blue collar workers employed by the City.

The unit which the Teamsters sought to represent constitutes a portion of the bargaining unit which the City established in 1970 and which is currently represented by the intervenor, Las Vegas City Employees Protective and Benefit Association, Inc.

After an attempt by the City to arrange an election among the parties concerned, the City denied the Teamsters' request for recognition setting forth three defects in the documentation which had been submitted pursuant to NRS 288.160(1) and (2).

On January 25, 1977, the Teamsters resubmitted their request for recognition. The City again denied recognition for three reasons:

> (1) the classifications submitted by the Teamsters did not constitute an appropriate unit for negotiating purposes;
>
> (2) the City Employees' Association is currently recognized as the exclusive bargaining agent for the classifications the Teamsters wished to represent; and
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> (3) the City would insist on a secret ballot election to protect the rights and privileges of all employees.

Pursuant to the provisions of NRS 288.160(4), this appeal followed.

Under NRS 288.160(3), there are four grounds upon which a local government employer may withdraw the recognition it has previously granted to a local government employee organization.[1]

No testimony or evidence was presented in this case to indicate that any of the provisions of NRS 288.160(3) have been violated by the City Employees' Association. In fact, the record

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1. NRS 288.160(3) provides:

> A local government employer may withdraw recognition from an employee organization which:
> (a) Fails to present a copy of any change in its constitution or bylaws, if any, or to give notice of any change in the roster of its officers, if any, and representatives;
> (b) Disavows its pledge not to strike against the local government employer under any circumstances;
> (c) Ceases to be supported by a majority of the local government employees in the bargaining unit for which it was recognized; or
> (d) Fails to negotiate in good faith with the local government employer.

indicates that the City Employees' Association is very meticulous in presenting changes in its constitution, bylaws, officers and representatives, that the City Employees' Association has not violated its no strike pledge, that the City Employees' Association continues to be supported by a majority of the employees in the bargaining unit for which it was initially recognized in 1970, and, that the Association and the City have just concluded a three year contract with no allegation by the City that the Association failed to negotiate that agreement in good faith.

All members of the Board agree that in the absence of a basis under NRS 288.160(3) for withdrawing recognition, the City cannot withdraw all or a portion of the City Employees' Association's recognition so another employee organization may be recognized as the exclusive bargaining agent for those employees. In light of this conclusion, we verbally ruled, during the second day of hearing on this case, that the City's action in denying recognition was not improper. Under the provisions of NRS Chapter 288 the City had no other recourse.

The question which next arises is whether we should either withdraw a portion of the City Employees' Association's recognition and establish a bargaining unit to be represented by the Teamsters Local, or, whether we should order an election on the question of representation within a new bargaining unit carved out of the current unit.

It is here our opinions diverge. Vice Chairman Gojack, in his dissent, believes that an election in this instance is warranted. We do not agree.

The provisions of NRS 288.160 and NRS 288.170 provide expeditious procedures for the recognition of an employee organization. At or immediately after a request for recognition, the employer establishes, pursuant to NRS 288.170, one or more

bargaining units. If the employee organization can comply with the provisions of NRS 288.160(1) and (2), that organization is recognized as the exclusive bargaining agent for the employees in the bargaining unit without the necessity and expense of an election. There are only four grounds in the enactment which constitute a basis for the withdrawal of that recognition. They have been set forth previously.

The refusal to recognize an employee organization can be appealed to us pursuant to NRS 288.160(4). That provision permits us to order an election if we in good faith doubt whether an employee organization is supported by a majority of the local government employees in a particular bargaining unit.

Throughout the history of NRS Chapter 288, Boards have held that the interests of both local government employers and local government employees are best served by establishing large bargaining units of employees rather than a proliferation of smaller units. 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; and, In the Matter of the American Federation of State, County and Municipal Employees, et al. v. City of Las Vegas, et al., Item #9, decision rendered July 31, 1972.

The Board faced a substantially similar situation to that raised in the instant case in Item #9, supra. In that instance, the AFSCME attempted to carve out a unit of blue collar workers from the unit represented by the City Employees Association. In denying the request for relief, the Board stated at page 2:

> The Board in good faith believes that the CEA represents a majority of the employees in the non-uniformed employee negotiating unit at the present time. In labor relations within the public sector, particularly where a no-strike clause prevails, large units more effectively serve the interests of the employees and therefore, clear and convincing evidence is necessary to persuade the Board to "carve out" smaller units from a large unit.

The appellant has failed to present clear and convincing evidence that would persuade us that the best interests of the local government employees here involved would be served by carving out a blue collar unit from the current bargaining unit composed of the non-uniformed employees of the City. Although there may or may not be a community of interest among the blue collar workers, there is a greater and overriding community of interest among all the non-uniformed employees of the City.

NRS 288.160(4) permits us to order an election if we in good faith doubt whether any employee organization is supported by a majority of the local government employees in a particular bargaining unit. Since we have not been persuaded to divide the current non-uniformed bargaining unit into two separate units, we must make our determination under NRS 288.160(4) based upon the current single unit for non-uniformed employees. No evidence was presented to indicate, and in fact the parties concede, that the City Employees' Association is supported by a majority of the employees in the non-uniformed bargaining unit. Thus, no good faith doubt exists in our minds and no election is warranted.

FINDINGS OF FACT

1. That the appellant, Teamsters Local No. 14, is a local government employee organization.

2. That the respondent, City of Las Vegas, is a local government employer.

3. That the intervenor, Las Vegas City Employees Protective and Benefit Association, Inc., is a local government employee organization.

4. That on or about January 10, 1977, the appellant, Teamsters Local No. 14, sought recognition from the respondent, City of Las Vegas, to represent, for the purposes of collective bargaining, a bargaining unit composed of blue collar workers employed by the respondent City of Las Vegas.

5. That on or about January 21, 1977, the respondent, City of Las Vegas, denied the request for recognition by Teamsters Local No. 14 stating three grounds for the denial.

6. That on or about January 25, 1977, the appellant, Teamsters Local No. 14, again filed with the respondent, City of Las Vegas, requesting recognition to represent, for the purposes of collective bargaining, a unit composed of the blue collar workers employed by the respondent City of Las Vegas.

7. That on or about February 3, 1977, the respondent, City of Las Vegas, again refused to recognize the appellant, Teamsters Local No. 14, setting forth three grounds for the denial of recognition.

8. That on February 11, 1977, this appeal was filed.

9. That on March 3, 1977, we granted an unopposed motion to intervene as a party respondent filed by the Las Vegas City Employees Protective and Benefit Association, Inc.

10. That in 1970, the intervenor, Las Vegas City Employees Protective and Benefit Association, Inc., was recognized by the respondent, City of Las Vegas, as the exclusive bargaining agent for a bargaining unit composed of non-uniformed employees of the respondent.

11. That the testimony and evidence adduced at the hearing on this matter disclose that the intervenor, Las Vegas City Employees Protective and Benefit Association, Inc., is supported by a majority of the employees in the bargaining unit for which it was initially recognized in 1970.

CONCLUSIONS OF LAW

1. That pursuant to the provisions of NRS Chapter 288, the Local Government Employee-Management Relations Board possesses original jurisdiction over the parties and subject matter of this complaint.

2. That the appellant, Teamsters Local No. 14, is a local government employee organization within the term as defined in NRS 288.040.

3. That the respondent, City of Las Vegas, is a local government employer within the term as defined in NRS 288.060.

4. That the intervenor, Las Vegas City Employees Protective and Benefit Association, Inc., is a local government employee organization within the term as defined in NRS 288.040.

5. That the intervenor, Las Vegas City Employees Protective and Benefit Association, Inc., has not violated any of the provisions of NRS 288.160(3).

6. That the respondent, City of Las Vegas, acted properly when it refused to withdraw a portion of the recognition it had previously granted to the intervenor, Las Vegas City Employees Protective and Benefit Association, Inc.

7. That although there may or may not be a community of interest among the blue collar workers of the City of Las Vegas, there is a greater and overriding community of interest among all the non-uniformed employees of the City.

8. That there is no clear and convincing evidence which would warrant the Board carving out of the current non-uniformed bargaining unit a smaller unit composed of blue collar workers employed by the respondent City of Las Vegas.

9. That the Board in good faith believes that the intervenor, Las Vegas City Employees Protective and Benefit Association, Inc., is supported by a majority of the employees in the non-uniformed bargaining unit established by the City of Las Vegas in 1970.

10. That no election pursuant to NRS 288.160(4) is warranted in this particular case.

The appeal is dismissed. Each party shall bear its own costs and attorneys' fees.

Dated this 6th day of March, 1978.

Dorothy Eisenberg, Board Chairman

Carole Vilardo, Board Member

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

GENERAL SALES DRIVERS, DELIVERY DRIVERS and HELPERS, TEAMSTERS LOCAL NO. 14 of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN and HELPERS OF AMERICA, Appellant, vs. CITY OF LAS VEGAS, Respondent, and LAS VEGAS CITY EMPLOYEES PROTECTIVE AND BENEFIT ASSOCIATION, INC., Intervenor.	Case No. A1-045307

D I S S E N T I N G O P I N I O N

The undersigned respectfully dissents from the Majority Opinion and Decision in this case. The Appellant has proved conclusively that there is a clear "community of interest" among the employees seeking recognition from the City of Las Vegas for a unit appropriate for purposes of collective bargaining. In four previous cases, none of which had the compelling evidence for a separate bargaining unit that prevails in this case, the E.M.R.B. granted a new and separate bargaining unit. The Majority Decision in this case now raises a question as to whether any group, under any circumstances however justified, can secure a separate bargaining unit. Hence the Majority Decision represents a dangerous precedent, and opens the door for such evil practices as "company unionism" among local government employee organizations.

At the very least, this Board should have found that the unit which the Appellant Union sought to represent did constitute an appropriate collective bargaining unit and a secret ballot election should have been ordered for the employees in that unit to determine their choice of bargaining agent.

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There is overwhelming precedent by this Board to carve out a separate bargaining unit, from a larger unit, where employees desire it and there is a clearly defined "community of interest" in the group seeking such separation. On October 28, 1977, the present Board Chairman and the undersigned ruled that the Captains and Lieutenants employed by the Las Vegas Metropolitan Police Department were to be taken out of the bargaining unit represented by the Las Vegas Police Protective Association Metro, Inc. On August 19, 1975, the present Board Chairman and the undersigned joined in a unanimous decision involving Clark County and Local 1908, International Association of Firefighters in which we established a separate bargaining unit for a few battalion chiefs. In this decision, the Board specifically stated "that the battalion chiefs possess the requisite community of interest to warrant their constituting a separate bargaining unit." On December 16, 1974, the undersigned participated in a decision ordering the City of Las Vegas, in a case brought by the International Association of Firefighters, Local 1285, to recognize a separate bargaining unit for Battalion Chiefs, Technical Services Division Chief and the Battalion Chief acting as Drillmaster. On March 6, 1972, in a case involving the City of Reno and Local 731, International Association of Firefighters, the Board ordered that two bargaining units be recognized for collective bargaining. One made up of non-supervisory employees such as line firefighters, and the other made up of supervisory personnel, lieutenants through battalion chiefs and other supervisors.

In each of these four precedent cases, the criteria used by the Board to justify establishing a separate bargaining unit also prevailed in this current case in which I dissent. Moreover, each of the four precedent cases involved a mere handful of employees, and while there is no justification in failing to apply

a principle simply because a group is small another factor must always be considered. That factor is whether or not granting another bargaining unit leads to proliferation of units. The Appellant in this case represents a group substantially larger than all of the employees in the four precedent cases, or over half of all employees in the current city employee bargaining unit. In no way can granting bargaining rights to such a large group lead to the proliferation of bargaining units. The City of Las Vegas, as evidenced by their representatives at this and other hearings before this Board, has extremely competent and professional people handling its collective bargaining. It would not create a burden on the City to deal with two large groups, rather than one, representing its employees.

"COMMUNITY OF INTEREST" WELL DEFINED BY APPELLANT

NRS 288.170 Determination of bargaining units, is specific and 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."

For almost 20 years from the late '30's into the '50's, the undersigned participated in hundreds of hearings by the National Labor Relations Board which involved determination of bargaining units. The NLRB defines "community of interest" as follows:

> "Qualifications, training and skills, job functions, methods of wages or pay schedule, hours of work, fringe benefits, supervision, frequency of contact with other employees, integration with work functions of other employees, and interchange with other employees."

Most NLRB cases involved a dispute as to whether certain employees, considered supervisory by management, were to be

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included in a larger bargaining unit. If the City of Las Vegas employees were being organized for the first time, and jurisdiction came under the NLRB, under no circumstances could one union win the wide bargaining unit of all city employees now enjoyed by the Intervenor. Under no circumstances would the NLRB consider the City's "white-collar" staff, stenos, technicians, etc., to have a community of interest with the "blue-collar" workers, manual and generally out-door employees. Had the undersigned organized a wide group such as all City of Las Vegas employees, he would have placed them into two different local unions and filed two different petitions for bargaining certification with the NLRB. Apart from NLRB policy, which would require at least two different bargaining units for City employees, it would be in the bestew interests of both groups to be in separate organizations. Likewise, most managements would prefer to have these groups in at least two separate bargaining units, because their working conditions, skills, and job classifications are so diverse.

NLRB policy and definition of "community of interest" is cited because it is better defined than our NRS provision which merely states that "the primary criterion for such determination shall be community of interest among the employees concerned." It is clear from the NLRB definition of "community of interest" that the blue-collar workers represented by Appellant do not belong in the same bargaining unit with the City's white-collar workers. Next door in California the public workers law which governs school employees has been in the throes of establishing appropriate units for purposes of collective bargaining. There the Board looks for "distinguishing characteristics" and calls for a "separate and distinct community of interest." As with the NLRB, the blue-collar workers represented by Appellant would have no problem winning separate bargaining

rights if they came within jurisdiction of the California State Board.

Appellant showed that blue-collar workers in Las Vegas wore uniforms provided by the City. White-collar workers did not. Hours of work were different for blue-collar workers than for white-collar staff. Supervision for blue-collar workers were never the same supervisors as for white-collar staff. There is no work contact between blue-collar employees and white-collar staff. There is no integration of work function between blue-collar workers and white-collar staff. There is no interchange between blue-collar workers and white-collar staff. The place of work, the geography, is different between blue-collar workers and white-collar staff; most of the latter being situated in City Hall. The type of work done by blue-collar workers is mostly manual labor, while no manual labor is performed by the white-collar staff whose work is mostly mental and operation of office machines. The job hazards between blue-collar workers and white-collar staff are vastly different. Accident risks for laborers on the street or in the parks, for electricians or carpenters, and virtually all blue-collar workers, are infinitely greater than for secretaries, clerks, telephone operators, and all other white-collar classifications. The tools and equipment used on the job are also greatly different, such as the heavy duty truck used by a blue-collar worker as compared to a typewriter used by a secretary. Lunch hours are different, with white-collar workers having one hour off and blue-collar workers limited to one-half hour or less for lunch. White-collar workers have pleasant facilities for coffee breaks, but blue-collar workers must take theirs on the job, in the streets, on a piece of equipment, out in the weather. Most blue-collar workers are on emergency call subject to work at any hour in event of emergency; while no one need call in a clerk for some paper work at midnight. The job functions of all the

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classifications in the City defined "blue-collar" group have no relationship whatsoever with the white-collar staff. Likewise, the job classifications of the entire white-collar staff have no relationship whatsoever with the job functions of the blue-collar group. For sake of brevity, examine those three classifications in the blue-collar group which include the largest number of employees. These include the classifications of Maintenance Laborer, Custodian, and Grounds Worker. Now examine the three classifications in the white-collar staff group which include the largest number of employees. These include Intermediate Clerk, Senior Clerk, and Sr. Engineering Asst. Any layman with common sense can tell that there is no community of interest regarding "qualifications, training and skills, or job functions" between Maintenance Laborer, Custodian, and Grounds Worker on the one hand, and Intermediate Clerk, Senior Clerk, and Sr. Engineering Asst., on the other hand.

Failure to grant Appellant's request for separate bargaining rights for the blue-collar group leaves the Automotive Body Mecahnics, Automotive Mechanics and Auto. Parts Clerks in the same bargaining unit with the Garage Foreman. The Cemetery Foreman is in the same bargaining unit with the laborers he supervises. The Custodial Foremen are in the same bargaining with the Custodians they supervise. The Traffic Maintenance Foreman is in the same bargaining unit with the dozen Traffic Maintenance Workers he supervises. And so on. This is not community of interest. This has the seeds of company unionism. For when the foreman belongs to the same union, and is in the same bargaining unit, as the employee over whom he has the right to fire, promote or demote, the employer enjoys an undue influence over the union holding collective barginaing rights. There was no evidence in this case to claim any domination of the Intervenor Union by the City of Las Vegas, and none is suggested here. However, a

witness for the Intervenor Union introduced an elaborate chart showing where Appellant's union membership was held based on job classifications. Questioning by the undersigned revealed that Intervenor's witness was able to compile this chart because he was furnished the membership records of the Appellant by the City of Las Vegas. Had this been an NLRB hearing, such an act would have created a furor and brought charges of unfair labor practice against the City. Appellant's membership cards were submitted to the City as proof for a claimed majority in the unit they sought to represent. These were confidential records between Appellant and the City and should never have been shown to Intervenor. In the private sector, this act would be construed as collusion between the City and the Intervenor as an attempt to frustrate Appellant's effort to win bargaining rights for the blue-collar group.

The reason for citing this incident is not to be critical of the City. The undersigned voted with the majority in finding that the City's action was not improper in denying recognition at the Appellant's request. The City was willing to agree to a secret ballot action, and made an attempt to arrange such an election, which is evidence of its impartiality. One serious danger in refusing to grant Appellant's request for a blue-collar bargaining unit is that different City officials might in the future abuse the unique situation enjoyed by having a broad bargaining unit with foremen and workers in the same union. Such wide-spread bargaining units as all city employees is almost a thing of the past. When [redacted] bargaining units were frequent in covering all employees in a single unit, in most cases they were pure and simple "company unions". A "company union" meaning a union dominated, or unduly influenced, by management. Obviously, a bargaining unit comprised of all employees, including foremen and the workers under their supervision, is more prone to

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becoming a company union than any union where the membership has a true community of interest and anyone with the right to fire, or effectively recommend same, is neither a member nor in the bargaining unit.

The majority, in my opinion, is mistaken to overlook the strong distinguishing characteristic of community of interest as shown by the fact that City employees in the blue-collar group all wear uniforms, while the white-collar staff does not. Any argument that the white-collar staff need not wear uniforms because of their cleaner working areas and conditions is not compelling. While it is true that the blue-collar group needs uniforms because of the nature of their work, this fact reinforces their separateness from the white-collar staff and emphasizes that they hold a community of interest not shared with the white-collar staff. However, if the white collar group really had a community of interest with the blue-collar workers the City could easily furnish them uniforms even though most of them work at desks. Employees in many banks and savings institutions are provided uniforms, and this certainly helps give such employees a greater community of interest.

UNIT DETERMINATION POLICY IN OTHER STATES

A careful examination of state policy regulations for public sector labor relations fails to show any state that would fail to grant Appellant's request for a blue-collar bargaining unit in this case. Some examples:

Alaska: Community of interest, history, desires, largest reasonable unit, and avoidance of unnecessary fragmentation.

Delaware: Board determines, considers duties, skills, working conditions, history of bargaining, extent of organization and desires of employees.

Hawaii: 8 state-wide units mandated (Non-supervisory blue-collar, supervisory blue-collar, non-supervisory white-collar, supervisory white-collar).

Illinois: Community of interest, promotion of statewide units, and general separation of professionals and non-professionals.

Missouri: Any plant, installation, craft or function of a public body with clear community of interest.

Montana: Community of interest, wages, hours, fringe benefits, history, common factors, desires of employees.

Nebraska: Units less than departmental size shall not be appropriate.

New Mexico: Efficiency, community of interest, employer and employee desires; usually most appropriate unit is to include all employees of an agency or location; managers, guards, supervisors excluded. Professional and non-professional separation.

Oregon: Community of interest, wages and working conditions, history of bargaining and employees' desires; need not be most appropriate. Confidential employees and supervisors excluded.

Rhode Island: Crafts shall be in separate unit when majority of craft so vote.

Washington: Criteria to be considered include duties, skills, working conditions, history of bargaining, extent of organization, desires of employees...executive managers, confidential employees, and supervisors excluded.

All other states providing for unit determination by statute generally follow one or more of the above listed examples. Most prevalent restriction is the exclusion of supervisory employees; and accordingly in most states the present City of Las Vegas bargaining unit would be struck down. There is nothing in any other state's statute that would define "community of interest" to lock into the same bargaining unit the blue-collar workers and the white-collar staff.

PROFESSIONAL STUDY OUTLINES CRITERIA FOR UNIT DETERMINATION

In 1973 Prentice-Hall published a study on collective bargaining problems and answers for the public sector. This study reported the following concerning criteria for unit determination:

"In those states in which there are laws regulating public employment bargaining, criteria are usually included in the law for unit determination. The most common are a clear and identifiable community of interest among the employees concerned; the effect of the unit on the efficiency of operations; the history, if any, of employee representation; the exclusion of supervisory and managerial employees from the same unit with nonsupervisory employees; the inclusion of non professional employees with professional only if a majority of the professional employees vote for inclusion in such unit."

In defining community of interest, the study declares:

"Community of interest is often construed to mean whatever partisans want it to mean. However, on an objective basis, it can best be described as a mutuality of interest. In deciding whether the requisite mutuality exists, you must look at such factors as whether employees share common duties, skills, working conditions, supervision, location and labor policies.

"These measures of community of interest are guidelines only. In a multi-tiered federal, state or city bureaucracy it is obvious all factors cannot and should not carry equal weight. The relative importance of each will vary from situation to situation. That's why most labor laws do not establish units - just criteria."

This study also makes an observation on unit determination as it affects efficient operation, declaring:

"One unit? - The most efficient number of units may well be just one unit for all employees in a political subdivision. This would make for consistent terms and conditions of employment and would be the easiest to administer. But there are pitfalls. One is that a unit structure that totally ignores employee wishes is not compatible with tranquil labor relations or the basic philosophy of collective bargaining....

"Labor boards must balance the employer's legitimate interest in efficiency against a general policy favoring the right of public employees to the fullest freedom possible in exercising the rights of self-organization."

In California, where school districts and a variety of unions have been pressing cases on unit determination, the Sweetwater (Chula Vista) decision has become the standard. The California Board ignored the fact that one union, CSEA, had for years bargained for most employees, and instead approved multiple

units. Out of 672 classified employees the Board established one unit of about 200 employees made up of white-collar staff. Basing this decision on what it considered a separate and distinct community of interest, the Board reasoned: "The functions of the office-technical and business service employees are generally to perform clerical and recordkeeping work rather than physical labor." The Board concluded, "The unique characteristics of the office, technical and business services employees relating to work function, educational requirements, compensation, work hours and supervision combine to establish that a separate office-technical and business services unit is appropriate." The Board than put the blue-collar classified employees into other bargaining units. All subsequent cases in California have followed the Sweetwater decision. In short, the California Board is not frozen into the one-unit or anti-multiple-unit concept. Basically, the one-unit concept, or refusal to give consideration to separate and distinct community of interest factors, is a pro-management and anti-employee stance.

For example, the Manager of Employee Relations in one of the largest California cities writes:

> "From a management viewpoint, Sweetwater hurt most big districts. For example, we have a trades unit, white collar, blue collar, and teachers, and I'm fighting like hell against an adult education unit.
>
> "However, there is a huge difference between a proliferation of five units compared to two units. The needs and wishes of an employee group must be considered or sound relationships and a good employer-employee relations program becomes non-existent. The efficient operations of an agency has got to be compromised with employee groups who feel their needs are not being addressed. Both sides can accommodate to a win-win situation."

It is clear from the record in California that had our Appellant's case been heard in that state a separate bargaining unit would have been granted. Most California districts would be

pleased to have only two bargaining units. For a city the size of Las Vegas, with its extremely competent labor relations staff, two bargaining units would not cause a ripple in its efficient administration. Proliferation and fragmentation of bargaining units in cities means considerably more than two units. New York City has 200 separate bargaining units, some wich as few as two employees. Detroit has 78 bargaining units. Even Los Angeles County with its 50 bargaining units is an example of proliferation and fragmentation. But under no circumstances can two, and even three or four, bargaining units in the City of Las Vegas be termed proliferation. To Boards and management and labor bargaining specialists in other states, the notion that a city the size of Las Vegas, with almost 800 city employees, can hang onto one bargaining unit would be considered amazing if not incredible.

While of course decisions and policies in other states, as well as NLRB decisions and policies are not binding in Nevada, they can be helpful guidelines in areas such as unit determination where we have had relatively little experience. In the Sweetwater decision, the California Board noted that in Fire Fighters v. the City of Vallejo the California Supreme Court held that cognizance should be taken of National Labor Relations Board decisions in interpretation of language of California statute sections which are similar or identical to the Labor Management Relations Act. Also in Sweetwater, Chairman Alleyne of the California Board pointed out several court cases, which he said, considered together, compel the following conclusion: "When the California state labor legislation is identical to the National Labor Relations Act, federal decisional law on the subject is in substance and effect the law in California."

When three reasonable Board members as sat on this case cannot agree on the meaning of the pertinent sections of the Nevada statutes it becomes prudent and helpful to look elsewhere

for definitions and clarifications. The undersigned, who is also a member of the American Arbitration Association, checked with that organization, with the NLRB, with officers and officials handling public sector collective bargaining matters in neighboring states, as well as reporting services and libraries, to draft a meaningful minority report in this case. Nothing in these contacts or research gave any support to denying Appellant's request for a separate bargaining unit for the blue-collar workers of the City of Las Vegas.

The only reference found that would support the present bargaining unit for the City of Las Vegas is in a 62-page booklet on federal "Fundamental Labor Legislation." Chapter II, Article 6, on Collective Agreement provides:

> "A collective agreement will be signed by a factory, works or local branch trade union committee on behalf of the factory workers and office employees, with the administration of the pertinent enterprise or organization.
>
> "The terms of the collective agreement cover all the factory workers and office employees of the given enterprise or organization, irrespective of whether they are trade union members or not."

The term "factory workers" appears in this document scores of times throughout 62 pages, but never alone. The term always used is "factory workers and office employees". Thus, in every factory and every enterprise, there is but one bargaining unit. The blue-collar workers are always in the same unit with white-collar employees. Obviously this makes collective bargaining and establishment of labor conditions and policies extremely efficient and easy for management. It also helps make for the largest "company union" in the world. This ideal of one bargaining unit in each enterprise is set forth in the Fundamental Labour Legislation of the USSR and The Union Republics. Of course no one in Las Vegas is interested in such a model of single unit representation for collective bargaining. It is cited here only to show that one-

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unit representation can be used for political purposes not to the benefit of either blue-collar workers or white-collar or office employees.

CONCLUSION

While not as detailed or explicit as in most states, our NRS on Determination of Bargaining Units does provide that: "The primary criterion for such determination shall be community of interest among the employees concerned." The white-collar staff here is only remotely concerned with whether the blue-collar workers are in or out of their bargaining unit. There was not one shred of evidence from a clerk, secretary, engineer or any other white-collar staff member to show that the blue-collar workers should remain in their bargaining unit because of community of interest, or any other reason. On the contrary, there were blue-collar workers testifying as to the many ways, uniforms, hours, working conditions, etc., in which they did not have a community of interest with the white-collar and technical groups. It hardly needed the blue-collar workers' testimony to show this. For what community of interest could an Accountant, Fiscal Analyst, Cultural Arts Specialist or Human Resources Planner have with Auto Mechanics, Maintenance Laborers, or Plumbers? The community of interest among the employees concerned in this case are the blue-collar workers. They are the group that became disenchanted with the bargaining efforts, or lack of efforts, by the Intervenor, the Las Vegas City Employees Protective and Benefit Association, Inc.

What is extremely significant also is that these blue-collar workers, a majority of those in the unit for which Appellant seeks bargaining rights, paid their new union $50, representing a $35 initiation fee and $15 dues for the first month of recognition. I submit that any time blue-collar workers

pay $50 for a change of union bargaining agent they are very unhappy if not angered at their old organization. It ill behooves any Board to tell such a group of blue-collar workers that they cannot even have the right to vote for a change in representation. These blue-collar workers made a tremendous sacrifice in their effort to secure a different bargaining agent, and they showed an extremely strong desire for such a change. If Nevada law, as in many states, included employee desire as a factor in unit determination, these blue-collar workers have certainly met that test.

The City could not be harmed by having its employees in two bargaining units, each with a clear and distinct community of interest. The City in fact did not object to an election to decide the issue. The Intervenor, LVCEPABA, Inc., of course objected to any shrinkage of its bargaining unit. It would appear that had Intervenor felt that Appellant lacked majority support in the blue-collar group it too would have agreed to an election. That would certainly have been the easiest, cheapest and quickest way to settle the question. Not being certain of winning such an election, the Intervenor resisted all efforts toward giving up any of its bargaining unit, thus bringing the issue to this Board for resolution. The Intervenor can in no way be blamed for its action. It acted in its own self-interest in not voluntarily agreeing to an action that might shrink its bargaining unit and membership.

When the parties were considering a secret ballot to settle the issue, and during the hearings, the Appellant gave up its claimed bargaining unit and accepted the City's listing of classifications for a blue-collar unit.

My esteemed colleagues in the majority on this case have, in my opinion, made a serious error of judgment in denying Appellant's request to represent the blue-collar workers employed

by the City. Any fair reading of the Nevada Statute and the general understanding of community of interest in unit determination in other states and by the NLRB, makes it clear that Appellant's request for a blue-collar bargaining unit should be granted. Moreover, the blue collar workers involved, making up over half of the City's employees in the existing bargaining unit, are entitled to a fundamental American right - the right to a secret ballot election to determine their representation.

For all of the foregoing reasons, the undersigned respectfully dissents from the majority opinion and decision. Further, the undersigned would hold that the bargaining unit of blue-collar workers requested by Appellant is in fact a unit appropriate for the purposes of collective bargaining. Further, the undersigned would direct that a secret ballot election be held in that unit of blue-collar workers for the purposes of designating whether the group will be represented by the Appellant, the Intervenor or neither union.

Submitted by:

John T. Gojack

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