Item No. 96

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

In the Matter of Operating Engineers Local 501, International Union of Operating Engineers, AFL-CIO Petitioner vs Las Vegas Convention/Visitors Authority, Respondent	)	A1-045323

DECISION

On January 17, 1980, the Local Government Employee-Management Relations Board held a hearing in the above matter; the hearing was properly noticed and posted pursuant to Nevada's Open Meeting Law.

This written Decision is prepared in conformity with NRS 233B.125 which requires that the final Decision contain findings of fact and conclusions of law separately stated.

By appeal filed June 26, 1979, the Operating Engineers Local 501 (hereafter Local 501) alleges that it is aggrieved by the refusal of Respondent Las Vegas Convention/ Visitors Authority (hereafter Authority) to grant recognition to Local 501 and by the bargaining unit determination made by the Authority.

The Respondent denies that it refused to grant recognition and asserts that it merely exercised its right to establish the bargaining unit(s) as provided by law in Chapter 288 of The Nevada Revised Statutes.

On July 13, 1978, Local 501 applied for recognition as an employee organization representing the skilled workers

in the Engineering and Sound Department at the Authority. However, the Respondent maintained that any negotiating unit of its employees must include all employees of the Authority (save those precluded by statute such as supervisors and confidential employees) a designation commonly classified as a "wall to wall" bargaining unit.

Subsequent to discussions and meetings between the parties over a nine month period, Local 501 notified the Authority on March 9, 1979, that it was joined by the Teamsters Local No. 995 in seeking the representation of all eligible employees of the Respondent. Although the Authority apparently agreed on the conduct of a secret ballot election to determine whether or not the eligible Authority employees desired local government representation by Local 501 and the Teamsters Local No. 995, the joint request remains pending. Subsequently, pursuant to the provisions of NRS 288.160 (4) and 288.170 (2), this appeal followed.

The provisions of NRS 288.160 and NRS 288.170 provide expeditious procedures for the recognition of an employee organization. General Sales Drivers, Delivery Drivers and Helpers, Teamsters Local No. 14 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America vs City of Las Vegas, and Las Vegas City Employees Protective and Benefit Association, Inc., Intervenor, Case No. A1-045307, Item No. 76, March 6, 1978.

As the Board stated at pp 3 - 4 of that Decision:

> "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 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."

Thus, it is clear that this Board has determined that the designation of the bargaining unit(s) must precede the grant of recognition.

Nevertheless, if an employee organization is aggrieved by the refusal of recognition, the aggrieved employee organization may appeal to the Board. NRS 288.160 (4). That provision permits the Board to order an election if the Board in good faith doubts whether an employee organization is supprted by a majority of the local government employees in a particular bargaining unit.

Similarly, if an employee organization is aggrieved by determination of a bargaining unit, it may appeal to the Board. NRS 288.170 (2)

The Advisory Commission of Intergovernment Relations in its September, 1969 report, Labor-Management Policies for State and Local Government, on page 74 states: "The major criterion used in determining the appropriate unit is 'community of interest'."

In Labor Relations Law in the Public Sector by Smith, Edwards, and Clark, Bobbs - Merrill Co., Inc., 1974, on page 217, the following is stated:

> "Community of interest is determined by a number of factors and criteria, some of which are as follows: similarity of duties, skills and working conditions, job classifications, employee benefits, the amount of interchange or transfer of employees, the integration of the employer's physical operations, the centralization of administrative and managerial functions, the degree of central control of operations, including labor relations, promotional ladders used by employees, supervisory hierarchy, and common supervision."
>
> "Even if the employees in the unit petitioned for have an established community of interest, the unit may not necessarily constitute an

> appropriate bargaining unit. In Kelly Air Force Base, GERR No. 288, at Unit Arbitrations 1 (1968), the arbitrator conceded that there was a community of interest in the proposed unit; nevertheless, he held that 'where that homogeneous group is only part of a larger essentially homogeneous group, sharing essentially the same common employment interests, a smaller group may not be found to be an appropriate 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. General Sales Drivers et. al. vs City of Las Vegas, supra; In the Matter of the American Federation of State, County and Municipal Employees, et. al. vs City of Las Vegas, et. al. Case No. 72-2, Items No. 9, July 31, 1972; and In the Matter of Local 731 of IAFF and the City of Reno for Determination of Bargaining Unit, Item No. 4, Decision rendered March 6, 1972.

In line with this reasoning, the Board believes that the bargaining unit sought by Local 501 is not in keeping with bargaining unit determinations of public sector employees which call for larger rather than smaller units.

The Board futher believes that the unit sought by the Authority, wall to wall, takes to extremes the appropriate bargaining unit. However, the Board acknowledges that the Authority, as the employer, has the right to determine the appropriate bargaining unit(s) as provided in NRS 288.170 (1). The Board also finds that a community of interest exists within the bargaining unit as established by the Authority, taking into account those factors enunciated above. Testimony revealed interchangeability or transfers of employees, similarity of working conditions including benefits, central supervision by the Executive Director of the Authority, and a uniform payroll system and personnel policy. Nearly all

Authority employees work in the same geographical location within one common structural complex and with the common objective of providing support services in sustaining the convention and tourism industry.

In bargaining unit determinations there has been, to some degree, a departure from the private sector concept of "an appropriate unit" to the public sector notion of "the most appropriate unit." Local 731 of IAFF vs City of Reno, supra. But in public sector determinations, efficiency of operations and effective dealings must also be considered in conjunction with the analysis of community in interest.

In the instant case, the Board balanced factors such as fragmentation or proliferation of bargaining units with the concomitant problems of whipsawing, leapfrogging and possible deterioration of system wide classification and benefit programs against the inhibition of effective contract negotiations and administration where the unit is too large or too all embracing.

With respect to the recognition question, the Board notes that in order for Local 501 to be recognized by the Authority, it must comply with the provisions of NRS 288.160 (2) within the bargaining unit established by the Authority as provided by NRS 288.170 (1).

FINDINGS OF FACT

1. That the Appellant, Operating Engineers Local 501, International Union of Operating Engineers, AFL-CIO, is a local government employee organization.

2. That the Respondent, Las Vegas Convention and Visitors Authority, is a local government employer.

3. That on July 13, 1978, Local 501 applied for recognition as an employee organization representing the skilled workers in the Engineering and Sound Department at the Authority.

4. That the Authority insisted that any negotiating unit of its employees must include all employees of the Authority save those precluded by statute.

5. That on March 9, 1979, subsequent to discussions and meetings over a nine month period, Local 501 notified the Authority that it was joined by the Teamsters Local No. 995 in seeking the representation of all eligible employees of the Authority. The joint request remains pending.

6. That on June 26, 1979, Local 501 filed an appeal with the EMRB which alleged that it was aggrieved by the Authority's bargaining unit determination and refusal to grant recognition.

7. That a community of interest exists within the bargaining unit as established by the Authority.

CONCLUSIONS OF LAW

1. That pursuant to the provisions of Nevada Revised Statutes 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, Operating Engineers Local 501, International Union of Operating Engineers, AFL-CIO, is a local government employee organization within the term as defined in NRS 288.040.

3. That the Respondent, Las Vegas Convention and Visitors Authority, is a local government employer within the term as defined in NRS 288.060.

4. That the procedures for recognition of an employee organization and bargaining unit determination are governed by NRS 288.160 and 288.170.

5. That if an employee organization is aggrieved by the refusal of recognition it may appeal to the Board. NRS 288.160 (4).

6. That if an employee organization is aggrieved by determination of a bargaining unit, it may appeal to the Board. NRS 288.170 (2).

7. That the employer reserves the right to determine the appropriate bargaining unit(s). NRS 288.170 (1).

8. That designation of the bargaining unit(s) must precede the grant of recognition. NRS 288.160 and NRS 288.170.

9. That in order to be recognized by the employer an employee organization must comply with the provisions of NRS 288.160 (1) and (2) within the bargaining unit established by the employer as provided in NRS 288.170 (1).

The requested relief is denied and the appeal dismissed. Each party shall bear its own costs and attorney's fees.

Dated this 5th day of May, 1980.

Dorothy Eisenberg, Board Chairman

Carole Vilardo, Board Vice Chairman

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