

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

In the Matter of The Reno)	
Police Protective Association,)	
)	
Complainant)	
)	
and)	
)	
The City of Reno,)	
)	
Respondent.)	
)	
and)	Case No. A1-045331
)	
Reno Fire Fighters, Local 731,)	
International Association of)	
Firefighters,)	
)	
Intervenor)	
)	

D E C I S I O N

On Tuesday, June 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 Complaint and Supplemental Complaint filed April 9, 1980, and April 14, 1980, respectively, the Reno Police Protective Association (hereinafter RPPA) alleges violation of NRS 288.270 (1)(e) by the City of Reno (hereinafter City). Specifically the RPPA charges that the City refused to bargain collectively in good faith over matters declared to be mandatory subjects of bargaining by NRS 288.150(2) including discharge and disciplinary procedures, grievance and arbitration procedures

and methods to classify employees in the bargaining unit.

The City submits that the subject matters raised by the RPPA for negotiations are non-negotiable by reason of Nevada Revised Statutes and/or City of Reno Charter provisions, specifically those regarding Civil Service.

At the time of the hearing the parties informed the Board that the sole legal issue remaining for resolution was how to interpret NRS 288.150 (2)(i) which includes "discharge and disciplinary procedures as within the scope of mandatory bargaining, with the Charter of the Reno Civil Service Commission, Chapter 662, Statutes of Nevada, 1971, as amended by Chapter 373, Statutes of Nevada 1979, which would substantially limit discharge and disciplinary negotiations. Related thereto the RPPA's allegation of bad faith bargaining by the City of Reno remained.

NRS 288.150 (2)(i) provides as follows:

- (2) The scope of mandatory bargaining is limited to:
 - (i) Discharge and disciplinary procedures.

By contrast, the relevant Reno Civil Service Charter provisions as amended by the 1979 legislature provide as follows:

"Section 9.260 Duties and authority of city manager.

1. All employees in the civil service, other than those employed by the commission, shall hold their positions at the pleasure of the city manager and shall perform their assigned duties under his direction, subject to the provisions of this article. No employee in the civil service shall be suspended, demoted, dismissed or disciplined except as provided in this article.
2. The city manager or his delegate may bring disciplinary action against any employee in the civil service who:

(a) Is unable to or fails for any reason to perform his duties properly and efficiently.

(b) Is guilty of any actions which reduce his effectiveness as an employee or bring discredit on the city service.

(c) Has violated any provision of this article or of commission rules.

3. The city manager shall immediately report any suspension of greater than three (3) days or any action of demotion or termination to the secretary of the commission and at the same time deliver to the secretary and to the affected employee copies of a complaint setting forth the action taken and the reasons for that action, with the name of the original complainant if other than the city manager.

4. Whenever a written complaint against any employee in the civil service is made to the city manager he shall immediately communicate it to the secretary of the commission.

5. The city manager or his delegate shall have the authority to adjust an employee's salary within the salary range for the class on the basis of quality and quantity of the employee's work. The commission shall by rule provide for appeals from such adjustment on a showing that it was made principally for disciplinary purposes."

"Section 9.270. Appeals to the commission.

1. An employee in the civil service who has been suspended for a period of greater than three (3) days or who is the subject of an action by the city manager to demote or terminate may appeal such action to the commission by serving the secretary of the commission with a written notice of appeal within ten days of such action. The commission shall set the time for hearing such appeal not less than five (5) nor more than fifteen (15) days from the date of service of the notice of appeal."

The City contends that sections 9.260 and 9.270 of The Reno City Charter preempt the area of discipline and discharge and provide the exclusive grievance procedure for any civil service employee who has been demoted, discharged or suspended for a period of greater than three days. The City further maintains that it may not negotiate on these terms since they are established law and that a procedure set by a valid statute or

regulation is an unlawful topic for negotiation.

In addition, the City argues that the concept of a civil service system mandates that the Civil Service provisions here in question limit the scope of NRS 288.150 (2)(i) and prevail over the bargaining statutes.

Finally, the City maintains that no repugnancy exists between the two laws and a harmonious interpretation can be reached by reading the two statutes together: The Charter to prevail with respect to suspensions of four (4) days or more; the NRS provision to govern suspensions of three (3) or less.

We reject the position taken by the City.

The provisions of NRS 288.150 are clear, unequivocal and unambiguous in delineating the scope of mandatory bargaining and in subsection 2 (i) declare discharge and disciplinary procedures to be a subject of mandatory bargaining.

The City's Charter merely provides one forum wherein an employee may seek review of discharge and disciplinary action. However, nothing within the Charter specifically declares that it is the exclusive tribunal for redress or that the Charter provisions related to discharge and discipline are exclusive, preemptive provisions. Nor does the Charter expressly or impliedly repeal provisions of NRS Chapter 288. See Ronnow v City of Las Vegas, 57 Nev. 332, 65 P2d 133 (1937). Indeed, nothing in The City Charter precludes the parties from negotiating discharge and discipline procedures and NRS 288.150 (2)(i) expressly provides that those subjects are topics of mandatory negotiation. In an alleged discrimination case a 1972 Attorney General opinion concluded that an employee's rights may be cumulative and a party may elect which procedure he desires to pursue. See AGO No. 60, February 29, 1972. Accordingly, the Board rules that, consistent with the terms and conditions of a negotiated contract, an employee may elect to pursue the discharge and disciplinary

procedures provided by the contract or the Civil Service Commission.

The Board further holds that where, as here, an attempt is made through local legislation outside the bounds of NRS 288 to limit, to preempt, or to make the requirements of 288 "subject to" local rule which results in a conflict or the appearance of a conflict between the state statute and (e. g.) a City Charter provision, the NRS 288 statutory duty to bargain collectively on issues of mandatory negotiation prevails over such conflicting provisions of (e. g.) the Charter of a municipality. See Pontiac Police Officers Association v. City of Pontiac, 246 NW 2d 831 (Mich. 1976) and Taylor v. Crane, 595 P2d 129 (Cal. 1979).

The position taken by the City in the instant matter is strikingly similar to the Washoe and Clark County School Districts' position in a companion case decision entitled Clark County School District v Local Government Employee-Management Relations Board, 90 Nev. 442, 530 P2d 114 (1974). In those cases, the School District attempted to limit the subjects of mandatory negotiation under the guise of "management rights" assertions.

In reaching its conclusions, the Nevada Supreme Court observed:

"The appellant's interpretation of the act would render NRS 288.150 a nullity. The fact of the enactment of the legislation itself evidences legislative intent that the statute serve a purpose and the stated purpose is to grant public employees a right that they did not have before which was to bargain collectively.

It is not conceivable that the legislature would give its extensive time and attention to study, draft, meet, hear, discuss and pass this important

Footnote 1. In 1975 the legislature revised NRS 288.150 to provide for the express and explicit outline of subjects within the scope of mandatory bargaining. Prior thereto the employer was required to negotiate wages, hours and conditions of employment and the Local Government Employee-Management Relations Board adopted a 'significantly related' standard to determine mandatorily negotiable subjects. This standard was upheld in Clark County School District, Supra.

piece of legislation were it not to serve a useful purpose. For this court to hold that any item even though remotely relevant to management policy is beyond the pale of negotiation defeats the purpose of the legislation." Id at 445-446.

No more than did assertion of management rights under statute does assertion of City Charter rights (a creature of statute) render the RPPA's discharge and disciplinary proposals non-negotiable. To permit the City to enact provisions which would limit, preempt or make the mandatory requirements of NRS 288 "subject to" home rule would invite infinite erosion of the rights which the legislature bestowed upon public employees in the collective bargaining process. This Board cannot and will not allow an erosion of those rights.

Turning to the bad faith charge the Board notes that NRS 288.150 (1) provides in relevant part the following:

"..... it is the duty of every local government employer to negotiate in good faith....concerning the mandatory subjects of bargaining set forth in subsection 2 with the designated representatives of the recognized employee organization, if any, for each appropriate bargaining unit among its employees."

Further NRS 288.270 (1)(e) provides in pertinent part:

(1) It is a prohibited practice for a local government employer or its designated representative willfully to:

(e) Refuse to bargain collectively in good faith with the exclusive representative as required in NRS 288.150.....

Testimony at the hearing revealed that the City refused to bargain collectively in good faith with the RPPA over discharge and disciplinary procedures, subjects declared to be mandatory subjects of bargaining by NRS 288.150 (2). In fact the evidence reflected that the City refused to bargain with the RPPA relative to discharge and disciplinary procedures at all,

contending that the provisions of the City Charter precluded them from negotiating these topics.

Nevertheless, the same City negotiating team which steadfastly refused to bargain these items with the RPPA openly negotiated these items with the Intervenor, Reno Fire Fighters.

Indeed, prior to reaching final contractual agreement for discharge and disciplinary procedures concerning suspensions of three (3) days or less, the City and Firefighters had, at one point, tentatively agreed upon procedures concerning suspensions of four (4) days or more as well. Realizing its "error" (apparently its belief of the contravention of the City Charter) the City then withdrew from the four (4) day agreement and settled with the Firefighters' procedures governing suspensions of three (3) days or less.

Only when the RPPA presented a copy of the Firefighters-City contract to the City did the latter attempt to explain away its position of negotiating three day, but not four day, suspensions. To the Board, openly negotiating subjects of mandatory bargaining with the firefighters while simultaneously declaring the same to be non-negotiable to the RPPA represents unequal and non-uniform application of the law and in fact reinforces the Board's determination of bad faith bargaining on the part of the City. Denial of due process and equal protection of the law is clearly evident within the scheme of the respective negotiations.

By refusing to negotiate discharge and disciplinary procedures with the RPPA, the City has clearly engaged in a prohibited practice in violation of NRS 288.270 (1)(e). By refusing to negotiate discharge and disciplinary procedures with regard to suspensions of four (4) or more days the Board finds that injury was caused to both the RPPA and the firefighters.

FINDINGS OF FACT

1. That the Complainant, Reno Police Protective Association, is a local government employee organization.
2. That the Intervenor, Reno Fire Fighters, Local 731, International Association of Firefighters, is a local government employee organization.
3. That the Respondent, City of Reno, is a local government employer.
4. That during the 1980 negotiation process the RPPA made attempts to negotiate discharge and disciplinary procedures with the City of Reno.
5. That during the 1980 negotiation process, the City of Reno refused to negotiate discharge and disciplinary procedures with the RPPA by asserting that the Reno City Charter precluded it from negotiating said subjects.
6. That during the 1980 negotiation process the Intervenor, Reno Fire Fighters made attempts to negotiate discharge and disciplinary procedures with the City of Reno.
7. That during the 1980 negotiations process the same City of Reno negotiating team which refused to negotiate discharge and disciplinary procedures with the RPPA openly negotiated discharge and disciplinary procedures with the Reno Firefighters and reached contractual agreement with the Reno Firefighters with respect to suspensions of three (3) days or less.

8. That during the 1980 negotiations process and prior to the final contract reached between the parties, the City of Reno and the Reno Firefighters tentatively agreed to a contract provision with respect to suspensions of four (4) days or more. (Apparently believing it had erred by contravening the City Charter, the City then withdrew from its position and settled with the Reno Fire Fighters on procedures governing suspensions of three (3) days or less).

CONCLUSIONS OF LAW

1. That pursuant to the provisions of Nevada Revised Statutes Chapter 288, the Local Government Employee-Management Relations Board possesses original jurisdictions over the parties and subject matter of this Complaint.
2. That the Complainant, Reno Police Protective Association is a local government employee organization within the term as defined in NRS 288.040.
3. That the Intervenor, Reno Fire Fighters, is a local government employee organization with the term as defined in NRS 288.040.
4. That the Respondent, City of Reno, Nevada, is a local government employer within the term as defined in NRS 288.060.
5. That the respective parties engaged in collective bargaining in 1980 pursuant to NRS Chapter 288.
6. That the RPPA made attempts to negotiate discharge and disciplinary procedures, subjects of mandatory bargaining per NRS 288.150 (2)(1)

with the City of Reno.

7. That the City of Reno refused to negotiate discharge and disciplinary procedures with the RPPA as mandated by NRS 288.150 (2) (i).

8. That the Reno Firefighters made attempts to negotiate discharge and disciplinary procedures, subjects of mandatory bargaining per NRS 288.150 (2) (i), with the City of Reno.

9. That the City of Reno negotiated discharge and disciplinary procedures with the Firefighters as mandated by NRS 288.150 (2) (i).

10. That it is the duty of every local government employer to negotiate in good faith through a representative or representatives of its own choosing concerning the mandatory subjects of bargaining set forth in subsection 2 of NRS 288.150 with the designated representative of the recognized employee organization, if any, for each appropriate bargaining unit among its employees and that the City of Reno breached its duty by refusing to negotiate discharge and disciplinary procedures with the RPPA. NRS 288.150 (1).

11. That the evidence disclosed that the City refused to bargain collectively in good faith in violation of the provisions of NRS Chapter 288.

12. That the City of Reno engaged in a prohibited practice in violation of NRS 288.270 (1) (e) by refusing to bargain collectively in good faith with the exclusive representative as required in NRS 288.150.

13. That, consistent with the terms and conditions of a negotiated contract, an employee may elect to pursue the discharge and disciplinary procedures provided by the contract or the Civil Service Commission. NRS 288.140 (2).

14. That where an attempt is made through local legislation outside the bounds of NRS 288 to limit, to preempt or to make the requirements of 288 "subject to" local rule which results in a conflict or the appearance of a conflict between the State statute and (e. g.) a City Charter provision, the NRS 288 statutory duty to bargain collectively on issues of mandatory negotiations prevails over such conflicting provisions of (e. g.) the Charter. NRS 288.150.

15. That discipline and discharge procedures are mandatorily negotiable, without restriction or limitation. NRS 288.150 (2) (i).

16. That grievance and arbitration procedures as provided in NRS 288.150 (2) (o) are mandatorily negotiable without restriction or limitation.

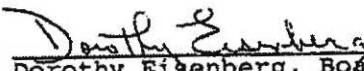
The requested relief is granted: The Board declares that the conduct of the City constitutes prohibited practices under Chapter 288 of The Nevada Revised Statutes. The Board orders The City of Reno to cease and desist from these and future prohibited practices in violation of Chapter 288 of the Nevada Revised Statutes and Rules and Regulations of this Board and to bargain collectively in good faith with the RPPA and The Reno Firefighters over discharge and disciplinary procedures, grievance and arbitration procedures and any other subjects made

mandatorily negotiable by NRS 288.150 (2) without restriction or limitation.

It is further the order of this Board that the Respondent City of Reno pay the Complainant's costs and expenses incurred in the prosecution of this action which shall include costs of hearings and reasonable attorney's fees pursuant to NRS 288.110 (6).

Dated this 28th of August, 1980

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD


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