Item No. 124

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

In the Matter of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, LOCAL NO. 14, Complainant, VS. COUNTY OF CLARK, Respondent.	Case No. A1-045346

DECISION

On Wednesday, December 2, 1981, 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 233.B.125 which requires that the final Decision contain Findings of Fact and Conclusions of Law separately stated.

By Second Amended Complaint filed January 19, 1981 the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 14 (hereinafter Teamsters) alleges that the Respondent, County of Clark (hereinafter County) refused to recognize the Teamsters as the exclusive bargaining agent for the Special Deputy Inspectors (hereinafter SDI) employed by the County. Teamsters also charges the County has laid off certain employees in the SDI employment category following organizing efforts, thereby willfully interfering with, restraining, and coercing its employees in the exercise of their right to join any employee organization of their choice, in violation of NRS 288.270(1)(a). Teamsters further charge the County has discriminated in regard to hiring, tenure, or any term or

condition of employment to discourage membership in Teamsters labor organization in violation of NRS 288.270(1)(c). Teamsters further charge that the County discriminated against employees because they joined or chose to be represented by Teamsters in violation of NRS 288.270(1)(d). Finally, Teamsters charge that the County discriminated against its employees because of age in violation of NRS 288.270(1)(f).

The County denied all allegations in its Answer to Complainant's Second Amended Complaint filed on March 16, 1981.

On August 20, 1980, the Teamsters requested, in writing, a meeting with the County to discuss contract negotiations for the SDI's employed by the County. The County Manager, Bruce Spaulding, responded by letter dated September 11, 1980, in which he noted that the County had recognized the Public Employees Association as the sole and exclusive collective bargaining representative of County Employees (except Fire Fighters), and directed attention to the provisions of NRS 288.160, Section 2, which sets forth provisions for recognition of employee organizations.

The Teamsters then submitted, in three separate letters, materials required by NRS 288.160(1), including copies of authorization cards represented to constitute a majority of the SDI employees.

The County's failure to recognize the Teamsters as exclusive bargaining agents for the SDI's resulted in the Teamsters filing the initial subject complaint with this Board.

Testimony in this case revealed that the County had held discussions among its top management in July, 1980, concerning the status of its SDI's and were planning to integrate the SDI's into its permanent employee structure. In a letter, dated August 11, 1980, the Director of the Department of Building and Zoning, Robert D. Weber, outlined to Joseph Denny, Assistant

County Manager, problems relating to the exact status of SDI's.

The issue of the status of the SDI's in their employment with the County is very important to this case. Testimony established to this Board's satisfaction that SDI's were individuals who conducted structural inspections for specific construction projects and that they worked on an agreement basis. When a particular project was finished, the particular SDI assigned to that project was out of work until assigned to another project. These individuals were not hired through regular County Personnel channels, but directly by the Building Department.

The County was persuasive in their contention that SDI's were independent contractors and not regular employees. Evidence indicated that SDI's were treated differently from employees, in that they did not receive sick leave, annual leave, holiday pay, merit increases, nor longevity pay. Thomas Grill, a previous SDI, who is now employed as a permanent County employee as a structural inspector, testified that he was told in the summer of 1980 that he was not an employee, was hired for specific projects and was not guaranteed permanent status.

Over time, the relationship of some SDI's and the County became close to full time, because of the increased building in the community. Beginning in January, 1980, the County began to discuss the status of SDI's and a decision was made to assimulate these individuals into a permanent classification of employees under the existing classification of structural inspectors. The transfers were executed in March, 1981.

John Slunka was a SDI. He had worked on projects for the County from 1977 until November, 1980, when he finished his last project at the Renaissance Shopping Center. During that time, Mr. Slunka testified that he had several breaks between projects, as much as six weeks at one time. Following his last project Mr. Slunka was told by Assistant Chief Inspector George Taylor

that there were no other projects available at that time. In March, 1981 when other SDI's were invited to join the County as permanent structural inspectors, Mr. Slunka was not so invited. Several of those SDI's who had signed Teamster's authorization cards were offered and accepted permanent employee status. Testimony by the Director of the Department of Building and Zoning showed that there had been complaints about Mr. Slunka's work, and that he and another SDI had not been recommended by their supervisor for permanent employee status.

Public employees have a protected right to join labor organizations if they so choose, free from restraint, interference, or coercion. NRS 288.140 and NRS 288.270.

Nevertheless, as the Board has stated before, the burden of proof falls upon the Complainant to demonstrate actions taken by an employer does in fact fall into the category of an unfair labor practice or other actions covered by Nevada statute. See, for example, WASHOE COUNTY SCHOOL DISTRICT NURSES ASSOCIATION; and NEVADA NURSES ASSOCIATION VS. WASHOE COUNTY SCHOOL DISTRICT; BOARD OF TRUSTEES OF WASHOE COUNTY SCHOOL DISTRICT; and JOHN DOES I-X, Case No. A1-045329, Item No. 109 (1981).

This Board believes in this case that burden has not been met.

Under the provisions of NRS 288.150 an employer has the power to hire, or not to hire an employee for any cause, or no cause at all, as long as its actions are not discriminatory because of labor organization membership or activities. LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 169 FOR REGINALD D.J. BECKER VS. WASHOE MEDICAL CENTER, Case No. 1, Item No. 1. Further, suspicion alone is not enough to conclusively establish that union activity was the sole reason or real reason, for discharge. DAVIS VS. HARRISON, ET.AL., Case No. A1-00234,

Item No. 15 (1974).

In this instance, the Teamsters have failed to produce adequate evidence to substantiate violations of NRS 288.270 (1)(c), (d), or (f).

FINDINGS OF FACT

1. That the Complainant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 14, is an employee organization.

2. That Respondent, County of Clark, is a local government employer.

3. That on or about August 20, 1980, the Complainant requested recognition of Respondent as collective bargaining representative for the Special Deputy Inspectors employed by the County.

4. That the County responded on or about September 11, 1980 by letter from the County Manager, Bruce W. Spaulding, directing attention to the provisions of NRS 288 regarding recognition of employee organizations and the fact that the Public Employee Association was the sole and exclusive collective bargaining agent for County employees.

5. That the Teamsters submitted materials required by NRS 288 for recognition, by three separate letters, dated October 7, 1980.

6. That SDI's were employed in service to the County on a project by project basis until March, 1981 when certain SDI's currently working on projects for the County, were offered permanent employee status as structural inspectors.

7. That NRS 288.140(1) states:

> "It is the right of every local government employee... to join any employee organization of his choice or refrain from joining any employee organization."

Assuming that the SDI's were local government employees, as the broadest interpretation of NRS 288.050 would indicate, there is not a clear and separate community of interest to warrant a separate bargaining unit from the bargaining unit already in place and represented by the Public Employee Association. Nor would the authorization cards, furnished by the Teamsters, been proof of majority support of the entire bargaining unit.

8. That the failure to offer John Slunka a permanent employee position is not an unfair labor practice nor discrimination in hiring because of labor organization membership or activities.

9. That the evidence presented at the hearing did not support a finding that the County interfered with, restrained, or coerced its employees in the exercise of their right to join any labor organization of their choice.

10. That the evidence presented at the hearing did not support a finding that the County discriminated against its employees because of age.

CONCLUSIONS OF LAW

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

2. That the Complainant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 14, is a local government employee organization within the term as defined in NRS 288.240.

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

4. That the local government employer shall determine which employees constitute an appropriate bargaining unit or units, NRS 288.170(1).

5. That Teamsters failed to present sufficient evidence to show representation of a majority of County employees to support a finding of violation of NRS 288.160.

6. That evidence presented at the hearing failed to support a finding of willfull interference with, restraint, or coercion of employees by the County in their right to join any employee organization of their choice. NRS 288.270(1)(a).

7. That failure to hire John Slunka, without evidence that the action was taken because of his labor organization activities or membership, is not a prohibited labor practice. NRS 288.270(1)(c).

8. That evidence presented at the hearing failed to support a finding of discrimination by the County against employees because of employees joined or chose to be represented by a labor organization. NRS 288.280(1)(d).

9. That there was no evidence that the County had discriminated against its employees because of age. NRS 288.270(1)(f).

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

Dated this 16th day of February, 1982.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

Earl L. Collins

Earl L. Collins, Board Chairman

Liz D. Foremaster

Liz D. Foremaster, Bd Vice-Chairman

Barbara A. Zimmer

Barbara A. Zimmer, Board Member

Certified Mail: Stanley Parry
Frederic Berkley

XC: Board Members
Mailing List (7)