Item No. 133

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

STATE OF NEVADA

In the Matter of STATIONARY ENGINEERS, LOCAL 39, Complainant, VS. AIRPORT AUTHORITY OF WASHOE COUNTY, Respondent.	Case No. A1-045349

DECISION

On Monday and Tuesday, March 29th and 30th, 1982, respectively, 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.

The Board rendered its verbal decision on the complaint on Friday, April 23, 1982 and ordered a representative election to be held on May 7, 1982.

This written decision is prepared in conformity with NRS 233.B125 which requires that the final decision contain Findings of Fact and Conclusions of Law separately stated.

On December 12, 1979, Stationary Engineers, Local 39, (hereinafter Local 39) formally notified the Airport Authority of Washoe County, (hereinafter Authority) that it represented a majority of Authority employees. A secret ballot election was conducted on February 11, 1980, and the Complainant was recognized as the exclusive bargaining representative for the employees in the bargaining unit.

The parties began negotiations on March 27, 1980. Following over twenty negotiating sessions, a contract offer was made by the Authority to Local 39 on January 16, 1981. The employees rejected the proposed contract and on February 12, 1981, the Authority notified Local 39 that it was withdrawing recognition of the Complainant.

The Complainant alleges that certain actions of the Respondent during the course of negotiations caused Local 39 to lose support of the employees in the bargaining unit, and the implementation of the Airport Authority Employees Association (hereinafter Association).

It should be noted subsequent to the filing of the Complaint, the Authority granted recognition to the Association as the exclusive bargaining agent of the Respondent's employees on May 7, 1981.

Specifically by the Complaint filed March 6, 1981, Local 39 alleges the actions of the Authority in denying employees proper representation, in being dilatory in its negotiating posture, in failing to bargain mandatory subjects, in taking unilateral actions during negotiations, and assisting and encouraging the decertification of Local 39 were capricious, arbitrary and contrary to law. They constitute prohibited practices under NRS 288.270(1)(a)(d) and (e) and bad faith bargaining in violation of NRS 288.150.

The Authority denies the allegations and further asserts it properly withdrew recognition of Local 39 in accordance with NRS 288.160(3)(c); that Local 39 lacks standing to be heard on the merits of the complaint as it no longer represents a majority of the employees in the bargaining unit; and that its sole and exclusive remedy under NRS 288.160(4) is to file an appeal with the Board.

Prior to hearing testimony on the complaint itself the Board heard argument on Respondent's Motion to Dismiss. The motion was denied and the Board proceeded to hear testimony on the Complaint.

Turning to the first issue raised by the complaint, Local 39 asserts the Authority refused certain employees the right of representation by the Complainant as predicated under NRS 288.067 and NRS 288.140. This claim is based on two events.

On or about February 4, 1981, the Authority held a termination hearing for its employee, Leslie Allison. Local 39 alleges it was not advised of the date and time in sufficient time to allow adequate preparation and representation.

Mary Stewart, an Authority employee, requested a meeting with Gary Oscarson, Personnel Administrator for the Authority on or about February 12, 1981 to discuss the denial of her application for Airport Dispatcher. The Complainant asserts this meeting did not take place as Respondent refused the employee the right to have a union representative present.

Freedom of association is constitutionally protected and the right of representation is statutorily guaranteed under the Local Government Employee-Management Relations Act.

In the first instance, although the employee was initially refused representation at the hearing, the Authority rescinded its objection and Local 39 was present to provide mutual aid and protection. The allegation of insufficient time for preparation and representation does not constitute a violation of NRS Chapter 288. It should be noted that neither the employee nor Local 39 prior to or at the hearing requested additional time to prepare.

In NLRB v. J. Weingarten, Inc., 420 US251(1975), the United States Supreme Court in discerning those instances, other then adversarial proceedings, wherein an employee may request union representation, held that an employee may insist on the presence of a union representative during an investigative interview when the employee can reasonably fear disciplinary action against him by his employer.

Such is not the case in the second instance. The Board feels that testimony and evidence does not support a claim of prohibited practices in that the employee initiated the meeting and its purpose was to be informational, not investigatory or disciplinary in nature.

Turning to the second claim for which relief is sought.

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The Complainant alleges the Authority failed to bargain in good faith in that the Authority was consistantly dilatory throughout the negotiating process. Local 39 asserts there were unwarranted delays due to late arrivals and early adjournments.

At no time did the Authority refuse to meet with Local 39 and in fact participated in over twenty negotiating sessions. No evidence was presented at the hearing wherein Local 39 took issue and raised complaint with the Authority as to any delay; however, testimony did reveal that both parties on various occasions either arrived late or left early.

It is the opinion of the Board that no prohibited practices can be found when one party may be responsible for delaying negotiations and the other party is likewise responsible. In the absence of any evidence supporting the allegation, the Complainant has failed to prove any dilatory tactics by the Authority.

The allegation has been raised also by Local 39 that the Authority refused to discuss items which were the subject of mandatory bargaining including dues deductions and release time for bargaining employees.

Of the items listed in the complaint, no evidence was presented to show that the Authority intended to commit a prohibited practice. What the complainant put forth in its pleadings and the matters raised during the hearing were often very different. The Complainant has failed to carry its burden of proof in this issue.

The Complainant also charges the Authority with implementing numerous changes to the Personnel Manual and reclassifying employees within the bargaining unit.

Evidence presented during the hearing failed to substantiate these allegations as such modifications did not significantly affect the bargaining unit to constitute an unfair labor practice.

Turning now to the Complainant's allegation the Authority unilaterally withdrew a benefit.

In June 1979 the Board of Trustees of the Authority issued Resolution No. 18; a document establishing a merit system, cost of living adjustments, retention of same or upgraded benefits being enjoyed by the City of Reno employees, and retention of same or upgraded salaries for those City of Reno employees assigned to the two airports and who were to be retained as Authority employees.

Prior to and following recognition of Local 39, the Authority had instituted and was paying merit increases to its employees.

Acting upon the advise of its Chief Negotiator that it would be committing a prohibited practice to continue paying increases to employees during the bargaining process, the Authority froze payment of any further merit increases.

It is the duty of the employer to maintain the status quo during the period following expiration of a collective bargaining agreement and negotiation of a successor agreement is in progress. To implement a change in wages, hours or working conditions other than was negotiated in the expired contract would improperly alter this static requirement.

When no collective bargaining agreement is in existance, the status quo can only be maintained by continuing past practices while the parties negotiate the initial agreement. To continue the practice of merit increases would not have evidenced bad faith bargaining in this instance. Hernando Classroom Teachers Association v. Hernando County School Board, Florida Public Relations Commission. Case No.'s 8H-CA-754-1083, 8H-CA-754-1154 (1977) 1977 CCH PEB, Par. 40,021. Teamsters Local Union No. 48, State, County, Municipal and University Employees v. The University of Maine and the Board of Trustees, Maine Labor Relations Board, Case No. 79-08 (1979) 1979 CCH PEB, Par. 41,230; and AFSCME, Council 74 v. Maine S.A.D., No. 1, Maine Labor Relations Board Case No. 81-12 (1981)

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The Authority, acting on the advise of its negotiator, sought to avoid commission of a prohibited practice, therefore the Board feels in the absence of intent, the actions of the Authority did not occur within the context of bad faith bargaining.

The final issue before this Board for decision is whether or not Respondent engaged in assisting and encouraging the decertification of Local 39.

Prior to February 11, 1981 certain employees in the bargaining unit began to circulate petitions requesting an election to determine who should represent Authority employees.

The petitions containing thirty names were submitted to the Authority on or about February 11, 1981.

The Authority notified Local 39 by letter on February 12, 1981 that it was withdrawing recognition because of loss of majority support of the employees in the bargaining unit. This determination was based upon the number of signatures contained in the petition and certain phone calls to management personnel.

NRS 288.160(3)(c) allows an employer to withdraw recognition of an employee organization if it ceases to be supported by a majority of the employees in the bargaining unit for which it was recognized, but is silent as to the procedures to be followed by an employer to verify loss of majority support.

The nature of the evidence presented during the hearing by the Respondent in that it relied upon twelve phone calls in conjunction with the petitions to withdraw recognition raises some doubt in our minds as to the desires of the employees at the time of decertification.

Evidence and testimony presented during the hearing in reference to the issue of management assistance in the decertification of Local 39 was often conflicting and confusing, therefore insufficient to support Complainant's allegations.

Although no testimony was presented on the issue of standing during the hearing, the Board feels it must address the issue as it was significant in Respondent's response to the Complaint.

Local 39 whether formally recognized by the Authority at the time of complaint, is an employee organization and has been aggrieved by the actions of the Authority which occurred when the Complainant was unquestionably the exclusive bargaining representative for Authority employees. Nevada Classified School Employees Association, Carson City, Chapter No. 4 vs. Carson City School District, Case No. A1-045328, Item No. 99.

To support the Authority's contention that Local 39 lacks standing to bring a complaint alleging prohibited practices as it is no longer recognized as the employee representative would defeat the purpose of the Local Government Employee-Management Relations Act.

At the conclusion of the hearing the Authority moved to dismiss from the Complaint the First Cause of Action, paragraph V; from the Second Cause of Action, a portion of paragraph 5 which relates to Crash Firefighter classifications; and the consolidation of release time in paragraph 2 of the Second Cause of Action. Complainant having no objection, the Board granted the motion.

In addition the Board granted Complainant's motion to stay negotiations between the Authority and the Association pending the Board's decision on the Complaint.

It is evident to this Board that the employees were frustrated and discouraged because of the delay in concluding negotiations and lack of communication as to the status of their demands.

The Board will allow that inexperience may have fostered certain actions or lack of action by the Authority and Local 39, but it cannot condone such when the employees are deprived of the opportunity of reaching agreement.

Under NRS 288 the parties are mandated to bargain in good

faith; a willingness to negotiate the issues with an open mind and a desire to reach agreement.

If such willingness or desire is absent, the welfare of the employee falls by the wayside.

Therefore, since the Board has a good faith doubt as to what the employees actually wanted of would have benefited from and to serve the best interests of all the employees, an election is warranted.

FINDINGS OF FACT

1. That the Complainant, Stationary Engineers, Local 39, is a local government employee organization.
2. That the Respondent, Airport Authority of Washoe County, is a local government employer.
3. That on December 12, 1979, the Complainant, Stationary Engineers, Local 39, sought recognition from the Respondent, Airport Authority of Washoe County, to represent, for the purposes of collective bargaining, those employees of the Respondent in the bargaining unit.
4. That on February 11, 1980, a secret ballot election was conducted to determine if Complainant represented a majority of the employees in the bargaining unit.
5. That following the election, the Respondent recognized the Complainant with recognition retroactive to January 24, 1980.
6. That on March 27, 1980, Stationary Engineers, Local 39 and the Airport Authority of Washoe County commenced negotiations.
7. That over twenty negotiating sessions took place between the parties.
8. That on January 16, 1981, a contract offer was made to the Complainant by the Respondent which was rejected by the employees in the bargaining unit.
9. That in February 1981, the Respondent refused two employees in the bargaining unit representation by the Complainant at

certain meetings.

10. That on February 11, 1981, certain employees in the bargaining unit presented a petition containing thirty signatures to the Respondent.

11. That said petition requested an election be held to determine who should represent those employees in the bargaining unit.

12. That on February 12, 1981, Respondent by letter notified the Complainant that it was withdrawing recognition of Complainant as exclusive representative for the employees in the bargaining unit.

13. That on March 6, 1981, Complainant filed a Complaint with the Local Government Employee-Management Relations Board.

CONCLUSIONS OF LAW

1. That pursuant to the provisions of the Nevada Revised Statutes Chapter 288, the Local Government Employee-Management Relations Board possesses original jurisdiction over the parties and subject matter of this complaint. NRS 288.110, NRS 288.280.

2. That Complainant, Stationary Engineers, Local 39 is an employee organization within the meaning of Nevada Revised Statutes Chapter 288. NRS 288.040.

3. That Respondent, Airport Authority of Washoe County is a local government employer within the meaning of Nevada Revised Statutes Chapter 288. NRS 288.060.

4. That the actions of the Authority in denying certain employees in the bargaining unit representation by the Complainant did not constitute interference, restraint or discrimination in the exercise of any right under NRS Chapter 288. NRS 288.270(1)(a) and (d).

5. That the actions of the Respondent during the course of negotiations do not constitute a violation of the duty to bargain in good faith or prohibited practices. NRS 288.150,

NRS 288.270(1)(e).

6. That evidence presented during the hearing failed to support that Respondent assisted or encouraged the decertification of the Complainant. NRS 288.270(1)(a) and (d).

7. That the Complainant has standing to bring the present action. NRS 288.040, NRS 288.160(3).

8. That an election is warranted in this particular case pursuant to NRS 288.160(4).

Since the Board deems the Complaint before it also as an appeal by Stationary Engineers, Local 39, we, therefore, direct the parties as follows:

(1) That the Airport Authority of Washoe County be enjoined from continuing negotiations with the Airport Employees Association for a period of three weeks commencing March 31, 1982 through April 23, 1982.

(2) To submit post hearing briefs to the Board on or about April 21, 1982.

(3) A representative election to be held on May 7, 1982 and shall be by secret ballot.

(4) To meet with the Commissioner of the Employee-Management Relations Board or her designee and agree to the election procedure, reducing such agreement to writing on or before April 30, 1982; that the eligibility lists will contain the names of those employees within the bargaining unit who are on the payroll as of April 23, 1982; that said list shall be prepared by the Airport Authority and presented to the Commissioner of the EMRB or her designee on or before April 30, 1982.

(5) That the ballot shall offer the employees the option of voting either for the Stationary Engineers, Local 39, the Airport Employees Association, or neither; that the election

notice shall be posted in conspicuous areas of the workplace on or before May 3, 1982.

(6) That the exclusive representative of the employees within the bargaining unit, if any, will be determined by a simple majority of the votes cast during the election.

(7) That the Airport Authority of Washoe County and the Airport Employees Association may resume good faith negotiations but are stayed from ratifying any agreement until after the election and if the results of said election are in favor of Local 39.

(8) That the costs of the election shall be equally shared by the Complainant and the Respondent.

(9) That for the purpose of the election, simple majority may be defined as the most votes cast for one of the choices appearing on the ballot.

(10) The directives set forth herein represent all of the directives issued by the Board to the respective parties in this matter. Therefore all orders and amended orders previously issued by the Board on March 30, April 23, and April 29, 1982 are vacated.

(11) The parties shall each be responsible for its own costs and attorney fees.

Dated this 12th day of July, 1982.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

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Mr. Earl L. Collins, Board Chairman abstaining.

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