Item No. 136

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

STATE OF NEVADA

In the Matter of INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 1265, Complainant, VS. CITY OF SPARKS, NEVADA, Respondent.	Case No. A1-045362

D E C I S I O N

On June 10, 1982, 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.

At the request of the parties for an expedited decision, the Board rendered its verbal decision on Monday, June 28, 1982.

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 filed March 3, 1982, the International Association of Fire Fighters, Local 1265 (hereinafter Union) alleges the City of Sparks (hereinafter City) refused to bargain in good faith in violation of NRS 288.033 constituting prohibited practices under NRS 288.270(1)(a), (b), (c), (e), and (g).

The City denied the allegations and filed a counterclaim on March 11, 1982, alleging the Union, was coercing the City to Bargain away the rights of unrepresented employees and that the Union failed to comply with the recognition procedures under NRS 288.160. The City further alleges the actions of the Union were in violation of NRS 288.033 and constituted prohibited practices under NRS 288.270(2)(a) and (b).

The parties have been involved in collective bargaining for over a decade. In 1970, the Union was recognized by the City Council as the exclusive bargaining representative for those City employees in the bargaining unit and have since negotiated successor contracts in subsequent years.

In 1979, the City amended the bargaining unit excluding the classification of Battalion Chief, Fire Marshall, and Senior Fire Inspector. In those agreements between the City and the Union for the years 1979-1982, the City recognized the Union as the exclusive representative for those employees in the bargaining unit, namely Firefighter, Pump-Operator, Driver and Fire Captain. The Union did not at any time request recognition to represent the Battalion Chiefs, Fire Marshall or Senior Fire Inspector in a separate bargaining unit.

On January 16, 1982, the Union properly notified the City in writing of its desire to negotiate a contract to succeed the existing collective bargaining agreement between the parties.

The parties met on February 12, 1982, and established ground rules to their negotiations and the Union submitted its proposals to the City. There was no discussion on the proposals at that time.

At the second meeting of the parties on February 23, 1982, the parties commenced discussion of the Union's package. The City contended at the time that many of the Union's proposals were not items for mandatory negotiation.

The parties discussed the preamble of the contract with the Union objecting to certain language in the clause under the existing agreement and proposed certain changes.

The next item discussed was the Union's proposal to change

the language of the recognition clause so as to delete those recognized classifications within the bargaining unit and to insert in pertinent part:

> "the employer recognized the union as the exclusive bargaining agent for all employees of the Sparks Fire Department, except the Chief" (Emphasis added)

The Union maintained it rightfully represents all fire service personnel and at one time represented the Battalion Chiefs

The City contended that the Union was to negotiate only for those classifications within the bargaining unit for which they had been recognized to represent and could not arbitrarily include Battalion Chiefs or any other classification.

The City left the negotiating table; further asserting that negotiations could not continue until the Union refrained from insisting upon negotiating for other than those classifications for which they had been recognized to represent. Because of the actions of the City the Union filed its Complaint with the Board. The City subsequently filed its counterclaim.

The Union declared the parties were at impasse and requested mediation and factfinding.

Between February 1982 and May 1982, the parties continued to correspond and meet and restate their respective positions.

The Union continued to contend that recognition was negotiable and wanted the position of Battalion Chief recognized under the successor agreement. The Union contends that the position of Battalion Chief was excluded from the bargaining unit during negotiations three years ago, therefore it has the right to negotiate them back in.

Although the Union agreed to set aside the recognition article and continue negotiating on other issues, the City maintained that the composition of the bargaining unit is not negotiable and until it was agreed as to whom it was negotiating for,

it could not continue to bargain with the Union. The City requested the Union to agree to sign off as to whom they represented so that negotiations could continue.

The Union refused.

The recognition clause is a common provision in a collective bargaining agreement and its purpose is to specifically recognize the employee organization as the representative of employees for bargaining purposes and to establish the legal basis of the organization's claim of representation. It may also define the scope of the bargaining unit. Prentice-Hall Inc., Industrial Relations Guide, (1977).

Historically in the private sector a "recognition clause" has been deemed a non-mandatory subject of bargaining, see NLRB vs. Borg-Warner Corp., 356 U. S. 342 (1958). In 1975 the Nevada Legislature amended NRS 288.150 (2) to list twenty subjects of mandatory bargaining including "recognition clause" under subsection (j).

The Board feels it was not the intent of the Legislature at that time to undermine the employer's perogative established under NRS 288.170 to determine which group or groups of employees constitute an appropriate bargaining unit, but only to reaffirm under the contract the employee organization's right to represent those employees in the bargaining unit. Therefore, in the opinion of this Board, these are two separate and distinct provisions in the statute.

The employer has no duty to bargain with the employee organization as to what classifications of employees will be included in the bargaining unit, therefore the Union's allegation that the City violated its duty to bargain under NRS 288.033, a prohibited practice under NRS 288.270 (1) (e) is invalid.

If the conduct of the City amounted to a complete refusal to bargain on mandatory subjects of bargaining, such conduct, of

course, would constitute a violation of its statutory duty to bargain, but the Union's initial insistance upon bargaining upon a non-mandatory subject of bargaining, notwithstanding its subsequent willingness to talk about other issues, established a climate wherein further negotiations were not likely to serve useful purpose or produce agreement.

For the Union to submit a proposal at the bargaining table under NRS 288.150 (2) (j) to alter the language of the recognition clause under the former contract is not improper, but to present a proposal that clearly was an attempt to modify the scope of the existing bargaining unit is improper.

The Union adamantly insisted upon negotiating its proposal even to the point of impasse. Adamacy on a single issue is not in and of itself a violation of the duty to bargain in good faith, but to insist to mediation and factfinding, a proposal concerning a non-mandatory subject of bargaining constitutes bad faith bargaining, a prohibited practice under NRS 288.270 (2) (b). See M.S.A.D. No. 43 Board of Directors vs. M.S.A.D. No. 43 Teachers Association, Main Labor Relations Board Case Nos. 79-36, 79-39, 79-45, 79-45 (1979). 1979 CCH PEB, Paragraph 41,460.

Assuming arguendo that the Union could negotiate the scope of the bargaining unit under NRS 288.150 (2) (j), it would be improper to place Battalion Chiefs in the existing unit as they are supervisory employees. The Board has previously ruled in IAFF, Local 1285 vs. City of Las Vegas, Case No. 83704, Item #21 (1979) that Battalion Chiefs are supervisory employees and cannot under NRS 288.170 (1) be a member of the same bargaining unit as the employees under their direction. See also IAFF, Local 731 vs. City of Reno, Item #4 (1972); IAFF, Local 1908 vs. County of Clark, Case No. 003486, Item #43 (1975) and IAFF, Local 1908 vs. County of Clark, Case No. 21-045279, Item #43 (1975).

They can be represented by the same employee organization that has been recognized to represent those employees in the non-supervisory bargaining unit if they so desire.

The evidence presented at the hearing disclosed that a majority of the Battalion Chiefs currently employed by the City did not wish to be represented by the Union.

Local 1265, by admission during the hearing, had not contacted all Battalion Chiefs as to their desires for representation, therefore, for the Union to attempt to negotiate for employees who were outside of the existing bargaining unit and who may not wish to be represented by the Union constitutes a willful interference with and coercion of those employees in the exercise of their rights guaranteed under NRS Chapter 288, a prohibited practice under NRS 288.270 (2) (a).

FINDINGS OF FACT

1. That the Complainant International Association of Fire Fighters, Local 1265, is a local government employee organization and a bargaining agent for collective bargaining purposes.

2. That the Respondent, City of Sparks, is a local government employer.

3. That the parties have been involved in collective bargaining since 1970.

4. That the Respondent modified the bargaining unit in 1979 to exclude the classifications of Fire Marshall, Senior Fire Inspector and Battalion Chief.

5. That the International Association of Fire Fighters, Local 1265 did not appeal this modification of the bargaining unit.

6. That the existing contract between the parties for the years 1980-1982 covers a bargaining unit consisting of Firefighter, Pump Operator-Driver and Fire Captain.

7. That the International Association of Fire Fighters, Local 1265 properly noticed the City of Sparks of its desire to negotiate a successor agreement in January, 1982.

8. That the parties commenced negotiations on February 12, 1982.

9. That in a subsequent meeting between the parties, IAFF, Local 1265 declared its intent of negotiating Battalion Chiefs back into the bargaining unit under its proposal in reference to the Recognition Clause.

10. That the City of Sparks refused to negotiate the scope of the bargaining unit.

11. That the IAFF, Local 1265 adamantly continued to insist upon bargaining to include Battalion Chiefs in the bargaining unit.

12. That IAFF, Local 1265 did not represent a majority of the Battalion Chiefs employed by the City of Sparks.

13. That Battalion Chiefs are supervisory employees.

14. That on February 24, 1982, the IAFF, Local 1265 requested mediation, declaring negotiations at impasse.

15. That the parties continued to correspond and meet between March and May, 1982, restating their respective positions.

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 the Complainant, IAFF, Local 1265, is a local government employee organization as defined in NRS 288.040.

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

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4. That the determination of the bargaining unit is a right vested in the local government employer pursuant to NRS 288.170 (1) and not a mandatory subject of bargaining under NRS 288.150 (2).

5. That the actions of the Respondent in refusing to bargain on a non-mandatory subject of bargaining with IAFF, Local 1265 does not constitute a violation of its duty to bargain under NRS 288.150 (1).

6. That the actions of the Respondent in refusing to bargain on a non-mandatory subject of bargaining did not constitute a willful refusal to bargain in good faith with IAFF, Local 1265. NRS 288.270 (1) (e).

7. That the actions of the Respondent did not constitute prohibited practices under NRS 288.270(1)(a), (b), (c), and (g).

8. That Battalion Chiefs are supervisory employees as defined uner NRS 288.075 (1) and may not be a member of the same bargaining unit as the employees under his direction. NRS 288.170 (1).

9. That IAFF, Local 1265 failed to follow the recognition procedures so as to represent Battalion Chiefs as required under NRS 288.160.

10. That IAFF, Local 1265 by its actions in attempting to negotiate for employees who are outside of the bargaining unit and who may not wish to be representd by the Union constitutes a willful interference with and coercion of those employees in the exercise of their rights guaranteed under NRS Chapter 288. NRS 288.270 (2) (a).

11. That IAFF Local 1265 by its actions in adamantly insisting upon negotiating a non-mandatory subject of bargaining to impasse is a violation of its duty to margain collectively in good faith with the City of Sparks under NRS 288.150 (1) constituting a prohibited practice under NRS 288.270 (2) (b).

The Complaint of the IAFF, Local 1265 is hereby dismissed with prejudice and requested relief is denied. We find that the counterclaim of the City of Sparks is well taken, therefore it is ordered:

1. That IAFF, Local 1265 cease and desist from its illegal actions.

2. That the City of Sparks and IAFF, Local 1265 are to resume negotiations and to bargain collectively in good faith.

3. That IAFF, Local 1265 pay reasonable costs and fees incurred by the City of Sparks pursuant to this matter.

4. The directives set forth herein represent the previous directives issued by the Board to the respective parties in this matter. Therefore, all orders previously issued by the Board on June 28, 1982, are vacated.

By post-hearing motion filed by IAFF Local 1265, the Union opposes the cost and fees submitted by the City of Sparks in that they are excessive and unreasonable. The Board agrees. Therefore, the amount to be paid by the Union in compliance with the Board's order of June 28, 1982, shall be as follows:

Costs: $115.00

Fees: $854.00

Dated this 21ST day of August, 1982.

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

Earl L. Collins

Earl L. Collins, Bd. Chairman

Elizabeth Foremaster

Elizabeth Foremaster, Bd. Vice-Chairman

Barbara A. Zimmer

Barbara A. Zimmer, Member

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