

CASE NO. A1-045377

ITEM NO. 160

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

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INTERNATIONAL ASSOCIATION OF  
FIREFIGHTERS, LOCAL 2423,

Petitioner,

-vs-

CITY OF ELKO,

Respondent.

FINDINGS OF FACT,  
CONCLUSIONS OF  
LAW, DISCUSSION AND  
DECISION

For the Petitioner: Jim V. Fisher

For the Respondent: Gary D. DiGrazia, Esq.

For the EMRB Board: Salvatore C. Gugino  
Tamara Barengo  
Jeffrey L. Eskin

STATEMENT OF THE CASE

This dispute arose between Respondent CITY OF ELKO (hereinafter referred to as the "CITY") and Petitioner IAFF, LOCAL 2423 (hereinafter referred to as the "FIREFIGHTERS"), when the CITY attempted to convert its fire department to either a volunteer system or one which would be subcontracted to a private fire protection service. Petitioner alleges that Respondent engaged in prohibited practices under the Nevada Local Government Employee-Management Relations Act (hereinafter referred to as the "ACT"), in that Respondent refused to bargain collectively in good faith, thereby violating the provisions of NRS 288.270(1)(a), (b), (c), (d), (e) and (f). Further, Petitioner alleges that Respondent violated the provisions of NRS 288.150(3)(b) in that Respondent laid off employees for reasons other than lack of work or lack of funds. Respondent denied all of the above-stated allegations. A hearing on the dispute was held before the Local Government Employee-

1 Management Relations Board wherein Petitioner and Respondent sub-  
2 mitted evidence in support of their respective positions.

3 Following a hearing on the dispute in Elko, the EMRB con-  
4 cluded that the CITY had violated its duty to negotiate in good  
5 faith, and that the CITY had an obligation to bargain with the  
6 FIREFIGHTERS over the impact and effect of subcontracting its  
7 fire department.

#### 8 DISCUSSION

- 9 1. ALTHOUGH THE DECISION TO SUBCONTRACT IS  
10 A MANAGEMENT PREROGATIVE, THE IMPACT AND  
11 EFFECT OF SUBCONTRACTING IS A SUBJECT OF  
12 MANDATORY BARGAINING.

13 As we have already pointed out in The County of Washoe v.  
14 Washoe County Employees Association, Case No. Al-045365 (1983),  
15 the decision to contract out services is a management prerogative;  
16 however, the impact and effect of subcontracting is a subject of  
17 mandatory bargaining. See also City of North Las Vegas v. IAFF,  
18 Local 1607, Case No. Al-045372 (1983). Such a determination is  
19 in line with the statutory rights given to the employer pursuant  
20 to NRS 288.153(3)(b) and to the employee organization pursuant to  
21 NRS 288.150(2)(t).

22 Our holding additionally conforms with rulings from other  
23 jurisdictions. See Civil Service Employees Association v. Newman,  
24 457 NYS2d 620 (1982); PLRB v. North Hill School District, Pa.  
25 Labor Relations Board Case No. C-7036-E--PPERB--(1976), aff'd. 95  
26 LRRM 3128 (ct. Comm. Pl. Alleg. Co. 1977).

- 27 II. THE RECORD, AS A WHOLE, DEMONSTRATES THAT  
28 THE CITY OF ELKO VIOLATED ITS DUTY TO  
29 NEGOTIATE IN GOOD FAITH.

30 In University of Nevada v. State Employees Ass'n., Inc., 90  
31 Nev. 106, 520 P.2d 602 (1974), the Nevada Supreme Court ruled that  
32 Civil Service positions could not be subcontracted by an appoint-  
ing authority unless it acted in good faith to effect a real  
rather than a fundamentally sham reorganization. Furthermore,

1 the reasons for obtaining the private contractor's services had  
2 to be substantial rather than arbitrary and capricious. Id. at  
3 112.

4 Respondents failed to present credible evidence at the hear-  
5 ing to indicate that there was a bona fide reason for abolishing  
6 the FIREFIGHTERS' positions. Petitioner, on the other hand,  
7 supplied sufficient evidence to persuade the Board that the deci-  
8 sion to terminate their positions resulted from a beneficial  
9 arbitration award in their favor which the CITY wished to avoid.  
10 In addition, the CITY took a formal position not to negotiate  
11 with the FIREFIGHTERS. All of the above constitutes a failure  
12 to negotiate in good faith pursuant to NRS 288.150(2)(t).

13 The Board also notes that there was some evidence that the  
14 CITY coerced those employees represented by the FIREFIGHTERS and  
15 that the CITY engaged in prohibited practices pursuant to NRS 288  
16 270(1)(c) and (d); however, said evidence was not substantial  
17 enough to render a finding in favor of Petitioners. For similar  
18 reasons, the Board finds that there was insufficient evidence to  
19 support a finding that the CITY OF ELKO assisted in the formation  
20 of another employee association or that the CITY discriminated  
21 against members of LOCAL 2423 because of personal reasons.

22 In light of our holdings, supra, it is unnecessary for the  
23 Board to rule upon the question of its jurisdiction to reform a  
24 collective bargaining agreement at this time.

#### 25 FINDINGS OF FACT

26 1. The Petitioner, IAFF, LOCAL 2423, was at all times  
27 relevant thereto the bargaining agent, as defined by NRS 288.027,  
28 for all FIREFIGHTER employees of Respondent CITY OF ELKO.

29 2. The Respondent, CITY OF ELKO, was at all times relevant  
30 hereto the local government employer, as defined by NRS 288.060.

31 3. The entire record, when considered in its entirety,  
32 demonstrates that Respondent violated its duty to negotiate in

1 good faith in that it failed to negotiate the impact and effect  
2 of a proposed subcontracting arrangement with a private fire-  
3 fighting company.

4 4. There was some evidence produced at the hearing in this  
5 matter that Respondent coerced its employees, represented by Peti-  
6 tioner, by stating its intention to subcontract with a private  
7 firefighting company, thereby discouraging membership in the  
8 LOCAL 2423 by its employees. However, this evidence was not of  
9 a substantial enough nature to render a finding in favor of the  
10 Petitioner as to this factual issue.

11 5. There was insufficient evidence presented to support  
12 Petitioner's allegations that Respondent assisted in the forma-  
13 tion of a new employee organization by stating its intention to  
14 contract privately for firefighting services.

15 6. There was insufficient evidence presented at the hearing  
16 to support Petitioner's assertions that Respondent discriminated  
17 against members of LOCAL 2423 because of personal reasons.

#### 18 CONCLUSIONS OF LAW

19 1. That a reduction in work force because of a lack of  
20 funds or lack of work is not a subject of mandatory bargaining,  
21 but is subject to the procedural negotiation requirements of  
22 NRS 288.150(2)(t).

23 2. That the decision by the CITY OF ELKO to subcontract  
24 firefighting services is a management prerogative; however, the  
25 impact and effect of such subcontracting agreement is the subject  
26 of mandatory bargaining because it is significantly related to  
27 terms and conditions of employment.

#### 28 D E C I S I O N

29 From the foregoing Discussion, Findings of Fact, and Conclu-  
30 sions of Law,  
31

32 IT IS HEREBY ORDERED as follows:

1           1. That Respondent, its officers, agents, servants, employ-  
2       ees, and designated representatives are hereby ordered to comply  
3       with the terms of the collective bargaining agreement heretofore  
4       entered into between the parties; and

5           2. That the Respondent negotiate in good faith all items  
6       properly negotiable under Chapter 288 of the Nevada Revised Statu-  
7       tes with the Petitioner, and in particular, the impact and effect  
8       of a proposed subcontracting arrangement with a private fire-  
9       fighting company.

10           DATED this 19<sup>th</sup> day of MARCH, 1984.

11                               LOCAL GOVERNMENT EMPLOYEE-  
12                               MANAGEMENT RELATIONS BOARD

13                               By Salvatore C. Gugno  
14                               SALVATORE C. GUGINO, Chairman

15                               By Tamara Barengo  
16                               TAMARA BARENGO, Vice-Chairman

17                               By Jeffrey E. Eskin  
18                               JEFFREY E. ESKIN, Board Member

19  
20       Distribution:

21           CERTIFIED:

22                               Andrew Puccinelli, Esq.  
23                               PO Box 530  
24                               Elko, Nevada 89801  
25                               Attorney for I.A.F.F.

26                               Gary E. DeGrazia, Esq.  
27                               PO Box 1358  
28                               Elko, Nevada 89108  
29                               Attorney for City

30       cc: Board Members  
31           Jim Fisher  
32           Ray Cash