

1 CASE NO. A1-045386

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4 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
5 RELATIONS BOARD

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7 RENO FIREFIGHTERS,)
8 Local 741, I.A.F.F.,)
9 Complainant,)

ITEM NO. 173

10 vs.)

D E C I S I O N

11 CITY OF RENO, a)
12 municipal corporation,)
13 DAVE HOWARD, DICK SCOTT)
14 and JANICE PINE,)

Respondents.)

15 For the Complainant:

Jack Schroeder, Esq.

16 For the Respondent:

Robert A. Groves, Esq.

17 For the EMRB Board:

Tamara Barengo
Jeffrey L. Eskin, Esq.
Salvatore C. Gugino, Esq.

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20 STATEMENT OF THE CASE

21 This dispute arose between Respondent CITY OF RENO
22 (hereinafter referred to as the "CITY") and the Complainant RENO
23 FIREFIGHTERS, LOCAL 741, I.A.F.F. (hereinafter referred to as the
24 "FIREFIGHTERS") when the CITY, during a personnel session of the
25 Reno City Council, allegedly failed to meet and discuss various
26 contract issues with the FIREFIGHTERS due to the presence of a
27 union representative. Complainant alleges that Respondent engaged
28 in prohibitive practices under the Nevada Local Government

1 Employee-Management Relations Act (hereinafter referred to as the
2 "ACT") in that Respondent violated NRS 288.270(1)(a),(b),(f) and
3 NRS 288.140(1). Additionally, Complainant alleges that Respondent
4 violated the provisions of NRS 288.150(1) and NRS 288.033 by its
5 failure to bargain in good faith.

6 On July 11, 1984, the Local Government Employee-Management
7 Relations Board (hereinafter referred to as the "BOARD") held a
8 hearing on the Complaint. The hearing was held pursuant to the
9 provisions of the ACT, as well as the provisions of the
10 Administrative Procedure Act. The Complainant and Respondent each
11 submitted evidence and argument in support of their respective
12 positions.

13 Following the hearing, the Board concluded that while
14 there was some evidence to support the allegations of the
15 Complainant's Complaint, the evidence was insufficient to support
16 a finding of prohibitive practice violations.

17 18 DISCUSSION

19 For the reasons set forth herein, the BOARD hereby
20 dismisses the Complaint for prohibited practices against the City
21 of Reno. This dismissal should not be construed to approve the
22 CITY'S actions in this matter. In fact, the BOARD'S position is
23 quite to the contrary.

24 On February 13, 1984, certain members of the FIREFIGHTERS,
25 along with its representative, Jim Fisher, appeared at what they
26 believed had been a properly arranged meeting to discuss contract
27 issues with the City Council. After the regular council meeting,
28 the FIREFIGHTERS entered the CITY'S personnel session for these

1 discussions. The City Council then voted to exclude Mr. Fisher
2 from the meeting. The vote resulted in a three to three tie,
3 which is a no action vote. Had the evidence shown that this
4 meeting was properly arranged by the Reno City Council, rather
5 than by some of its members, then a prohibitive practice violation
6 would have been conclusively established. The agenda for the
7 meeting of the City Council did not show the matter as scheduled.

8 Additionally, the record indicates that some of the coun-
9 cilmen were either unaware or confused as to why the FIREFIGHTERS
10 were even present. The City Clerk understood the personnel
11 session to be for the purpose of discussing the competency and
12 integrity of the Fire Chief. The motion itself, and, in par-
13 ticular, the context of the motion was ill-advised. It is
14 apparent that the BOARD could construe the motion on its face as
15 a clear violation of the ACT. The vote, in a vacuum, supports
16 such a conclusion.

17 The totality of the circumstances, however, indicate that
18 some members of the Council wanted to be equally represented in
19 meeting with the FIREFIGHTERS; therefore, the motion also could
20 be construed as an inartful attempt to continue the matter to a
21 time where both parties could be represented and knew of the pur-
22 poses of the session.

23 The BOARD is mindful that some may attempt to utilize this
24 decision to chill negotiations and thwart the process of
25 encouraging discussions between the various parties. It is the
26 BOARD'S position, however, that the ACT has been created to
27 encourage the resolution of disputes, and that resolution includes
28 the use of bargaining agents freely chosen by the units. The

1 CITY, in this case and by this decision, has received the benefit
2 of the doubt. The CITY is well advised that similar conduct will
3 not receive such benefit in light of the warnings implicit herein.

4 As to the issue of whether the CITY failed to bargain in
5 good faith from January 31, 1984, through March of 1984, the BOARD
6 finds that since neither party properly opened negotiations,
7 according to the factfinder, there can be no duty to bargain,
8 and, therefore, the Complaint lacks merit.

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10 FINDINGS OF FACT

11 1. That the Complainant, RENO FIREFIGHTERS, LOCAL 731,
12 I.A.F.F., is a local government employee organization.

13 2. That the Respondent, CITY OF RENO, is a local govern-
14 ment employer.

15 3. That on March 8, 1984, the Complainant filed a
16 Complaint with the Local Government Employee-Management Relations
17 Board alleging in its Complaint that the City of Reno and several
18 of its councilmen had engaged in prohibitive practices by:

19 a. Refusing to bargain in good faith with a properly
20 designated representative of the Complainant association;
21 and

22 b. Interfering, restraining, coercing and discrimi-
23 nating against the rights of the Complainant.

24 4. That union members arranged with some, but not all, of
25 Reno City's Council Members to meet with Reno's City Council on
26 or about February 13, 1984.

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1 5. That the Reno Firefighters appointed Jim V. Fisher as
2 a designated representative of the Reno Firefighters, Local 731,
3 I.A.F.F., the bargaining agent for the FIREFIGHTERS.

4 6. That Jim V. Fisher was not an employee of the City of
5 Reno.

6 7. That the Reno Firefighters' representatives appeared
7 at the February 13, 1984, meeting with the Reno City Council.
8 These representatives included, but were not limited to, Carlos
9 Archuleta, Mike Brown, Jon Johnson, Charles Laking, along with Jim
10 Fisher.

11 8. That at approximately 6:30 p.m. on February 13, 1984,
12 the Reno City Council entered a personnel session.

13 9. That the City Clerk, Mr. Gilbert Frank Mandagaran,
14 understood the purpose of the personnel session to discuss the
15 competency and integrity of the Fire Chief.

16 10. That the above-referenced members of the FIRE-
17 FIGHTERS, along with Mr. Fisher, entered the personnel session to
18 meet with the City Council to discuss various issues relating to
19 the pending contract.

20 11. That some members of the City Council appeared con-
21 fused as to why the FIREFIGHTERS were present at the personnel
22 session.

23 12. That the agenda for the City Council meeting of
24 February 13, 1984, did not contain an item regarding discussions
25 with the FIREFIGHTERS, but did provide for the selection of a fire
26 chief.

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1 13. That the City Council took a vote requesting that
2 Mr. Fisher be excused from the meeting since the CITY'S represen-
3 tative was not present.

4 14. That the CITY voted three to three to deny the right
5 of Mr. Jim Fisher to be present at the session.

6 15. That the three to three vote resulted in no action;
7 that subsequent to the vote, the FIREFIGHTERS' delegates left the
8 City Council personnel session.

9 16. That the Reno Firefighters had given notice to the
10 City of Reno of its intent to negotiate a new labor contract for
11 1984-1985 by correspondence dated January 31, 1984.

12 17. That a factfinder, acting at the request of both
13 parties, ruled that both the CITY and FIREFIGHTERS had failed to
14 properly open negotiations for the 1984-1985 contract.

15
16 CONCLUSIONS OF LAW

17 1. That pursuant to the provisions of the Nevada Revised
18 Statutes, Chapter 288, the Local Government Employee-Management
19 Relations Board possesses original jurisdiction over the parties
20 and the subject matter of the Complaint. NRS 288.110, NRS
21 288.280.

22 2. That Complainant, RENO FIREFIGHTERS, LOCAL 731,
23 I.A.F.F., is a local government employee organization within the
24 meaning of Nevada Revised Statutes Chapter 288. NRS 288.040.

25 3. That the Respondent, CITY OF RENO, is a local govern-
26 ment employer within the meaning of Nevada Revised Statutes,
27 Chapter 288. NRS 288.060.

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1 4. That the Complainant was precluded from addressing,
2 talking to, or communicating with the Reno City Council in the
3 personnel session of February 13, 1984, however, the evidence is
4 insufficient for the Board to conclude that a prohibitive practice
5 had occurred.

6 5. That there is evidence to support the conclusion that
7 the City of Reno engaged in conduct on February 13, 1984, at the
8 personnel session which amounts to interference, restraint, coer-
9 cion and/or discrimination of the rights of the FIREFIGHTERS,
10 however, said evidence does not support a finding that a prohibi-
11 tive practice had transpired, pursuant to NRS 288.270 and NRS
12 288.140, for the following reasons:

13 a. That there is insufficient evidence to establish
14 that the Reno City Council, in its official capacity as
15 a public body acting on behalf of the City of Reno,
16 arranged for a meeting with the FIREFIGHTERS;

17 b. That several members of the City Council were
18 unaware as to why the FIREFIGHTERS were present at the
19 session, which by at least one account was to discuss
20 the competency and integrity of the Fire Chief;

21 c. That the agenda did not reflect a session for
22 discussion with the FIREFIGHTERS; and

23 d. That there was discussion surrounding the vote of
24 the City Council that unless the City Council was also
25 represented, the CITY would not meet at that session
26 with Jim Fisher.

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1 6. That there is insufficient evidence to support the
2 conclusion that the CITY failed to bargain in good faith with the
3 FIREFIGHTERS since the factfinder, acting at the request of both
4 parties, ruled that negotiations were not properly opened by each
5 party for the 1984-1985 contract. Therefore, the actions of the
6 Respondent do not constitute a violation of the duty to bargain in
7 good faith pursuant to NRS 288.033, NRS 288.150.

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9 DECISION

10 From the foregoing Discussion, Findings of Fact, and
11 Conclusions of Law,

12 IT IS HEREBY ORDERED that the Complaint of the
13 FIREFIGHTERS be dismissed with prejudice, each party to bear its
14 own costs and fees.

15 DATED this 15th day of October, 1984.

16 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
17 RELATIONS BOARD

18 By: Tamara B. Barengo
19 Tamara Barengo, Chairman

20 By: Jeffrey L. Eskin
21 Jeffrey L. Eskin, Member

22 By: Salvatore C. Gugino
23 Salvatore C. Gugino, Member

24
25 cc: Jack Schroeder, Esq.
26 Robert A. Groves, Esq.
27 Board Members
28 Interested Parties