

CASE NO. A1-045390

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

** ** *

RENO POLICE PROTECTIVE
ASSOCIATION,)
Complainant,)
-vs-)
THE CITY OF RENO,)
Respondent.)

DECISION

For the Complainant: Paul H. Lamboley, Esq.
Patrick D. Dolan, Esq.
For the Respondent: Frank Cassas, Esq.
William F. Schoeberlein, Esq.
For the EMRB: Tamara Barengo
Jeffrey L. Eskin, Esq.
Salvatore C. Gogino, Esq.

STATEMENT OF THE CASE

This action arises out of ongoing negotiations between Complainant, RENO POLICE PROTECTIVE ASSOCIATION (hereinafter referred to as the "RPPA") and the Respondent, CITY OF RENO (hereinafter referred to as the "CITY"), wherein the Complainant alleged that Respondent committed several prohibited practices, including:

1. Refusing to participate in factfinding procedures in violation of the duty to bargain in good faith;
2. Unilaterally modifying, changing and altering existing health insurance and special pay practices; and
3. Failing to provide information requested by the RPPA necessary for proceeding with mandatory negotiations.

The Board conducted extensive hearings on September 7th and October 4th, 1984. Having reviewed all of the testimony and exhibits presented, together with the post-hearing briefs submitted by counsel, and after due deliberation, the Board has concluded that there is sufficient evidence to support a finding of prohibited practice violations by the CITY on all three counts, and that

1 further, Complainants be awarded sanctions against the CITY.

2
3 DISCUSSION

4 The record in this matter reveals a consistent pattern of obfuscatory
5 activity on the part of the CITY against the RPPA. Perhaps the most discon-
6 certing violations surrounded the manner in which the CITY conducted its nego-
7 tiations with the RPPA.

8 On April 17, 1984, a bargaining session was held at which the procedures
9 involving mediation and factfinding under the Employee-Management Relations
10 Act (NRS 288, et seq.) were discussed. Complainant alleges that, after dis-
11 cussion with the CITY's negotiator, Neldon Demke, it was agreed by both sides,
12 that the statutory deadline for mediation and factfinding would be waived.
13 It was further alleged that the parties had a past practice of waiving such
14 deadline dates in order to facilitate constructive negotiations. This version
15 of the facts was uniformly testified to at length by Joseph Buttermann and
16 David A. Quest who were both present at the meeting in question. The sole
17 witness for the CITY on this issue was Neldon Demke, who claimed that the CITY
18 reserved its right to follow the statutory guidelines on economic issues.

19 Following an exchange of letters between the parties, in which the
20 RPPA requested the formation of a panel to submit their dispute to factfinding
21 the Board received notification from the CITY dated June 27, 1984, that it
22 would participate in mediation, but would oppose the formation of a panel on
23 the basis that the statutory deadlines had not been met.

24 On August 1, 1984, the CITY implemented a new insurance plan on behalf
25 of all employees of the CITY, including members of the RPPA. Complainant
26 had previously been advised that such a change was being initiated, as some
27 of its representatives had served on a committee created by the CITY to review
28 the plan. However, the RPPA had not adopted nor agreed to its implementation
29 at the bargaining table and had, in fact, requested that the CITY defer action
30 on the plan and on changes in P-2 special pay practices. At the time the
31 program was put into effect, negotiators for the RPPA were still requesting
32 claims experience information from the CITY which was allegedly unavailable.

1 Previously, on July 26, 1984, Complainants sought for and received a
2 temporary restraining order from the Second Judicial District Court of the
3 State of Nevada requiring the CITY to participate in factfinding procedures,
4 and barring the CITY from unilateral implementation of changes in health in-
5 surance and P-2 special pay practices.

6 This matter then came before the Board for hearing on September 7th
7 and October 4th, 1984.

8 1. THE CITY, BY FAILING TO HONOR ITS AGREEMENT
9 TO WAIVE STATUTORY DEADLINES AND TO ENGAGE
10 IN MEDIATION AND FACTFINDING, HAS COMMITTED
11 A PROHIBITED PRACTICE VIOLATION.

12 After reviewing the testimony and exhibits, the Board was of a unani-
13 mous opinion that the RPPA and the CITY had agreed in their April 17, 1984
14 meeting to waive the mediation and arbitration procedures set forth in NRS
15 288.190 and 288.200. The testimony of the Complainant's witnesses was clear
16 and concise and reflected the past practice of the CITY in dealing with
17 several of its bargaining units. The testimony of Mr. Demke was, however,
18 less than credible. His testimony was contradicted not only by Complainant's
19 witnesses, but also by exhibits presented to the Board. His story was simply
20 not believable. See Innes v. Beauchene, 370 P.2d 174 (Alaska 1962.) It is
21 the firm belief of this Board that all parties to negotiations pursuant to
22 NRS 288, et seq., must act to facilitate the bargaining process in good faith,
23 and must not act or perform their duties in an obfuscatory manner. The repre-
24 sentations of the CITY's witness on this issue before the Board were rejected
25 upon the facts, which prompt this Board to observe and to quote the common
26 law maxim, "falsus in uno, falsus in omnibus", People v. Cook, 148 Cal.Rptr.
27 605, 583 P.2d 130 (1978).

28 The Board therefore rules that Respondent committed a prohibited prac-
29 tice violation pursuant to NRS 288.270(1)(e) for its failure to bargain in
30 good faith with the RPPA regarding mediation and factfinding.

31 2. UNILATERAL IMPLEMENTATION OF CHANGES IN TERMS
32 AND CONDITIONS OF EMPLOYMENT CONSTITUTES A
33 PROHIBITED PRACTICE UNDER THE EHRA.

34 The Board is aware of the split in authority concerning the unilateral

1 implementation rule as applied under the National Labor Relations Act, and
2 those bargaining statutes enacted by the various states. NLRB v. Katz, 369
3 US 736 (1962). It is the opinion of the Board that, even in the private
4 sector, the unilateral implementation rule may not be invoked in the absence
5 of good faith bargaining. NLRB v. Herman Sausage Company, 275 F.2d. 229
6 (5th Cir. 1960). It is the opinion of the Board that the better view, in the
7 public sector, holds that any attempt to unilaterally implement changes prior
8 to the exhaustion of procedures promulgated under the public bargaining statute
9 constitutes a prohibited practice violation. Wasco County v. American Fed. of
10 State, etc., 46 Or.App. 859, 613 P.2d 1067 (1980); Moreno Valley Unified School
11 District v. Public Employment Relations Board, 142 Cal.App.2d 191 (1983). As
12 pointed out in Wasco County, supra, such a unilateral change is a "per se"
13 violation of the duty to bargain in good faith. Id. at 1068, 1071.

14 Health insurance and special pay practices are terms and conditions of
15 employment which are mandatory subjects of negotiation pursuant to NRS 288.150
16 (2)(a) and (f). Therefore, the CITY had a duty to negotiate directly with
17 the RPPA in bargaining sessions concerning any proposed changes in said condi-
18 tions prior to their implementation.

19 4. THE CITY'S FAILURE TO PROVIDE INFORMATION
20 CONCERNING HEALTH INSURANCE BENEFITS WAS A
PROHIBITED PRACTICE PURSUANT TO THE EHRA.

21 There is no question that subsection (2) of NRS 288.130 specifically
22 requires that the employee organization be provided "reasonable information con-
23 cerning any subject matter included in the scope of mandatory bargaining which
24 it deems necessary for and relevant to the negotiations." Further, the statute
25 requires that such information be furnished without unnecessary delay.

26 Under the circumstances of this case, Complainants were consistently
27 denied access to the claims experience relating to their bargaining unit invol-
28 ving a particular health insurance provider. They were informed by the CITY
29 that such information was inaccessible to them, and thus, unavailable to them.
30 During the hearing on this matter, however, Respondent's own witness admitted
31 that the information was not so difficult to obtain after all. According to
32 testimony, an insurance agent trying to obtain the CITY's business, received

1 the claims experience by going to the insurance company, and representing him-
2 self as a broker for the City of Reno. The information was promptly produced.

3 Such a failure to produce information constitutes one of the most classic
4 examples of an unfair labor practice in both the private and public sector.
5 As pointed out in Press Democrat Pub. Co. v. NLRB, 629 F.2d 1320 (9th Cir.
6 1980),

7 "It has long been established that the obligation
8 to bargain collectively in good faith includes an
9 employer's duty to furnish information which the
10 Union needs to carry out its statutory duties and
11 responsibilities ... (citations omitted), that is,
12 'sufficient information to enable the (union) to
13 understand and intelligently discuss the issues
14 raised in bargaining permitted by the collective
15 bargaining contract.'" Id. at 1324.

16 17 CONCLUSION

18 From all of the above, it is apparent that Respondent has committed
19 flagrant acts which serve only to frustrate and obstruct the ongoing process
20 of negotiations. It is therefore the opinion of this Board that Respondent
21 has acted in bad faith, and that Claimant is therefore entitled to a judgment
22 in its favor, and to attorneys' fees and costs.

23 24 FINDINGS OF FACT

25 1. That the Complainant, RENO POLICE PROTECTIVE ASSOCIATION, is a local
26 government employee organization.

27 2. That the Respondent, CITY OF RENO, is a local government employer.

28 3. That on August 1, 1984, the Complainant filed a prohibitive practice
29 complaint with the Local Government Employee-Management Relations Board alleg-
30 ing that Respondent had violated the provisions of NRS 288 by:

31 (a) Refusing to participate in factfinding proceedings;

32 (b) Unilaterally modifying, changing and altering certain terms

1 and conditions of employment, specifically health insurance
2 and special pay practices; and

3 (c) Failing to provide information requested by Complainant
4 relevant and necessary for negotiations.

5 4. That, on April 17, 1984, the parties mutually agreed to waive the
6 statutory requirements for mediation and factfinding pursuant to NRS 288.199
7 and 288.200.

8 5. That Respondent unilaterally implemented changes in the employees'
9 health insurance program and special pay practices without negotiating said
10 subjects with Complainant.

11 6. That Respondent failed to provide information requested by Com-
12 plainant which was necessary for proceeding with mandatory negotiations.

13 CONCLUSIONS OF LAW

14
15 1. That pursuant to the provisions of the Nevada Revised Statutes,
16 Chapter 288, the Local Government Employee-Management Relations Board
17 possesses original jurisdiction over the parties and the subject matter of
18 the Complaint. NRS 288.110, NRS 288.280.

19 2. That Complainant, RENO POLICE PROTECTIVE ASSOCIATION, is a local
20 government employee organization within the meaning of the Nevada Revised
21 Statutes, Chapter 288. NRS 288.040.

22 3. That the Respondent, CITY OF RENO, is a local government employer
23 within the meaning of the Nevada Revised Statutes, Chapter 288. NRS 288.060.

24 4. That the failure of Respondent to participate in factfinding pro-
25 ceedings with Complainant constitutes a prohibited practices violation pur-
26 suant to NRS 288.070(e).

27 5. That, by unilaterally modifying, changing and altering the existing
28 health insurance and special pay practices without prior negotiations with
29 Complainant constitutes a prohibited practices violation pursuant to NRS 288.
30 270(e).

31 6. That Respondent's failure to provide information required by NRS
32 288.180 to Complainant constitutes a prohibited practice pursuant to NRS 288.

1 270(g).

2 O R D E R

3 From the foregoing Discussion, Findings of Fact and Conclusions of law,
4 IT IS HEREBY ORDERED, ADJUDGED and DECREED that Respondent, CITY OF RENO,
5 being held in violation of the prohibited practices provisions of NRS 288.270,
6 be required to participate in factfinding pursuant to NRS 298.200, et seq.,
7 as modified by the agreement of the parties in negotiation. The Respondent
8 will rescind any unilateral changes and alterations as to health insurance or
9 special pay practices which it implemented against this bargaining unit. In
10 addition, Respondent shall provide the information relating to claims exper-
11 ience requested by Claimant which is necessary for proceeding with negotiations.

12 IT IS FURTHER ORDERED that Complainant be awarded attorneys' fees and
13 costs and that Complainant shall have to and including February 15, 1985, to
14 provide the Board with an affidavit of costs and fees. Respondent shall have
15 to and including March 1, 1985, in which to file any written objections there-
16 to.

17 LOCAL GOVERNMENT EMPLOYEE-
18 MANAGEMENT RELATIONS BOARD

19 DATED this 30th day of January, 1985.

20 By Tamara Barengo
21 TAMARA BARENGO, Chairperson

22 By Jeffrey L. Eskin
23 JEFFREY L. ESKIN, Member

24 By Salvatore C. Gugino
25 SALVATORE C. GUGINO, Member

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 5th day of February, 1985, I deposited in the U.S. mails, postage fully prepaid, a true and correct copy of the foregoing DECISION, Case No. A1-045390, addressed to the following:

Patrick D. Dolan, Esq.
Attorney at Law
321 So. Arlington Ave.
Reno, NV 89501
Attorney for Complainant

Frank Cassas, Esq.
Attorney at Law
One E. Liberty St., #504
Reno, NV 89505
Attorney for Respondent

Neldon Demke, Dir.
Employee Relations
City of Reno
PO Box 1900
Reno, NV 89505

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By *[Signature]*

XC: Board Members
Parties in Interest

Robert L. Van Wagoner, Esq.
Reno City Attorney

Joseph Butterman, President
R.P.P.A.