ITEM NO. 182

CASE NO. A1-045391

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

** ** **

CITY OF SPARKS,
Petitioner,
-vs-
OPERATING ENGINEERS, LOCAL UNION NO. 3,
Respondent.

D E C I S I O N

For the Petitioner: DONALD E. GLADSTONE, Esq.

For the Respondent: WILLIAM M. BALDWIN, Esq.

For the EMRB Board: TAMARA BARENGO, Chairman
JEFFREY L. ESKIN, Esq., Vice Chairman
SALVATORE C. GUGINO, Esq., Member

STATEMENT OF THE CASE

On August 10, 1984, the City of Sparks filed a Petition seeking a determination of whether the administration of the CITY's health insurance is a mandatory subject of bargaining. The CITY OF SPARKS concedes that the subject of benefit levels is a mandatory subject of barbaining under NRS 288.150 (2)(f). However, the CITY contends that the manner in which these benefits are provided or administered is not a mandatory subject of bargaining, citing NRS 288.150(5).

The CITY OF SPARKS seeks a resolution of the perceived tension between NRS 288.150(2)(f) and NRS 288.150(5) as applied to the issue of whether the administration of the CITY's health insurance is a mandatory subject of bargaining.

NRS 288.150(2)(f), in relevant part, states that...

.....

"(2) The scope of mandatory bargaining is limited to:

.....

(f) insurance benefits."

NRS 288.150(5) states:

"The provisions of this chapter, including without limitation the provisions of this section, recognize

> and declare the ultimate right and responsibility of the local government employer to manage its operations in the most efficient manner consistent with the best interests of all its citizens, its taxpayers and its employees."

It should be noted that under the negotiability provisions in effect prior to May of 1975, this Board utilized a "significant relationship" test to determine whether or not a matter was the mandatory subject of bargaining. However, in 1975 the legislature amended NRS 288.150 to delineate twenty areas which are mandatory subjects of bargaining. Thus, the item, "insurance benefits", as cited in NRS 288.150(2)(f), is expressly made a mandatory subject pursuant to the 1975 amendment. See Washoe County Teachers Association v. Washoe County School District, et al., Item No. 56 (August 1976).

With this preface, we turn to a consideration of the issue presented in this case.

DISCUSSION

Operating Engineers Local Union No. 3, (hereinafter referred to as UNION), has been the recognized bargaining agent for certain groups of municipal employees for the CITY OF SPARKS, (hereinafter referred to as CITY), for several years. Prior to 1982, the UNION was allowed to offer its health care plan to its own members as an option to a plan offered by the CITY. In 1982, the CITY became partially self-insured in its health care plan. The CITY's plan was offered to all its employees and the UNION plan was removed as an option.

In 1984, negotiations were conducted in order to obtain a new contract. The chief issue in negotiations was whether the UNION health care plan would again be offered as an option to the CITY plan to the UNION members. Issues concerning benefit levels and cost went through negotiations, mediation and fact-finding.

It is the CITY's contention, in this Petition, that while benefit levels are proper subjects of mandatory bargaining, the subject of health care plan administrator is not a health insurance benefit under NRS 288.150(2)(f). The CITY contends that under NRS 288.150(5) it is not obligated to consider recommendations for alternative plans or administrators.

The Board disagrees. As pointed out in Respondent's Brief, federal law under the Labor-Management Relations Act provides that the selection of an administrator/processor of a health care plan is a mandatory subject of bargaining. Keystone Steel and Wire Division of Keystone Consolidated Industries Inc. vs. Independent Steel Workers Alliance, 99 LRRM 1036, 38-CA-3387 (1978), 237 NLRB, 91.

In deciding that case, the National Labor Relations Board attempted to determine whether the identity of the administrator vitally effected the terms and conditions of employment. The NLRB considered the differences in the speed of processing claims, in procedures for filing surgical claims, and in the geographical areas used to regularly calculate the "usual and customary" fees that the plan would pay to providing doctors.

Finding some areas of difference, the Board found that:

> "...The issue is not whether one (administrator) or the other insurance administrator is preferrable, but only whether identity of the administrator/processor is a mandatory subject of bargaining, i.e., whether the identity of the administrator/processor has a significant impact on the wages, hours, or working conditions of the unit employees. If the choice of an administrator makes a difference, then the parties must bargain about the choice." Id at 1039.

Respondent's brief also cites the California case of Franklin-McKinley Education Association v. Franklin McKinley ESD, Case No. SF-CE-12 (June 6, 1977), before the Public Employees Relations Board. At issue was the conduct and actions of the school district in unilaterally changing the employee dental plan insurance carrier. The key issue was whether the choice of carrier is within the scope of representation. Looking to both NLRB and court decisions on the issue, it was decided that carrier choice is negotiable in cases where the nature of the benefits is inseparable from the identity of the carrier. Since the carrier was named in past agreements between the parties, the new carrier was actually a self-insurance scheme (and several changes in terms and benefits accompanied the switch), it was ruled that the differences in benefits "are totally interrelated" with the identity of the carrier and hence negotiable. The school district was ordered to negotiate in good faith as to the relative advantages of various carriers in the future.

This Board has long looked to authority in other jurisdictions as guides to interpreting or applying provisions of NRS 288 where there has been a sufficient identity of facts and issues and the reasoning has been found to be persuasive. See for example, Laborers' International Union of North America, Local Union No. 169 vs. Washoe Medical Center, EMRB Item No. 1, pp. 8-13. This Board finds the reasoning cited in the referenced cases persuasive, especially since it is undisputed in the case at issue that there are major differences in the benefit levels and their administration between the OPERATING ENGINEERS' Plan and that offered by the CITY OF SPARKS.

Furthermore, it is this Board's opinion that the CITY's position in regards to NRS 288.150(5) is inconsistent with NRS 288.150(3).

NRS 288.150(3) states:

> "3. Those subject matters which are not within the scope of mandatory bargaining and which are reserved to the local government employer without negotiation include:
>
> (a) The right to hire, direct, assign or transfer an employee, but excluding the right to assign or transfer an employee as a form of discipline.
>
> (b) The right to reduce in force or lay off any employee because of lack of work or lack of funds, subject to paragraph (t) of subsection 2.
>
> (c) The right to determine:
>
> (1) Appropriate staffing levels and work performance standards, except for safety considerations;
>
> (2) The content of the workday, including without limitation workload factors, except for safety considerations;
>
> (3) The quality and quantity of services to be offered to the public; and
>
> (4) The means and methods of offering those services." (Emphasis added).

There is nothing in NRS 288.150(5) that limits the CITY's duty to negotiate in good faith on those items that are mandatory subjects of bargaining. The Board finds that the subject of health care plan administration is a proper subject of mandatory bargaining under "insurance benefits". NRS 288.150(2)(f).

FINDINGS OF FACT

1. That OPERATING ENGINEERS LOCAL NO. 3 is a local government employee organization.

2. That the CITY OF SPARKS, Nevada, is a local government employer.

3. That during negotiations conducted in 1984, there were disagreements between the parties regarding whether health care plan administration is a health insurance benefit under NRS 288.150(2)(f) and therefore a mandatory subject of bargaining.

4. That on August 10, 1984, the CITY OF SPARKS filed a Petition for Declaratory Relief with this Board seeking a determination as to whether the subject of health care plan is a mandatory subject of bargaining.

5. That on January 25, 1985, the Board conducted a hearing on the Petition for Declaratory Relief.

CONCLUSIONS OF LAW

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

2. That OPERATING ENGINEERS LOCAL UNION NO. 3 is a local government employee organization within the meaning of NRS 288.040.

3. That the CITY OF SPARKS, Nevada, is a local government employer within the meaning of NRS 288.060.

4. That health care plan administration is a health insurance benefit within the meaning of NRS 288.150(2)(f) and therefore is a mandatory subject of bargaining.

DATED this 31 day of October, 1985.

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

By Tamara Barengo
TAMARA BARENGO, Chairman

By Jeffrey L. Eskin
JEFFREY L. ESKIN, Vice Chairman

By Salvatore C. Gugino
SALVATORE C. GUGINO, Member

DISTRIBUTION:

CERTIFIED MAIL:

WILLIAM M. BALDWIN, Esq.
Operating Engineers #3
675 Hegenberger Road
Oakland, CA 94621

DONALD E. GLADSTONE, Esq.
Ass't. City Attorney
431 Prater Way
Sparks, NV 89432

cc: BOARD MEMBERS
INTERESTED PARTIES