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5 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
6 RELATIONS BOARD
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8 WATER EMPLOYEES ASSOCIATION,)

9 Complainant-Counterdefendant,)

10 vs.)

11 BOARD OF DIRECTORS, LAS VEGAS)

12 VALLEY WATER DISTRICT,)

13 Defendant-Counterclaimant.)

D E C I S I O N14 For the Complainant-Counterdefendant: Christopher G. Gellner,
15 Esq.

16 For the Defendant-Counterclaimant: Gregory E. Smith, Esq.

17 For the EMRB Board: Salvatore C. Gugino, Esq.
18 Tamara Barengo
Jeffrey L. Eskin, Esq.19 STATEMENT OF THE CASE20 This dispute arose upon the filing of a complaint by the
21 Water Employees Association (hereinafter referred to as the
22 "WEA") against the Board of Directors of the Las Vegas Valley
23 Water District (hereinafter referred to as "Water District"),
24 alleging that the Water District committed a prohibited practice
25 by refusing to negotiate with the WEA's combined negotiating team
26 consisting of members of both a supervisory bargaining unit and a
27 non-supervisory bargaining unit represented by the WEA, thereby
28 interfering with the right of employees represented by the WEA to

1 select who shall sit at the bargaining table and negotiate on
2 their behalf, interfering with the administration of the WEA and
3 refusing to bargain collectively in good faith, all within the
4 meaning of NRS 288.270(1)(a)(b) and (e).

5 The Water District filed a counterclaim in which it alleged
6 that the WEA committed prohibited practices by refusing to
7 bargain collectively in good faith within the meaning of NRS
8 288.270; by failing to negotiate in good faith within the meaning
9 of NRS 288.160; by attempting to change the composition of the
10 bargaining units represented by it in violation of NRS 288.160;
11 by attempting to force supervisory employees to become members of
12 the same bargaining unit as employees under their discretion in
13 violation of NRS 288.170. Based thereon, the Water District
14 requested written permission to withdraw recognition from the WEA
15 or, in the alternative, that the WEA be ordered to bargain in
16 good faith for two collective bargaining agreements, each
17 covering a properly recognized bargaining unit, with a
18 negotiating team for each bargaining unit that does not include
19 members of the other bargaining unit.

20 The parties filed a pre-hearing statement in which the
21 parties stipulated and agreed that the issues presented to the
22 Board were as set forth in the complaint and counterclaim
23 allegations.

24 A hearing on these disputes was held before the Local
25 Government Employee-Management Relations Board in which both
26 parties submitted evidence in support of their respective
27 positions and after which both parties submitted post-hearing
28 briefs for consideration by the Board. The hearing was continued

1 until the date set for the filing of briefs on November 2, 1987.
2 The parties did file their briefs on that date and the hearing
3 was closed immediately thereafter.

4 Based upon the testimony of witnesses, the evidence
5 submitted by the parties, the post-hearing briefs and arguments
6 of counsel, the EMRB concluded that the WEA, when negotiating on
7 behalf of two bargaining units, one of which consists of
8 supervisors and the other which does not, may not select members
9 of one such bargaining unit to negotiate on behalf of the other
10 bargaining unit, and that the Water District did not, therefore,
11 commit a prohibited practice by refusing to negotiate with such a
12 mixed bargaining team. In making this ruling, the EMRB overrules
13 In the Matter of the Request for a Declaratory Ruling by the City
14 of Reno, Case No. A1-045315, Item No. 86. Because the WEA acted
15 in reliance upon Item No. 86, however, it will not be assessed a
16 prohibited practice under NRS 288.160 by attempting to change the
17 composition of the bargaining units represented by it or under
18 NRS 288.170 by effectively forcing supervisory employees to
19 become members of the same bargaining unit as employees under
20 their direction. The WEA did, however, fail to negotiate in good
21 faith, violating NRS 288.160 and 288.270(2)(b) by withdrawing the
22 1986 supervisory negotiation proposals from the table and
23 indicating that it would resume negotiations for the supervisory
24 unit only in tandem with negotiations for the non-supervisory
25 unit. The Board also concluded that the Water District may not
26 receive the Board's permission to withdraw recognition from the
27 WEA for the supervisory bargaining unit pursuant to NRS
28 288.160(3). Finally, the Board concluded that neither party is

1 entitled to an award of attorneys fees or costs assessed against
2 the other and that each party should bear its own costs and fees.

3 DISCUSSION

4 1. Local Government Employee Associations, When
5 Representing Two Bargaining Units One of Which Is Comprised of
6 Supervisors And The Other Which Is Not, Must Represent Those Two
7 Units in Negotiations with a Local Government Employer with
8 Separate Bargaining Teams, Neither of Which are Permitted to
9 Include Members of the Other Bargaining Unit.

10 NRS 288.170 provides that a supervisor "shall not be a
11 member of the same bargaining unit as the employees under his
12 direction." There is no question that the purpose and intent of
13 that statute is to protect both the supervisors and employees
14 from conflicts of interest inherent in having both of them in the
15 same bargaining unit. We concur with the reasoning of the New
16 Hampshire Supreme Court in City of Concord v. Public Employee
17 Labor Relations Board, 407 A.2d 363 (N.H. 1979) which found, in
18 construing a statute similar to ours, that the members must not
19 only in separate bargaining units but also, as a logical
20 consequence, that they must not be allowed to co-mingle on each
21 other's negotiating teams. In our view, to hold otherwise, would
22 permit the existence of the very conflicts of interest the
23 legislature intended to prohibit.

24 In making this ruling, we recognize the principle that both
25 bargaining parties are normally allowed to select bargaining
26 representatives of their own choosing. That is a strong
27 principle in both public sector and private sector labor
28 management relations. Our Decision should not be interpreted to

1 prevent bargaining units from selecting separate or mutually
2 appointed negotiators who are not members of a bargaining unit
3 for purposes of conducting negotiations. These negotiators must
4 not, however, insist on co-mingling the bargaining teams of the
5 negotiating sessions where separate individual units are
6 involved.

7 2. Both the Water District and Association Violated NRS
8 288.160 And 288.170(2)(b) During the Course of the 1986
9 Supervisory Negotiations.

10 The record reveals that, throughout the course of
11 negotiations involving the supervisory unit in 1986, neither the
12 Water District or the Association appeared willing to resolve
13 anything but the most minor of issues. Eventually, the parties
14 requested a binding factfinding panel to consider the merits of
15 thirty-four (34) unresolved issues. After hearing the
16 presentations of both parties on January 13, 1987, the panel sent
17 the issues back to the bargaining table on January 20, 1987 with
18 the following statements:

19 In reviewing the testimony presented during
20 the hearing, the panel was unable to find any
21 evidence that the negotiation process has not
22 worked or will not work in the absence of binding
23 factfinding. This panel will not permit the powers
24 granted to it by NRS 288.200(6) to be used as a
25 substitute for good faith bargaining by either
26 party.

27 In light of the absence of any previous bargaining
28 history between the parties and based upon the
evidence and testimony presented, it is hereby, by
the panel,

"ORDERED that the thirty-four (34) unresolved
issues be remanded back to the parties and the
parties promptly resume negotiations. The panel
also strongly suggests the use of a mediator
to aid in reaching resolution."

1 There is additional evidence that the District intended to
2 "sit" on the supervisory contract "until hell froze over." (TR
3 58, 59). Ground rules proposed by both parties were bickered
4 over endlessly (TR 67 - 71), and it wasn't until the meeting on
5 May 7, 1986 that substantive issues were even addressed (TR 71).

6 In light of the above, and in reviewing the totality of
7 circumstances surrounding the collective bargaining activity in
8 1986, this Board finds that both parties acted in bad faith with
9 regard to negotiations on behalf of the supervisory unit in 1986.
10 See Clark County Classroom Teachers Ass'n v. Clark County School
11 District and Board of Trustees of the Clark County School
12 District, Case No. A1-045302, Item No. 61 (Dec. 10, 1976).

13 3. The WEA Violated NRS 288.160 and 288.270(2)(b) In 1987
14 By Withdrawing All of Its Proposals For The 1986 Supervisory
15 Negotiations And Refusing to Continue Negotiations Except in
16 Tandem with The Negotiations for The Field And Clerical
17 Bargaining Contract.

18 After the panel hearing in January 1987, the panel issued an
19 order refusing to send any of the 34 unresolved items to binding
20 arbitration and, instead, ordered the parties back to the
21 bargaining table. That action by the panel was entirely
22 appropriate even though challenged by the WEA as being beyond the
23 scope of its authority.

24 After the panel's order in late January 1987, the WEA
25 withdrew all of its bargaining proposals and refused to
26 participate in further negotiations except in tandem with its
27 recently opened negotiations for the field and clerical contract.
28 We find that both the withdrawal of proposals and the refusal to

1 obey the panel's order constitute prohibited practices within the
2 meaning of NRS 288.160 and NRS 288.270(2)(b). If the WEA
3 believed that the panel had exceeded its authority, it could have
4 challenged that panel's ruling by an appeal to this Board or by
5 appropriate legal action. It had no authority to decide for
6 itself that the panel exceeded its authority and to simply refuse
7 to obey it.

8 4. The Patterns or Practices of the Water District In
9 Dealing With the Supervisory Unit Constitute a Failure to Bargain
10 In Good Faith.

11 This Board is extremely concerned with the testimony and
12 evidence it received concerning the patterns or practices engaged
13 in by the Water District in dealing with the supervisory unit.
14 As mentioned supra, there is evidence that Pat Mulroy, general
15 manager for management systems at the Water District, stated in a
16 negotiating session in 1985, that "they would sit on the
17 supervisory contract until hell froze over." (TR 58). Although
18 Ms. Mulroy attempted to explain her remarks, the Board finds her
19 statements unpersuasive (See TR 238, 239). As early as September
20 24, 1985, Brad Smith, deputy district attorney assigned to the
21 Water District, was questioning whether or not the WEA had a
22 majority of the supervisors (TR 62). The Water District spent
23 months in negotiations quibbling over ground rules for
24 supervisory negotiations (TR 67 - 71).

25 On January 27, 1987, when the WEA tried to withdraw 1986
26 proposals from the table in order to begin multi-unit
27 negotiations with the Water District, the employer specifically
28 retaliated against the front-line supervisor's unit, although the

1 field and clerical unit was clearly orchestrating this bargaining
2 tact. In January of 1987, two months prior to the filing of the
3 Association's Complaint, the Water District's representative, Pat
4 Mulroy, made her decision to file charges before the EMRB (TR
5 245). Although she disclaims any consideration to seek
6 decertification at that time (TR 245), she does admit that by the
7 February 17, 1987 meeting with the Board of Directors,
8 decertification was "tossed around as an idea." (TR 246). After
9 the WEA filed its complaint against the Water District on March
10 17, 1987, the Water District responded with a counterclaim of its
11 own on April 1, 1987 seeking, in Count 7, a withdrawal of
12 recognition of the WEA. This decertification was actually
13 directed against the supervisory unit only (See Conclusion, Post-
14 Hearing Brief of Las Vegas Valley Water District, page 54,
15 requesting withdrawal of the WEA as representative of the front-
16 line supervisors only).

17 Subsequently, on July 1, 1987, the date of the expiration of
18 the contract with the WEA field and clerical unit, the General
19 Manager of the Water District sent a letter to each employee
20 unit, explaining the Water District's position regarding why it
21 was refusing to negotiate (UX - 2, UX - 3). Although Mr. Pine
22 states that the Water District is "eager to get back to
23 bargaining on the real issues," he does not mention that the
24 employer had been actively trying to decertify the WEA for the
25 past three (3) months.

26 The Board views the totality of the circumstances
27 surrounding the Water District's activities and finds that, from
28 its inception, the front-line supervisory unit has been subjected

1 to the District's stalling tactics during negotiations,
2 decertification actions and an employer communication which says
3 more by omission than commission. See Teacher's Association of
4 F.A.D. No. 40 v. Board of Directors of M.S.A.D., No. 49, Maine
5 Labor Relations Board, Case No. 80-49 (November 18, 1980).

6 Under NRS 288.160(3)(d), a local government employer may
7 withdraw recognition from an employee organization which fails to
8 negotiate in good faith with the local government employer. That
9 employer, however, must first seek the written permission of the
10 Board. NRS 10530.

11 The Board will not withdraw recognition under NRS
12 288.160(3)(d) where a local government employer has engaged in an
13 ongoing campaign to decertify the bargaining unit. Such
14 activity, under the circumstances, constitutes a prohibited act
15 on the part of the employer pursuant to NRS 288.270(b) and (e).

16 FINDINGS OF FACT

17 1. That the Water Employee's Association is the local
18 government employee organization.

19 2. That the Board of Directors, Las Vegas Valley Water
20 District, is the local government employer.

21 3. That in August of 1985, the WEA demanded recognition as
22 the representative of a supervisory bargaining unit for front-
23 line supervisors.

24 4. That the employer recognized the WEA as the bargaining
25 representative for the front-line supervisors on October 30,
26 1985.

27 5. That the WEA requested a start of negotiations for
28 ground rules on January 10, 1986.

1 6. That it took nine (9) meetings for the parties to agree
2 upon and execute such rules, which were eventually completed on
3 April 21, 1986.

4 7. That the parties negotiated from May 7, 1986 to
5 September 17, 1986 on substantive issues, with little progress
6 having been made by either side.

7 8. That on January 13, 1987, the parties submitted to a
8 formal panel hearing to determine whether thirty-four (34)
9 unresolved issues would be subject to binding factfinding.

10 9. That the factfinding panel on January 20, 1987, ordered
11 that the thirty-four (34) unresolved issues be remanded back to
12 the parties and that the parties resume negotiations.

13 10. That on January 27, 1987, the WEA informed the Water
14 District that it was withdrawing its proposals on behalf of the
15 supervisory bargaining unit for the 1986-87 negotiating session
16 and notified the Board of Directors of the Water District of its
17 intent to commence multi-unit negotiations simultaneously for
18 supervisory and non-supervisory bargaining units for the 1987-88
19 contract.

20 11. That the WEA was proposing a single contract to cover
21 both bargaining units.

22 12. That, since Water District officials had indicated that
23 they would resist the successful negotiation of a contract by the
24 WEA on behalf of the front-line supervisors.

25 13. That as early as September 24, 1985, the Water District
26 was questioning whether or not the WEA had a majority of the
27 supervisors in order to act as bargaining representative.
28

1 14. That the Water District was considering decertification
2 of the bargaining unit of front-line supervisors as early as
3 February 17, 1987.

4 15. That on March 17, 1987, the WEA filed its complaint
5 against the Water District and the Water District responded with
6 a counterclaim against the WEA on April 1, 1987 seeking a with-
7 drawal of recognition of the WEA supervisory unit.

8 16. That, on July 1, 1987, the general manager of the Water
9 District sent communications to members of both bargaining units
10 concerning his views on the negotiation process.

11 CONCLUSIONS OF LAW

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

16 2. That the Water Employee's Association is a local
17 government employee organization within the term as defined in
18 NRS 288.040.

19 3. That the Board of Directors, Las Vegas Valley Water
20 District is a local government employer within the term as
21 defined in NRS 288.060.

22 4. That an employee association, when negotiating on behalf
23 of two bargaining units, one of which consists of supervisors and
24 the other which does not, may not select members of one such
25 bargaining unit to negotiate on behalf of the other bargaining
26 unit.

27 5. That both the Water District and the WEA violated NRS
28 288.160 and 288.170(2)(b) during the course of their negotiations

1 in 1986 by their refusal to bargain with each other in good faith
2 and by their unnecessary submission of thirty-four (34)
3 unresolved issues to a factfinding panel.

4 6. That the WEA violated NRS 288.160 and 288.270(2)(b) in
5 1987 by withdrawing all of its proposals for the 1986 supervisory
6 negotiations and by refusing to continue negotiations except in
7 tandem with the negotiations for the field and clerical
8 bargaining contract.

9 7. That the patterns or practices of the Water District in
10 dealing with the supervisory unit constitute a failure to bargain
11 in good faith pursuant to NRS 288.270(b) and (e).

12 DATED this 16th day of March, 1988.

13 LOCAL GOVERNMENT EMPLOYEE-
14 MANAGEMENT RELATIONS BOARD

15
16 By Salvatore C. Gucino
17 SALVATORE C. GUCINO, ESQ.
Chairman

18
19 By Tamara d. Barenco
20 TAMARA BARENGO
Vice-Chairman

21
22 By Jeffrey L. Eskin
23 JEFFREY L. ESKIN, Esq.
Member

24 Certified copies:

25 Christopher G. Gellner, Esq.
26 Gregory E. Smith, Esq.

27 Xc: Water Employees Association
28 Board of Directors, Las Vegas Valley Water District
Board Members
Interested Parties
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