STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL NO. 1883, Complainant, -vs- CITY OF HENDERSON, Respondent.	ITEM NO. 239 CASE NO. A1-045455 **DECISION**

For the Complainant: Jim V. Fisher
AMERICAN LABOR MANAGEMENT ASSOCIATION

For the Respondent: Norman H. Kirshman, Esq.
KIRSHMAN & HARRIS

For the EMRB: Salvatore C. Gugino, Chairman
Tamara Barengo, Vice Chairman
Howard Ecker, Board Member

STATEMENT OF THE CASE

On August 30, 1989, the International Association of Fire Fighters, Local No. 1883 ("Union") filed this Complaint against the City of Henderson ("City") asking the Local Government Employee-Management Relations Board ("Board") to find the City in violation of its duty to bargain in good faith and to direct the City to return to the bargaining table.

On June 22, 1989, the Union notified the City it had ratified the tentative three-year labor agreement. The City ratified the agreement the same day and implemented it on July 1, 1989. On August 14, 1989, the Union informed the City that its members had re-voted on the ratification and that they had

rejected the agreement. The Union, therefore, requested a resumption of negotiations. The City rejected the request.

The Union's chief concern is the City's refusal to invalidate the agreement and return to the bargaining table now that the Union has discovered that the Union's ratification was conducted improperly under its rules. The Union also claims that no proper notification of ratification was conveyed to the City and further, that the agreement could not be valid until it had been signed by the Union president.

The City believes both parties ratified the agreement in good faith in June and that a binding agreement has existed since. The Union, therefore, has no right to repudiation and has waived its right to further negotiations. The City also points to past practice in previous contract implementations.

At the hearing before the Board on December 12, 1989, the following issues were presented for determination:

1. Was the Union's ratification of the agreement on June 21, 1989 in violation of the Union rules and therefore invalid?

2. Did the City dominate or interfere with the Union's ratification process?

3. Did the parties ratify the tentative agreement in good faith on June 21 and 22, 1989?

4. Is the ratified agreement a properly executed labor contract between the parties?

5. Did the City fail to bargain in good faith when it refused to renegotiate the agreement as requested by the Union

on August 14, 1989?

DISCUSSION

I

BOARD WILL NOT REFEREE INTERNAL UNION MATTERS.

The Board rejects the Union's request to find that the Union's ratification on June 21, 1989 was improperly conducted and therefore invalid. The Board has clearly asserted its unwillingness to act as a referee in internal employee organization matters. In Triner, Dukesian, et al. v. AFT #2170, et al., (1975) the Board declared, "There is no provision in Chapter 288 which indicates that we possess the jurisdiction to rule upon the internal functioning of a local government employee organization . . ." The Board further stated in City of Reno v. RPPA; IAFF #731, (1978), "Unless the parties should agree otherwise, the means, methods and procedures whereby an employee organization ratifies its collective bargaining agreement with the employer are internal concerns of the organization . . ."

In the instant case, three officers of the Union notified the City that the Union had ratified the agreement in good faith on June 22, 1989. With that action, the Union's ratification and notification processes became closed matters for the City and the Board.

We note that testimony from the Union's witnesses appears to establish that the majority of members voting ratified the agreement. The witnesses testified that:

1. Notices for Union ratification meeting on June 21,

1989 were posted for fifteen (15) days prior to the meeting.

2. A quorum was present at the meeting. Arrangements for telephone voting were made for those members unable to attend because they were on duty.

3. Several copies of the forty-three (43) page tentative agreement were available for the members to follow and study and all members had summaries of the agreement.

4. The president read the agreement verbatim to the members and entertained questions and comments on each article.

5. The bargaining team took a neutral position on the proposal.

6. There was a secret written ballot for ratification.

7. The ballots were counted at the meeting by the officers and the tally was announced immediately as twenty-five (25) in favor and fifteen (15) opposed.

8. The president, the vice-president and the secretary of the Union notified the City of the ratification the next day.

9. The ratification process used on June 21st was the same one used by the Union in all contract ratifications since 1983.

10. Union rules prescribe a second meeting for the eight (8) members who did not vote because they were on duty.

11. Eight (8) votes would not have affected the majority support for ratification.

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II

EVIDENCE NOT SUFFICIENT TO SHOW EMPLOYER INTERFERENCE.

The Board does not find any interference by the City in the Union's ratification process in violation of NRS 288.270(1)(b) which states:

> 1. It is a prohibited practice for a local government employer or its designated representative willfully to:
> b. Dominate, interfere or assist in the formation or administration of any employee organization.

After four (4) months of negotiations, the parties reached tentative agreement on the terms of the new labor contract on June 5, 1989. On June 21, 1989, the Union membership ratified the agreement. No evidence was presented to show the City had attempted to hinder or influence the members' vote in any way.

The next day, the City accepted notification of the ratification from three (3) Union officers in good faith. The City did not question or concern itself with the Union's ratification process. The City Council acted in good faith on the Union's notification by ratifying the agreement the same day at a public meeting in accordance with the Nevada Open Meeting Law. No one from the Union raised any objection to the ratification with the City.

The Union's argument that the City tried to interfere in the Union's business by refusing to accept the second ratification vote of August 13, 1989 is not persuasive. The duty to bargain includes the duty to execute agreements once

reached by the parties. Ratification is part of that process. See Hilton Inn North, 279 NLRB 45, 49 (1986).

Upon reflection, the Union membership may be dissatisfied with some of the terms of the agreement, but it is obligated to live by the agreement once excecuted. The vote in August must be viewed merely as a statement of the members' dissatisfaction with their Union's actions in June. The City's rejection was not an attempt to direct or to influence the Union.

III

NO FAILURE TO BARGAIN IN GOOD FAITH.

The Board rejects the Union's claim that the City had a good faith duty to return to the bargaining table when the Union notified the City of its new ratification vote on August 14, 1989. The Union had foreclosed its right to request further negotiations when it notified the City of its first ratification vote on June 22, 1989.

NRS 288.150 requires in part:

> 1. . . . every local government employer shall negotiate in good faith through one or more representatives of its own choosing concerning the mandatory subjects of bargaining set forth in subsection 2 with the designated representatives of the recognized employee organization, if any, for each appropriate bargaining unit among its employees. If either party so requests, agreements reached must be reduced to writing.

NRS 288.270:

> 1. It is a prohibited practice for a local government employer or its designated representative willfully to:
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> (e) Refuse to bargain collectively in good faith with the exclusive representative as required in NRS 288.150.

Further NRS 288.033 defines collective bargaining as a method of determining conditions of employment by negotiation and to meet at reasonable times and bargain in good faith with respect to:

> 1. Wage, hours and other terms and conditions of employment;
> 2. The negotiation of an agreement;
> 4. The execution of a written contract incorporating any agreement reached . . .

The City clearly met its duty to bargain as described above. Evidence presented by both parties show that they met eight (8) times in formal negotiations beginning on February 22, 1989, that detailed minutes of the meetings were taken, that tentative agreements were reduced to writing and that there was a tentative agreement on the total package on June 5, 1989. Following the ratification by the Union, the City ratified and implemented the contract. No objection was raised to any part of the process for several weeks after contract implementation.

There was no obligation to reopen negotiations once the agreement is ratified. The Union's notification of ratification on June 22nd was fait accompli, a waiver of the right to bargain further.

IV

CLAIM OF NO CONTRACT IS WITHOUT MERIT.

The Board also rejects the Union's argument that the agreement did not go into effect because the Union president had not signed it. The Union ignores established practice and labor law in this issue.

Implementing the terms of a labor agreement immediately after ratification by the parties is a common and welcome practice in Nevada public sector collective bargaining. Implementation before the printing and signing of a final draft provides the employees the benefits of the bargaining process without delay. A final form of the agreement must be signed and distributed in a reasonable time, but the time necessary to produce the final document need not delay implementation of the new agreement.

Further, the City and the Union have used this procedure for as far back as the witnesses could recall. The parties recognized this practice again when they adopted their ground rules on February 22, 1989:

> 7. All agreements will be tentative pending approval of the Union membership and the City Council.

The courts have consistently endorsed the practice. In Wiley v. Livingston, the U. S. Supreme Court required an employer to submit to grievance arbitration pursuant to a prior employer's labor agreement even though the employer had not signed that agreement. The Court declared that "while the principles of law governing ordinary contracts would not bind to a contract, an unconsenting successor to a contracting party, a collective bargaining agreement is not an ordinary contract." John Wiley & Sons v. Livingston, 376 U.S. 543, 557-58, 84 S.Ct. 909, 11 L.Ed.2d 898 (1964).

The Ninth Circuit U.S. Court of Appeals said:

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> In determining whether the parties agreed to a contract, the Board is not bound by technical questions of traditional contract interpretation. The Board is free to use general contract principles adopted to the collective bargaining context to determine whether the two sides have reached agreement. NLRB v. World Evangelism, Inc., U.S. Court of Appeals, Ninth Circuit, No. 80-7334 (September 21, 1981), 108 LRRM 2577.

Further, if all the terms to be incorporated into writing have been agreed upon, it may be inferred that the writing to be drafted and delivered is a mere memorial of the contract already final by the earlier mutual assent of the parties. Rosenfield v. United States Trust Co., 290 Mass. 210, 195 NE 323, 122 ALR 1210.

The contract was effective upon approval by the parties.

The Union also has an obligation to sign the agreement. The failure to sign a written memorandum of the agreement made has been uniformly regarded as refusal to bargain in good faith. NLRB v. Big Run Coal & Clay Co., 385 F.2d 788, 66 LRRM 2640 (CA 6, 1987). Also see Standard Oil Co., 137 NLRB 690, 50 LRRM 1230 (1962), and South Benton Education Association v. Monroe Union High School Dist. #1, Oregon Court of Appeals, No. UP-97-85 (CA A39164, October 17, 1986).

FINDINGS OF FACT

1. That the Complainant, International Association of Fire Fighters, Local No. 1883, is a local government employee organization engaged in the representation of fire-fighting employees of the City of Henderson.

2. That the Respondent, City of Henderson, is a municipal corporation and a local government employer.

3. That on February 22, 1989, the parties began negotiations on a successor collective bargaining contract.

4. That the ground rules adopted by the parties on February 22, 1989 called for all agreements to be tentative until ratified by each party.

5. That on June 5, 1989, the negotiations teams for the parties came to tentative agreement on the terms of the contract.

6. That on June 21, 1989, the Union membership voted in to ratify the agreement by a vote of twenty-five (25) to fifteen (15).

7. That eight (8) members who were on duty at the time of the ratification meeting may have been prevented from voting.

8. That the ratification procedure used by the Union on June 21, 1989 was the same as was used in past ratifications.

9. That on June 22, 1989, the City received notification from the Union's top three (3) officers that the members had ratified the agreement.

10. That the City accepted the Union's notice of ratification in good faith.

11. That on June 22, 1989, the City Council ratified the agreement at a public meeting.

12. That the agreement became effective on July 1, 1989.

13. That on July 13, 1989, paychecks reflecting the new

agreements wage increases were accepted by the Union members.

14. That on July 18, 1989, the Union leadership met formally with the City manager and failed to inform him of any desire to repudiate or to renegotiate the agreement.

15. That no objection to the ratification of the agreement was raised by the Union until August 1, 1989.

16. That on August 1, 1989, the Union sent a letter to the City advising of the Union's intent to hold a reconsideration vote on the ratification.

17. That on August 14, 1989, the Union sent a letter to the City repudiating the agreement and requesting resumption of negotiations.

18. That on August 14, 1989, the City responded by letter asserting that a valid, binding contract was in place and refusing to resume negotiations.

CONCLUSIONS OF LAW

1. That the Local Government Employee-Management Relations Board does not possess jurisdiction in the matter of the Union's alleged violation of its own ratification rules.

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

3. That the Complainant, International Association of Fire Fighters, Local No. 1883, is a recognized employee organization within the term defined by NRS 288.040.

4. That the Respondent, City of Henderson, is a local

government employer within the terms defined by NRS 288.060.

5. That the Union notified the City of its acceptance of the contract on June 22, 1989 in good faith pursuant to NRS Chapter 288.

6. That the City ratified the agreement in good faith pursuant to NRS 288.150.

7. That the ratified agreement is a binding labor contract pursuant to NRS 288.150.

8. That an alleged violation of Union rules is an internal matter of the Union.

9. That the duty to bargain pursuant to NRS Chapter 288 does not require the City to renegotiate the terms of a previously approved and binding agreement.

DECISION AND ORDER

Upon decision rendered by the Board at its meeting on February 9, 1990, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. That the Union's Complaint, be and hereby is dismissed with prejudice;

2. That the parties are bound by the terms of the ratified agreement through June 30, 1992; and

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3. That each party is to bear its own costs and fees in this action.

DATED this 23RD day of February, 1990.

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

By _____
SALVATORE C. GUGINO, Chairman

By _____
TAMARA BARENGO, Vice Chairman

By _____
HOWARD ECKER, Member