

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CITY OF RENO,

Complainant,

-vs-

INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, LOCAL 731,

Respondent.

ITEM NO. 253

CASE NO. A1-045472

DECISION

For the Complainant: Randy K. Edwards, Esq.
RENO CITY ATTORNEY'S OFFICE

For the Respondent: Paul D. Elcano, Jr., Esq.

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

STATEMENT OF THE CASE

On May 31, 1990, Complainant City of Reno ("City") filed a Motion For Stay with the Local Government Employee-Management Relations Board ("Board") seeking an order to stay factfinding/arbitration between the City and Respondent International Association of Firefighters, Local 731 ("Union") pending the resolution of a complaint at bar.

Specifically, the City had filed a complaint against the Union on May 11, 1990 alleging that the Union had failed to bargain in good faith by insisting in the presence of a court reporter, by failing to meet at reasonable times and by other conduct frustrating the bargaining process. The City further claimed that in light of the Union's failure to bargain, that the Union's April 20, 1990 request for factfinding was

1 premature. The City sought an order directing the Union to
2 engage in good faith bargaining before the parties were
3 allowed to proceed to factfinding.

4 The Union filed a counter-complaint on May 30, 1990
5 alleging that the City had failed to bargain in good faith by
6 wasting time on ground rules negotiations and by failing to
7 produce counter proposals.

8 The City's chief concern in seeking the stay is that
9 factfinding would be premature until the parties have had some
10 meaningful negotiations and attempted to resolve some of the
11 outstanding sixty-six (66) issues. The City contends that
12 allowing the Union to proceed to factfinding at this time
13 would remove any incentive for the Union to bargain in good
14 faith and further, that if any finding by the Board that the
15 City's claims are well taken, any order by the Board would be
16 rendered ineffectual by the factfinding.

17 The Union argues that the City contributed to the lack
18 of progress in negotiations and there is little likelihood the
19 City's claims will be well taken. Further, the Union argues
20 that no harm will occur by allowing the parties to engage in
21 factfinding as mandated under NRS 288.205 and that factfinding
22 can only help assist the parties to reach settlement.
23 Finally, the Union contends that the Board is without specific
24 statutory authority to issue stay orders and is prohibited
25 from interfering with the factfinding and arbitration
26 processes prescribed in NRS Chapter 288.

27 On September 14, 1990, the Board conducted a hearing on
28

1 the matter in Reno, Nevada to consider whether the Board
2 should issue the stay and if so, whether it had the authority
3 to issue a stay. The Board reviewed the papers and pleadings
4 on file and heard arguments by counsel for the parties. From
5 all the above, the Board denies the motion for stay of
6 factfinding/arbitration.

7 DISCUSSION

8 I

9 THE CITY IS NOT HARMED WITHOUT A
10 STAY TO FACTFINDING.

11 The Board does not believe that the City would be
12 irreparably harmed nor that the Union would gain unfair
13 advantage by allowing the parties to proceed to factfinding.
14 NRS Chapter 288 encourages the use of collective bargaining,
15 including mediation and factfinding, as the best means to
16 resolve disputes. Specifically, NRS 288.205(1) applies to
17 firemen and provides:

18 In the case of an employee organization and a
19 local government employer to which NRS 288.215
20 applies, the following departures from the
21 provisions of NRS 288.200 also apply:

22 1. If the parties have not reached agreement
23 by April 10, either party may submit the dispute
24 to an impartial factfinder at any time for his
25 findings.

26 The law contemplates that the parties will meet at
27 reasonable times between February 1 and April 10 and bargain
28 in good faith with the intent to reach agreement. If the
parties cannot reach agreement in that seventy (70) day
period, either party may request a third party to assist the
parties in finding settlement on the outstanding issues. The

1 law anticipates that the parties will use the recommendations
2 of a factfinder as a basis for further negotiations. The
3 Board believes that proper use of factfinding by the parties
4 in the instant case could lead to a resolution of many, if not
5 all, of the issues on the table. Without finding irreparable
6 injury to the City, the Board will not issue a stay to
7 factfinding. See Dixon v. Thatcher, 102 Nev. 414 (1987).

8 The Board is mindful of the large number of unresolved
9 issues on the table and the lack of bargaining between the
10 parties. The Board takes a dim view of a cavalier approach to
11 bargaining by any party which would contribute to a lack of
12 progress in reaching settlement. Both parties are compelled
13 to take every opportunity to meet and bargain with the intent
14 to settle. As a practical matter, entering factfinding with
15 sixty-six (66) issues after little or no bargaining on many of
16 the issues does not make judicious use of a factfinder's time
17 or skills and runs the risk of making a mockery of the
18 process.

19 Accordingly, the Board encourages the parties to
20 immediately return to the table without the encumbrances of
21 tape recorders or court reporters in an effort to resolve as
22 many of the outstanding issues as possible before factfinding.

23 II

24 BOARD'S AUTHORITY TO ISSUE STAYS 25 IS A MOOT QUESTION.

26 Having denied the motion for a stay to factfinding for
27 the reasons discussed above, the question of the Board's
28 authority to issue stay orders is moot.

1 FINDINGS OF FACT

2 1. That Complainant, City of Reno, is a local
3 government employer.

4 2. That Respondent, International Association of
5 Firefighters, Local 731, is a local government employee
6 organization engaged in the representation of firemen.

7 3. That on April 20, 1990, the Union declared
8 negotiations with the City were at impasse and requested a
9 list of factfinders by letter in order to participate in
10 factfinding under NRS Chapter 288.

11 4. That on May 11, 1990, the City filed a Complaint
12 with the Board alleging the Union failed to bargain in good
13 faith.

14 5. That on May 30, 1990, the Union filed a Counter-
15 Complaint with the Board alleging the City failed to bargain
16 in good faith.

17 6. That May 31, 1990, the City filed a Motion For Stay
18 of Factfinding pending the resolution of the Complaint filed
19 on May 11th.

20 CONCLUSIONS OF LAW

21 1. That Complainant, City of Reno, is a local
22 government employer as defined in NRS 288.060.

23 2. That Respondent, International Association of
24 Firefighters, Local 731, is a recognized employee organization
25 as defined by NRS 288.040.

26 3. That NRS 288.205 contemplates that the parties will
27 engage in factfinding in a good faith effort to resolve
28

1 outstanding issues if one of the parties requests factfinding
2 after April 10th.

3 4. That if the parties proceed with factfinding
4 pursuant to NRS 288.205, the City will not suffer irreparable
5 harm.

6 DECISION AND ORDER

7 Upon decision rendered by the Board at its meeting on
8 September 14, 1990, it is hereby

9 ORDERED, ADJUDGED AND DECREED as follows:

10 1. That the City's Motion For Stay of Factfinding/
11 Arbitration, be, and hereby is, denied; and

12 2. That each party is to bear its own costs and fees in
13 this action.

14 DATED this 3rd day of October, 1990.

15 LOCAL GOVERNMENT EMPLOYEE-
16 MANAGEMENT RELATIONS BOARD

17 By Salvatore C. Gugno
18 SALVATORE C. GUGINO, Chairman

19
20 By Tamara Barengo
TAMARA BARENGO, Vice Chairman

21
22 By Howard Ecker
23 HOWARD ECKER, Member