

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CITY OF RENO,

Complainant,

-vs-

INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, LOCAL 731,

Respondent.

ITEM NO. 253-A

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: Tamara Barengo, Chairman
Salvatore C. Gugino, Member

STATEMENT OF THE CASE

On May 11, 1990, Complainant, City of Reno ("City"), filed this complaint with the Local Government Employee-Management Relations Board ("Board") against Respondent, International Association of Firefighters, Local 731 ("Union"), alleging that the Union engaged in bad faith bargaining by insisting upon the presence of a court reporter in negotiations, by failing to meet to negotiate at reasonable times, and by the totality of conduct, frustrating the bargaining process.

In response, the Union contends that the ground rules negotiated by the parties allowed the use of a court reporter, that either party has an inherent right to take the best notes possible during negotiations including transcription and

1 further, that this dispute is a matter of interpretation c
2 the ground rules and accordingly, a matter in which this Board
3 has no jurisdiction.

4 Negotiation between the parties began with an exchange
5 of written proposals in January, 1990. The Union proposed
6 changes to 34 items; the City proposed 32.

7 On February 23, 1990, the parties met for the first time
8 and agreed to four ground rules.

9 The second meeting was scheduled for March 1, 1990, but
10 was cancelled the day before the meeting was to take place by
11 the Union because the City would not provide free parking. On
12 March 19, 1990, the second meeting was convened and the
13 parties discussed certain proposals, but no tentative
14 agreements were reached.

15 The third meeting took place on March 26, 1990. The
16 parties discussed several proposals, but no agreements were
17 reached.

18 The fourth meeting took place March 30, 1990. The Union
19 brought a court reporter to transcribe the proceedings. The
20 City objected to the verbatim transcription of the meeting and
21 the meeting ended.

22 On April 20, 1990, the Union declared impasse and
23 requested a list of factfinders pursuant to NRS 288.200.

24 On May 31, 1990, the City filed a Motion to Stay the
25 Factfinding requested by the Union. On September 14, 1990,
26 the Board heard arguments by the parties on the motion and
27 denied the motion for stay with the intent that the parties
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1 should return to the bargaining table.

2 Previously, the Union filed a Motion to Dismiss the
3 Complaint alleging the Board had no jurisdiction on the
4 matter. The motion was taken under advisement and is dealt
5 with infra.

6 On November 16, 1990, the Board conducted a hearing on
7 the complaint in Reno, Nevada. The issues for determination
8 by the Board were:

- 9 1. Whether the Board has jurisdiction in this
10 matter;
- 11 2. Whether the Union violated its duty to bargain
12 in good faith pursuant to NRS Chapter 288 by
13 insisting upon the presence of a court reporter to
14 make a verbatim record during negotiations;
- 15 3. Whether the Union violated its duty to bargain
16 in good faith by engaging in conduct which
17 frustrated the bargaining process; and
- 18 4. Whether the City violated its duty to bargain
19 in good faith pursuant to NRS Chapter 288 by
20 engaging in conduct frustrating the bargaining
21 process.

22 The Board took the testimony of witnesses, examined
23 evidence, heard argument by the parties and reviewed the
24 papers and pleadings on file. From all the above, the Board
25 concludes that the Union engaged in prohibited practices in
26 violation of NRS 288.270(2).

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1 good faith bargaining and therefore, properly before this
2 Board pursuant to NRS 288.280.

3 II

4 INSISTENCE UPON THE PRESENCE OF A
5 STENOGRAPHER IN NEGOTIATIONS IS A
6 PROHIBITED PRACTICE.

7 The Union exceeded permissible bounds when it insisted
8 that a court reporter be present in negotiations to make a
9 verbatim record of the proceedings.

10 The Board is in accord with the National Labor Relations
11 Board (NLRB) in Reed & Prince Mfg. Co., 96 NLRB 850, 28 LRRM
12 1608 (1951), enf'd on other grounds 205 F.2d 131, (CA 1 1953)
13 cert. denied 346 U.S. 887 (1953):

14 The presence of a stenographer at such
15 negotiations is not conducive to the friendly
16 atmosphere so necessary for the successful
17 termination of negotiations, and it is a practice
18 condemned by experienced persons in the industrial
19 relations field. Indeed the business world itself
20 frowns upon the practice in any delicate
21 negotiations where it is so necessary for the
22 parties to express themselves freely. The
23 insistence by the respondent in this case upon the
24 presence of a stenographer at the bargaining
25 meeting is, in our opinion, further evidence of
26 its bad faith.

27 The NLRB further considered the issue and concluded that
28 the demand by a party for the presence of a court reporter is
not a mandatory subject of bargaining and that insistence to
imasse on a non-mandatory subject is an unfair labor practice
regardless of whether it was committed in bad faith.
Bartlett-Collins Co., supra.

The presence of a stenographer can surely stifle the
spontaneous, frank, no-holds-barred exchange of ideas and

1 persuasive forces that successful bargaining often requires.
2 One party's insistence upon the presence of a stenographer,
3 over the objection of the other, creates an uncooperative and
4 repressive climate for collective bargaining. NRS Chapter 288
5 does not require a party to negotiate under such inequitable
6 circumstances and accordingly, the City did not commit a
7 prohibited practice when it refused to bargain in the face of
8 the Union's insistence on the presence of a court reporter.

9 The City immediately raised its objection to the court
10 reporting at the meeting of March 30, 1990 (Petitioner's
11 Exhibit "A", page 2). The City further articulated its
12 objection in a letter of April 6, 1990 from Clay Holstine,
13 Assistant City Manager, to Paul Elcano, Union Spokesman:

14 In this case, we believe that the presence of
15 a court reporter will increase posturing and
16 inhibit rather than promote the exchange of facts
17 and arguments. Court reporters do not take
18 "notes" as you have characterized it. Rather,
19 verbatim transcripts of all proceedings are
20 reported. This defeats the entire idea of
21 spontaneity and conciliation, even more so than
22 tape recording. The fact that you have mentioned
23 as a justification for a court reporter your
24 concern that accurate "notes" can be presented to
25 the EMRB indicates that you are entering these
26 "negotiations", if they can be so characterized at
27 this point, more with the idea of building a case
28 against the City than in engaging in the type of
dialogue and discussion necessary to hammer out a
mutually agreeable contract. (Respondent's
Exhibit "25").

Even in the face of this objection, the Union continued
to maintain that stenographic recording was a condition to
further bargaining, further evidence of bad faith.

The Board rejects the Union's argument that the making
of a verbatim record by a stenographer is simply a form of

1 note-taking and is allowed under one of the ground rules
2 agreed upon by the parties which provides:

3 Each party shall be responsible for keeping
4 its own notes. Tape recording of the negotiating
sessions is prohibited.

5 It is unreasonable, in fact, absurd, to conclude that
6 there is no distinction between note-taking and making a
7 verbatim record. Any reliance upon the ground rule on note-
8 taking as license to use a stenographer is, in itself,
9 evidence of bad faith.

10 The Board also finds without merit, the Union's argument
11 that it was justified in its action because no one on the
12 Union's bargaining team could take notes as proficiently as
13 the person taking notes on the City's team.

14 We also reject the Union's argument that the Nevada Open
15 Meeting Law, NRS Chapter 241, permits recording of bargaining
16 sessions. Indeed, the Nevada Legislature has recognized that
17 the fundamental nature and characteristics of collective
18 bargaining are distinct from those of other meetings involving
19 public employers by excluding such bargaining sessions from
20 coverage under NRS Chapter 241. NRS 288.220(1) provides:

21 The following proceedings, required by or
22 pursuant to this chapter, are not subject to any
provision of NRS which requires a meeting to be
open or public:

23 1. Any negotiations or informal discussion
24 between a local government employer and an
employee organization or employees as individuals,
25 whether conducted by the governing body or through
a representative or representatives.

26 Also, see Washoe County Teachers Assn. v. Washoe County School
27 District, EMRB Item No. 54, Case No. A1-045295 (May, 1976).
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Lastly, the Union argues that it simply desires recording of the truth as in judicial proceedings and that no harm can come from such an action. The Board disagrees. The Union's analogy is misplaced. The purposes of collective bargaining and those of the judicial process are not the same.

Collective bargaining cannot be equated with an academic search for truth - or even with what might be thought to be the ideal of one. NLRB v. Insurance Agent's International Union, 361 U.S. 488 (1970). The pursuit of truth and justice is not always the guiding beacon in collective bargaining. The goal of ascertaining with 100 percent accuracy what was said in negotiations may be subordinate to other concerns, such as ensuring peaceful resolution of industrial disputes. NLRB v. Bartlett-Collins Co., *supra* 657.

Finally, the Board notes that the number of cases in which bargaining parties resort to adjudication, and in which resolution depends upon an accurate record of the bargaining process, is small in comparison to the number of labor contracts negotiated. This fact supports the reasonableness of the Board's conclusion that any advantages from stenographic recording of negotiations are outweighed by its chilling effect on the bargaining process.

III

THE TOTALITY OF THE UNION'S CONDUCT
IN BARGAINING CONSTITUTES A PROHIBITED
PRACTICE.

A party's conduct at the bargaining table must evidence a sincere desire to come to an agreement. The determination

1 of whether there has been such sincerity is made by "drawing
2 inferences from conduct of the parties as a whole". NLRB v.
3 Insurance Agents Union, supra. Also, see Stationary
4 Engineers, Local 39 v. Lyon County, EMRB Item No. 241, Case
5 No. A1-045457 (June, 1990) and Clark County Classroom Teachers
6 Assn. v. Clark County School District, EMRB Item No. 62, Case
7 No. A1-045302 (December, 1976).

8 In the instant case, the Union engaged in numerous acts
9 which when viewed as a whole, constitute a violation of it's
10 duty to bargain in good faith pursuant to NRS 288.270(2)(b).

11 Bargaining Meeting Cancelled

12 On February 28, 1990, the Union cancelled a scheduled
13 negotiations session with less than one day's notice using the
14 feeble excuse that free parking was not provided (Petitioner's
15 Exhibit "16"). Cancelling a previously scheduled meeting
16 without good cause is evidence of bad faith. W.R. Hall
17 Distributor, 144 NLRB 1285 (1963).

18 Refusal to Designate Representatives

19 Testimony from witnesses for both parties stated that
20 the Union refused to designate the members of its bargaining
21 team (Transcript at 119, 143, 179).

22 NRS 288.150(1) provides in pertinent part:

23 Except as provided in subsection 4, every
24 local government employer shall negotiate in good
25 faith through one or more representatives of its
26 own choosing concerning the mandatory subjects of
27 bargaining set forth in subsection 2 with the
28 designated representatives of the recognized
employee organization, if any, for each
appropriate bargaining unit among its employees.
(Emphasis added.)

1 Notwithstanding the Union's obligation to designate its
2 bargaining representatives pursuant to statute, the refusal to
3 do so is also further evidence of the Union's intent to
4 frustrate the bargaining process.

5 Refusal to Provide Information

6 The refusal of the Union to provide documentation or
7 even discuss how it arrived at its 15% cost figure for its
8 salary proposal at the March 26, 1990 meeting (Transcript at
9 128, 183, 192) is contrary to the intent of NRS 288.180(2)
10 which provides in pertinent part:

11 . . . the employee organization or the local
12 government employer may request reasonable
13 information concerning any subject matter included
14 in the scope of mandatory bargaining which it
deems necessary for and relevant to the
negotiations. The information requested must be
furnished without delay.

15 Failure to provide reasonable information is a
16 prohibited practice. Additionally, the Union's flippant
17 response to the City that the request was "simply an attempt
18 to avoid doing your own homework" (Petitioner's Exhibit "12")
19 is further evidence of the Union's lack of sincere desire to
20 reach agreement.

21 Premature Impasse Declared

22 Finally, we note the Union declared impasse and
23 requested factfinding after only two bargaining sessions
24 involving mandatory subjects. The parties had only limited
25 discussion on eleven items in two meetings and they had not
26 reached agreement on any of the sixty-six items on the tabl
27 when the Union requested factfinding on April 20, 1990
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1 (Petitioner's Exhibit "28"). This action is the most blatant
2 in the Union's series of actions in contravention to its duty
3 to bargain in good faith. This Board has consistently sent
4 the parties back to the table where requests for factfinding
5 have been premature. See Water Employees Assn. v. Las Vegas
6 Valley Water District, EMRB Item No. 204, Case No. A1-045418
7 (March, 1988) and I.A.F.F., Local 1265 v. City of Sparks, EMRB
8 Item No. 136, Case No. A1-045362 (August, 1982).

9 The parties are required to make every effort to reach
10 agreement. Engaging in surface bargaining as the Union has in
11 this case, is a violation of the very intent of NRS Chapter
12 288 and it will not be permitted by this Board.

13 In summary, the Board finds the Union's conduct in these
14 negotiations reprehensible. All evidence leads to the
15 reasonable conclusion that the Union never intended to bargain
16 in good faith and that it was simply posturing for factfinding
17 and arbitration. Such conduct is clearly in violation of NRS
18 288.270(2)(b).

19 Accordingly, the Union is ordered to cease and desist
20 from the actions complained of herein and to return to the
21 bargaining table in a sincere effort to resolve the sixty-six
22 items on the table.

23 FINDINGS OF FACT

24 1. That during January, 1990, the Union and the City
25 opened negotiations with an exchange of proposals on sixty-six
26 items.

27 2. That on February 23, 1990, the parties met to
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1 discuss ground rules. The parties agreed to four ground
2 rules, among them, a rule allowing each party to take notes,
3 but not to tape record the meetings.

4 3. That at the February 23, 1990 meeting, the Union
5 made a summary rejection of the City's proposal on
6 ratification procedures.

7 4. That at the February 23, 1990 meeting, the Union
8 refused to designate its representatives at the bargaining
9 table.

10 5. That on February 28, 1990, the Union cancelled a
11 negotiations session scheduled for the next day because the
12 City would not provide free parking.

13 6. That on March 19, 1990, the parties met for the
14 second time and discussed five proposals. No agreements were
15 reached.

16 7. That on March 26, 1990, the parties met for the
17 third time and discussed six items. No agreements were
18 reached.

19 8. That at the March 26, 1990 meeting, the Union
20 refused to provide certain information regarding the cost of
21 its salary proposal.

22 9. That on March 30, 1990, the parties met for the
23 fourth time. No proposals were discussed.

24 10. That at the March 30, 1990 meeting, the Union
25 insisted that a court reporter be present to record the
26 bargaining session as a precondition to any further
27 bargaining. The City objected the verbatim transcription of
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1 the meeting and the meeting ended.

2 11. That on April 20, 1990, the Union declared impasse
3 and requested factfinding.

4 12. That the making of a verbatim record and the taking
5 of notes are distinctly different and that agreements
6 regarding note-taking do not necessarily apply to stenographic
7 recording.

8 13. That the presence of a stenographer in negotiations
9 over the objections of one of the parties is disruptive and
10 frustrating to the bargaining process.

11 CONCLUSIONS OF LAW

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

16 2. That Complainant, City of Reno, is a local
17 government employer within the meaning of NRS 288.060.

18 3. That Respondent, International Association of
19 Firefighters, Local 731, is an employee organization within
20 the meaning of NRS 288.040.

21 4. That disputes regarding unilateral implementation of
22 ground rules are matters of good faith bargaining properly
23 before this Board pursuant to NRS 288.270 and 288.280.

24 5. That ground rules are not mandatory subjects of
25 bargaining pursuant to NRS 288.150(2) and accordingly,
26 disputes over ground rules are not matters for factfinding
27 pursuant to NRS 288.205.

1 6. That insistence upon the use of a stenographer to
2 make a verbatim record of bargaining sessions is a violation
3 of the Union's duty to bargain in good faith pursuant to NRS
4 288.270(2)(b).

5 7. That the City did not commit an unfair labor
6 practice when it refused to continue bargaining in the face of
7 the Union's insistence upon the presence of a court reporter.

8 8. That the Union's cancellation of a bargaining
9 session with one day's notice because of the City's failure to
10 provide free parking is evidence of bad faith bargaining
11 pursuant to NRS 288.270(2)(b).

12 9. That the Union's refusal to designate representa-
13 tives for bargaining violates the intent of NRS 288.150(1) and
14 is evidence of failure to bargain in good faith pursuant to
15 NRS 288.270(2)(b).

16 10. That the Union's refusal to provide information
17 regarding the cost of its salary proposal is a prohibited
18 practice pursuant to NRS 288.270(2)(d).

19 11. That the Union's declaration of impasse and its
20 request for factfinding after only two negotiation sessions on
21 substantive items, during which only eleven (11) of sixty-six
22 (66) were discussed and no items were agreed upon, was
23 violation of the Union's duty to bargain in good faith
24 pursuant to NRS 288.270(2)(b).

25 12. That the totality of the Union's conduct in the
26 negotiations referred to herein constitutes a prohibited
27 practice pursuant to NRS 288.270(2)(b).
28

1 ORDER

2 Upon decision rendered by the Board at its meeting on
3 December 18, 1990, it is hereby

4 ORDERED, ADJUDGED AND DECREED as follows:

5 1. That the City's Complaint be, and the same hereby
6 is, upheld;

7 2. That the Union's Counterclaim and its Motion to
8 Dismiss be, and the same hereby are, denied;

9 3. That the Union shall cease and desist and in the
10 future, shall refrain from engaging in the prohibited
11 practices complained of herein;

12 4. That the parties shall return to the bargaining
13 table to negotiate the unresolved issues in good faith, the
14 first meeting to be not later than twenty (20) days from
15 receipt of this Order;

16 5. That this Decision and Order shall be publicly
17 posted by the City at work sites of employees affected by this
18 decision for a period of sixty (60) days; and

19 6. That the Union shall pay the City for fees and costs
20 in the sum of \$500.00.

21 DATED this 1st day of February, 1991.

22 LOCAL GOVERNMENT EMPLOYEE-
23 MANAGEMENT RELATIONS BOARD

24 By Tamara Barengo
25 TAMARA BARENGO, Chairman

26
27 By Salvatore C. Gugin
28 SALVATORE C. GUGINO, Member