BEFORE THE LOCAL GOVERNMENT

EMPLOYEE-MANAGEMENT RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 731, Complainant, -vs- THE CITY OF RENO, Respondent.	ITEM NO. 257 DECISION CASE NO. A1-045466
CITY OF RENO, Counter-Claimant, -vs- INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 731, Counter-Respondent.	

For the Complainant: Paul D. Elcano, Esq.

For the Respondent: Randall K. Edwards, Esq.
RENO CITY ATTORNEY'S OFFICE

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

STATEMENT OF THE CASE

On March 3, 1990, the International Association of Firefighters, Local 731 ("Union") brought this complaint before the Local Government Employee-Management Relations Board ("Board") against the City of Reno ("City") alleging that the City unilaterally increased the health insurance rates for employees' dependents during the term of the contract in violation of the City's duty to bargain pursuant to NRS Chapter 288. The Union further alleged that the City failed to provide reasonable information regarding the insurance claims history in

violation of NRS 288.180.

In response, the City contends that, pursuant to the labo. contract, it had no obligation to negotiate the increased rates and that this is a contract interpretation matter in which the Board has no jurisdiction.

Further, the City alleges that the Union's complaint is simply one more attempt to gain what it lost in interest arbitration and that the complaint was filed to harass, vex and annoy the City and frustrate the bargaining process.

The issue of establishing health insurance rates and benefits for the Reno firefighters was brought before four forums by the Union before it was filed with this Board.

The issue first arose during 1988 negotiations between the parties. Unable to reach agreement in negotiations, the issu was submitted to a factfinder, David Concepcion, on April 5, 1988 for his recommendation. On August 2, 1988, he recommended that the City pay 50% dependent coverage and that benefits be subject to renegotiations every six months (Respondent's Exhibit "A").

Secondly, the parties, unable to agree to the recommendations, turned to Mr. Concepcion to act as the arbitrator and to select the final offer from one of the parties. On april 8, 1989, he awarded the City's final offer which established a specific dollar contribution by the City towards dependent premiums and a process to negotiate new rates ech year if the existing benefits were altered (Petitioner's Exhibit "1").

Thirdly, on June 19, 1989, the Union petitioned the Second District Court in Washoe County to vacate Mr. Concepcion's award On January 29, 1990, the parties stipulated to a settlement

before Judge Whitehead and he dismissed the case (Respondent's Exhibit "D").

Finally, on February 22, 1990, the Union filed a grievance claiming the City violated the labor contract when it unilaterally implemented dependent premium rate increases. On March 16, 1990, the Reno City manager denied the grievance at Level II. There was no request for arbitration by the Union on the matter (Responent's Exhibit "Q").

On November 16, 1990, the Board conducted a hearing on the matter in Reno, Nevada. The questions before the Board were:

1. Whether the City violated its duty to bargain pursuant to NRS 288.150 and committed an unfair labor practice pursuant to NRS 288.270 when it unilaterally increased insurance rates;

2. Whether the City violated its duty to provide information pursuant to NRS 288.180 and committed an unfair labor practice pursuant to NRS 288.270 when it failed to provide certain claims history information; and

3. Whether the Union acted in bad faith in violation of NRS 288.270 by filing this Complaint.

The Board took the testimony of witnesses, examined evidence, heard arguments by counsel and reviewed the paper and pleadings on file. From all of the above, the Board finds the Complaint to be without merit.

DISCUSSION

I

THE LABOR AGREEMENT ESTABLISHES A WAIVER OF THE CITY'S DUTY TO BARGAIN

The essence of this matter is whether or not Article 18 of the current labor contract between the parties establishes a waiver of the City's obligation to bargain increases in insurance premium rates during the term of the contract.

Article 18(d) provides:

> The city agrees to provide, at least an open enrollment period and enrollment period and employee and dependent eligibility shall be in accordance with the policies and rules of the insurance carrier or carriers, including the city for self-funded plans. Prior to this period, the providers, including the City, shall establish the premium rates necessary to fund existing benefits. These new rates and existing benefits shall be called Plan "A".
>
> Unless the parties otherwise agree, any negotiations to change benefits shall be concluded fourteen (14) days prior to the beginning of the open enrollment period. The providers, including the City, shall establish the premium rates necessary to fund any changed benefits negotiated between the parties. These new rates and changed benefits shall be called Plan "B". The Union shall select Plan "A" or Plan "B" for its membership. If the parties are unable to agree upon benefits fourteen (14) days prior to the open enrollment period, Plan "A" shall be implemented as the new plan for open enrollment.

(Petitioner's Exhibit "2", page 11.) (Emphasis added).

A determination by this board that an employee organization has waived its right to bargin changes in mandatory items during the term of the contract is not made lightly. See Las Vegas Police Protective Assn. - Metro, Inc. v. City of Las Vegas, EMRB Item No. 248, Case No. A1-045461 (August 15, 1990). The duty bargain continues through the term of the bargaining agreement.

NLRB v. Jacobs maufacturing Co., 196 F.2nd 680, 30 LRRM 2098 (1952). However, a party may contractually waive its right to bargain about a particular subject. Ador Corp., 150 NLRB 1658, 58 LRRM 1280 (1965). The waiver must be in clear and unmistakable language. Norris Industries, 231 NLRB 50, 96 LRRM 1078 (1977).

In the instant case, the waiver of the City's duty to bargain in Article 18 is clear and unmistakable. If benefits remain the same, the providers, including the city, can unilaterally establish rates necessary to fund those existing benefits.

The arbitrator awarding this language, David Concepcion, gave his analysis of the City's right to unilateral actions.

> In essence Plan "A" allows for the unchanged continuation of existing benefits with a unilateral change in premium rates. Plan "B" allows for negotiations of benefit changes to which certain premium rates attach. Thus, for example, if the cost of benefit usage is more than value premiums collected, premium rates would increase under Plan "A". However, parties could negotiate a Plan "B" which would reduce benefits to conform to existing premium rates. The catch is that no impasse is allowed. If the parties fail to negotiate a Plan "B", then Plan "A" automatically prevails.

(Petitioner's Exhibit "B", page 13.)

The parties not only failed to reach agreement on a Plan "B" fourteen (14) days prior to the open enrollment period, there were never any negotiations on Plan "B" prior to the deadline. Witnesses for the Union stated a proposal had been formulated prior to the deadline, but declined to submit it to the City (Transcript at pages 44, 48).

The City proceeded in accordance with Article 18(d). There

was no obligation for the City to bargain the new rates because the benefits remained unchanged.

II

THE BOARD ADOPTS A LIMITED "DEFERRAL DOCTRINE" WITH REGARD TO DISPUTES ARISING OUT OF LABOR AGREEMENTS

Labor disputes sometimes involve conduct constituting both a labor agreement violation and an unfair labor practice. Under federal law, such cases are governed by the "deferral doctrine" developed by the NLRB to accommodate the central role of grievance arbitration in collective bargaining, and to determine under what conditions the NLRB will "defer to the grievance arbitration machinery to resolve such disputes." See California Public Sector Labor Relations, Section 36.01, citing Collyer Insulated Wire (1971) N.L.R.B. 837.

Under NRS 288.110(2), the Board is permitted to hear and determine any complaint arising out of the interpretation of, or preformance under, the provisions of Chapter 288. This includes the jurisdiction to adjudicate unfair labor practices as enumerated under NRS 288.150(1) even when the resolution of such a charge requires the interpretation of a contractual provision. See Nevada Classified School Employees Association, Chapter One, Clark County vs. Clark County School District, EMRB Item No. 105, Case No. A1-045336 (November 21, 1980).

It is the Board's policy to encourage parties, whenever possible, to exhaust their remedies under the contractual dispute resolution systems contained in their collective bargaining agreeements before seeking relief from the LGEMRB. Thus, wher the parties have not exhausted their contractual grievance

arbitration provisions, the Board will not exercise its discretion to hear a complaint unless there is a clear showing of special circumstances or extreme prejudice.

The Union properly sought to resolve the question of the City's duty to bargain pursuant to Article 18 by filing a grievance on the matter of February 22, 1990 and pursuing the grievance through level 2 on March 13, 1990 (Respondent's Exhibit "Q"). The Union erred in raising this matter before this Board without exhausting its remedies in arbitration following the City's denial of the grievance on March 16, 1990.

That this matter is, first and foremost, a grievance is clear. Charles Laking, President of the Union, stated in a letter of January 30, 1990 to the City Manager, Harold Schilling:

> This letter is official notice to the City of Reno that the proposed insurance rate increases to be charged on March 1, 1990 would violate the provisions of our labor agreement.

The Board will not take jurisdiction in a matter which is clearly a contract grievance ripe for arbitration. The Board's position is well-established. In this regard, see Clark County Classroom Teachers Association v. Clark County School District, EMRB Item No. 130, Case No. A1-045351 (April 29, 1982) and Clark County Classroom Teachers Association v. Clark County School District, EMRB Item No. 203, Case No. A1-045408 (March 16, 1988).

The Board does not believe that there is sufficient evidence to find the Union acted in bad faith by filing this action. However, the City was compelled to prepare a defense against a complaint with no merit. Accordingly, the Union is ordered to pay the City $500.00 for costs of preparation in this case

pursuant to NRS 288.110(6).

III

INFORMATION NEED NOT BE PROVIDED

WHERE NEGOTIATIONS ARE NOT REQUIRED

NRS 288.180(2) provides in pertinent part:

> Following the notification provided for in subsection 1, the employee organization or the local government employer may request reasonable information concerning any subject matter included in the scope of mandatory bargaining which it deems necessary for and relevant to the negotiations. The information requested must be furnished without unnecessary delay. The information must be accurate, and must be presented in a form responsive to the request and in the format in which the records containing it are ordinarily kept.

The duty to provide information under this subsection arises once the parties are in negotiations pursuant to NRS Chapter 288. The City was not compelled to bargain the March 1, 1990 insurance rate increases and accordingly, the question of providing insurance claims information is moot.

FINDINGS OF FACT

1. That Article 18 of the labor agreement between the parties provides that the insurance providers, including the City have a right to unilaterally adjust health insurance rates if the benefits remain the same.

2. That, for the period relevant herein, the insurance benefits remained the same.

3. That the City, by letter of December 13, 1989, noticed the Union that it intended to increase the rates on March 1, 1990.

4. That the Union made no formal proposal to change th insurance benefits.

5. That on February 22, 1990, the Union filed a grievance complaining of the City's proposed unilateral change in insurance rates.

6. That the Union failed to seek final resolution of the grievance through arbitration.

CONCLUSIONS OF LAW

1. That the Local Government Employee-Management Relations Board possesses original jurisdiction over the parties and the subject matter of the issues of the City's duty to bargain and to provide information pursuant to NRS Chapter 288.

2. That Complainant, International Association of Firefighters, Local 731, is a recognized employee organization within the terms defined by NRS 288.040.

3. That Respondent, City of Reno, is a local government employer within the terms of NRS 288.060.

4. That Article 18(d) of the labor agreement between the parties establishes a clear and unmistakable waiver to the City's duty to bargain changes in insurance rates pursuant to NRS 288.150 if the benefits were not changed.

5. That the benefits were not changed, and accordingly, the City had no obligation to bargain the insurance rates change effective March 1, 1990.

6. That without a duty to bargain, the City had no duty to provide information pursuant to NRS 288.180.

7. That the proper forum for resolution of the dispute over the application of Article 18(d) is the grievance procedure, and if necessary, arbitration.

DECISION AND ORDER

Upon decision rendered by the Board at its meeting on December 18, 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 City's Counter-Complaint be, and hereby is, dismissed with prejudice; and

3. That the Union shall pay the city for attorney fees and costs in the sum of $500.00.

DATED this 15th day of February, 1991.

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

By Tamara Barengo
TAMARA BARENGO, Chairman

By
SALVATORE C. GUGINO, Member