

1 STATE OF NEVADA
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD

4 INTERNATIONAL ASSOCIATION OF)
5 FIREFIGHTERS, LOCAL 2487,)

ITEM NO. 267

6 Complainant,)

CASE NO. A1-045488

7 vs.)

DECISION

8 TRUCKEE MEADOWS FIRE PROTECTION)
9 DISTRICT,)

Respondent.)

10 For the Complainant: Victor L. McDonald, Esq.
11 DYER and McDONALD

12 For the Respondent: Greg Shannon, Esq.
13 WASHOE COUNTY DISTRICT ATTORNEY'S OFFICE

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

STATEMENT OF THE CASE

17 During the course of collective bargaining for the 1989,
18 1990, 1991 agreement, the Complainant, International
19 Association of Firefighters, Local 2487 ("Union"), submitted
20 for negotiation a provision concerning "successorship" in the
21 event the Employer, Truckee Meadows Fire Protection District
22 ("District"), transferred its firefighting operations to
23 another employer during the term of the collective bargaining
24 agreement. The proposed successor clause reads:

25 The District agrees to not sell or convey or cause
26 to sell or convey or otherwise transfer or cause
27 to transfer its operations to a new employer
28 without first securing the agreement of the
successor to assume the District's obligations
under this agreement.

1 (according to the District) the Union's second issue suggests
2 that the only question to be answered is whether the
3 particular proposed clause is appropriate for consideration
4 under the alleged mandatory duty.

5 The District states that the issue to be determined is
6 simply whether there is a mandatory duty to negotiate on
7 successorship.

8 After due deliberation, the Board finds that there is no
9 "mandatory duty to negotiate successorship" per se under NRS
10 288.150 or any other provision of NRS Chapter 288. This
11 finding, however, is not dispositive of the instant dispute.
12 There is, as has been conceded by the District, a mandatory
13 duty to bargain regarding the effects or impact of successor-
14 ship.

15 While the District implies that employer-prerogatives
16 (such as the employer's right to unilaterally make reductions
17 in the work force due to a lack of funds and to make decisions
18 regarding the size and scope of municipal services) would be
19 undermined if the Board were to find in the Union's favor in
20 this dispute, the Board does not believe such employer-
21 prerogatives would be undermined to any significant degree by
22 such a finding. It is important to note that where it can be
23 shown that an action or proposal involving a statutorily
24 non-negotiable subject is "significantly related" to the
25 wages, hours and working conditions of the employees, the
26 non-negotiable status is converted to a subject of mandatory
27 bargaining by virtue of its effect(s) or impact on the
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1 employees. See 9 NPER WA-18010, City of Richland vs
2 I.A.F.F., Local 1052 (September 29, 1986), affirming 9 NPER
3 WA-17075 (1986), which also involved a proposed successorship
4 clause. The Board has followed this principle in Pershing
5 County Classroom vs. Pershing County School District, EMRB
6 Item No. 212-A (January 20, 1991) and 212 (August 2, 1988),
7 Case No. A1-045416 and Douglas County Professional Education
8 Assn. vs. Douglas County School District, EMRB Item No. 168,
9 Case No. A1-045380 (July 11, 1984).

10 A determination regarding the negotiability of a
11 successor clause must be based on its purpose, not its title.
12 If a proposed successor clause is directed against
13 successorship per se (its purpose is to give an employee
14 organization veto power over management decisions to transfe
15 operations to other entities through sale, merger,
16 consolidation or divestiture) the courts and various boards of
17 adjudication have consistently refused to require employers to
18 bargain with respect thereto. However, if a proposed
19 successor clause has as its purpose to address the "effects"
20 of successorship, the overwhelming weight of authority
21 requires that same be considered a subject of mandatory
22 bargaining. Lone Star Steel Co. vs. N.L.R.B., 639 F.2d 545,
23 554 (10th Cir. 1980), cert. denied, 450 U.S. 911 (1981); Amax
24 Coal Co. vs. N.L.R.B., 614 F.2d 872 (3rd Cir. 1980), reversed
25 on other grounds, 453 U.S. 322 (1981); United Mine Workers
26 (Lone Star Steel), 231 N.L.R.B. 573, 575 (1977).

27 The Board believes that the proposed successor claus
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1 involved here has as its manifest purpose to address the
2 effects of successorship. If adopted, the clause would
3 require the District to secure a successor agreement to assume
4 the District's obligations under the labor agreement before
5 its operations could be sold, conveyed or transferred to a new
6 employer. Implicit therein are obligations the District has
7 assumed by virtue of negotiations conducted pursuant to NRS
8 288.150(2), which sets forth matters which are subject to
9 mandatory bargaining. Since a clear and significant
10 relationship exists between the District's obligations under
11 the labor agreement and the subjects of mandatory bargaining
12 set forth in NRS 288.150(2), the proposed successor clause
13 clearly meets the criteria of a subject of mandatory
14 bargaining.

15 The Union also contends that the District's refusal to
16 bargain regarding the Union's proposed successor clause
17 evidenced a failure to bargain in good faith and was
18 tantamount to a prohibited practice under NRS 288.270(1)(e).
19 The Board does not agree with the contentions of the Union in
20 this regard.

21 The record reflects that the negotiability of successor
22 clauses has been a bone of contention between the parties
23 since at least 1985. The District attempted to obtain
24 definitive guidance and direction regarding the dispute when
25 it filed the Complaint which resulted in the Board's decision
26 in Truckee Meadows Fire Protection District vs. I.A.F.F.,
27 Local 2487, Item No. 196, Case No. A1-045400 (September 21,

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1 1987). However, the Boards' decision in that case, as it
2 concerned the successorship question and one other subject,
3 was overturned by the District Court, on the premise that the
4 proposed successor clause involved in that particular dispute
5 unlawfully violated contract principles by attempting to bind
6 new employer successors who were not party to the agreement.
7 The court's reversal was based on the unenforceability of the
8 particular proposed successor clause involved in Item No. 196,
9 and not successor clauses per se. In fact, the District Court
10 stated:

11 The Court expresses no opinion on whether
12 some class or character of anti-assignment
13 covenants or other clauses that might generically
14 fall within a category called "successorship
15 clauses" may -- with appropriate enabling
16 authority -- be subject to mandatory bargaining.
17 The Court notes simply that the type of clause
18 under consideration here -- which seeks to bind
19 future new employers to contract terms which they
20 did not negotiate -- violates basic contract
21 principles.

22 The proposed successor clause at issue in the instant case
23 represents the Union's attempt to re-write the successor
24 clause involved in Item No. 196 to eliminate the legal
25 deficiency alluded to by the District Court and the Board
26 believes that the Union has been successful in that endeavor.

27 Under the circumstances of this particular dispute, the
28 Board finds that the District's refusal to bargain regarding
29 the Union's proposed successor clause was due to it's sincere
30 belief that the issue (of whether or not such successor
31 clauses were subjects of mandatory bargaining under NRS
32 288.150) had not been definitively resolved by the Board'

1 decision in Item No. 196, due to said decision being
2 overturned in District Court. Accordingly, it's refusal to
3 bargain on the subject can be considered neither a failure to
4 bargain in good faith nor a prohibited practice under NRS
5 288.270(1)(e).

6 FINDINGS OF FACT

7 1. That the International Association of Firefighters,
8 Local 2487 ("Union"), is a local government employee
9 organization.

10 2. That the Truckee Meadows Fire Protection District
11 ("District"), is a local government employer.

12 3. That during the course of bargaining for the
13 1989-90-91 labor agreement, the Union submitted for
14 negotiation a provision concerning the effects of successor-
15 ship.

16 4. That throughout negotiations on the 1989-90-91 labor
17 agreement, the District refused to bargain regarding the
18 Union's proposed successor clause on the premise that the
19 subject of successorship is outside the scope of mandatory
20 bargaining.

21 5. That by agreement of the parties the issue of the
22 negotiability of the Union's proposed successor clause was
23 preserved for presentation to and resolution by this Board.

24 CONCLUSIONS OF LAW

25 1. That the Local Government Employee-Management
26 Relations Board possesses original jurisdiction over the
27 parties and subject matter of this Complaint.

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2. That the International Association of Firefighters Local 2487, is a local government employee organization as defined by NRS 288.040.

3. That the Truckee Meadows Fire Protection District is a local government employer as defined by NRS 288.060.

4. That the successor clause proposed for negotiation by the International Association of Firefighters, Local 2487, is a mandatory subject of bargaining pursuant to NRS 288.150(2) and NRS 288.030(1).

5. That the refusal of Truckee Meadows Fire Protection District to bargain regarding the Union's proposed successor clause can be considered neither a failure to bargain in good faith nor a prohibited practice under NRS 288.270(2)(b).

DECISION AND ORDER

Upon decision rendered by the Board at its telephone-conference meeting on May 13, 1991, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. That, to the extent set forth in the Board's CONCLUSIONS OF LAW, supra, the Union's Complaint is upheld;

and

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2. That each party is to bear its own costs and fees in the above-entitled matter.

DATED this 30th day of May, 1991.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By Tamara Barengo
TAMARA BARENGO, Chairman

By Howard Ecker
HOWARD ECKER, Vice Chairman

By Salvatore C. Gugino
SALVATORE C. GUGINO, Member