

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF)
ELECTRICAL WORKERS, LOCAL 1245,)

ITEM NO. 269

Complainant,)

CASE NO. A1-045485

-vs-)

DECISION

CITY OF FALLON,)

Respondent.)

For the Complainant: Michael E. Langton, Esq.
LANGTON & KILBURN

For the Respondent: Mike Evans, Esq.
DIEHL, EVANS & ASSOCIATES

For the EMRB: Tamara Barengo, Chairman
Howard Ecker, Vice Chairman
Sal Gugino, Member

STATEMENT OF THE CASE

In a pre-hearing conference held on April 12, 1991, the Complainant, International Brotherhood of Electrical Workers, Local 1245 ("Union"), and the Respondent, City of Fallon ("City"), narrowed the issues to the following:

1. Whether or not the City failed to bargain in good faith as a result of its:
 - (a) Alleged cancellation, re-scheduling or failure to appear for bargaining sessions in violation of the ground rules agreement;
 - (b) Alleged rescission and/or repudiation of agreements reached by the parties on issues concerning hours and working conditions;
 - (c) Alleged failure to submit any proposals concerning wages and benefits; and

1 (d) Alleged lack of authority of chief
2 negotiator to enter into agree-
3 ments.

4 2. Whether or not the City committed an unfair
5 labor practice as a result of its:

6 (a) Alleged retaliation against bargain-
7 ing unit employees; and

8 (b) Alleged attempt to bargain directly
9 with bargaining unit employees.

10 On April 26, 1991, the Local Government Employee-
11 Management Relations Board ("EMRB" and "Board") conducted a
12 Hearing on the instant Complaint. The Board's Discussion,
13 Findings of Fact, Conclusions of Law, Decision and Order
14 regarding the Complaint are set forth below.

15 DISCUSSION

16 From the facts stipulated to by the parties, the
17 testimony of witnesses cross-examined at the Hearing, and
18 other evidence of record, the Board has determined that:

19 (A) The City recognized the Union as the
20 exclusive representative of its bargaining unit
21 employees on November 7, 1989;

22 (B) The City entered into collective bargaining
23 with the Union on an initial labor agreement,
24 participated in numerous negotiation sessions,
25 cancelled at least one session on short notice and
26 re-scheduled others (on the premise that it was
27 unprepared) and through its agent (a City
28 Commissioner) indicated to a bargaining unit
member that the employees would suffer adverse
consequences as a result of organizing;

(C) On or about September 14, 1990, the Union
presented a written proposal, allegedly embodying
the items tentatively agreed-to (subject to
approval of the City Commissioners) and the
Union's previously discussed proposal for wage
increases and other "economic" benefits;

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1 (D) On or about September 18, 1990, the City
2 requested verification (by election) of the
3 Union's status as representative of the majority
4 of its employees in the bargaining unit;

5 (E) The Union agreed to the election, which was
6 held on September 19, 1990, and confirmed the
7 Union's status as representative of the majority
8 of the bargaining unit employees;

9 (F) That the City rejected the Union's proposed
10 labor agreement, but submitted a proposed labor
11 agreement dated October 10, 1990 (approved by the
12 City Council), which essentially contemplates no
13 changes and/or increases in the wages and benefits
14 of the employees; and

15 (G) Due to the City's refusal to consider any
16 increases in wages or benefits for the employees
17 (on the premise that no money is available for
18 this purpose), no additional bargaining sessions
19 have been scheduled.

20 Initially, while the parties have not specifically
21 included it as an issue, the City's request that the Union
22 verify the fact that it represented the majority of the
23 bargaining unit employees during negotiations was, under the
24 circumstances, highly questionable conduct. While the City
25 sought and/or required the election without either informing
26 the EMRB or seeking its concurrence, on the premise that it
27 believed the Union had ceased to be supported by the majority
28 of bargaining unit employees, the City produced no evidence of
probative value to support such a conclusion. Accordingly,
the Board views the City's action as contrary to the intent of
NRS 288.160 and an apparent attempt to either undermine the
bargaining process or delay its conclusion. While not
determinative in and of itself, this action appears to
evidence a conscious effort on the City's part to avoid or
delay its statutory obligations under NRS Chapter 288.

1 The Union contends that the City failed to bargain in
2 good faith by not giving its chief negotiator the authority to
3 enter into agreements, and the City answers by citing the
4 Negotiating Ground Rules Agreement which provides, in
5 pertinent part, that the bargaining agents of the respective
6 parties are authorized to consummate a contract, "subject to
7 confirmation by the City Council." While it is not uncommon
8 for the parties to limit the authority of their negotiators in
9 such proceedings, in the instant case it appears that the
10 authority of the City's chief negotiator was considerably less
11 than that contemplated by the Negotiating Ground Rules
12 Agreement and less than that measure of authority generally
13 relegated to bargaining agents with limited authority.
14 Testimony developed through cross-examining the witnesses
15 indicated that virtually every word of every provision
16 tentatively agreed to by the City's chief negotiator was
17 subjected to the intense scrutiny of the entire City Council
18 and Mayor. After their editing and/or revisions were made,
19 the provisions on which the negotiating committees had reached
20 tentative agreement apparently were no longer recognizable to
21 the Union's negotiators. If the City's chief negotiator was
22 not constructively assigned to impede, delay and/or otherwise
23 mitigate the City's statutory obligation to bargain in good
24 faith, then it appears that he was assigned to an exercise in
25 futility, for almost a year, at the expense of the Union's
26 negotiators and its constituents.

27 As concerns the City's refusal to submit any economic
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1 proposals throughout the negotiations, except that the status
2 quo be maintained, it is noted that no evidence of probative
3 value was presented in support of the City's contention to the
4 effect that it has no money available for any increases in
5 wages or improvements in benefits for employees of the
6 bargaining unit.

7 The conduct of the City in several areas has been called
8 into question; i.e., including, but not limited to, the fact
9 that the City, through its agents, appears to have attempted
10 to intimidate and/or coerce bargaining unit employees from
11 pursuing activity protected by NRS Chapter 288; the fact that
12 the City, through its agents, appears to have attempted to
13 delay or impede the negotiation of an initial labor agreement
14 by cancelling, re-scheduling and failing to appear for
15 bargaining sessions; and by its adopting a "take it or leave
16 it stance" regarding wages and benefits, actions which are
17 indicative of a failure to bargain in good faith. However, it
18 is not any one act, but rather the totality of the City's
19 conduct throughout the negotiations (previously discussed
20 herein) which requires the Board to find that the City
21 violated its duty to bargain in good faith. The "totality of
22 conduct" doctrine generally stems from the Decision in NLRB
23 vs. Virginia Electric & Power Co., 314 U.S. 469, 9 LRRM 405
24 (1941). Also, see 9 NPER CA-18118, Temple City Unified School
25 District vs. Temple City Education Assn., NEA, CTA (June 24,
26 1987).

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FINDINGS OF FACT

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2 1. That the Complainant, International Brotherhood of
3 Electrical Workers, Local 1245, is a local government employee
4 organization.

5 2. That the Respondent, City of Fallon, is a local
6 government employer.

7 3. That on or about November 7, 1989, the City
8 recognized the Union as the exclusive bargaining agent for the
9 employees of the bargaining unit; consisting of persons
10 employed in the following categories: Sanitation Department
11 Employee; Equipment Operator; Clerk; Custodian; Laborer; and
12 Lineman.

13 4. That subsequent to November 7, 1989, the City and
14 Union commenced negotiations on a collective bargaining
15 agreement and met approximately eight (8) times in bargaining
16 sessions between the date negotiations commenced and October
17 11, 1990.

18 5. That on or about September 14, 1990, the Union
19 presented a written proposal to the City, allegedly embodying
20 the parties tentative agreements, and included the previously
21 discussed Union proposal for wage increases and other
22 "economic" benefits.

23 6. That on or about September 18, 1990, the City sought
24 to verify that the Union represented a majority of the
25 bargaining unit employees by requesting that the employees
26 submit to an election.

27 7. That the Union agreed to an election, the election
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1 was held on September 19, 1990, and verified the Union's
2 status as representative of the majority of bargaining unit
3 employees.

4 8. That the City rejected the Union's proposal of
5 September 14, 1990, and on October 10, 1990, the City
6 submitted a proposed labor agreement, which it subsequently
7 indicated had been approved by the City Council.

8 9. That the Union has rejected the City's proposal of
9 October 10, 1990, and negotiations have constructively ceased.

10 CONCLUSIONS OF LAW

11 1. That the Local Government Employee-Management
12 Relations Board has jurisdiction over the parties and the
13 subject matter of this Complaint, pursuant to the provisions
14 of NRS Chapter 288.

15 2. That the Complainant, International Brotherhood of
16 Electrical Workers, Local 1245, is a recognized employee
17 organization as defined by NRS 288.040.

18 3. That the Respondent, City of Fallon, is a recognized
19 local government employer as defined by NRS 288.060.

20 4. That the City of Fallon, pursuant to NRS 288.170(1),
21 determined its non-professional employees constituted an
22 appropriate bargaining unit for negotiations, and recognized
23 the International Brotherhood of Electrical Workers, Local
24 1245, pursuant to NRS 288.160(1) and (2), as the exclusive
25 bargaining agent for said employees.

26 5. That, upon receipt of a request from the
27 International Brotherhood of Electrical Workers, Local 1245,
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1 to negotiate an initial labor agreement, the City of Fallon
2 commenced to negotiate an initial labor agreement, pursuant to
3 NRS 288.150(1).

4 6. That, after nearly one and one-half years following
5 commencement of negotiations, the parties have failed to
6 negotiate an initial labor agreement, as contemplated by NRS
7 288.150(1) and NRS 288.180(1), (2) and (3), due to the City of
8 Fallon's failure to bargain in good faith.

9 7. That the City of Fallon has engaged in prohibited
10 practices; i.e., cancelling and re-scheduling bargaining
11 sessions on short notice; repudiating agreements negotiated by
12 its chief negotiator; failing to submit counter-proposals on
13 wages and benefits (except for a "take-it-or-leave-it"
14 proposal to maintain the status quo); attempting to coerce
15 and/or intimidate a member of the bargaining unit; and
16 generally engaging in conduct to avoid and/or delay its
17 statutory obligation to negotiate in good faith, in violation
18 of NRS 288.270(1)(a) and (e).

19 DECISION AND ORDER

20 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

21 1. That the Union's Complaint is upheld to the extent
22 set forth in the Board's Conclusions of Law, and the City
23 shall be required to immediately resume negotiations with the
24 Union on an initial labor agreement for the 1990-91 labor
25 agreement term;

26 2. That the aforementioned negotiations shall include
27 all subjects of mandatory bargaining, including matters
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1 requiring the budgeting of money, and shall continue until
2 agreement is reached on all such subjects or until an impasse
3 is reached; and

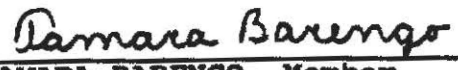
4 3. That each party is to bear its own costs and fees in
5 the above-entitled matter.

6 DATED this 25th day of July, 1991.

7 LOCAL GOVERNMENT EMPLOYEE-
8 MANAGEMENT RELATIONS BOARD

9 By 
10 HOWARD ECKER, Chairman

11 By 
12 SALVATORE GUGINO, Vice Chairman

13
14 By 
15 TAMARA BARENGO, Member
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