

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

WASHOE COUNTY SHERIFF'S DEPUTIES)
ASSOCIATION, INC.; WASHOE COUNTY)
DISTRICT ATTORNEY INVESTIGATORS')
ASSOCIATION; and WASHOE COUNTY)
EMPLOYEES ASSOCIATION,)

ITEM NO. 271

CASE NO. A1-045479

DECISION

Complainants,

and

INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, LOCAL 2487,

Intervenor,

-vs-

COUNTY OF WASHOE,

Respondent.

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

For the Intervenor: Victor L. McDonald, Esq.
DYER AND MCDONALD

For the Respondent: Maureen Sheppard-Griswold, Esq.
WASHOE COUNTY DISTRICT ATTORNEY'S OFFICE

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

STATEMENT OF THE CASE

In a pre-hearing conference held on January 29, 1991,
the Complainants, Washoe County Sheriff's Deputies
Association; Washoe County District Attorney Investigators'
Association; and Washoe County Employees Association
("Associations"), and the Respondent, County of Washoe
("County") narrowed the issues to the following:

1 1. Whether or not the Complaint was filed in
2 a timely manner pursuant to NRS 288.110(4);

3 2. Whether or not the Board lacks
4 jurisdiction in matters of retirement benefits
5 preempted by NRS 286 and 287;

6 3. Whether or not the Washoe County
7 Sheriff's Deputies Association, Inc. lacks
8 standing to bring this Complaint on behalf of
9 supervisory and administrative employees of the
10 Washoe County Sheriff's Department;

11 4. Whether or not the Complainants lack
12 standing to bring the Complaint on behalf of
13 retired employees of Washoe County;

14 5. Whether or not the Complainants lack
15 standing to bring the Complaint on behalf of
16 current employees of Washoe County in matter of
17 future benefits complained of herein;

18 6. Whether or not medical insurance benefits
19 for retirees are a mandatory subject of bargaining
20 pursuant to NRS 288.150(2) or under any other
21 provision of Chapter 288 of Nevada Revised
22 Statutes or under case law;

23 7. Whether or not the Complainants are
24 estopped from alleging that medical insurance
25 benefits for retirees is a mandatory subject of
26 bargaining based upon their past position and
27 actions (or inactions) with respect to Washoe
28 County actions affecting such benefits;

 8. Whether or not Complainants, or any of
them, demanded that good faith negotiations be had
prior to March 27, 1990, before the elimination of
the retiree medical premium subsidy benefit
granted to certain of Respondent's employees;

 9. Whether or not Respondent unilaterally
modified any of the collective bargaining
agreements existing between Complainants and
Respondent on or about March 27, 1990, when it
eliminated the previous benefit of subsidizing the
medical premium for certain of its employees upon
their retirement.

 10. Whether or not Respondent committed a
prohibited practice within the meaning of NRS
288.270.

Prior to the hearing, counsel for the parties met and

1 jointly stipulated to the following facts:

2 1. Washoe County is a local government
3 employer.

4 2. Complainant, Washoe County District
5 Attorney Investigators' Association (D.A.
6 Investigators' Association), is a local government
7 employee organization.

8 3. Complainant, Washoe County Employees
9 Association (WCEA), is a local government employee
10 organization comprised of a supervisory-adminis-
11 trative employees unit and a non-supervisory
12 employees unit.

13 4. Complainant, Washoe County Sheriff's
14 Deputies Association, Inc. (Sheriff's Deputies
15 Association), is a local government employee
16 organization and represents certain non-super-
17 visory employees of the Washoe County Sheriff's
18 Department. That Association also represented
19 certain supervisory and administrative employees
20 of the Sheriff's Department until recognition of
21 the Washoe County Sheriff's Supervisory Deputies
22 Association on April 24, 1990, which is a
23 successor employee organization to the existing
24 collective bargaining agreement between the County
25 and supervisory and administrative unit of the
26 Washoe County Sheriff's Deputies Association.
27 (This disposed of Issue No. 3.)

28 5. On April 5, 1977, the Washoe County
Insurance Committee recommended that the Board of
County Commissioners consider payment of all or
part of a retired employee's medical insurance
premium. At that time, there were 54 County
retirees which would cost the County approximately
\$10,724.00 in premiums annually.

6. On May 3, 1977, the Washoe County
Insurance Committee recommended payment of medical
insurance premiums for retired employees as
follows:

(1) County would pay 50% of medical
insurance premium of a retired employee
with at least 10 years County employ-
ment;

(2) County would pay 75% of the premium
for an employee who had worked at least
15 years for Washoe County; and

1 (3) County would pay 100% of the premium
2 for an employee who had worked at least
20 years for Washoe County.

3 The Board of County Commissioners approved and
4 adopted the recommendations. On May 24, 1977, the
Board of County Commissioners ordered that the
5 minutes of May 3, 1977, Item 77-754, be amended by
the addition of two more recommendations: (4)
6 County premium payments would commence September
1, 1977; and (5) the County reserved the right to
7 modify or terminate premium payments at anytime.

8 No negotiations were held between Washoe
County and any of the Complainants regarding this
9 program.

10 7. On January 13, 1981, Washoe County
amended their May 1977 action by defining "years
11 of service" to mean consecutive years of service
with Washoe County, and defining "retired
12 employee" to mean one drawing immediate retirement
benefits upon leaving Washoe County employment.

13 The Board of County Commissioners provided
14 that the program was to be subject to an annual
review during the budget hearings.

15 No negotiations were held between Washoe
County and any of the Complainants regarding these
16 changes in the program.

17 8. On January 28, 1986, Washoe County again
amended their May 1977 action by adding provisions
18 for payment of medical insurance premiums for
elected officials based upon terms in office,
19 including a provision allowing a County employee
who was elected to office to include their years
20 of service as a County employee whether such
employment was before or after serving in office,
21 so long as all service to be counted was
consecutive.

22 No negotiations were held between Washoe
23 County and any of the Complainants regarding these
changes to the program.

24 9. On May 8, 1987, the Sheriff's Deputies
25 Association offered in a collective bargaining
session Proposal No. 26 regarding the supervisory
26 unit of the Association, and Proposal No. 28
regarding the non-supervisory unit of the
27 Association. Both proposals called for Washoe
County to provide a fully paid medical plan for
28

1 all employees who retire with a minimum of 15
2 years service. On May 21, 1987, the County
3 declined to negotiate on both proposals on the
4 basis that they involved non-mandatory subjects of
5 bargaining. The Association disagreed with the
6 County's position.

7 10. On April 14, 1988, during the first
8 collective bargaining session for 1988-1989, the
9 Sheriff's Deputies Association offered a proposal
10 for the supervisory and non-supervisory units of
11 the Association. The proposal called for the
12 County to provide fully paid medical and dental
13 plans to all employees, including their
14 dependents, who retire with a minimum of ten years
15 service with Washoe County. The County declined
16 to negotiate the proposal on the basis that it was
17 not a mandatory subject of bargaining. The
18 Association disagreed.

19 11. The Sheriff's Deputies Association
20 signed collective bargaining agreements for its
21 supervisory-administrative unit and its non-super-
22 visory unit on July 25, 1989, covering the period
23 July 3, 1989 and continuing for 2 years there-
24 after.

25 12. On April 13, 1989, in contract
26 negotiations for 1989-1990, the D.A.
27 Investigators' Association offered a proposal
28 which called for the County to provide a group
medical plan, including dental and vision
coverage, to all retired D.A. Investigators
drawing pension benefits. The proposal was pulled
from the table the same day.

13. On February 9, 1990, Washoe County
negotiator, Howard Reynolds, met with bargaining
representatives of the Sheriff's Deputies
Association and D.A. Investigators' Association
and advised them that at a recent workshop the
Board of County Commissioners stated their
intention to eliminate the payment of retiree
medical premiums for all new hires. May
Prosser-Strong, bargaining representative for the
Sheriff's Deputies Association and D.A.
Investigators' Association wrote letters on behalf
of each Association to Howard Reynolds, both
letters dated February 14, 1990, and made a
request to meet and negotiate on the issue prior
to any action being taken by Washoe County.

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1 14. On February 14, 1990, Washoe County
2 negotiator, Howard Reynolds, met with the
3 Executive Board of the WCEA and advised them that
4 the Board of County Commissioners intended to
eliminate the payment of retiree medical premiums
for all new hires. The WCEA Executive Board did
not respond at that time.

5 15. On March 27, 1990, the Board of County
6 Commissioners clarified the program of paying for
7 retiree medical insurance premiums for those
8 employees employed between May 3, 1977 and January
9 13, 1981; and amended in part and ratified in part
10 the payment of medical insurance premiums for
11 employees hired on or after January 13, 1981. For
12 employees hired on or after March 28, 1990, the
County decided that it would no longer pay any
portion of the premium for medical insurance upon
the employee's retirement. Further, for employees
rehired after March 28, 1990, who were previously
employed by the County, such employment after
March 28, 1990 would not be counted as qualifying
service towards the County's retiree health
insurance program.

13 16. On April 20, 1990, in contract
14 negotiations for 1990-1991, the D.A.
15 Investigators' Association offered Proposal #5,
16 which called for Washoe County to pay medical
insurance premiums for retired employees. The
County declined to negotiate the proposal on the
basis that it was not a mandatory subject of
bargaining. On May 22, 1990, the Association
withdrew the proposal on the basis that they would
treat the withdrawal of the program for new hires
by Washoe County as an unfair labor practice.

17 17. On July 17, 1990, the D.A. Investigators
18 and Washoe County signed a collective bargaining
19 agreement covering the period July 2, 1990,
20 through June 30, 1992.

21 18. On April 19, 1990 WCEA and Washoe County
22 commenced negotiations on a contract for 1990-92.
23 No proposals were made for the payment by Washoe
24 County of premiums for retirees and no discussions
25 were held throughout the negotiations regarding
the cessation of the program of paying for retiree
medical insurance premiums. WCEA signed
collective bargaining agreements for its non-
26 supervisory unit and its supervisory-adminis-
trative unit with Washoe County on October 23,
27 1990. The agreements cover the period of July 2,
28 1990 through June 30, 1992.

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

6 **DISCUSSION**

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

10 **THE COMPLAINT IS PROPERLY BEFORE**
11 **THE BOARD UNDER NRS 288.110(4)**
(Issue No. 1)

12 The County contends that the Complaint should be
13 dismissed with prejudice for the reason that the filing
14 thereof was not accompanied by a verification, pursuant to NRS
15 15.010 and NAC 288.200(2), within 6 months after the
16 occurrence which is the subject of the complaint as required
17 by NRS 288.110(4); also, the County contends that its rights
18 were prejudiced as a result of the absence of said
19 verification.

20 The Associations respond by pointing out the fact that
21 verifications were indeed filed by the Complainants and that
22 neither NAC 288 nor NRS Chapter 288 requires that the
23 verification be filed coterminous with the complaint. Also,
24 that NRCP allows a party to amend its pleading before an
25 answer (responsive pleading) is served, and that the County
26 has not provided any proof in support of its contention that
27 its substantial rights were prejudiced by the fact that said
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1 verification did not accompany the Complaint.

2 Under the circumstances involved in this particula(
3 Complaint, the Board finds that the filing of this instant
4 Complaint without an accompanying verification did not
5 prejudice the rights of the County and does not warrant
6 barring the Complaint from consideration on its merits.

7 **THE BOARD'S JURISDICTION IN MATTERS**
8 **OF RETIREMENT BENEFITS HAS NOT BEEN**
9 **PREEMPTED BY NRS CHAPTER 286 AND/OR**
10 **NRS CHAPTER 287 (Issue No. 2)**

11 The County contends that the negotiability of retirement
12 benefits has been preempted by NRS Chapter 286 and NRS Chapter
13 287. The Board does not agree. NRS Chapter 286 provides a
14 statutory retirement system for state and local government
15 employees in Nevada. NRS Chapter 287 pertains, in pertinent
16 part, to group health and medical insurance for state and(
17 local government employees. No provision of either statute
18 expressly states that a local government employer may not
19 negotiate over the benefits referred to therein; although NRS
20 287.023, Subsection 3, states that a local government employer
21 may not pay more for medical and hospital coverage for retired
22 officers and employees than it does for its current officers
23 and employees. However, this statutory restriction would not
24 preclude the parties from negotiating, pursuant to NRS
25 288.150(2), regarding insurance benefits to be accorded
26 current employees upon their retirement, with said
27 negotiations to include the funding for any cost(s) exceeding
28 that which is statutorily mandated by NRS 287.023, Subsection (
3. 9 NPER IA-18031, Lenox Community School District vs. Lenox

1 Education Assn. (June 17, 1987). In fact, the negotiation of
2 insurance benefits for employees pursuant to NRS
3 288.150(2)(f), appears to be fully compatible with and not in
4 contravention of NRS 287.010, NRS 287.020, NRS 287.023, NRS
5 287.025, NRS 287.040 and NRS 287.044. Further, no other
6 provision of NRS Chapter 287 appears to preclude negotiation
7 of insurance benefits for employees pursuant to NRS
8 288.150(2)(f). Furthermore, where a mandatory subject of
9 bargaining is not prescribed or controlled by other statutes,
10 and where negotiations regarding said subject will not
11 contravene broad public policies or specific prohibitions
12 contained in other statutes, such negotiations are permissible
13 even though implementation of any agreement reached on the
14 subject would require specific legislative action. 9 NPER
15 ME-1800, State of Maine vs. Maine State Employees Assn. (July
16 17, 1986).

17 As concerns specifically Chapter 286 covering the Public
18 Employees Retirement System, the Board likewise finds no
19 prohibition contained therein against negotiations between a
20 local government employer and its employees regarding medical
21 coverage for employees upon their retirement. Even though
22 said statute may provide a "comprehensive system to provide
23 retirement income to employees who have retired from public
24 service" as alleged by the County, the Board finds that said
25 statute is not sufficiently specific or all encompassing in
26 the area of insurance benefits for retirees to be considered
27 as preempting negotiation with respect to the payment of
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1 medical insurance premiums for current employees upon their
2 retirement.

3 The premise for the County's position with respect to
4 preemption is that NRS Chapters 286 and 287 are in conflict
5 with NRS Chapter 288 and, since NRS Chapters 286 and 287 are
6 allegedly more specific with respect to insurance benefits for
7 retirees than is NRS Chapter 288, the provisions of the latter
8 statute (NRS Chapter 288) must be considered as preempted by
9 the former (NRS Chapters 286 and 287). The Board does not
10 agree with the County's premise. NRS 288.150(2)(f) explicitly
11 provides that "insurance benefits" are a subject of mandatory
12 bargaining. The statutes alluded to are not in conflict, but
13 rather fully compatible with NRS 288.150(2)(f). Additionally,
14 the Board finds that the case law cited by the County, rather
15 than supporting its position regarding preemption, supports
16 the Board's conclusion that NRS 288.150(2)(f) has not been
17 preempted by NRS Chapters 286 and 287. Matter of Hunterdon
18 County Board of Chosen Freeholders, 561 A.2d 597, 601 (1989)
19 and City of Allentown vs. Local 302, International
20 Association, 514 A.2d 1175 (1986).

21 Implicit in the County's premise regarding the alleged
22 preemption is that the funding for the subject program is
23 controlled by NRS Chapter 286 and/or NRS Chapter 287 to the
24 extent that the provisions of said statutes would preclude any
25 negotiation regarding the cost to the employees of said
26 program. This aspect of the County's premise is belied by the
27 fact the County's chief negotiator testified at the hearing
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1 that not only does the Public Employees Retirement System not
2 administer the program, nor has the County ever deposited
3 funds in the public employees' retirement trust fund to cover
4 the cost of paying the medical insurance premiums, but also
5 the County did not consult with the Board of the Public
6 Employees Retirement System as to whether it (the County)
7 could institute the program, modify said program or
8 discontinue payment of premiums for employee hired after a
9 certain date. Also, the County's chief negotiator testified
10 to the affect that the insurance premiums in question are not
11 paid with funds provided by the Public Employees Retirement
12 System. Certainly, if the statute(s) contemplate(s) that a
13 local government employer has the discretion to establish,
14 amend and/or discontinue an insurance program for retirees,
15 and the subject program is not statutorily funded, then any
16 conclusion to the effect that negotiations with respect to
17 said program are statutorily preempted will require more
18 evidence than has been proffered by the County in the instant
19 case. It will require evidence of the existence of a
20 specific, expressed statutory prohibition, which is lacking in
21 the case at bar.

22 In summary, the insurance benefits which are the subject
23 of the instant Complaint are benefits which accrue to current
24 employees upon their retirement. Insurance benefits for
25 former employees, currently retired, are not at issue here.
26 Accordingly, the Board finds that it has jurisdiction over the
27 subject at issue, and that its jurisdiction has not been
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1 preempted by NRS Chapter 286 and/or NRS Chapter 287. 9 NPER
2 NJ-18068, University of Medicine and Dentistry of New Jersey
3 and State of New Jersey vs. AAUP, Council of Chapters and AFT,
4 NJSFT, Council of New Jersey State College Locals (February 9,
5 1987) and 9 NPER ME-18000, State of Maine vs. Maine State
6 Employees Assn. (July 17, 1986).

7 **COMPLAINANTS HAVE STANDING TO BRING**
8 **COMPLAINT ON BEHALF OF CURRENT EMPLOYEES**
9 **REGARDING GROUP HEALTH AND MEDICAL**
10 **BENEFITS UPON RETIREMENT OF CURRENT**
11 **EMPLOYEES (Issues No. 4 and 5)**

12 The County contends that its decision to discontinue
13 paying any portion of the premium for medical insurance upon
14 the employee's retirement, for employee hired on or after
15 March 28, 1990, cannot be a subject of mandatory bargaining
16 because upon retirement the employees are no longer subject to
17 the County's labor agreements with the Associations. In
18 support of its contention the County cites provisions of NRS
19 Chapter 288 describing an existing relationship between
20 current employees and their employer; also, the United States
21 Supreme Court's decision, agreeing with the Court of Appeals
22 in reversing the decision of the NLRB in Allied Chemical and
23 Alkali Workers vs. Pittsburgh Plate Glass Co., 404 U.S. 157,
24 92 S.Ct. 383, 30 L.Ed.2d 341 (1971). The County also avers to
25 the effect that the insurance premium payments for retirees
26 cannot be considered as included in the mandatory subjects of
27 bargaining listed under NRS 288.150(2) because insurance
28 premium payments for retirees do not constitute direct
monetary compensation payable currently in exchange for

1 services rendered, and insurance premium payments for retirees
2 do not fall in the category of insurance benefits as they are
3 truly "retirement benefits" which are not included as
4 mandatory subjects of bargaining.

5 The Associations contend that insurance premium payments
6 for retirees is not a "retiree's benefit", but rather it is a
7 benefit accrued through employment, such as life insurance;
8 i.e., it is accrued during employment and paid after
9 employment. In support of said contention the Associations
10 cite the Board's Decision in Ormsby County Teachers Assn. vs.
11 Carson City School Dist., Case No. A1-045382, Item No. 174
12 (1985). Also, the Associations allege that the County had
13 effectively increased the medical insurance premium payments
14 for some of its employees by unilaterally discontinuing the
15 payment of such premiums for employees hired after a date
16 arbitrarily chosen by the County, resulting in alleged
17 disparate treatment as to job benefits.

18 In support of its position that insurance premiums for
19 employees upon their retirement is a subject of mandatory
20 bargaining, the Intervenor also cites the Supreme Court's
21 decision in Allied Chemical (Pittsburgh Plate Glass), supra,
22 the same case which the County cited in support of its
23 position to the opposite effect.

24 Inasmuch as the subject here at issue (insurance premium
25 payments for retirees, for employees hired subsequent to a
26 certain date), involves remuneration (albeit deferred) for
27 services rendered by current employees, and not for employees
28

1 who are already retired, the Board finds that the Associations
2 have properly brought the instant Complaint on behalf of
3 current employees. 9 NPER NJ-18036, Hunterdon Central High
4 School Board of Education vs. Hunterdon Central High School
5 Education Assn. (December 23, 1986); and Woods School, 116
6 LRRM 1172, 270 NLRB 171 (1984).

7 Under the facts and circumstances surrounding the
8 instant case, the Board believes that its conclusion(s) in the
9 premise follow the guidelines laid down by the United States
10 Supreme Court in Allied Chemical (Pittsburgh Plate Glass),
11 supra.

12 MEDICAL INSURANCE BENEFITS FOR
13 CURRENT EMPLOYEES, UPON THEIR
14 RETIREMENT, IS A SUBJECT OF
MANDATORY BARGAINING (Issue No. 6)

15 The County essentially contends that since insurance(
16 premium payments for retirees is not specifically listed among
17 the subjects of mandatory bargaining under NRS 288.150(2) and
18 retirees cannot be considered as employees under any provision
19 of the statute, medical insurance benefits for retirees cannot
20 be considered as a subject of mandatory bargaining. Also,
21 that the subject of retiree's medical insurance premiums is
22 not directly and significantly related to any mandatory
23 subject of bargaining contained in NRS 288.150(2), because it
24 does not affect conditions of employment.

25 The Associations essentially contend that because the
26 payment of medical insurance premiums arose as a direct result
27 of and preconditioned on employment, such benefits must be (
28 considered as a fringe benefit "directly and significantly

1 related to" a mandatory subject of bargaining under NRS
2 288.150(2)(f); i.e., "insurance benefits". The Associations
3 have consistently denied that they were attempting to
4 negotiate on behalf of persons who have already retired.

5 The Board finds that any subject is a mandatory subject
6 of bargaining if it is directly and significantly related to
7 the compensation or working conditions of current employees,
8 and/or any one of the subjects specifically enumerated in NRS
9 288.150(2)(a) through (v) under a broad construction of the
10 particular listed subject. County of Washoe vs. Washoe County
11 Employee's Association, Case No. A1-045365, Item No. 159
12 (1984) and Ormsby County Teachers Association vs. Carson City
13 School District, Case No. A1-045382, Item No. 174 (1985). In
14 the instant case it is clear that the payment of medical
15 insurance premiums for current employees upon their retirement
16 is directly and significantly related to one of the subjects
17 specifically enumerated in NRS 288.150(2); i.e., NRS
18 288.150(2)(f) specifically lists "Insurance benefits" as a
19 mandatory bargaining subject.

20 Pursuant to the foregoing the Board finds that the
21 subject insurance benefits are a subject of mandatory
22 bargaining under NRS 288.150(2)(f), and payment of the
23 premiums for said benefits upon retirement is a form of
24 deferred compensation for services rendered by current
25 employees; therefore, the payment of said premiums also may
26 properly be considered as a form of direct compensation
27 (albeit deferred) under NRS 288.150(2)(a).
28

1 COMPLAINANTS ARE NOT ESTOPPED FROM
2 ALLEGING THAT MEDICAL INSURANCE
3 BENEFITS FOR RETIREES IS A MANDATORY
4 SUBJECT OF BARGAINING BASED ON THEIR
5 PAST POSITION AND ACTION (OR INACTIONS)
6 (Issues No. 7 and 8)

7 The County contends that the Associations are estopped
8 from alleging that medical insurance benefits for retirees is
9 a mandatory subject of bargaining by their following actions
10 (or inactions):

11 (1) None of the Complainants objected to the
12 County's implementation of certain changes in the
13 program during 1981 and 1986;

14 (2) Although certain of the Complainants submitted
15 proposals to amend the program or provide
16 additional benefits for retirees during
17 negotiations in 1987, 1988, 1989 and 1990, they
18 withdrew said proposals when confronted with the
19 County's refusal to negotiate on the premise that
20 they involved non-mandatory subjects of
21 bargaining. (However, in 1990, the Washoe County
22 District Attorney Investigators' Association, one
23 of the Complainants involved, indicated that
24 notwithstanding its withdrawal of said proposal,
25 it would treat the County's elimination of the
26 aforementioned program as an unfair labor
27 practice.)

28 (3) In each instance where the Complainants
29 withdrew their proposals regarding amendments to
30 the program or to provide additional benefits for
31 retired employees, said Complainants consummated a
32 labor agreement with the County which did not
33 contain a provision addressing medical insurance
34 for employees upon their retirement.

35 (4) In 1990, Complainant Washoe County Employees
36 Association and the County negotiated and signed a
37 collective bargaining agreement, however, no
38 proposals were made to the effect that the County
39 should pay medical insurance premiums for retirees
40 and no discussions were held throughout the
41 negotiations regarding the County's cessation of
42 the program of paying the medical insurance
43 premiums for employees hired after a certain date.

44 Essentially, the County is contending that the

1 Associations waived any right to allege that medical insurance
2 benefits for retirees is a mandatory subject of bargaining by
3 their aforementioned actions or inactions. A waiver may
4 result from either action or inaction. In the instant case,
5 the County's position is to the effect that the Associations
6 waived any right to allege that medical insurance benefits for
7 retirees is a mandatory subject of bargaining by their failure
8 to make that allegation when the program was amended, as well
9 as their failure to insist on bargaining to impasse on the
10 proposals which they submitted to amend the program or add
11 other benefits for retired employees, and/or their failure to
12 file unfair labor practice complaints in previous instances
13 when the County refused to bargain over the subject.
14 Likewise, the County is contending that the Associations
15 waived any right to make said allegation when they withdrew
16 their subject proposals from negotiations when confronted with
17 the County's position that the matter was not a subject of
18 mandatory bargaining.

19 The NLRB generally has been reluctant to give broad
20 effect to a waiver by inaction. Pearless Publications, Inc.,
21 231 NLRB 244, 85 LRRM 1611 (1977). A waiver by action,
22 however, may be given broad effect where the action manifests
23 the clear and unmistakable intentions of the party (or
24 parties) taking said action; e.g., a party may contractually
25 waive its right to bargain, but where such an assertion is
26 raised, the test applied has been whether the waiver is
27 evidenced by the "clear and unmistakable" intentions of the
28

1 party (or parties). Norris Industries, 231 NLRB 50 96 LRRM
2 1078 (1977). In assessing whether the alleged waiver in th
3 instant case meets the "clear and unmistakable" test, however,
4 the Board must consider the bargaining history to determine
5 the intention of the Associations by their failure to allege
6 that medical insurance for retirees is a mandatory subject of
7 bargaining when the program was amended, their failure to file
8 unfair labor practice complaints and their failure to insist
9 on bargaining to impasse regarding the proposals they
10 submitted involving changes in the program. Where an employer
11 relies on a purported waiver to establish its right to
12 unilaterally change terms and conditions of employment not
13 contained in the contract, evidence is required that the
14 matter in issue "was fully discussed and consciously explored
15 during negotiations and the union must have consciously
16 yielded or clearly and unmistakably waived its interest in the
17 matter." GTE Automatic Elec., 261 NLRB 1491, 110 LRRM 1193
18 (1982), supplementary 240 NLRB 297, 100 LRRM 1204 (1979). See
19 also WPER OH-21856, City of Huber Heights, Docket No.
20 89-ULP-09-0508, issued August 17, 1990. No such evidence has
21 been proffered here. In the instant case, therefore, the
22 Board finds that the facts do not evidence a clear and
23 unmistakable intention on the part of the Associations to
24 waive their right to allege that medical insurance benefits
25 for retirees is a mandatory subject of bargaining.

26 Additionally, the Board does not view the lack of a
27 "past practice clause or prevailing rights clause" in any of (

1 the Associations' labor agreements as mitigating the County's
2 statutory duty to maintain the subject program until or unless
3 changed pursuant to collective bargaining, notwithstanding any
4 contentions that may or may not have been advanced by the
5 Associations as to the negotiability of the subject program.

6 As concerns the Associations' failure to insist on
7 bargaining to impasse regarding the subject, the record
8 reflects that the County's chief negotiator apparently was
9 successful in creating sufficient doubt in the mind(s) of the
10 Associations' negotiator(s) concerning the negotiability of
11 the subject that they were persuaded to withdraw the matter
12 rather than insist on negotiating to impasse on a subject
13 which could be found to be non-mandatory and result in the
14 Associations being found guilty of a prohibited practice. 9
15 NPER NY-14562, Town of Parishville vs. Teamsters Local 687
16 (July 1, 1986). He (the County's Chief Negotiator) managed to
17 effectively place the Associations in an untenable position,
18 insofar as the County was concerned; i.e., if they failed to
19 insist on bargaining to impasse on the subject, the County
20 would consider such failure as a waiver of their right to
21 bargain with respect thereto, and, if they insisted on
22 bargaining to impasse and the subject was found to be
23 non-negotiable, the Associations could be found to have
24 committed a prohibited practice. Under these circumstances,
25 the Board does not consider the Associations' failure to
26 insist on bargaining to impasse regarding the subject to be a
27 determinative factor in the instant case.

1 Additionally, in view of the fact that "insurance
2 benefits" is listed under NRS 288.150(2)(f) as a mandatory
3 subject of bargaining, as well as the fact that the payment of
4 medical insurance premiums for current employees upon their
5 retirement is a form of compensation for services rendered
6 (albeit deferred), as contemplated by NRS 288.150(2)(a), the
7 Board is of the opinion that the Associations could not
8 considered to have waived their rights to bargain regarding
9 the subject, except by clear and unmistakable contract
10 language pursuant to negotiations wherein the matter of waiver
11 was fully discussed and consciously explored.

12 COUNTY'S ELIMINATION OF PAYMENT OF
13 MEDICAL INSURANCE PREMIUM FOR EMPLOYEES
14 UPON THEIR RETIREMENT WAS A PROHIBITED
15 CHANGE IN THE TERMS AND CONDITIONS OF
16 THEIR EMPLOYMENT WITHIN THE MEANING OF
17 NRS 288.270 (Issues No. 9 and 10)

18 The record indicates that in 1977 the County established
19 a practice or program involving payment of medical insurance
20 premiums for retired employees as follows:

21 (1) County would pay 50% of medical
22 insurance premium of a retired employee
23 with at least 10 years County employ-
24 ment;

25 (2) County would pay 75% of the premium
26 for an employee who had worked at least
27 15 years for Washoe County; and

28 (3) County would pay 100% of the premium
 for an employee who had worked at least
 20 years for Washoe County.

 In adopting this practice or program, the Board of County
Commissioners reserved the right to modify or terminate
premium payments at anytime. No negotiations were held

1 between the County and any of the Complainants regarding this
2 program at that time.

3 The fact(s) that the subject program was unilaterally
4 implemented (no negotiations were held or requested at that
5 time), the County promulgated its right to modify or terminate
6 premium payments at anytime and the program was subsequently
7 amended without negotiation, does (do) not in and of itself
8 preclude a finding that the County's unilateral elimination of
9 said program was a prohibited change in the terms and
10 conditions of employment for the County's employees. As
11 stated previously, proposals were submitted and negotiations
12 were requested by one or more of the Complainants regarding
13 the subject in 1987, 1988, 1989 and 1990, indicating that the
14 Association(s) considered the subject negotiable, although in
15 each instance the County convinced the Complainant to withdraw
16 the proposal on the premise that insistence on bargaining to
17 impasse regarding a subject which is found to be non-mandatory
18 constitutes a prohibited practice under NRS 288.270. Also, a
19 local government employer cannot unilaterally abrogate its
20 statutory duty to bargain collectively by merely proclaiming
21 that it reserved the right to modify or terminate premium
22 payments at anytime. Edward Hines Lumber Co. vs. Lumber and
23 Sawmill Workers, Local 2588, F.2d, 119 LRRM 3210 (9th Cir.
24 1985).

25 The determinative factor in this case is that the
26 subject (insurance benefits for retirees) is considered a
27 mandatory subject of bargaining under NRS 288.150(2)(a) and
28

1 (f). Furthermore, when the County adopted a program of paying
2 medical insurance premiums for employees upon their
3 retirement, and maintained said program for a substantial
4 period of time (over 13 years), it thereby created a term or
5 condition of employment which it was obligated to continue,
6 subject to negotiation with the employees' designative
7 representative(s). Marine Central R.R. vs. Transportation
8 Union, F.2d, 122 LRRM 2017 (1st Cir. 1986); Railway Clerks vs.
9 C & O Railway Co., F.Supp., 115 LRRM 3635 (N.D., Ohio (1983);
10 and Metal Specialty Co., 39 LA 1265, 1269 (1962). Its (the
11 County's) unilateral action of eliminating said program
12 without negotiating with the designated representatives of the
13 employees affected was a prohibited practice under NRS
14 288.270(1)(e). 9 NPER FL-18150, Pensacola Junior College vs.
15 Pensacola Junior College Faculty Assn. (June 11, 1987); 9 NPER
16 NY-14625, Town of Henrietta vs. CWA, Local 1170, Roadrunners
17 Assn. (December 15, 1986); Titmus Optical Co., Inc. and United
18 Steel Workers of America. AFL-CIO-CLC, 205 NLRB 974, 84 LRRM
19 1245 (1973); and Law Enforcement Labor Services, Inc. vs.
20 Mower County, Minn. Ct.App. No. C9-90-2329, 5/7/91.

21 **FUNDING OF PROGRAM TO BE DETERMINED**
22 **THROUGH COLLECTIVE BARGAINING**

23 In defending its unilateral action of discontinuing the
24 practice of paying the medical insurance premiums for
25 employees hired on or after March 28, 1990, upon their
26 retirement, the County has pointed to the very substantial
27 increase in the cost of the program, i.e., from \$10,724.00 in
28 1977 to in excess of \$340,000.00 in 1990. For this and other

1 reasons the County contends that only a "prefunded" program
2 should be considered negotiable.

3 Implicit in the County's position regarding prefunding
4 is that the Associations refused to negotiate on any program
5 other than a "pay-as-you-go" program. From the evidence of
6 record the Board finds no evidence to support the premise on
7 which the County's position is based. The proposals submitted
8 by the Associations were an attempt to discuss the subject
9 "conceptually" and did not preclude negotiation of a prefunded
10 plan. Additionally, if either party had set such a
11 pre-condition for negotiations (that the program must be
12 either prefunded or pay-as-you-go) such would have been a
13 prohibited practice under NRS 288.270.

14 While the Board does not disagree with the notion that a
15 prefunded program would be preferable from the County's point
16 of view, it finds no statutory basis for holding that only a
17 prefunded program could be considered negotiable. The funding
18 for the program is a matter to be determined through
19 collective bargaining, with the understanding that the
20 County's financial concerns must be addressed if the parties
21 are to avoid negotiating to impasse.

22 **FINDINGS OF FACT**

23 The Board's Findings of Fact are as stipulated to by the
24 parties and set forth in the Board's Statement of the Case on
25 pages 3 through 6 of this Decision.

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CONCLUSIONS OF LAW

1
2 1. That the Local Government Employee-Management
3 Relations Board has jurisdiction over the parties and the
4 subject matter of this Complaint, pursuant to the provisions
5 of NRS Chapter 288.

6 2. That the Complainants, Washoe County Sheriff's
7 Deputies Association; Washoe County District Attorney
8 Investigators' Association; and Washoe County Employees
9 Association, are recognized employee organizations as defined
10 by NRS 288.040.

11 3. That the Respondent, County of Washoe, is a
12 recognized local government employer as defined by NRS
13 288.060.

14 4. That the instant Complaint is properly before the
15 Board for consideration on its merits under NRS 288.110(4).

16 5. That the Board's jurisdiction pursuant to NRS
17 Chapter 288 to decide disputes involving subjects of mandatory
18 bargaining as set forth in NRS 288.150(2) has not been
19 preempted by NRS Chapter 286 and NRS Chapter 287.

20 6. That the Complainants have the proper standing to
21 bring a complaint before this Board on behalf of current
22 employees involving medical insurance premiums to be paid upon
23 their retirement, pursuant to NRS 288.150(1)(a) and (f).

24 7. That the accrual of medical insurance benefits by
25 current employees for payment upon their retirement is a
26 mandatory subject of bargaining, pursuant to NRS 288.150(1)(a)
27 and (f).
28

1 8. That the Complainants are not estopped from and did
2 not waive their right to contend that medical insurance
3 benefits for current employees, to be paid upon their
4 retirement, is a subject of mandatory bargaining pursuant to
5 NRS 288.150(2)(a) and (e), by their past actions or inactions.

6 9. That the Respondent, County of Washoe, committed a
7 prohibited practice in violation of NRS 288.270(1)(a) and (e)
8 when it unilaterally discontinued the practice or program of
9 paying the medical insurance premiums for current employees
10 upon their retirement, without negotiating said change
11 pursuant to NRS 288.150(2)(a) and (f).

12 **DECISION AND ORDER**

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

14 1. That the Associations' Complaint is upheld to the
15 extent set forth in the Board's Conclusions of Law, and the
16 County shall immediately reinstate its program of paying the
17 medical insurance premiums of current employees upon their
18 retirement;

19 2. That the aforementioned reinstatement of benefits
20 shall be retroactive to the date the County discontinued
21 paying the medical premiums of current employees upon their
22 retirement;

23 3. That any subsequent change in benefits which are
24 subject to mandatory bargaining shall be made pursuant to the
25 provisions of NRS Chapter 288; and

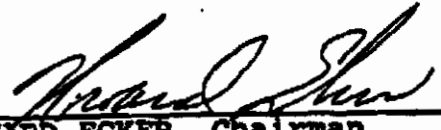
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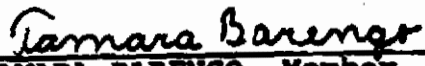
1 4. That each party is to bear its own costs and fees in
2 the above-entitled matter.

3 DATED this 25th day of July, 1991.

4 LOCAL GOVERNMENT EMPLOYEE-
5 MANAGEMENT RELATIONS BOARD

6 By 
7 HOWARD ECKER, Chairman

8 By 
9 SALVATORE GUGINO, Vice Chairman

10 By 
11 TAMARA BARENGO, Member
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