STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CONSOLIDATED MUNICIPALITY OF CARSON CITY, Petitioner, -vs- CARSON CITY EMPLOYEES ASSOCIATION; CARSON CITY FIRE FIGHTERS ASSOCIATION, LOCAL #2251; CARSON CITY SHERIFF'S PROTECTIVE ASSOCIATION; and CARSON CITY SHERIFF'S SUPERVISORY ASSOCIATION, Respondents.	**ITEM NO. 276** CASE NO. A1-045498 **DISSENTING OPINION**

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DYER AND MCDONALD

For the EMRB: (Majority) Salvatore C. Gugino, Vice Chairman
Tamara Barengo, Member

For the EMRB: (Dissent) Howard Ecker, Chairman

I respectfully dissent from the majority decision of the Board.

The majority has determined that the City's decision to become a self-insured employer and the selection of a private administrator for workmen's compensation claims, is not a subject of mandatory collective bargaining pursuant to NRS 288.150(2). For the reasons set forth below, it is submitted that the majority's decision is in error.

I. "Preemption" of NRS 288.150 by Provisions of Chapter 616.

NRS 288.150(2)(f) provides that "Insurance Benefits" a subject of mandatory collective bargaining. The City depa from the plain meaning of the face of the Statute, and argues t the provisions of Chapter 616 "preempt" the ability of the Bo to mandate collective bargaining on the issue of workme compensation benefits.

NRS Chapter 616 contains specific statutory provisio setting out minimum standards for workmen's compensation benefi in Nevada. The State Industrial Insurance System (SII administers such benefits, unless an employer chooses to sel insure and select a private Administrator for payment of su workmen's compensation benefits. The provisions of Chapter 6 regarding minimum benefits is clearly intended to render void a contract establishing benefits which fall below those mi mu standards.

MGM Grand Hotel-Reno, Inc., vs. Insley, 102 Nev. 513, 72 P.2d 821 (1986), stated as follows:

> "...The State Industrial Insurance System (SIIS) is an independent public agency which administers and is supported by the state insurance fund. N.R.S. 616.1701. Employers and employees are governed by the terms, conditions and provisions set out in N.R.S. Chapter 616 and 617.
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> "The obligation to pay compensation benefits and the right to receive them exists as a matter of statute independent of any right established by contract. They are minimum standards "independent of the collective-bargaining process [that] devolve on [employees] as individual workers, not as members of a collective organization". Metropolitan Life Insurance Co. v. Massachusetts, 471 U.S. 724,____, 105 S.Ct. 2380, 2397 (1985). Indeed, a contract of employment which would waive or modify the terms of liability created by N.R.S. 616 would be void. N.R.S. 616.265."

MGM v. Insley involved a tort claim by an employee again the employer and the employer's administrator of its private sel insured workman's compensation program. The employer defended the basis that the employee's tort claim was preempted by t National Labor Relations Act. In its decision, the Supreme Cou of Nevada clarified that the NLRA did not automatically preem every state law claim that related in some way to a provision i a collective bargaining agreement. In so reasoning, the Cou clarified that the provisions of Chapter 616 established minimu standards which are independent of the collective bargainin process, in the sense that Chapter 616 confers specific rights c each individual worker.

Nowhere in the decision of MGM v. Insley does the Nevad State Supreme Court suggest, merely because minimum standards ar set forth in Chapter 616, that any private contract concernin workmen's compensation benefits is void or voidable pursuant t Chapter 616. The majority's reliance on MGM v. Insley for tha proposition is misplaced. MGM v. Insley, in the context of thi instant discussion, stands only for the proposition that contract of employment which waives or modifies the minimu benefits as prescribed by Chapter 616, would be void. (MGM v Insley, supra).

The employment agreements in this instant case provid benefits that are greater than those required under Chapter 616. Specifically, the Agreements between the City and the variou employee associations contain provisions that the City will pa 100% of each employee's compensation for the first sixty (60) day of disability. This is a "contractual excess", a benefit

negotiated between the employer and the employee associatic which provides for full compensation, rather than the employ receiving only the statutory amount of 66 2/3%, which is t minimum standard prescribed by Chapter 616.

The majority cites the case of Segura v. Molycorp, 97 N. 13, 636 P.2d 284 (1981), to support its conclusion that t "contractual excess is not workmen's compensation" (Segur supra). The majority, therefore, reasons that workmen compensation benefits, being distinct from "contractual exces are exclusively the province of Chapter 616, and are, therefor not negotiable and not subject to collective bargaining unde Chapter 288.

The majority's reasoning is too narrow, and leads to mistaken conclusion. The full text of the relevant portion o the Segura case states as follows:

> "Although there is no New Mexico authority directly on point, the authority from other jurisdictions may be summarized as follows. The exclusive remedy provisions in workmen's compensation laws, such as Section 52-1-6(D), supra, do not prevent an employer and an employee from entering into a private agreement for contractual disability benefits greater than those benefits provided under the legislative workmen's compensation scheme. The rule is set forth in 4 A. Larson, Workmen's Compensation Law, Section 97.53 (1977) as follows:
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> > "It is possible to imagine a number of troublesome legal questions that might emerge from the type of contract in which the employer agrees to pay, say $90 a week benefits instead of the $70 specified by statute. One cardinal principle, however, should ordinarily settle most such questions. That principle is the simple proposition that the contractual excess is not Workmen's Compensation. It performs the same functions, and is payable under the same general conditions, but legally it is nothing more than the fruit of a private agreement to pay a sum of money on specified

conditions. The provisions of a compensation act may be incorporated into the agreement by reference, but the operative force and the ultimate legal character of the arrangement remain that of private contract.

"Accord: Nelson v. Victory Electric Works, Inc., 227 F.Supp. 404 (D.C.Md.1964); City Counsel of Augusta v. Young, 218 Ga. 346, 127 S.E.2d 904 (1964); Board of Ed., etc. v. Chicago Teachers Union, 82 Ill.App.3d 354, 37 Ill.Dec. 639, 402 N.E.2d 641 (1980) and Heck v. Geo. A. Hormel Co., 260 N.W.2d 421 (Iowa, 1977). The Supreme Court of Iowa, in Heck, supra, was confronted with the same basic fact pattern presented here and, in concluding that such actions are not within the purview of the Workmen's Compensation Acts, said:

> "The fact that an employee's rights against an employer for industrial accidents lie exclusively within the provisions of Chapter 85 does not prevent the parties from agreeing by contract to augment the benefits there conferred. The present action is not a claim in derogation of the Worker's Compensation Act; it is a claim to enforce a contract similar to an insurance contract."
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> [Emphasis added.]

Segura makes clear that workmen's compensation benefit are properly a part of a collective bargaining agreement, and ma be incorporated into such an agreement. Further, Segura clarifie that claims or disputes over such agreements (which may contai minimum benefits as part of their terms) are not voided b workmen's compensation acts, but rather are contractual disputes In the instant case, such contractual disputes must be subject t the provisions of Chapter 288.

Accordingly, the employees' associations' assertion of right to mandatory collective bargaining over the contractua provisions regarding workmen's compensation, cannot be said to be precluded by any provision of Chapter 616. The provisions of Chapter 616 exist only to void a contract which falls below the minimum standards established under that Chapter. Chapter 61

does not reveal any legislative intent to "preempt" or to preclu collective bargaining over private contracts between employers a employees associations, where those contracts contain the mi...m standards required by Chapter 616, or exceed those minim standards.

A compelling preemption test is set forth in Matter Board of Chosen Freeholders, 561A.2d 597, at 601 and 601:

> "[1] The County contends initially that its safety-incentive program is a 'subject [that] has been fully or partially preempted by statute'. It argues that N.J.S.A. 40A;5-31 and 40A:9-18 are such preemptive statutes, giving it authority to adopt the safety-incentive program unencumbered by any need to discuss or negotiate the program with its employees.
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> "The issue, however, is not whether these statutes, N.J.S.A. 40A:5-31 and 40A:9-18, authorize the County to adopt a safety-incentive program, but whether they exempt the County from negotiating with the Union over any of its provisions.
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> "The preemption test governing the resolution of this kind of issue was articulated in Bethlehem Township Bd. of Educ. v. Bethlehem Township Educ. Ass'n, 91 N.J. 38, 44, 449 A.2d 1254 (1982):
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> "As a general rule, an otherwise negotiable topic cannot be the subject of a negotiated agreement if it is preempted by legislation. However, the mere existence of legislation relating to a given term or condition of employment does not automatically preclude negotiations. Negotiation is preempted only if the regulation fixes a term and condition of employment 'expressly, specifically and comprehensively', Council [of New Jersey State College Locals v. State Board of Higher Education] 91 N.J. [18] at 30 [449 A.2d 1244 (1982)]. The legislative provision must 'speak in the imperative and leave nothing to the discretion of the public employer'. In re IFPTE Local 195 v. State, 88 N.J. 393, 403-04 [443 A.2d 187] (1982), quoting State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80 [393 A.2d 233] (1978). If the legislation, which encompasses agency regulations, contemplated discretionary limits or sets a minimum or maximum term or condition, then negotiation will be confined within these limits.

> Id. at 80-82 [393 A.2d 233]. See N.J.S.A. 34:13A-8.1. Thus, the rule established is that legislation 'which expressly set[s] terms and conditions of employment...for public employees may not be contravened by negotiated agreement'. State Supervisory, 78 N.J. at 80 [393 A.2d 233].

Chosen Freeholders adopts the reasonable and common sens rule that the mere existence of legislation relating to a give term or condition of employment cannot automatically preclud negotiations over such subjects. In order to find exception t this rule, the statute must "speak in the imperative and leav nothing to the discretion of the public employer" (Board of Chose Freeholders, supra).

Neither the provisions of NRS Chapter 616 cited by th majority nor any other provision of NRS Chapter 616 can be sai to "speak in the imperative and leave nothing to the discretio of the public employer". In other words, nothing contained in NR Chapter 616 requires the City to become a self-insured employer Nothing contained therein expressly, specifically an comprehensively fixes any term or condition of employment as suc relates to an employer's decision to become self-insured or to th selection of a third-party administrator for workmen's compensation claims. In fact, as it pertains to the issue at ba (whether the decision to go self-insured and the selection of a private administrator for the handling of workmen's compensatio claims are negotiable), the applicable legislative provisions (NR 616.291 and 616.293) speak in the permissive (not the "imperative") and, rather than leaving "nothing to the discretion of the public employer", gives the public employer the option of going self-insured.

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Clearly, Carson City in the present case has done wh many other government entities have done across the United Stat -- it has negotiated with its public employees associations provide benefits which exceed the minimum standards set forth the workmen's compensation statutes of Nevada (Chapter 616). so doing, the City and the employees associations were ful within their rights and discretion, as Chapter 616 does n specify that benefits must be limited to the amounts set forth that Chapter.

The City's reliance on this "preemption" concept misplaced in this instant case, and conflicts with earlie decisions of this Board. The Board's decision in Washoe Count Sheriff's Deputy Association, Inc., et al vs. County of Washoe Item #271, Case Number A1-045479 (July 25, 1991), addressed a ver similar preemption argument by Washoe County.

Washoe County argued that its decision to discontinu certain retiree insurance benefits could not be a subject o mandatory collective bargaining, as NRS Chapter 286 (Publi Employee's Retirement System) and NRS Chapter 287 (Group Healt and Medical Insurance for State Employees) preempted suc mandatory collective bargaining under Chapter 288.

The Decision stated as follows:

> "Even though said Statute [Chapter 286-Public Employee's Retirement System] may provide a 'comprehensive system to provide retirement income to employees who have retired from public service' as alleged by the County, the Board finds that said Statute is not sufficiently specific or all-encompassing in the area of insurance benefits for retirees, to be considered as preempting negotiation with respect to the payment of medical insurance premiums for current employees upon their retirement".

"N.R.S. 288.150(2)(f) explicitly provides that 'insurance benefits' are a subject of mandatory bargaining. The Statutes alluded to are not in conflict, but rather fully compatible with N.R.S. 288.150(2)(f). Additionally, the Board finds that the case law cited by the County, rather than supporting its position regarding preemption, supports the Board's conclusion that N.R.S. 288.150(2)(f) has not been preempted by N.R.S. Chapters 286 and 287. The matter of Hunterdon County Board of Chosen Freeholders, 4561 A.2d 597, 601 (1989), and City of Allentown vs. Local 302 International Association, 514 A.2d 1175 (1986)." (Washoe County Sheriff's Deputy's Association, supra).

It is clear from the foregoing that the preemptio argument advanced by the City has no basis. The negotiability o the minimum standards created by NRS Chapter 616 is not an issu in this case. Requiring the parties in the instant case t bargain collectively with respect to the City's decision t convert to a self-insured workmen's compensation program an select a private administrator, does not contravene any of the provisions of Chapter 616. Chapter 616 simply does not contai any such prohibition.

II. Applicability of "Article 36" of the employment Agreements.

One difficulty with the City's position in this matter, overlooked by the majority in their opinion, is that the Agreements herein refer specifically to "SIIS benefits" and benefits "provided by SIIS". The employee associations contend that the administration of workmen's compensation benefits by SIIS, was a specific term of the contract. Therefore, the City's decision to change administrators from SIIS to a private administrator, is a modification of a specific term of the contract; such revision must be mutually agreed to by virtue of

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specific provisions in each Agreement; see Articles 34, 35, 36 . 36, to-wit: Carson City Employees Association Agreement, Car City Firefighters Association Agreement, Carson City Sherif Protection Association Agreement and Carson City Sheriff Supervisory Association, respectively. For ease of referenc these Articles will collectively be referred to as "Article 36

The use of the terms "SIIS", "State Industrial Insuran System", and "SIIS benefits" in the Agreements, plain contemplates that the State Industrial Insurance System is t Administrator of the plan and will continue to be so until unless such provisions are changed by mutual agreement. T agreements do not employ language such as "workmen's compensati benefits" in the text, and make no reference whatsoever to private administrator. Clearly, had the City contemplated change of administrators at the time of the formation of th contract, the City would have reserved the right to do so; or, i the alternative, the City would have referred to the benefits ar the administrator thereof by a true generic label. Instead, th parties bargained-for and specifically provided that SIIS woul provide benefits and administer the payment of same.

The City's contention that "SIIS benefits" is a generi term is further belied by the structure of the Agreements betwee the City and the employee associations. At the hearing before th Board, Exhibit "C" of the Record, attached hereto (Agreemen between the Carson City and the Sheriff's Protective Association on page 16, lines 12 through 28, and in Exhibit "D" of the Record, attached hereto (Agreement between Carson City and the Sher 's Supervisory Association), page 15, lines 24 through 28, and page

16, lines 1 through 15, reveal that under the category "Industrial Compensation" (a true "generic" label), the text that paragraph refers specifically to the "State Industri Insurance System". Thus, the designation of "SIIS" was not generic term of the Agreements, but was rather a specif administrator referred to under the general category "Industrial Compensation".

It is clear that the State Industrial Insurance Syste was specifically designated by the City and the employee associations as the administrator of all workmen's compensatic benefits under the collective bargaining agreements. A change i that specific provision of the agreement cannot be institute unilaterally by the City, but is subject to negotiation pursuan to Article 36.

Accordingly, upon a plain reading of the agreements, th employee's associations are entitled to negotiate with respect t the City's determination to become self-insured and to select private administrator. This right should be enforced pursuant t the terms of the contract itself (Article 36), such enforcemen being separate and distinct from any issue regarding mandator collective bargaining under NRS 288.150(2).

III. Decision to Self-Insure and to Select a Privat Administrator as a Mandatory Collective Bargaining Issu Pursuant to NRS 288.150(2).

The fundamental issue before the Board in this case i the determination as to whether the City's decision to become self-insured employer and its selection of a private administrato should be properly the subjects of mandatory collective bargainin pursuant to NRS 288.150(2).

A. Workmen's Compensation benefits are undeniably "Insuran benefits" under NRS 288.150(2)(f).

The majority herein has concluded that work n compensation benefits are not "Insurance benefits" under NI 288.150(2)(f). The majority states no authority for thi conclusion. Workmen's compensation benefits are "insuranc benefits", even if the minimum standards required by NRS Chapte 616 cannot be voided or reduced by a collective bargainin agreement.

A straightforward review of the nature of the topic contained in NRS 288.150(2) reveals that the topics enumerate therein contain important employee/employer issues and benefits Salary, sick leave, vacation leave, holidays, total work hours discharge and disciplinary procedures, and protection of employee as members of employee organizations are just a few of th important topics contained within the statute. The mere existenc of Chapter 616 does not exclude workmen's compensation benefit from subsection (f) "insurance benefits", of NRS 288.150(2).

Furthermore, as discussed below, even the "excess benefits" contained in the Agreements between Carson City and its employee associations, are affected by the City's contemplatec change to a self-insured system. In addition, as discussed below, the City's decision to self-insure and select a private administrator must be a subject of mandatory collective bargaining because of its potential affect and impact on many other employee benefits herein, including, among others, sick leave and annual leave.

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B. Decision of the City to self-insure is not a "managemer prerogative".

The majority opinion concludes that the City's decisior to self-insure and to select a private administrator are "management prerogative", and are governed solely by th provisions of Chapter 616. The majority supports this reasonin by referring to specific portions of Chapter 616 which state th requirements and obligations of self-insured employers certification requirements, and the like.

The majority then states on page 9, lines 12 through 20 of the Declaratory Order as follows:

> "The Board must observe that, in none of these statutes or regulations, is there a requirement that an employer negotiate its decision to become self-insured, nor is there a further requirement that an employer negotiate its selection of a third party administrator. To the contrary, the statutes and regulations appear to indicate that an employer must merely meet the requirements stated therein in order to become self-insured or to select an administrator."

The majority's heavy reliance on the provisions of Chapter 616 is misplaced. The obvious reason that Chapter 616 does not contain language suggesting that the Legislature intended such matters be subject to collective bargaining, is plainly because Chapter 616 does not deal in any fashion with the subject of collective bargaining. That is clearly the purview of Chapter 288. Chapter 616 and its provisions for qualification and certification of self-insured employers is clearly not applicable to any determination by this Board as to whether a particular issue should be the subject of mandatory collective bargaining under NRS 288.150(2).

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C. The City's decisions to self-insure and to select private administrator are decisions which significant effect benefits of the employees herein.

The critical question to be addressed herein is wh the decision to change to a self-insured workmen's compensati program, and to select a private administrator for such progra are decisions which are significantly related to and/or effect t rights and benefits of employees to such an extent that the sa should be included within the scope of the mandatory collecti bargaining provisions of Chapter 288.150(2).

NRS 288.100 provides as follows:

> "1. If a matter is significantly related to the subjects enumerated in subsection 2 of NRS 288.150, a local government employer, upon written request by an appropriate employee organization, shall negotiate the matter unless, in the determination of the employer, the proposed matter to be negotiated would be reserved to the local government employer pursuant to subsection 3 of NRS 288.150."
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> [Emphasis added.]
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> "3. Those subject matters which are not within the scope of mandatory bargaining and which are reserved to the local government employer without negotiation include:
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> (a) Except as otherwise provided in paragraph (u) of subsection 2, the right to hire, direct, assign or transfer an employee, but excluding the right to assign or transfer an employee as a form of discipline.
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> (b) the right to reduce in force or lay off any employee because of lack of work or lack of money, subject to paragraph (v) of subsection 2.
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> (c) The right to determine:
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> (1) Appropriate staffing levels and work performance standards, except for safety considerations;
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> (2) The content of the workday, including without limitation work load factors, except for safety considerations;
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> (3) The quality and quantity of services to be offered to the public; and
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> (4) The means and methods of offering those services.
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> (d) Safety to the public."

As is readily apparent from the above, neither t decision to become self-insured or the selection of a priva administrator for the handling of workmen's compensation clai is reserved to the local government employer under any provisi of subsection 3 of NRS 288.150.

Consistent with NRS 288.100, this Board has consistentl in the past, found that a number of subjects which are nc specifically listed as mandatory bargaining subjects under NR 288.150(2) should, nevertheless, be subject to collectiv bargaining. The Board has reasoned and held that, if a subjec is directly and significantly related to one of the subject enumerated in NRS 288.150(2), or significantly impacts sai subjects, it must be negotiated. The following decisions of th Board have comported with these principles regarding subjects no specifically listed under NRS 288.150(2):

Item No. 159, County of Washoe vs. Washoe County Employees' Association, Case No. A1-045365 (1984)

Item No. 168, Douglas County Professional Education Assn. vs. Douglas County School District, Case No. A1-045380 (1984)

Item No. 174, Ormsby County Teachers Association vs. Carson City School District, Case No. A1-045382 (1985)

Item No. 182, City of Sparks vs. Operating Engineers Local Union No. 3, Case No. A1-045391 (1985)

Item Nos. 212 and 212-A, Pershing County Classroom vs. Pershing County School District, Case No. A1-045416 (1988)

Item No. 267, International Association of Firefighters, Local 2487 vs. Truckee Meadows Fire Protection District, Case No. A1-045488 (1991)

Item No. 271, Washoe County Sheriff's Deputies Ass'n, Inc., et al vs. County of Washoe, Case No. A1-045479 (1991)

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In Item No. 182, City of Sparks vs. Operating Engineers supra, the City of Sparks contended that the City's selection of a new health care plan administrator was not an issue which was subject to mandatory bargaining under NRS 288.150(2)(f) ("Insurance benefits"). The Board disagreed with the City's position. The Board looked to whether the nature of the benefit was inseparable from the identity of the carrier, and concluded that major differences existed in the benefit levels and administration of the two plans. Therefore, the Board concluded that the decision to change carriers was properly a subject of mandatory collective bargaining between the City and the employee's association.

In the City of Sparks opinion, the Board relied on two key decisions in this area: Keystone Steel and Wire Division vs. Independent Steel Worker's Alliance, 99 LRRM 1036, 237 NLRB -1, 38-CA-3389 (1978) and Franklin-McKinley Education Association vs. Franklin-McKinley ESD, Case No. SF-CE-12 (June 6, 1977).

The Keystone Steel decision plainly held that the choice of an administrator of a health care plan was a mandatory subject of collective bargaining. The NLRB in that case indicated that the issue was "whether the identity of the administrator/processor has a significant impact on the wages, hours or working conditions of the unit employees. If the choice of an administrator makes a difference, then the parties must bargain about the choice." Keystone, supra, page 1039.

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The Franklin-McKinley case dealt with the action of school district unilaterally changing the employee dental pl insurance carrier. The case held that the choice of the carri was negotiable where the nature of the benefits was inseparab from the identity of the carrier. The carrier was named in pa agreements between the parties, it was found that several change in terms and benefits accompanied the switch, and the conclusio was reached that the differences in benefits were totall interrelated with the identity of the carrier, and hence must b negotiable.

The Board of Chosen Freeholders, supra, examined th application of the "significantly related" doctrine in th determination as to whether a subject is subject to collectiv bargaining:

> "[2] The County also argues that the program, aside from its asserted statutory immunity from negotiation, is non-negotiable because it does not sufficiently implicate the "terms and conditions" of employment, and further, it does not 'intimately and directly affect the work and welfare of public employees'. In re IFPTE Local 195, supra, 88 N.J. at 403-04, 443, A.2d 187. The county thus stresses that economic considerations are inapplicable because no money was awarded prior to the unilateral termination of the program, and, in addition, the program did not impose any additional duties or overtly change existing workplace practices, demonstrating, along with the continuing expectation that workers will act to avoid on-the-job accidents, that the incentive program did not affect the welfare or work conditions of employees.
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> "It is clear that employer actions that arguably affect compensation may be mandatorily negotiable. Although the clearest example of such effects is provided when the disputed actions concerns rates of pay and working hours, see, e.g., In re IFPTE Local 195 v. State, supra, 88 N.J. at 403, 443 A.2d 187; Bd. of Educ. Woodstown-Pilesgrove Regional School District v. Woodstown-Pilesgrove educ. Ass'n., 81 N.J. 582, 410 A.2d 1131 (1980) our courts have upheld findings by PERC that

modest amounts of compensation, or even seemingly minor non-economic benefits, can sufficiently affect the work and welfare of employees to trigger mandatory negotiability. [Emphasis added.]

Freeholders clearly indicates that even de minimus issu which have minor economic effect on employees, can still be fou to affect the work and welfare of employees, and thereby beco matters of mandatory negotiation.

In reviewing just a portion of the facts of the insta situation, one must conclude that the change of administrator and the change to a self-insured system, will have a significar affect and impact on the delivery of benefits to employees, a well as the amount of benefits which employees will receive.

The majority opinion makes reference to the concerns o the employees regarding matters which will affect them in th change of administrators, citing among other things, th following: (1) that another qualified or less responsiv administrator might later be obtained; (2) that differences i appeals from denial of claims would result; (3) that the respons time on claims might be extended; (4) that different procedure would be employed for the processing of claims without input b the employees; (5) that counsellors previously available t employees might not be available in the future, or less qualifiec counsellors may replace those currently serving employees; and (6) that the administrator might owe allegiance to the City rather than employees, as the City is the unilateral designator of the administrator. Implicit in each of these concerns is its affect or impact on the delivery and/or amount of benefits.

In its presentation to the Board, the City introduced in evidence the 1990 Performance Audit on "Compensation and Othe Benefits to Insured Workers" in Nevada which was prepared by th Legislative Auditor of the Nevada Legislature. Statistics cite in the Performance Audit were used by the City to show tha conversion to a self-insured program would result in a significan savings to the City.

That Performance Audit, however, also contains informatio revealing that the average benefits paid, per claim, diffe dramatically from self-insured employers as opposed to the Stat Industrial Insurance System. The Performance Audit, Carson Cit Exhibit "L", on page 1.12, a copy of which is attached hereto compares the average benefit costs per claim between SIIS an self-insured employers. The audit clearly indicates that self- insured employees received approximately $3,106 in benefits pe claim, while employees administered by SIIS received $7,183 pe claim.

Clearly, the City initially proposed the change to a self- insured system as a cost-cutting measure. However, it is clea that a portion of the savings under a self-insured plan may result from the delivery of a lesser amount of benefits, in total, to the public employees covered under such a self-insured program. The City refers to this generally as a more efficient handling of claims. However, in actual dollar compensation for medical costs, temporary disability compensation, permanent disability compensation and rehabilitation benefits, employees receive less compensation under a self-insured scheme, according to the Performance Audit submitted by the City to the Board.

The change of administrators, and the change to a self insured program from SIIS administered benefits, obviously is global change in the entire system of administering workmen compensation benefits to employees. It is unthinkable to conclude that, simply because the minimum benefits under Chapter 616 do not change under a self-insured system, that employees are not significantly affected. Clearly, in the administration of workmen's compensation benefits, the process of the administration of claims significantly affects the ultimate extent and duration of benefits to employees, to a far greater degree than the majority is willing to acknowledge.

The extent to which the new administrator can effect the duration of benefits, has a profound rippling effect on additional City employee benefits which are dependent on the extent of the employee's fully paid disability leave. As noted above, a key component of the Agreements concerns the City's obligation to supplement the Workman's Compensation benefits for wage loss (66-2/3%), by guaranteeing full wages to the employee for sixty (60) days of disability. Exhibit "A" of the Record (hereto attached) the contract of the Carson City Employee's Association at page 34, paragraph (f), indicates that "employee benefits, sick leave and annual leave continue to accrue so long as the employee is eligible for a full salary" under the City's obligation as defined above. Accordingly, this effect could impact a number of the other specifically defined areas of collective bargaining under NRS 288.150(2), including subsection (a) "Salary or wage rates or other forms of direct monetary compensation"; subsection (b) "[illegible]

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Leave"; and subsection (e) "Other paid or non-paid leaves o absence".

It appears clear that the majority in this case considere it critical that the Board recognize the right and responsibilit of local government employers to manage their operations in th most efficient manner consistent with the best interests of al their citizens, taxpayers and employees. However, in so doing the majority has significantly impacted the rights of the affecte employees herein, and has ignored the obvious effect and impact that an important unilateral decision of the City will have o each public employee's benefits under NRS Chapter 616. No perso would dispute the City's right and obligation as a public employer, to conduct its business in the most efficient and cost effective manner possible. Similarly, one cannot be unsympathetic with Carson City's desire to reduce costs through the implementation of a self-insured workmen's compensation program. However, this savings of costs and the greater efficiency which may result from a self-insured program can still occur; but it must occur through negotiation between the City and its employee associations as is clearly required by the mandatory bargaining provisions of NRS 288.150(2).

Carson City is to be commended for the intelligent and forthright manner it has chosen for resolving this dispute with its employee associations, to-wit: by petitioning this Board for a declaratory order before implementing any unilateral changes. However, the significant effect and impact which this requested change would have upon the process and, therefore, ultimate benefits cannot be ignored.

The majority emphasized the City's obligation to disc with its employees, the City's decision to become self-insured a choose a private administrator. While clearly the City does na a duty to discuss these matters with the employee associatic under NRS 288.150(6), obviously that statute does not require t City to negotiate such matters with the employee association The provisions of NRS 288.150(6) are insufficient in this matt to protect the important rights of the employees, whose benefi will be significantly affected and impacted by the City intention to become a self-insured employer and its selection a private administrator. The City must be compelled to negotia its desired changes with its affected employee associatio pursuant to the provisions of NRS 288.150(2).

IV. Conclusion.

The City's decision to implement a self-insured work. a' compensation program, and to select a private administrator fo delivery of benefits, must be negotiated between the City and it employee associations for the following reasons:

(1) The City's argument that the provisions of Chapte 616 preempt the applicability of NRS 288.150(2), is erroneous NRS Chapter 616 operates only to void a contract which fails t incorporate the minimum standards of that Chapter. Th negotiability of minimum standards created by NRS Chapter 616 i not an issue in this case. Requiring the parties in the instant case to bargain collectively with respect to the City's decisior to convert to a self-insured workmen's compensation program and its selection of a private administrator, does not contravene .y of the provisions of NRS Chapter 616.

(2) The City's agreements with its employee association specifically refer to and establish SIIS as the administrator for workmen's compensation benefits. The City's decision to change to a different administrator is a modification of a specific term of the existing Agreements. As such, this change must be mutually agreed to under Article 36 of each Agreement.

(3) The City's decision to convert to a self-insured program to select a private administrator significantly affects and impacts the benefits of the employees, and is significantly related to a number of subjects (including "Insurance Benefits") which are specifically enumerated in NRS 288.150(2). In the present case, the conversion to a self-insured program may affect the timing and delivery of benefits, the duration of benefits, and the actual amount of benefits paid to the City's employees. The City, therefore, must be compelled to negotiate the proposed change under NRS 288.150(2).

For the foregoing reasons, I respectfully dissent from the majority opinion of this Board.

HOWARD ECKER, Chairman

1989 - 1992

A G R E E M E N T

between

CARSON CITY

and the

CARSON CITY SHERIFF'S PROTECTIVE ASSOCIATION

(July 1, 1989 - June 30, 1992)

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Article 13. SICK LEAVE

(a) RATE SICK LEAVE ACCRUED: After six months of continuous service each employee shall be entitled to one and one-fourth working days of sick leave with pay for each month or major fraction thereof of actual service without limitation for use purposes, but with a maximum of 720 hours for purposes of compensation upon termination due to death or retirement of those employees having 10 years or more of service in the public retirement system. Such compensation will be at the rate of one hour for every three hours accrued, to be paid at the eligible employees hourly rate of pay. In the event of death, such payment will be made to a legitimate heir. For employees hired after July 1, 1990 the following accrual rate will apply:

Time in Service	Accrual Rate
(1) 0 - 12 months	6 hours per month
(2) over 12 months	10 hours per month
Maximum Accrual	720 hours

(b) RECOMMENDATION OF DEPARTMENT HEAD: Sick leave with pay can be granted only upon approval of the Sheriff in the case of a bonafide illness of an employee or member of his immediate family, defined as husband, wife, parent, brother, sister, child, grandparent or grandchild or corresponding relation by affinity. Family sick leave shall be limited to ten days per calendar year and must be counted as part of regular sick leave. Any family sick leave over ten days must be taken as annual leave.

(c) PHYSICIAN'S STATEMENT: The City may require a physician's statement as to the authenticity of the reasons for absence on sick leave, when such sick leave is for more than three (3) consecutive days. Where the Sheriff has reasonable cause to believe sick leave is being abused, he may require the employee to submit a physician's statement.

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(d) MATERNITY/ADOPTION LEAVE:

(1) The parties hereto agree to abide by all applicable state and federal laws applicable to leave for maternity which shall include adoption.

(e) INELIGIBLE CAUSES: No Sheriff's employee shall be entitled to sick leave while absent from duty on account of any of the following causes;

(1) Disability arising from any sickness or injury purposely self-inflicted or caused by willful conduct of said employee.

(2) Sickness or disability sustained while on an unexcused absence during normal working hours.

(3) Sickness or disability sustained while working in outside employment.

(f) INDUSTRIAL COMPENSATION: Employees who suffer an injury or illness in the line of duty with Carson City and such injury or illness prevents the employee from performing his normal duties and are being compensated by the State Industrial Insurance System shall receive full salary for a period of up to, but not exceeding, sixty calendar days. When hospital confinement is warranted in a duly licensed hospital as a result of the industrial injury or illness, the sixty calendar days for which the City pays the entire salary commences the day following release from the hospital. For the purpose of this subparagraph, the Board of Supervisors may, at their discretion, approve at the employees request "home care" to constitute "hospital confinement". After expiration of the sixty calendar days subsequent to the on-the-job injury, if the employee is still unable to work , he may elect to use accrued sick leave, during which period the employee shall receive full compensation from the City. It is the intent of the City to pay the difference between his salary and that provided by SIIS as a salary continuance. The employee shall return to the Personnel Department all SIIS wage compensation payments while receiving full City pay and benefits. After the employee exhausts all accrued sick leave, if he is

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still unable to return to work, then he shall receive his SIIS benefits and the City shall be under no further obligation to supplement those benefi-

(g) WELL DAYS: - Employees using 16 hours or less of any combination of family sick and sick leave in a calendar year will receive 16 hours of personal leave off with pay. The time off must be taken within one year of accrual with scheduling of time off agreed to by both the employee and the Sheriff's Department. If not used within one year of accrual the personal leave shall be forfeited and not paid.

Article 14. GROUP INSURANCE

All employees shall have the benefit of participating in the City group insurance program as the same is now, or may hereafter be, in effect. In the event of participation by an employee, the City shall pay all of the premium for such insurance covering or attributable to the employee premium.

Article 15. GROUP LIFE INSURANCE

(a) The City shall pay one hundred percent (100%) of the premium for a ten thousand dollar ($10,000) policy of Group Term Life Insurance for each of the employees of the Sheriff's Office, for those classifications listed below:

4012 Identification Specialist

4022 Evidence Custodian/I.D. Lab Assistant

4025 Deputy

4040 Detective

4045 Inspector

4050 Sr. Inspector

Effective July 1, 1990, the following job titles/classifications shall apply:

Deputy Sheriff I	Grade 23
Deputy Sheriff	Grade 28
Detective	Grade 30

1989 - 1991

AGREEMENT

between

CARSON CITY

and the

CARSON CITY SHERIFF'S SUPERVISORY ASSOCIATION

(July 1, 1989 - June 30, 1991)

management's cancellation of approved leave shall be three hundred (300). The employees new maximum of accrued leave shall exist only until management is able to schedule enough annual leave for the employee to reduce his accrued leave to a lower level, and eventually down to the normal two hundred and forty (240) hour maximum.

(e) TIME ANNUAL LEAVE TAKEN: All annual leave will be taken at a time mutually agreeable to the employee and his supervisor. The selection of annual leave schedules shall be made in each department on a seniority basis. For reasons deemed sufficient by the department head, an employee may, with the consent of the department head, take less than the normal annual leave one year with a correspondingly longer annual leave the following year.

Article 13. SICK LEAVE

(a) RATE SICK LEAVE ACCRUED: After six months of continuous service each employee shall be entitled to one and one-fourth working days of sick leave with pay for each month or major fraction thereof of actual service without limitation for use purposes, but with a maximum of 720 hours for purposes of compensation upon termination due to death or retirement of those employees having 10 years or more of service in the public retirement system. Such compensation will be at the rate of one hour for every three hours accrued, to be paid at the eligible employees hourly rate of pay. In the event of death, such payment will be made to a legitimate heir. For employees hired after July 1, 1989 the following accrual rate will apply:

Time in Service	Accrual Rate
(1) 0 - 12 months	6 hours per month
(2) over 12 months	10 hours per month
Maximum Accrual	720 hours

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(b) RECOMMENDATION OF DEPARTMENT HEAD: Sick leave with pay can be granted only upon approval of the Sheriff in the case of a bonafide illness of an employee or member of his immediate family, defined as husband, wife, parent, brother, sister, child, grandparent or grandchild or corresponding relation by affinity. Family sick leave shall be limited to ten days per calendar year and must be counted as part of regular sick leave. Any family sick leave over ten days must be taken as annual leave.

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(g) Well Days - Employees using 16 hours or less of any combination of family sick and sick leave in a calendar year will receive 16 hours of personal leave off with pay. The time off must be taken within one year of accrual with scheduling of time off agreed to by both the employee and the Sheriff's Department. If not used within one year of accrual the personal leave shall be forfeited and not paid.

Article 14. GROUP INSURANCE

All employees shall have the benefit of participating in the City group insurance program as the same is now, or may hereafter be, in effect. In the event of participation by an employee, the City shall pay all of the premium for such insurance covering or attributable to the employee premium.

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NEVADA LEGISLATURE

STATE OF NEVADA

WORKERS' COMPENSATION PROGRAM

COMPENSATION AND OTHER BENEFITS TO INJURED WORKERS

PERFORMANCE AUDIT

1990

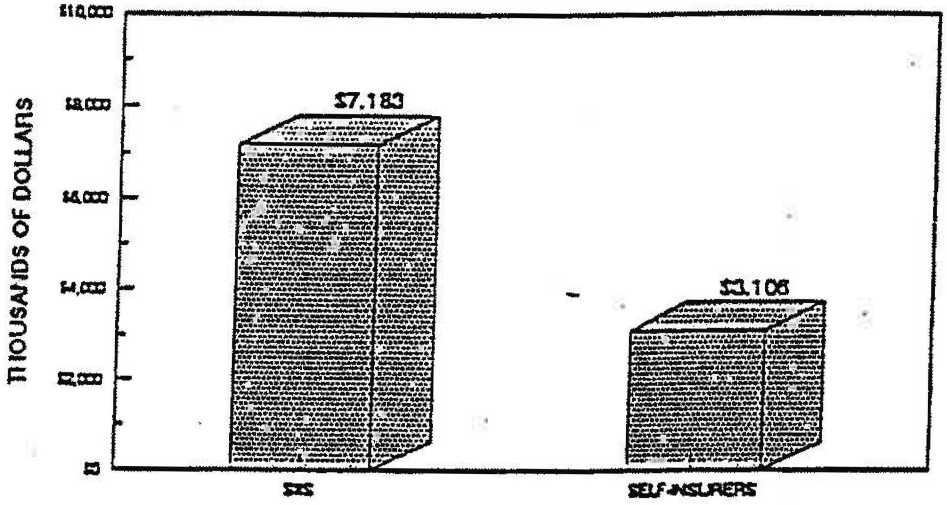
LEGISLATIVE AUDITOR

CARSON CITY, NEVADA

CARSON CITY EXHIBIT "L"

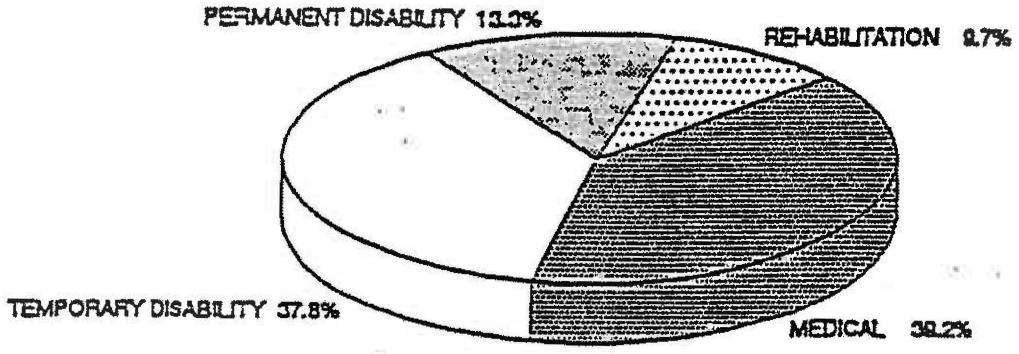
INTRODUCTION AND BACKGROUND
(continued)

FIGURE 4
AVERAGE COMPENSATION AND OTHER BENEFIT COSTS PER LOST TIME CLAIM - SIIS VS. SELF-INSURERS (1987-1989)



Compensation and other benefits, the largest combined component for the workers' compensation program costs, account for 60.8 percent of the total benefits paid. Figure 5 shows the relationship of various components of workers' compensation program benefits [illegible].

FIGURE 5
BENEFIT PAYMENTS - BY TYPE (1987 - 1989)



1990-93

AGREEMENT

Between

CARSON CITY

and the

CARSON CITY EMPLOYEES ASSOCIATION

(July 1, 1990 - June 30, 1993)

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illness, disability or communicable disease in the immediate family.

j. Paragraphs (b) through (f) of this section shall apply to all permanent full-time employees whether hired prior to or after July 1, 1989.

18.2 COMPENSATION FOR UNUSED SICK LEAVE

Upon death, retirement or termination after 10 years of satisfactory service, employees or beneficiaries shall receive compensation for a maximum of 720 hours of accrued unused sick leave on the basis of one hour for every 3 hours (33 1/3%) at the employee's regular hourly rate of pay unadjusted for retirement.

18.3 SIIS

Absence due to injury incurred in the course of employment will not be charged against an employee's sick leave for a period not to exceed sixty (60) calendar days from the date of injury. During this time, the City will provide full salary to the employee upon the condition that the employee shall endorse and deliver to the City any State Industrial Insurance System benefits received.

a. Upon the expiration of sixty (60) calendar days, if the employee is still unable to work, accrued compensatory time shall be used to supplement SIIS benefits in order to receive full salary. Such accrued compensatory time shall be charged only to the extent not reimbursed by SIIS.

b. When accrued compensatory time has been exhausted, if the employee is still unable to work, accrued sick leave shall be used to supplement SIIS benefits in order to receive full salary. Such accrued sick leave shall be charged only to the extent not reimbursed by SIIS.

c. When accrued sick leave has been exhausted, if the employee is still unable to work, accrued annual leave shall be used to supplement SIIS benefits in order to receive full salary. Such accrued annual leave shall be charged only to the extent not reimbursed by SIIS.

d. When accrued annual leave has been exhausted, the employee shall receive no additional compensation from the City, and shall receive SIIS benefits in accordance with their regulations.

e. An employee who is permanently disabled shall be entitled to use any accrued compensatory time, sick leave and annual leave prior to leaving City employment.

f. Employee benefits, sick leave and annual leave shall continue to accrue so long as the employee is eligible for full salary as provided above.