

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

4 INTERNATIONAL ASSOCIATION OF)
5 FIRE FIGHTERS, LOCAL 1285,)

6 Complainant,)

7 -vs-)

8 CITY OF LAS VEGAS, NEVADA,)

9 Respondent.)

ITEM NO. 317

CASE NO. A1-045529

DECISION

10 For the Complainant: Norman Ty Hilbrecht, Esq.
11 HILBRECHT & ASSOCIATES

12 For the Respondent: Larry G. Bettis, Esq.
13 LAS VEGAS CITY ATTORNEY'S OFFICE

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

STATEMENT OF THE CASE

17 In a pre-hearing conference held on April 13, 1993, the
18 Complainant, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL
19 1285 (hereinafter referred to as "the Association"), and the
20 Respondent, CITY OF LAS VEGAS, NEVADA (hereinafter referred to
21 as "the City"), narrowed the issues to the following:

22 a. Whether the conduct of the "classification/
23 compensation study" involves direct contact and
24 discussion by Ralph Andersen & Associates'
25 representatives and/or City personnel with members
26 of the City firefighters bargaining units
27 represented by Local 1285.

28 b. Whether the direct contacts and discussions
between Ralph Andersen & Associates'
representatives and/or City personnel and members
of the City firefighters bargaining units
represented by Local 1285 include the solicitation
of those firefighters' opinions on prospective
changes in wage and monetary compensation and job

1 and salary classifications.

2 c. Whether the direct contacts and discussions
3 between Ralph Andersen & Associates'
4 representatives and/or City personnel and members
5 of the City firefighters bargaining units
6 represented by Local 1285, include the
7 solicitation of those firefighters' opinions
8 concerning comparative wages and job tasks
9 assigned to persons inside and outside the
10 firefighter bargaining units.

11 d. Whether the City furnished Local 1285 with a
12 request, pursuant to Article 30 (Article 29 of
13 Supervisory Contract) of the parties' Collective
14 Bargaining Agreement, to negotiate, discuss, or
15 reopen any wages, job tasks or wage or job
16 classifications.

17 e. Whether the City sought permission of Local
18 1285 for the City or its agent, Ralph Andersen &
19 Associates or their representatives to contact
20 members of the City firefighters bargaining units
21 represented by Local 1285 directly to solicit
22 those firefighters' opinions on prospective
23 changes in wages and monetary compensation and/or
24 job and salary classifications.

25 f. Whether the City was obliged by NRS Chapter
26 288 and Article 30 (Article 29 of Supervisory
27 Contract) of the Collective Bargaining Agreement
28 to discuss or negotiate with Local 1285 concerning
prospective wages, job tasks or wages or job
classifications, rather than soliciting the
opinions of members of the bargaining units
directly on those subjects.

g. Whether the City was obliged by NRS
288.150(2)(a) to request permission from Local
1285 to permit its agent, Ralph Andersen &
Associates or their representatives to directly
contact members of the City firefighters
bargaining units represented by Local 1285 to
solicit those firefighters' opinions on
prospective changes in wages and monetary
compensation and/or job and salary
classifications.

h. Whether the City's conduct constitutes a
prohibited practice under NRS 288.270(1)(b).

i. Whether the City's actions circulating a
document on or about October 1, 1992, entitled
"Job Analysis Questionnaire" to all of its

1 employees, including its firefighters and other
2 Fire Department personnel, amounts to a failure of
3 the City to bargain in good faith with Local 1285
4 in violation of NRS 288.270(1)(e).

5 j. Whether the representatives of Ralph Andersen
6 & Associates, the author of the Questionnaire, or
7 employees of the City contacted Local 1285 members
8 directly and discussed subjects of mandatory
9 bargaining under NRS Chapter 288; including, but
10 not limited to, solicitation of opinion from Local
11 1285 members on prospective changes in internal
12 and external wage relationships and job tasks
13 assigned to said bargaining unit classifications
14 during the training sessions on how to fill out
15 the Questionnaire, or during follow-up sessions.

16 k. Whether any representatives of the City or its
17 agent Ralph Andersen & Associates made any
18 position statement, threat of reprisal, or promise
19 of benefit based on the results of the
20 Questionnaire or as the result of information
21 received, if any, from the training sessions on
22 how to fill out the Questionnaire or follow-up
23 sessions.

24 l. Whether members of Local 1285 were required to
25 fill out the Questionnaire or be in attendance at
26 training sessions regarding completion of the
27 Questionnaire.

28 The parties also stipulated to the following facts:

1. A collective bargaining agreement currently
exists between the City and Local 1285, which
commenced July 1, 1992, and expires June 30, 1994.

2. During October 1992, the City circulated to
all its employees a job analysis questionnaire
entitled "CITY OF LAS VEGAS JOB ANALYSIS
QUESTIONNAIRE".

3. Said Questionnaire was prepared by Ralph
Andersen and Associates on behalf of the City.

4. The City and Local 1285 were not involved in
labor contract negotiations during any period of
time the Questionnaire and training sessions or
follow-up meetings in connection therewith were
being conducted.

On May 6, 1993, the Local Government Employee-Management
Relations Board ("EMRB" and "Board") conducted a hearing on

1 the instant Complaint. The Board's Discussion, Findings o
2 Fact, Conclusions of Law, Decision and Order are set forth
3 below:

4 DISCUSSION

5 During October 1992, the City circulated a job analysis
6 questionnaire to all its employees (classified, non-
7 classified, appointive and confidential), including
8 supervisory and non-supervisory employees represented by the
9 Association. This questionnaire was prepared by Ralph
10 Andersen and Associates on behalf of the City. Allegedly, the
11 City's purpose in circulating the questionnaire was to gain an
12 overview of the City's work force and determine the duties and
13 responsibilities assigned this work force, according to the
14 perception(s) of the individual employees. At the time said
15 questionnaire was being circulated, training sessions and
16 follow-up meetings held, there were no contract negotiations
17 being conducted between the City and the Association.

18 The Association's objection to the questionnaire appears
19 to arise from speculation that the information gathered will
20 be used by the City to support its position(s) in collective
21 bargaining regarding proposed reductions in pay for certain
22 classifications of employees. The premise for the complaint
23 appears to be that by soliciting input directly from the
24 employees on matters which may be related to mandatory
25 bargaining subjects, the City is engaging in a practice which
26 is tantamount to direct dealing with the employees or "end-run
27 bargaining".

1 In its meeting of May 13, 1993, conducted pursuant to
2 Nevada's Open Meeting Law, the Board determined, after due
3 deliberation on the testimony and evidence of record, that the
4 Complaint is without merit. The Board's determination is
5 based on the following:

6 I.

7 THE CITY'S SOLICITATION OF INPUT FROM
8 ITS EMPLOYEES (VIA A JOB ANALYSIS
9 QUESTIONNAIRE) AS PART OF A CLASSIFICATION
10 AND COMPENSATION STUDY, WITHOUT THE
11 PERMISSION OF THE ASSOCIATION, WAS PROPER
12 AND APPROPRIATE UNDER NRS 288.150(3).
13 (See Issues a, b, c, d, e, f, g, j, k and l.)

14 NRS 288.150(3) reads as follows:

15 3. Those subject matters which are not
16 within the scope of mandatory bargaining and which
17 are reserved to the local government employer
18 without negotiation include:

19 (a) Except as otherwise provided in paragraph
20 (u) of subsection 2, the right to hire, direct,
21 assign or transfer an employee, but excluding the
22 right to assign or transfer an employee as a form
23 of discipline.

24 (b) The right to reduce in force or lay off
25 any employee because of lack of work or lack of
26 money, subject to paragraph (v) of subsection 2.

27 (c) The right to determine:

28 (1) Appropriate staffing levels and work
performance standards, except for safety
considerations;

(2) The content of the workday, including
without limitation work load factors, except for
safety considerations;

(3) The quality and quantity of services to
be offered to the public; and

(4) The means and methods of offering those
services.

(d) Safety of the public.

(Emphasis added.)

29 The testimony and evidence of record clearly established
30 that the City was acting in accordance with its
31 prerogative(s), pursuant to NRS 288.150(3), above, when it
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1 solicited input from all its employees [not just those
2 employees who are members of the bargaining unit(s)
3 represented by the Association] for the purpose of gathering
4 information to be used in a classification and compensation
5 study. The solicitation of input from employees regarding
6 their duties and responsibilities is not per se tantamount to
7 dealing directly with the employees for collective bargaining
8 purposes. It appears that this information was being gathered
9 by the City in order to assist it in determining matters such
10 as appropriate staffing levels and work performance standards;
11 the content of the workday, including without limitation work
12 load factors; the quality and quantity of services to be
13 offered to the public and the means and methods of offering
14 those services. These subjects clearly fall within the ambit
15 of matters which are not within the scope of mandatory
16 bargaining and which are reserved to the local government
17 employer without negotiation, pursuant to NRS 288.150(3).

18 The Board's findings are further supported by the
19 following facts:

20 (1) There was no testimony or evidence
21 introduced to indicate that any of the other
22 organizations representing the City's employees
23 objected to the subject job analysis questionnaire
24 or classification and compensation study, and all
25 such employee organizations, as well as the
26 Association, were given advance notice of the
27 study.

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1 (2) The City made it clear that
2 participation by the employees in the
3 classification and compensation study (by
4 completing the job analysis questionnaire) was
5 entirely voluntary.

6 (3) The City made it clear to the
7 Association that any changes in classifications or
8 compensation which might be recommended as a
9 result of the study, would be subject to approval
10 of the Civil Service Board and any changes
11 involving mandatory bargaining subjects would also
12 be subject to collective bargaining; i.e., such
13 changes would not be implemented unilaterally.

14 While it is true that pursuant to NRS 288.150(1) local
15 government employers are limited to negotiating with the
16 designated representative of the recognized employee
17 organization for each bargaining unit, in the instant case the
18 City's solicitation of its employees for input as to their
19 duties and responsibilities can be considered as neither
20 "negotiating" pursuant to NRS 288.150(1) nor as "interrogation
21 of employees" as inferred by the Association. As indicated
22 previously, participation in the study (by completing the job
23 analysis questionnaire) was entirely voluntary. There was no
24 threat of reprisal or force or promise of benefit contained
25 therein. Accordingly, under the prevailing facts and
26 circumstances, the subject job analysis questionnaire can be
27 considered as nothing more than the City's effort to
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1 communicate with its employees pursuant to its constitutional
2 right of free speech. Ormsby County Teachers Association vs.
3 Carson City School District, EMRB Case No. A1-045339, Item No.
4 114 (April 22, 1981).

5 In view of that stated above and under the particular
6 facts of this case, the Board finds that the classification
7 and compensation study conducted by the City was proper and
8 appropriate pursuant to NRS 288.150(3).

9 II.

10 THE CITY'S CONDUCT IN CIRCULATING THE JOB
11 ANALYSIS QUESTIONNAIRE NEITHER AMOUNTED TO
12 A FAILURE TO BARGAIN IN GOOD FAITH NOR WAS
IT IN VIOLATION OF NRS 288.270(1)(b) or (e).
(See Issues h and i.)

13 NRS 288.270(1)(b) and (e) read as follows:

14 1. It is a prohibited practice for a local
15 government employer or its designated representa-
tive willfully to:

16 (b) Dominate, interfere or assist in the
17 formation or administration of any employee
organization.

18 (e) Refuse to bargain collectively in good
19 faith with the exclusive representative as
20 required in NRS 288.150. Bargaining collectively
includes the entire bargaining process, including
mediation and factfinding, provided for in this
chapter.

21 An objective review of the testimony and evidence of
22 record will clearly show that there was nothing that
23 transpired in the City's conduct of the subject classification
24 and compensation study (including circulation of the job
25 analysis questionnaire) which could reasonably be construed as
26 domination or interference in the administration of the
27 Association. Likewise, the Board finds no basis for
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1 concluding that the City's conduct in circulating the job
2 analysis questionnaire (thereby soliciting the input of the
3 employees regarding their duties and responsibilities)
4 constituted a failure to bargain in good faith. The only
5 witness to testify regarding his participation in the study
6 (completion of the job analysis questionnaire) testified to
7 the effect that he felt neither intimidated nor coerced by
8 being asked to provide the information requested.

9 Further, the Association's contention that the City's
10 conduct constitutes direct dealing with bargaining unit
11 members (or so-called "end-run bargaining"), appears to be
12 based entirely on speculation as to the City's intent; i.e.,
13 that the information gathered via the questionnaire will be
14 used by the City to support positions which it will advance
15 during collective bargaining that certain positions should be
16 reclassified and compensated at a lower rate of pay. However,
17 the testimony clearly established that the information
18 gathered via the questionnaire might also show that some
19 positions should be reclassified for the purpose of increasing
20 the rate of pay. Accordingly, under the facts and
21 circumstances of this case, the Board finds no basis for
22 concluding that the City's classification and compensation
23 study (including solicitation of employee input via the job
24 analysis questionnaire) should be construed as either direct
25 dealing with bargaining unit members or a failure to bargain
26 in good faith. Ormsby County Teachers Association, supra.

27 For the reasons set forth above, the Board finds no
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1 violation of NRS 288.270(1)(b) and/or (e) in the City's
2 conduct of the subject classification and compensation study
3 (which included solicitation of employee input via the job
4 analysis questionnaire).

5 FINDINGS OF FACT

6 1. That the Complainant, International Association of
7 Fire Fighters, Local 1285, is a local government employee
8 organization.

9 2. That the Respondent, City of Las Vegas, Nevada, is a
10 local government employer.

11 3. That a collective bargaining agreement currently
12 exists between the City and the Association, which commenced
13 July 1, 1992 and expires June 30, 1994.

14 4. That during October 1992, the City circulated to all
15 its employees a job analysis questionnaire (entitled "City of
16 Las Vegas Job Analysis Questionnaire"), requesting input as to
17 their duties and responsibilities.

18 5. That the above-referred to questionnaire was
19 prepared by Ralph Andersen & Associates on behalf of the City.

20 6. That the City and the Association were not involved
21 in labor contract negotiations during the time that the
22 questionnaire, training sessions and follow-up meetings in
23 connection therewith were being conducted.

24 7. That the Association was the only employee
25 organization representing City employees which objected to the
26 City's solicitation of input from employees via the job
27 analysis questionnaire.

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and compensation study, without the permission of the Association, was proper and appropriate under NRS 288.150(3).

5. That, under the facts and circumstances of this Complaint, the City's conduct in circulating the job analysis questionnaire neither amounted to a failure to bargain in good faith nor was it in violation of NRS 288.270(1)(b) or (e).

DECISION AND ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Association's Complaint is denied, without prejudice, with each side to bear its own costs and attorney's fees.

DATED this 15th day of June, 1993.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By Salvatore C. Gugino
SALVATORE C. GUGINO, Chairman

By Tamara Barengo
TAMARA BARENGO, Vice Chairman

By Howard Ecker
HOWARD ECKER, Member