

STATE OF NEVADA  
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF  
FIRE FIGHTERS, LOCAL 1285,

Complainant,

-vs-

CITY OF LAS VEGAS, NEVADA,

Respondent.

ITEM NO. 317

CASE NO. A1-045529

DECISION

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

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

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

STATEMENT OF THE CASE

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

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

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  
solicitation of those firefighters' opinions  
concerning comparative wages and job tasks  
assigned to persons inside and outside the  
firefighter bargaining units.

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

10 e. Whether the City sought permission of Local  
11 1285 for the City or its agent, Ralph Andersen &  
12 Associates or their representatives to contact  
13 members of the City firefighters bargaining units  
14 represented by Local 1285 directly to solicit  
those firefighters' opinions on prospective  
changes in wages and monetary compensation and/or  
job and salary classifications.

15 f. Whether the City was obliged by NRS Chapter  
16 288 and Article 30 (Article 29 of Supervisory  
17 Contract) of the Collective Bargaining Agreement  
18 to discuss or negotiate with Local 1285 concerning  
19 prospective wages, job tasks or wages or job  
classifications, rather than soliciting the  
opinions of members of the bargaining units  
directly on those subjects.

20 g. Whether the City was obliged by NRS  
21 288.150(2)(a) to request permission from Local  
22 1285 to permit its agent, Ralph Andersen &  
23 Associates or their representatives to directly  
24 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.

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

27 i. Whether the City's actions circulating a  
28 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

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.  
28

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  
28

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  
28

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  
28

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.

1           8.     That participation by the employees in the  
2 classification and compensation study (by completing the job  
3 analysis questionnaire) was voluntary.

4           9.     That as of the date of the hearing, no  
5 recommendations as to any changes in classifications or  
6 compensation as a result of the study, had been made.

7           10.    That, in the event any changes are recommended as a  
8 result of the study, said changes will be subject to approval  
9 of the Civil Service Board (before which the Association will  
10 have an opportunity to appear and provide input prior to any  
11 action being taken), and any changes involving mandatory  
12 bargaining subjects will also be subject to collective  
13 bargaining.

14                           CONCLUSIONS OF LAW

15           1.     That the Local Government Employee-Management  
16 Relations Board has jurisdiction over the parties and the  
17 subject matter of this Complaint, pursuant to the provisions  
18 of NRS Chapter 288.

19           2.     That the Complainant, International Association of  
20 Fire Fighters, Local 1285, is a recognized employee  
21 organization as defined by NRS 288.040.

22           3.     That the Respondent, City of Las Vegas, Nevada, is a  
23 recognized local government employer as defined by NRS  
24 288.060.

25           4.     That, under the facts and circumstances of this  
26 Complaint, the City's solicitation of input from its employees  
27 (via job analysis questionnaire) as part of a classification  
28

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

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

7 **DECISION AND ORDER**

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

11 DATED this 15th day of June, 1993.

12 LOCAL GOVERNMENT EMPLOYEE-  
13 MANAGEMENT RELATIONS BOARD

14 By Salvatore C. Gugno  
15 SALVATORE C. GUGNO, Chairman

16 By Tamara Barengo  
17 TAMARA BARENGO, Vice Chairman

18 By Howard Ecker  
19 HOWARD ECKER, Member