

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

3 RENO POLICE PROTECTIVE )  
ASSOCIATION, )

4 )  
5 Complainant, )

ITEM NO. 366

6 vs. )

CASE NO. A1-045584

7 CITY OF RENO, )

DECISION

8 Respondents. )  
\_\_\_\_\_ )

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

10 For Respondent: Carol Cooke, Esq.  
11 RENO CITY ATTORNEY'S OFFICE

12 For EMRB: Christopher Voisin, Chairman  
13 Tamara Barenco, Vice Chairman  
David Goldwater, Member

14 STATEMENT OF THE CASE

15 During negotiations for the 1994-95 collective bargaining  
16 agreement between the parties, which initially included a  
17 proposal by the Reno Police Protective Association (hereinafter  
18 referred to as the "Association") for a vision care plan, the  
19 City maintained an inability-to-pay position. This position was  
20 based on an alleged insufficient unreserved ending fund balance.  
21 A factfinder subsequently affirmed the City's inability to pay.

22 In late November, 1994, after factfinding had closed, the  
23 City was informed that there would be a surplus in the Self-  
24 Funded Insurance Program. In December, 1994, the City notified  
25 the employee organizations representing its various bargaining  
26 units (except those not covered by this program), including the  
27 Association, that there would be a surplus and that a one-year  
28 vision care program would be offered as a result thereof.

1 (Employees enrolled in the Self-Funded Insurance Program were  
2 offered vision care at no cost, while employees enrolled in the  
3 Hospital Health Care Plan were required to pay a premium of  
4 \$2.36 per pay period for vision care.) The Association  
5 (Complainant herein) belatedly rejected the City's offer and  
6 demanded that the vision care premiums be reduced and/or  
7 refunded to the Association's members. The City countered by  
8 offering to reduce the premiums under both funds (Self-Funded  
9 Insurance Program and Hospital Health Care Plan) by the same  
10 amount. Instead of responding to the City's counter-proposal,  
11 the Association filed the instant Complaint, alleging that the  
12 City knew during negotiations that it had the ability to pay for  
13 a vision care program, and that the City's alleged unilateral  
14 implementation of vision care coverage was an unfair labor  
15 practice.

16 All other employee organizations which were offered the  
17 one-year vision care program, accepted said program.

18 DISCUSSION

19 I.

20 THE CITY DID NOT COMMIT AN UNFAIR LABOR  
21 PRACTICE BY CONTENDING DURING NEGOTIATIONS  
22 (AND BEFORE THE FACTFINDER) THAT IT LACKED  
23 THE ABILITY TO PAY FOR ADDITIONAL WAGES OR  
24 BENEFITS

25 From the testimony and other evidence of record, it is  
26 clear that the City could not have known that there would be a  
27 surplus in the Self-Funded Insurance Program until after  
28 factfinding had closed. The City's inability-to-pay position  
throughout negotiations and factfinding was based on the fact  
that, pursuant to NAC 354, its unreserved ending fund balance

1 was too low to provide additional wages or benefits. Also, it  
2 is not practical to project a surplus in the Self-Funded  
3 Insurance Program, inasmuch as one or two catastrophic events in  
4 a short period of time can cause the program to go over-budget.  
5 Accordingly, the City could not be certain that the Self-Funded  
6 Insurance Program would have a surplus until it had closed its  
7 books in October and the actuary had come back with the results  
8 of its audit in late November. Promptly upon learning of the  
9 surplus, the City commenced discussions with the employee  
10 organizations representing the affected bargaining units,  
11 including the Association. This is not evidence of a failure to  
12 disclose the ability to pay additional wages or benefits during  
13 negotiations. Rather, it appears to be evidence of a good faith  
14 attempt on the part of the City to provide its employees with an  
15 opportunity to share in a surplus which had accrued as a result  
16 of said employees being required to utilize the Self-Funded  
17 Insurance Program substantially less than actuarially projected;  
18 i.e., by offering them the one-year vision care program which  
19 was rejected by the Association.

20 For the above reasons, the Board finds that the City did  
21 not commit an unfair labor practice by contending during  
22 negotiations (and before the factfinder) that it lacked the  
23 ability to pay for additional wages or benefits.

24 II.

25 THE CITY DID NOT UNILATERALLY IMPLEMENT THE  
26 ONE-YEAR VISION CARE PLAN

27 The vision care plan which the City offered its employee  
28 organizations clearly is an "insurance benefit" and therefore a

1 mandatory bargaining subject, pursuant to NRS 288.150 (2) (f).  
2 Accordingly, if the City had unilaterally imposed the vision  
3 care plan on the employees represented by the Association, it  
4 would have violated its obligation to bargain in good faith,  
5 pursuant to NRS 288.270 (1)(e). Reno Police Protective  
6 Association vs. City of Reno, Case No. A1-045390, Item No. 175  
7 (1/30/85). However, the City did not unilaterally impose the  
8 vision care plan on any of its employees. Pursuant to the  
9 provisions of the collective bargaining agreement, the City had  
10 the right to set the rates for insurance benefits received by  
11 the employees represented by the Association. (Although, in the  
12 instant Case the \$2.36 attributable to the cost of the vision  
13 care under the Hospital Health Plan was set by the provider, not  
14 by the City.) Further, it is clear from the testimony and other  
15 evidence of record that the City made a good-faith effort to  
16 resolve the instant dispute to no avail. After the Association  
17 finally rejected the vision care plan and demanded that the  
18 premiums be reduced and/or refunded to the employees represented  
19 by the Association, the City countered by offering to reduce the  
20 premium for the Self-Funded Insurance Program as well as  
21 rebating the premium for vision care under the Hospital Health  
22 Care Plan. The Association did not respond to the City's offer,  
23 choosing to file the instant Complaint instead.

24 The instant complaint borders on being frivolous, inasmuch  
25 as it appears that the City offered the Association  
26 substantially everything it had demanded in lieu of the vision  
27 care plan. This dispute could (and should) have been resolved  
28 by the parties without in anyway jeopardizing or undermining the

1 integrity of their relationship. Instead, this Board was  
2 required to expend its time and limited resources on a matter  
3 which was readily amendable to resolution by the Association  
4 simply responding to the City's last offer.

5 Notwithstanding that stated above, the Board concludes that  
6 the City's offer of April 5, 1995, to reduce the premium for the  
7 Self-Funded Insurance Program and rebate the premium for vision  
8 care under the Hospital Health Care Plan is an appropriate  
9 resolution of the dispute and should be implemented,  
10 retroactively, as soon as possible.

11 FINDINGS OF FACT

12 1. That the Complainant, Reno Police Protective  
13 Association, is a local government employee organization as  
14 defined in NRS 288.040.

15 2. That the Respondent, City of Reno, is a local  
16 government employer as defined in NRS 288.060.

17 3. That during negotiations for the 1994-95 collective  
18 bargaining agreement the City did not know that there would be  
19 a surplus in the Self-Funded Insurance Program (from which  
20 additional benefits could be funded), and the City's "inability-  
21 to-pay" position throughout negotiations and factfinding was  
22 based on the status of its unreserved ending fund balance.

23 4. That the City did not unilaterally implement a one-  
24 year vision care plan, but rather offered the vision care plan  
25 to all bargaining unit employees who were eligible for the Self-  
26 Funded Insurance Program.

27 5. That the Complainant, Reno Police Protective  
28 Association, rejected the vision care plan offered by the city

1 and demanded that the premiums be reduced and/or refunded to the  
2 employees it represents.

3 6. That the City's offer to reduce the premiums for the  
4 Self-Funded Insurance Program, as well as to rebate the premiums  
5 for vision care under the Hospital Health Care Plan,  
6 substantially met the Association's demand(s).

7 CONCLUSIONS OF LAW

8 1. That the Local Government Employee-Management  
9 Relations Board has jurisdiction over the parties and the  
10 subject matter addressed by this Decision, pursuant to the  
11 provisions of NRS Chapter 288.

12 2. That, in maintaining throughout negotiations and  
13 factfinding an "inability-to-pay" stance, the City did not  
14 commit an unfair labor practice pursuant to NRS 288.270 (2)(e)  
15 or any other provision of NRS 288.

16 3. That, during negotiations, the City did not withhold  
17 information from the Association regarding a surplus in the  
18 Self-Funded Insurance Program, and did not commit an unfair  
19 labor practice under NRS 288.270 (2)(e) or any other provision  
20 of NRS 288 as a result thereof.

21 4. That the City did not unilaterally implement a vision  
22 care plan in violation of NRS 288.270 (2)(e) or nay other  
23 provision of NRS 288, but rather offered the plan to all  
24 bargaining units who are eligible for the Self-Funded Insurance  
25 Program, and implemented said plan only for the employee  
26 organizations that accepted it.

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DECISION AND ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that

1. The City did not commit an unfair labor practice by maintaining an "inability-to-pay" stance throughout negotiations and factfinding.
2. The City did not unilaterally implement a vision care plan or commit an unfair labor practice by offering a one-year vision care plan to bargaining unit employees when a surplus developed in the Self-Funded Insurance Program.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, notwithstanding that stated above, that the City shall reduce the premium for the Self-Funded Insurance Program and rebate the premiums for vision care under the Hospital Health Care Plan, retroactively, for bargaining unit employees represented by the Association, as soon as possible.

DATED this 10th day of January, 1996.

Local Government Employee-Management  
Relations Board

By: Christopher Voisin  
CHRISTOPHER VOISIN, Chairman

By: Tamara Barengo  
TAMARA BARENGO, Vice Chairman

By: David Goldwater  
DAVID GOLDWATER, Member