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STATE OF NEVADA  
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF )  
FIREFIGHTERS, LOCAL 731 )  
Complainant, )  
vs. )  
CITY OF RENO, )  
Respondent. )

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ITEM NO. 370

CASE NO. A1-045573

DECISION

10 For Complainant: Lawrence P. Digesti, Esq.  
11 For Respondent: Carol Cooke, Esq. and  
12 Carolyn Cramer, Esq.  
RENO CITY ATTORNEY'S OFFICE  
13 For EMRB: Christopher Voisin, Chairman  
14 Tamara Barengo, Vice Chairman  
David Goldwater, Member

15 STATEMENT OF THE CASE

16 The Complaint sets forth four (4) causes of action; i.e.,

- 17 1. The City's contracting for managed care services for  
18 the worker's compensation program without negotiating  
same with the Association;  
19 2. The City's appointment of bargaining unit member Ron  
20 Jones to the position of Internal Affairs Investigator  
without negotiating same with the Association;  
21 3. The Association's desire for an increase in the number  
22 of payroll deduction slots (issue settled); and  
23 4. The parties agreement not to negotiate through the  
24 media, which agreement was allegedly violated by the  
City.

25 In each cause of action which remains to be adjudicated by  
26 the Board, the Association contends that the City failed to  
27 negotiate in good faith and/or violated various provisions of  
28 NRS 288.

1 The Board's findings as to the causes of action remaining  
2 for the Board's adjudication are set forth in its Discussion,  
3 Findings of Fact and Conclusions of Law, which follow:

4 DISCUSSION

5 I.

6 THE CITY'S DECISION TO ENTER INTO A MANAGED  
7 CARE PROVIDER CONTRACT FOR THE WORKER'S  
8 COMPENSATION PROGRAM, PURSUANT TO NRS 616,  
9 IS A MANAGEMENT PREROGATIVE

9 The facts and circumstances surrounding the Association's  
10 first cause of action are substantially identical to those  
11 surrounding Consolidated Municipality of Carson City vs. Carson  
12 City Employees Association; Carson City Fire Fighters  
13 Association, Local #2251; Carson City Sheriffs Protective  
14 Association; and Carson City Sheriff's Supervisory Association,  
15 Case No. A1-045498, Item No. 276 (3/23/92). In that Case, the  
16 majority held, in pertinent part, that the decision to become a  
17 self-insured employer under NRS 616 is a management prerogative,  
18 pursuant to NRS 288.150 (5), and that while the employer is not  
19 required to negotiate regarding the decision to go self-insured,  
20 the employer is obligated to discuss its decision to become  
21 self-insured with its employees, pursuant to NRS 288.150 (6).  
22 In the instant Case, the evidence of record establishes that the  
23 City made a good-faith effort to discuss its decision with the  
24 Association, to no avail. (The Association refused to  
25 participate.)

26 For the reasons set forth above, the Board finds that the  
27 issue underlying the Association's first cause of action (the  
28 propriety of the City's decision to unilaterally contract for

1 managed care services to administer the worker's compensation  
2 program) has already been disposed of, res judicata.  
3 Consolidated, supra.

4 II.

5 THE CITY'S UNILATERAL RECLASSIFICATION  
6 AND/OR ASSIGNMENT OF BARGAINING UNIT MEMBER  
7 RON JONES TO CONDUCT INTERNAL  
8 INVESTIGATIONS OF FELLOW BARGAINING UNIT  
9 MEMBERS WAS (IS) CONTRARY TO THE PROVISIONS  
10 OF NRS 288.

11 The Association's second cause of action (the City's  
12 appointment of bargaining unit member Ron Jones to the position  
13 of Internal Affairs Investigator without negotiation with  
14 negotiation) was the subject of both grievance arbitration and  
15 non-binding factfinding. The arbitrator, Andria S. Knapp, Esq.,  
16 found that the appointment was not a breach of the parties  
17 collective bargaining agreement, but commented, in pertinent  
18 part, as follows:

19 ...  
20 The Union's concerns are well-founded, but, as with  
21 the issue of the initial assignment of internal  
22 investigators duties, there is no real relief to be  
23 had from the contract. The issues of freedom of  
24 expression and the freedom to meet and associate  
25 freely are appropriately addressed through the  
26 statutory framework available to the parties in NRS  
27 Chapter 288 rather than through the arbitration  
28 process...

29 The factfinder, William Eaton, recommended that Article  
30 XVIII of the collective bargaining agreement be amended to  
31 include language to prohibit any member of the bargaining unit  
32 from conducting internal affairs investigations concerning  
33 fellow bargaining unit members. The City has offered to seek a  
34 "clarification" of Arbitrator Knapp's award as it pertains to

1 internal affairs investigations conducted by bargaining unit  
2 members, however, the City has not offered to negotiate language  
3 to prohibit a bargaining unit member from conducting internal  
4 investigations of other bargaining unit members, as recommended  
5 by Factfinder Eaton. It does, however, contend that no internal  
6 affairs investigations of fellow bargaining unit members have  
7 been conducted by Mr. Jones subsequent to Factfinder Eaton's  
8 recommendation of May 12, 1994.

9 After due deliberation as to the testimony and other  
10 evidence of record, the Board finds that the provisions of NRS  
11 288.170 (4) preclude confidential employees from being included  
12 in the bargaining unit. The duties assigned bargaining unit  
13 employee Ron Jones (to investigate fellow members of the  
14 bargaining unit) are certainly of a confidential nature. Also,  
15 while the provisions of NRS 288.150 (3) were construed by  
16 Arbitrator Knapp as reserving to the employer the right to  
17 assign job duties to individual employees, the method used to  
18 classify employees in the bargaining unit is a mandatory  
19 bargaining subject, pursuant to the provisions of NRS 288.150  
20 (2)(k). It is clear that the effect of the City's act of  
21 unilaterally changing the title of Ron Jones' position to  
22 Internal Affairs Investigator and assigning him duties of a  
23 confidential nature concurrent therewith, was to "reclassify"  
24 his position. The "method" used to classify (or reclassify)  
25 this position was not negotiated, in view of which the act  
26 (changing the title of Ron Jones' position and assigning him  
27 duties of a confidential nature) must be considered as a failure  
28 to bargain in good faith regarding a mandatory bargaining

1 subject in violation of NRS 288.270 (1)(e). Las Vegas Police  
2 Protective Association Metro, Inc. vs. City of Las Vegas,  
3 Nevada, Case No. A1-045461, Item No. 248 (8/15/90).

4 III.

5 THE EVIDENCE IS INSUFFICIENT TO ESTABLISH  
6 THAT THE CITY DISCLOSED CONFIDENTIAL  
7 INFORMATION TO THE MEDIA CONCERNING ITS  
8 NEGOTIATIONS WITH THE ASSOCIATION

8 The testimony adduced at the hearing, as well as other  
9 evidence of record, clearly establishes that an understanding  
10 existed between the parties to the effect that they would not  
11 negotiate through the media. The fact that said understanding  
12 was not reduced to writing (not made a part of the ground rules)  
13 does not in any way mitigate against the validity or  
14 enforceability of said understanding. A verbal agreement should  
15 be and is a sufficient basis on which parties of good faith may  
16 conduct collective bargaining. Stationary Engineers, Local 39,  
17 International Union of Operating Engineers vs. County of Lyon,  
18 Case No. A1-045457, Item No. 241 (6/11/90).

19 Notwithstanding that stated above, the Board finds that the  
20 testimony adduced at the hearing, as well as other evidence  
21 introduced by the Association, is not sufficient to form a  
22 reasonable basis for concluding that the City's chief negotiator  
23 (Robert Latchow) breached the aforementioned understanding or  
24 verbal agreement by disclosing to the media details of a  
25 confidential nature concerning the negotiations, as alleged by  
26 the Association.

27 / / /  
28 / / /

FINDINGS OF FACT

1  
2           1.    That the Complainant, International Association of  
3 Firefighters, Local 731, is a local government employee  
4 organization as defined by NRS 288.040.

5           2.    That the Respondent, City of Reno, is a local  
6 government employer as defined by NRS 288.060.

7           3.    That the City's decision to enter into a managed care  
8 provider contract for the worker's compensation program was (is)  
9 a management prerogative, pursuant to NRS 288.150 (5).

10          4.    That the City offered to discuss its decision to enter  
11 into a managed care provider contract with the Complainant,  
12 pursuant to NRS 288.150 (6), but the Complainant refused to  
13 participate.

14          5.    That the City's unilateral reclassification and/or  
15 assignment of bargaining unit member Ron Jones to conduct  
16 internal investigations of fellow bargaining unit members was  
17 (is) contrary to the provisions of NRS 288.170 (4) and NRS 288  
18 (2)(k), and constitutes a failure to bargain in good faith as  
19 required by NRS 288.270 (1)(e).

20          6.    That a verbal agreement or understanding existed  
21 between the parties to the effect that the parties would not  
22 negotiate through the media.

23          7.    That the City's chief negotiator did not breach the  
24 aforementioned verbal agreement or understanding by disclosing  
25 to the media the details of the factfinder's report, including  
26 the Complainant's bargaining proposals, as alleged by the  
27 Association.

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2 CONCLUSIONS OF LAW

3 1. That the Local Government Employee-Management  
4 Relations Board has jurisdiction of the parties and the subject  
5 matter addressed by this Decision.

6 2. That the City's decision to enter into a managed care  
7 provider contract for the worker's compensation program was (is)  
8 a management prerogative, pursuant to NRS 288.150 (5).

9 3. That the City offered to discuss its decision to enter  
10 into a managed care provider contract with the Complainant,  
11 pursuant to NRS 288.150 (6), but the Complainant refused to  
12 participate.

13 4. That the City's unilateral reclassification and/or  
14 assignment of bargaining unit member Ron Jones as Internal  
15 Affairs Investigator to conduct internal investigations of  
16 fellow bargaining unit members was (is) contrary to the  
17 provisions of NRS 288.170 (4) and NRS 288 (2)(k), and  
18 constitutes a failure to bargain in good faith as required by  
19 NRS 288.270 (1)(e).

20 5. That the City's chief negotiator did not breach the  
21 verbal agreement or understanding between the parties not to  
22 negotiate through the media, in view of which there was not a  
23 failure to bargain in good faith in violation of NRS 288.270  
24 (1)(e), as concerns that cause of action.

25 DECISION AND ORDER

26 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that

27 1. The City did not commit an unfair labor practice by  
28 unilaterally entering into a managed care provider contract for  
the worker's compensation program.

1 2. The City violated the provisions of NRS 288 and  
2 committed an unfair labor practice by unilaterally reclassifying,  
3 and/or assigning bargaining unit member Ron Jones to a position  
4 entitled Internal Affairs Investigator, with duties which  
5 include the investigation of fellow bargaining unit members.

6 3. The City did not commit an unfair labor practice by  
7 verbally agreeing not to negotiate through the media and then  
8 allegedly breaching said agreement by disclosing to the media  
9 information of a confidential nature concerning the parties'  
10 negotiations.

11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the City  
12 shall immediately restore Ron Jones to his former position and  
13 duties, subject to negotiation with Complainant as to the method  
14 which is to be used for reclassifying the positions of  
15 bargaining unit employees.

16 Each party shall bear its own costs and attorney's fees in  
17 this matter.

18 DATED this 14<sup>th</sup> day of March, 1996.

19 Local Government Employee-Management  
20 Relations Board

21 By: *Christopher Voisin*  
22 CHRISTOPHER VOISIN, Chairman

23 By: *Tamara Barenzo*  
24 TAMARA BARENGO, Vice Chairman

25 By: *David Goldwater*  
26 DAVID GOLDWATER, Member

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