

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

4 **TEAMSTERS LOCAL 14,**
5 **Complainant,**

6 **vs.**

7 **CITY OF HENDERSON,**
8 **Respondent**

ITEM NO. 399-A

CASE NO. AI-045605

DECISION

9 **For Complainant: Patricia S. Waldeck, Esq.**

10 **For Respondent: Sandra L. Pomrenze, Esq.**

11 **For EMRB: Christopher W. Voisin, Chairman**
12 **Tamara Barengo, Vice Chairman**
13 **David Goldwater, Member**

14 **STATEMENT OF THE CASE**

15 **The complaint filed on May 6, 1996, by Teamsters Local 14 (hereinafter Union), alleged: that**
16 **the City of Henderson (hereinafter City) unilaterally removed the positions of Project Engineer and**
17 **Survey/Right of Way Supervisor from the bargaining unit; that the City created two new positions**
18 **of Project Engineer III and Survey/Right of Way Coordinator, the duties of which were substantially**
19 **the same as the two positions which were removed from the bargaining unit; that the City refused**
20 **to process the Union's grievance in said incidents which constitute a failure to negotiate in good faith**
21 **in violation of NRS 288.150; and that the City's conduct is also a violation of NRS 288.270 in that**
22 **it is engaging in discriminatory treatment of its bargaining unit employees for the purpose of**
23 **discouraging membership in a labor organization. A Stipulation Re Dismissal and Order was**
24 **submitted jointly by counsel for both parties and signed by the Board dismissing that part of the**
25 **complaint filed relating to allegations by the union that the City is in violation of NRS 288.150 and**
26 **NRS 288.270 because of its failure to negotiate in good faith with the Union with respect to a**
27 **mandatory subject of bargaining, to wit, the failure to process the Union's grievances.**

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1 DISCUSSION

2 I

3 DID THE CITY FAIL TO NEGOTIATE
4 THE TRANSFER OF BARGAINING UNIT WORK
5 TO NON-BARGAINING UNIT EMPLOYEES

6 Testimony and evidence were provided as to the various job duties of the two positions which
7 were eliminated and the new management positions which were created. Although the Stipulated
8 Facts submitted by counsel agreed that the positions of Project Engineer and Survey/Right of Way
9 Supervisor were eliminated, testimony by Janice Wiese, the City's Personnel Manager, stated these
10 positions are still open and could be filled at a later date. Testimony elicited from Ms. Wiese further
11 stated that it was her belief that the City could, if it so chose, promote all of the bargaining unit
12 positions into management positions without negotiating with the Union. She also stated she had not,
13 in the past, contacted the Union regarding promoting an individual from a position in the existing
14 bargaining unit into a management position. Conflicting testimony was given in regards to the past
15 practices as it related to removing positions from the bargaining unit by Jim Wilkerson, retired
16 Secretary-Treasurer for the Union, who testified that he was contacted each time an individual and
17 the bargaining unit duties were transferred, prior to the transfer. This testimony was not challenged
18 by the City.

19 Testimony was provided by several witnesses as to the specific duties of the management
20 positions of Project Engineer III and Survey/Right of Way Coordinator versus the specific duties of
21 the bargaining unit positions of Project Engineer and Survey/Right of Way Supervisor, which were
22 eliminated, which revealed that both management positions are currently responsible for the duties
23 which were historically done under the bargaining unit positions. The descriptions of job duties of
24 the positions which were removed from the bargaining unit appear to be substantially the same as the
25 two new positions created in management with some additional certifications or training required.

26 Having reviewed all the testimony and exhibits presented, together with the post-hearing
27 briefs submitted by counsel, and after due deliberation, the Board has concluded that there is
28 sufficient evidence to support a finding of failure to negotiate the transfer of work out of the
bargaining unit in violation of NRS 288.150 (2) (a) (k).

1 II.

2 DID THE CITY FAIL TO
3 BARGAIN IN GOOD FAITH.

4 The record in this matter reveals a past practice of the City to notify and meet with the Union
5 prior to promoting an individual out of the collective bargaining unit into a management position. The
6 City, Union and individual would all agree on this transfer. In these prior occurrences, the duties
7 of that individual were maintained by and transferred with that individual and new duties were added.
8 Testimony provided that the City did not notify and meet with the Union in regards to the changes
9 implemented in the positions disputed in the Complaint.

10 As stated in Operating Engineers, Local 3 of the International Union of Operating Engineers,
11 AFL-CIO v. County of Lander, Case No. A1-045553, Item No. 346 (1994), "Unilateral changes by
12 an employer during the course of a collective bargaining relationship concerning matters which are
13 mandatory subjects of bargaining are regarded as "per se" refusals to bargain."

14 It is the finding of this Board that the City's unilateral implementation of the transfer of
15 duties from the bargaining unit positions to management positions without any notice to the Union
16 constitutes a violation of NRS 288.270 (1) (e).

17 FINDINGS OF FACT

18 1. That the Complainant, Teamsters Local 14, is an employee organization as defined
19 in NRS 288.040.

20 2. That the Respondent, City of Henderson, is a local government employer as defined
21 by NRS 288.060.

22 3. That the duties and responsibilities of the bargaining unit classification of Project
23 Engineer have been unilaterally reassigned by the City to the non-bargaining unit position of Project
24 Engineer III.

25 4. That the duties and responsibilities of the bargaining unit classification of
26 Survey/Right of Way Supervisor have been unilaterally reassigned to the non-bargaining unit position
27 of Survey/Right of Way Coordinator.

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1 5. That the testimony provided regarding a past practice of the City to meet and
2 negotiate with the Union prior to the transfer of work out of the bargaining unit, given by Janice
3 Wiese and Jim Wilkerson, was conflicting.

4 6. That in both the positions of Project Engineer and Survey/Right of Way Supervisor,
5 the City did not negotiate with the Union in regards to the transfer of work.

6 **CONCLUSIONS OF LAW**

7 1. The Local Government Employee-~~Management~~ Relations Board has jurisdiction over
8 the parties and the subject matter addressed by the Decision, pursuant to the provisions of NRS 288.

9 2. That, the City unilaterally transferred work from the bargaining unit positions of
10 Project Engineer and Survey/Right of Way Supervisor to ~~non~~-bargaining unit positions, in violation
11 of NRS 288.150 (2)(a)(k).

12 3. That the City failed to bargain in good faith the transfer of said work, a violation of
13 NRS 288.270 (1)(e).

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DECISION AND ORDER

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2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that: (1) the Respondent
3 remove from the classification of Project Engineer III and Survey/Right of Way Coordinator, the
4 duties and responsibilities previously assigned to the Project Engineer and Survey/Right of Way
5 Supervisor, (2) the Respondent return and fill the positions of Project Engineer and Survey/Right of
6 Way Supervisor, which were effectively removed from the bargaining unit; (3) the Respondent refrain
7 from making any further changes in status to bargaining unit positions without negotiations; and (4)
8 that each party is to bear their own costs and attorney's fees.

9 DATED this 3rd day of April, 1997.

10 LOCAL GOVERNMENT EMPLOYEE-
11 MANAGEMENT RELATIONS BOARD

12 By *Christopher W. Voisin*
13 CHRISTOPHER W. VOISIN, Chairman

14 By *Tamara Barenko*
15 TAMARA BARENGO, Vice Chairman

16 By *David Goldwater*
17 DAVID GOLDWATER, Member