STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

RENO POLICE PROTECTIVE ASSOCIATION, Complainant, vs. RENO POLICE DEPARTMENT, CITY OF RENO, Respondents.	**ITEM NO. 415B** **CASE NO. A1-045626** **DECISION**

For Complainant: Michael E. Langton, Esq.

For Respondents: Donald L. Christensen, Esq.

STATEMENT OF THE CASE

On June 17, 1997, Complainant RENO POLICE PROTECTIVE ASSOCIATION (hereafter "Union") filed a complaint alleging prohibited practices by Respondents, RENO POLICE DEPARTMENT (hereafter "Department") and the CITY OF RENO (hereafter "City") alleging (a) two police officers were prevented by the Department and City from presenting their defense in an incident described as the "Caesar's Tahoe incident" in violation of General Order 4/800.00 and NRS 288.270(1) and (b) that Police Officer John Bohach was denied his benefits under the applicable collective bargaining agreement by being discharged in an unrelated incident; and that the conduct of both the Department and the City resulted in unlawful unilateral changes in the applicable collective bargaining agreement.

On November 12, 1997, an order remanding the matter and instructing the parties to exhaust their remedies as outlined in their collective bargaining agreement pursuant to this Board's "limited deferral doctrine."

On August 25, 1999, after deliberations noticed pursuant to Nevada's Open Meeting Laws, this Board entered an order directing the parties to advise it as to the status of the grievance-arbitration process under the parties' collective bargaining agreement.

On September 8, 1999, Complainant requested a hearing.

On January 11, 2000, a hearing was held before the Local Government Employee-Management Relations Board (hereafter "Board"), noticed in accordance with Nevada's Open Meeting Law, at which time the Board heard oral arguments from counsel, received evidence, and heard testimony from three (3) witnesses, namely, Ron Dreher, Jim Weston, and Richard Gonzalez. The Board's findings as to the Union's Complaint are set for in its Discussion, Findings of Fact and Conclusions of Law, which follow.

DISCUSSION

Testimony at the hearing established the existence of a past practice now referred to as the "Robertson criteria." Under the criteria, certain conditions were defined under which off-duty police officers can be disciplined. The criteria included (a) identifying oneself as a police officer, thus placing himself/herself on duty, (b) the use of any tools of the police officer trade, such as handcuffs, gun, badge, identification, etc., and (c) did a third person know the individual as a police officer or identified the individual as a police officer. The practice was alleged to have existed under Police Chiefs Robert Bradshaw, Richard Kirkland, and Jim Weston.

Testimony was offered that the collective bargaining agreement does not contain reference to off-duty conduct and resulting discipline. Incidents involving an off-duty officer involved in a DUI and another charged with disturbing the peace, who were not disciplined for their off-duty conduct, were testified to. Further testimony was presented that such incidents occurred after the "Caesar's Tahoe Incident" and the "Bohach incident." Correspondence from Police Chief Jim Weston, dated February 7, 1997 was offered as Exhibit 3, which not only listed the above three criteria but included a fourth, namely, whether the conduct impaired the reputation or operations of the police department. This fourth criteria was objected to by the Union as not being part of the original Robertson criteria.

On behalf of the Department and the City, Police Chief Weston testified that certain off-duty officers were indeed disciplined without the criteria being utilized and further testified that he may not have been familiar with the term "Robertson Criteria" although he was familiar with the criteria.

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Witness Gonzales, City of Reno Labor Relations Manager, testified that correspondence was drafted and allegedly e-mailed to a number of individuals requesting their comment on his belief that the City and Department may have unilaterally changed the policy concerning discipline for off-duty conduct. Such correspondence (Exhibit "4") was not labeled "confidential" nor "attorney-client privileged document." Furthermore, evidence was produced that the use of the City e-mail system may not be considered as a private transmission, but may be classified as a public document.

FINDINGS OF FACT

1. That a past practice existed prior to and after the parties' execution of the collective bargaining agreement known as the "Robertson Criteria" for which off-duty police officers may be disciplined for certain conduct and under certain conditions.

2. That the collective bargaining agreement is silent as to discipline for certain off-duty conduct.

3. That the City and Department were aware of this criteria prior to and after the Caesar's Tahoe incident and the Bohach incident.

4. That forms of discipline were ordered for the officers in both incidents without consideration of the Robertson criteria.

5. That certain officers were not disciplined for off-duty conduct at the discretion of the Department.

6. That a document was drafted by Mr. Gonzales, the Reno Labor Relations Manager, acknowledging that there may have been a unilateral change by the Department and the City in disciplining off-duty police officers for certain conduct without consideration of the Robertson criteria.

CONCLUSIONS OF LAW

1. The Local Government Employee-Management Relations Board has jurisdiction over the parties and the subject matters of the complaint on file herein pursuant to the provisions of NRS Chapter 288.

2. The City is a local government employer as defined in NRS 288.060.

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3. The Department is a police department organized by the City of Reno, State of Nevada, whose principal duties are to enforce the law.

4. The Union is an employee organization as defined by NRS 288.040.

5. The parties to this matter entered into a collective bargaining agreement for the term October, 1994 through June, 1997, which agreement is silent as to the subject of police officer discipline for certain conduct while off-duty.

6. That there existed simultaneously with the collective bargaining agreement the practice known as the Robertson Criteria for determining whether discipline should be administered to police officers for certain off-duty conduct; and this practice was known to and accepted by all parties involved in this matter.

7. That the City and Department failed to utilize this criteria in determining whether discipline was appropriate for the officers involved in the Bohach incident and the Caesar's Tahoe incident.

8. That by failing to utilize the criteria, the City and the Department have unilaterally changed terms and conditions of employment, which are mandatory subjects for bargaining pursuant to NRS 288.150, without first negotiating with the Union for such a change.

9. That such unilateral change is unlawful.

DECISION AND ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Union's prohibited practice complaint is well-grounded and the Union is entitled to the relief sought in its complaint, namely:

a. That the City and Department are hereby ORDERED to immediately cease violating the rights of the Union and its members as set forth in NRS Chapter 288.

b. That the City and Department are hereby ORDERED to rescind any and all actions taken against the Union and its members involved in the two incidents described herein.

c. That the City and Department are hereby ORDERED to negotiate with the Union concerning any revisions to their collective bargaining agreement pertaining to disciplining officers for certain off-duty conduct.

d. That reasonable fees and costs should be awarded to the Union and that the Union

is hereby ORDERED to submit its documents and records in support its request for fees and costs and documenting the amount due within ten (10) days from the date of this order.

e. That it is FURTHER ORDERED that the City and Department have ten (10) days after service of the documents and records in support of the Union's request for fees and costs within which to respond to the Union's request.

DATED this 29th day of February 2000.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By _____
DAVID GOLDWATER, Chairman

By _____
KAREN L. McKAY, Vice-Chairman

By _____
JAMES E. WILKERSON, SR., Member