STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 533,
Complainant;

vs.

CITY OF FALLON,
Respondent.

ITEM NO. 424

CASE NO. A1-045631

DECISION

FOR COMPLAINANT: Lawrence J. Yenko, Esq.
LANGTON & YENKO

FOR RESPONDENT: Donald A. Lattin, Esq.
WALTHER, KEY, MAUPIN, OATS, COX, KLAICH & LeGOY

STATEMENT OF CASE

This complaint was filed by International Brotherhood of Teamsters, Local 533 (herein after Union) on August 18, 1997, concerning events that occurred between the parties while negotiating their first collective bargaining agreement. The Union alleged that the City of Fallon (hereinafter City) committed a prohibited practice by initially agreeing to final and binding arbitration on all grievance matters, including discipline, and then withdrawing its agreement. The City filed its Answer on September 9, 1997, denying that it committed a prohibited practice.

On February 25, 1998, a hearing was held before the Local Government Employee-Management Relations Board, noticed in accordance with Nevada's Open Meeting Law, at which the Board heard oral arguments from counsel and testimony from six witnesses: Michael E. Langton, Lou Martino, Charles Gomes, Dennis Heck, Ken Tedford, Robert Adams. The Board's findings as to the Union's Complaint are set forth in its Discussion, Findings of Fact and Conclusions of Law, which follow:

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DISCUSSION

Testimony at the hearing established that the City's Chief Negotiator Robert Adams and the Union's negotiating team established ground rules which included a process of "tentative agreement" to items which both parties felt would meet approval. Although the final agreement would have to be approved, the parties agreed to reach "tentative agreements" through their clients on specific articles. However, those articles would not go into effect until the final agreement was approved by the parties.

Testimony showed that the City, through Mr. Adams, agreed to final and binding arbitration in all matters when it approved Article 10. Before approving Article 10, the City and the Union agreed to Article 6.4. Nothing in Article 10 precludes matters arising under Article 6.4 from being subject to its grievance/arbitration procedures. On April 29, 1997, Adams notified the Union that the City would not agree to final and binding arbitration on grievances, including issues of discipline. Adams requested a letter of clarification from the Union for the City. On May 5, 1997, the Union sent said letter to Adams which stated, in pertinent part, that discharge and disciplinary procedures are mandatory subjects of bargaining and such procedures include "the ultimate resolution of a grievance, not just preliminary procedures."

When the parties met in June 1997 to discuss all unresolved issues, the City did not present the final and binding arbitration of disciplinary grievances as an unresolved issue. However, during the negotiations of Article 23, the City withdrew its agreement to arbitrate disciplinary matters by refusing to agree to Article 23.6.

Although this action would normally constitute bad faith bargaining, both parties subsequently agreed to ratify the agreement subject to resolving the issue of whether disciplinary matters are subject to the arbitration procedures. This action effectively remedied any claim of bad faith bargaining, making the prohibited practice complaint moot.

FINDINGS OF FACT

1. On or about February 26, 1997, the City recognized the Union as the exclusive bargaining agent of certain employees of the City.

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2. In April 1997, the parties began negotiations for their initial collective bargaining agreement (hereinafter Agreement).

3. The parties' negotiators agreed to ground rules that included that after the negotiators reached agreement on an article, Adams would check with the City to obtain approval of the article. The parties agreed that such approval was tentative on the Union membership and the City ratifying a final Agreement.

4. The parties agreed to Section 6.4, which provides that "[n]o employee shall be disciplined, suspended . . . dismissed, terminated or otherwise deprived of any employment advantage without just cause."

5. The parties then agreed to Article 10, which provides that a grievance is a claim relating to the interpretation or application of the Agreement, and that such grievances may be submitted to arbitration for resolution.

6. Nothing in Article 10 precluded a claim relating to the application of Section 6.4 from being submitted to final and binding arbitration.

7. Thereafter, on April 29, 1997, Adams informed the Union's negotiators that the City did not want to allow final and binding arbitration of disciplinary grievances. The Union objected to the City's position, and informed Adams that they had already reached agreement on that issue.

8. When the parties met in June 1997 to discuss all unresolved issues, the City did not present the final and binding arbitration of disciplinary grievances as an unresolved issue.

9. After the Union agreed to submit the Agreement to its membership for ratification, Adams informed the Union's negotiators that the City was refusing to agree to final and binding arbitration of disciplinary grievances.

10. The parties agreed to submit the Agreement for ratification, with the exception of the issue of final and binding arbitration for disciplinary grievances.

11. The parties agreed that they would resolve the issue as to whether the City must allow final and binding arbitration for all grievances after such ratification.

12. The Union membership and the City ratified the Agreement.

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13. On August 18,1997, the Union filed its Complaint with the Local Government Employee- Management Relations Board.

14. At the February 15, 1998 hearing, the Union requested only attorneys' fees and costs as the remedy for the alleged bad faith bargaining. Thus, it dropped its request in its Complaint for an order that the City adhere to the Agreement, including the arbitration of all grievances.

CONCLUSIONS OF LAW

1. The Local Government Employee-Management Relations Board has jurisdiction over the parties and the subject matter of this Complaint pursuant to the provisions of NRS Chapter 288.

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

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

4. The Union has the burden of proving its allegations that the City committed a prohibited practice under NRS 288.270(1)(e) by withdrawing its agreement to final and binding arbitration of all grievances, including disciplinary grievances.

5. The City did agree that all grievances, including those involving disciplinary matters, may be submitted to final and binding arbitration for resolution.

6. The City did not present a sufficient reason for withdrawing its agreement to submit all grievances to final and binding arbitration.

7. While the City's actions may normally have constituted bad faith bargaining, the parties subsequently agreed to submit the undisputed portions of the Agreement for ratification, and to resolve thereafter, through another forum, the issue of whether disciplinary grievances may be arbitrated.

8. By agreeing to proceed in this manner, any bad faith bargaining was remedied by agreement. Thus, the Union cannot meet its burden.

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DECISION AND ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Union's prohibited practice Complaint is moot, and thus, the Union is not entitled to its requested relief.

IT IS FURTHER ORDERED that each party shall bear its own costs and attorney's fees.

DATED this 18th day of March 1998.

LOCAL GOVERNMENT EMPLOYEE-
GOVERNMENT RELATIONS BOARD

By _____
DAVID GOLDWATER, Chairman

By _____
KAREN L. McKAY, Vice Chairperson

By _____
JAMES E. WILKERSON, SR., Board Member