STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 533,
Complainant;

vs.

CITY OF FALLON,
Respondent.

ITEM NO. 424A

CASE NO. A1-045631

MODIFIED 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

On March 18, 1998, the Local Government Employee-Management Relations Board entered an order holding that Union's prohibited practice Complaint is moot because the International Brotherhood of Teamsters, Local 533 (hereinafter Union) " dropped its request in its Complaint for an order that the City [of Fallon] adhere to the Agreement, including the arbitration of all grievances." However, on April 2, 1998, the Union filed a Petition for Rehearing ("Petition") on the basis that it did not waive that requested remedy or claim.

Pursuant to NAC 288.360(2), the Board ordered the parties to submit additional data in support of their respective positions on whether the parties had agreed to resolve their dispute in a forum other than before the Board. On May 28 and June 3, 1998, respectively, the Union and the City agreed that there never was an agreement between the parties to submit any part of their dispute to alternative dispute resolution, and that the Complaint before the Board was the Union's chosen forum for challenging the City's alleged actions.

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Pursuant to the Board's deliberations at its meeting on August 12, 1998, noticed in accordance with Nevada's Open Meeting Law, on the Union's Petition, the Board hereby modifies its March 18, 1998 Decision as follows:

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.

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.

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.

13. On August 18,1997, the Union filed its Complaint with the Local Government Employee- Management Relations Board in an attempt to resolve the issue as to whether the City must allow final and binding arbitration for 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. By unlawfully refusing to execute the written contract embodying all the terms and conditions of a collective bargaining agreement with the Union, the City has engaged in a prohibited practice of bad faith bargaining in violation of NRS 288.270(e). See, e.g., J.H. Heinz Corn v NLRB, 311 U.S. 514 (1941); New Orleans Stevedoring Co., 308 N.L.R.B. 1076 (1992); Wisdom Industries, Inc., 257 N.L.R.B. 1237 (1981).

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DECISION AND ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the City shall cease and desist from failing and refusing to execute, implement, and comply with the terms of the collective bargaining agreement agreed upon by the City and the Union, which includes the Union's right to submit grievances involving disciplinary matters to final and binding arbitration for resolution.

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

DATED this 10th day of September 1998.

LOCAL GOVERNMENT EMPLOYEE-
GOVERNMENT RELATIONS BOARD

By _____
DAVID GOLDWATER, Chairman

By _____
KAREN L. McKAY, Vice-Chairperson

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