

1 STATE OF NEVADA
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD
4

5 TRUCKEE MEADOWS FIREFIGHTERS)
6 LOCAL 2487, INTERNATIONAL)
7 ASSOCIATION OF FIREFIGHTERS,)
8 Complainant,)

9 vs.)

10 TRUCKEE MEADOWS FIRE)
11 PROTECTION DISTRICT,)
12 Respondent.)

ITEM NO. 448A

CASE NO. A1-045650

DECLARATORY ORDER

13 For Complainant: Sandra G. Lawrence, Esq.
14 Dyer, Lawrence, Cooney and Penrose

15 For Respondent: Maureen Sheppard-Griswold, Esq.
16 Washoe County District Attorney's Office

17 FACTS

18 On August 27, 1998, Complainant Truckee Meadows Firefighters Local 2487, International
19 Association of Firefighters (hereafter referred to as the "Union") filed a complaint in this matter
20 alleging prohibited practices by the Respondent Truckee Meadows Fire Protection District (hereafter
21 referred to as the "District"). The Complaint alleged unilateral changes by the District concerning
22 the procedures for leave time and allocating overtime to employees.

23 A hearing was held before the Local Government Employee-Management Relations Board
24 (hereafter referred to as the "Board") on March 19, 1999; said hearing and deliberations were noticed
25 pursuant to Nevada's Open Meeting Law. The Union was represented by Sandra G. Lawrence, Esq.,
26 and the District was represented by Maureen Sheppard-Griswold, Deputy District Attorney. Opening
27 statements were made by the parties, after which time the witnesses were sworn and allowed to
28 testify, and evidence admitted.

Thereafter, deliberations were conducted and the Board found that the parties had reached
an agreement that the prohibited practices complaint would be dismissed, with prejudice, with the

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1 parties pursuing this matter as an action for declaratory relief concerning two issues. Briefs were
2 ordered from the parties on the following two issues:

3 1. Whether the substance of the two proposals at issue, the authorized leave and
4 the overtime procedures, are mandatory subjects of bargaining under Chapter 288 of the Nevada
5 Revised Statutes?

6 2. If either or both of these are mandatory subjects of bargaining, when does the
7 obligation to bargain arise and what are the impasse procedures that would apply?

8 By stipulation of the parties, a third issue was also briefed; that issue was whether a local
9 government employer has the ultimate right to direct employees to work overtime or is overtime a
10 subject of negotiation?

11 On June 7, 1999, deliberations were held by the Local Government Employee-Management
12 Relations Board, with said deliberations being noticed pursuant to Nevada's Open Meeting Law.
13 Pursuant to those deliberations, the Board finds as follows:

14 DISCUSSION

15 The Board considered the arguments raised in the parties' supplemental briefs and affidavits
16 submitted in support of the briefs, as well as reviewed and discussed the complete agreement between
17 the parties with particular attention to Article 16 and 18 thereof. That agreement provides in Section
18 VI, Wages, Article 2, Overtime, B.3, that "allocation of available overtime shall be fair and equitable.
19 The procedures for the allocation of available overtime and the record keeping shall be contained in
20 the Procedures Manual." That procedures manual was not presented to this Board for review and
21 consideration.

22 A discussion was then held whether NRS 288.150(2)(a) includes overtime, which states that
23 "salary or wage rates or other forms of direct monetary compensation" are subjects of mandatory
24 bargaining. The District contends that overtime scheduling and the allocation thereof are not
25 mandatory subjects of bargaining as it is not mentioned in that section and are functions reserved for
26 the employer to assure appropriate staffing levels and that quality services are adequately offered to
27 the public for its safety and protection. The Union contends that its members had enjoyed specific
28 rights concerning overtime and leave; that they are directly and significantly related to hours, wages,

1 and working conditions; and that the District cannot unilaterally change the procedures during the
2 term of the agreement without consent by the Union. In support of those contentions, the Union
3 cited, among other cases, Mount Union Area Educ. Support Personnel Assoc. v. Mount Union Areas
4 Sch. Dist., 24 PPER, p. 24152 (1993); Service Employees Int'n Union, Local 11, and City of Crest
5 Hill, 4 PER1 p 2030 (Illinois, 1988); and In the Matter of the City of Long Branch and the Long
6 Brach PBA Local No. 10, Docket No. SN-82-11, P.E.R.C. No. 83-15 (1987).

7 A discussion was also held concerning when does the duty arise for the parties to negotiate
8 new issues or the duty to re-negotiate or revisit matters also agreed upon.

9 FINDINGS OF FACT

10 1. That the parties successfully negotiated collective bargaining agreements in 1991 and
11 1995.

12 2. That the issue of overtime allocation was not a subject of negotiations between the
13 parties in either 1991 or 1995.

14 3. That a separate procedures manual apparently prepared by the District exists with a
15 provision therein concerning overtime and that such a manual was referred to in the agreement
16 between the parties, although no date or edition for the manual was identified in the agreement.

17 4. That during the term of the agreement at issue herein, the District sought changes to
18 the existing procedures for allocating overtime among employees and requesting leave, as well as
19 overtime scheduling.

20 5. That the issues involved herein appear significantly related to wage rate or other
21 monetary compensation, which are mandatory subjects for negotiations.

22 6. That the complaint filed herein was dismissed by stipulation of the parties, and this
23 matter continued as a complaint for declaratory relief.

24 CONCLUSIONS OF LAW

25 1. That the Board has jurisdiction over the parties and the subject matters of the
26 complaint filed herein, pursuant to the provisions of NRS Chapter 288.

27 2. That the District is a local government employer as defined in NRS 288.060.

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1 3. That the Union is an employee organization as defined by NRS 288.040 and is
2 recognized as the exclusive bargaining representatives for the employees at issue herein, in
3 accordance with NRS 288.160.

4 4. That the parties successfully negotiated collective bargaining agreements in 1991 and
5 1995; and overtime allocation was not a subject of negotiation in either collective bargaining
6 agreements.

7 5. That the parties stipulated to the dismissal of the Union's complaint alleging prohibited
8 practices by the District.

9 6. That this matter then proceeded alternatively as a complaint for declaratory relief.

10 7. That although overtime allocation is not specifically mentioned as a mandatory subject
11 of bargaining in NRS 288.150, it is a form of a wage rate or other form of monetary compensation,
12 or in the alternative, it is significantly related to those subjects mentioned therein and, therefore, is
13 a subject of mandatory bargaining.

14 8. That although overtime is a mandatory subject of bargaining, the employer retains the
15 right to order overtime in an emergency situation and that employer right is not affected by this
16 Decision and Order. See NRS 288.150(4).

17 9. That a separate procedures manual exists with a provision therein concerning overtime
18 and that such a manual was referred to in the agreement between the parties, although no date or
19 edition for the manual was identified in the agreement; however, the combination of manual and
20 agreement contain the terms and conditions applicable to the parties.

21 10. That during the term of an agreement, the working terms and conditions (including
22 the issues involved herein of overtime allocation, overtime scheduling, and procedures for requesting
23 leave) already in effect or in existence cannot be unilaterally changed during that agreement term; any
24 such change during the term of the agreement must be mutually agreeable to the parties.

25 11. That the duty to renegotiate a provision of the agreement or negotiate a potential
26 amendment or change does not arise during the term of the existing agreement, unless the parties
27 mutually agree to renegotiate any such provision or negotiate proposed changes or amendments.

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1 12. That since the complaint alleging prohibited practices by the District was dismissed
2 by stipulation of the parties, and this matter continued as a complaint for declaratory relief, no finding
3 was required nor made as to whether the District committed any alleged prohibited practices.

4 **ORDER**

5 IT IS, THEREFORE, THE ORDER OF THIS BOARD that the imposition of or scheduling
6 overtime in non-emergency situations as referred to in NRS 288.150(4) and the allocation of overtime
7 among employees are mandatory subjects for bargaining.

8 IT IS ORDERED that existing practices and procedures for allocating and scheduling
9 overtime and assignment of leave time shall not be unilaterally changed during the term of a collective
10 bargaining agreement.

11 IT IS FURTHER ORDERED that the duty of either party to renegotiate a provision in an
12 existing agreement, or negotiations concerning a change or amendment thereto, shall not arise during
13 the term of the agreement; any such modifications or additions may only be accomplished by mutual
14 consent of the parties during the term of the agreement, unless other arrangements are specified in
15 said agreement.

16 DATED this 23rd day of July 1999.

17 LOCAL GOVERNMENT EMPLOYEE-
18 MANAGEMENT RELATIONS BOARD

19 By David Goldwater
20 DAVID GOLDEWATER, Chairman

21 By James E. Wilkerson, Sr.
22 JAMES E. WILKERSON, SR., Member

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24 **DISSENTING OPINION**

25 I must respectfully dissent from the above opinion of the Board as I find the argument of the
26 District persuasive concerning the overtime issue.

27 NRS 288.150 pertains to negotiations between employer and employees and sets forth specific
28 subjects which are subject of mandatory bargaining. Throughout the portion of the statute pertaining

1 to subjects of mandatory bargaining, no mention is made of "overtime." More specifically, NRS
2 288.150(2) limits the scope of mandatory bargaining to specific subjects, namely:

- 3 (a) Salary or wage rates or other forms of direct monetary
4 compensation,
- 5 (b) Sick leave.
- 6 (c) Vacation leave.
- 7 (d) Holidays.
- 8 (e) Other paid or nonpaid leaves of absence.
- 9 (f) Insurance benefits.
- 10 (g) Total hours of work required of an employee on each
11 workday or work week.
- 12 (h) Total number of days' work required of an employee in a work
13 year.
- 14 (i) Discharge and disciplinary procedures.
- 15 (j) Recognition clause.
- 16 (k) The method used to classify employees in the bargaining unit.
- 17 (l) Deduction of dues for the recognized employee organization.
- 18 (m) Protection of employees in the bargaining unit from
19 discrimination because of participation in recognized employee
20 organizations consistent.
- 21 (n) No-strike provisions
- 22 (o) Grievance and arbitration procedures for resolution of
23 disputes relating to interpretation and application of collective
24 bargaining agreements.
- 25 (p) General savings clause.
- 26 (q) Duration of collective bargaining agreements.
- 27 (r) Safety of the employee.
- 28 (s) Teacher preparation time.
- (t) Materials and supplies for classrooms.
- (u) Policies for the transfer and reassignment of teachers.
- (v) Procedures for reduction in work force.

18 This statute is very specific: it requires that the "rate" of compensation be a subject of
19 mandatory bargaining. Therefore, the rate for overtime is subject to bargaining, but only the issue
20 of "wage rate" or monetary compensation for such work. A plain reading of the statute requires such
21 a decision. Additionally, see In the Matter of Washoe County School District and the Washoe County
22 Teachers Association, EMRB Item No. 3 (October 9, 1971), confirming overtime pay (i.e., rate) as
23 a subject for mandatory bargaining.

24 Rights enjoyed by the employer, without negotiations with the employees or its
25 representatives, are found in NRS 288.150(3), and include the right to "direct" and "assign" an
26 employee (NRS 288.150(3)(a)); the right to determine "appropriate staffing levels and work
27 performance standards" (NRS 288.150(3)(c)(1)); and the right to determine "the content of the
28 workday" (NRS 288.150(3)(c)(2)). Although overtime is not mentioned in this statute, the

1 immediately above-quoted subsections appear to more appropriately refer to or imply overtime
2 imposition and allocation. These immediately above-quoted subsections are not subject to mandatory
3 bargaining.

4 Additionally, the employer must assure the "safety of the public" (NRS 288.150(3)(d)) and
5 the "quality and quantity of services to be offered to the public." (NRS 2889.150(3)(c)(3).) Again,
6 this implies the employer's right to determine whether overtime is required to accomplish those goals
7 and how such overtime is allocated among the employees.

8 Further supporting my belief that overtime issues (other than rate) are not subject to
9 mandatory bargaining is the lack of inclusion of such topics in the prior 1991 and 1995 agreements
10 between the parties. Had the parties believed the matter was subject to mandatory bargaining, it
11 would be logical to then have included the subject in the agreement. The agreement, however, did
12 not contain detailed provisions concerning overtime. Rather, the subject was discussed within the
13 procedures manual prepared by the employer and required merely that the overtime allocation process
14 be fair and equitable. Since this manual does not require negotiation, the subjects contained therein
15 should then be left to the discretion of the employer. Finally, the agreement between the parties does
16 not specifically incorporate such provisions, but merely acknowledges the existence of the
17 same in the District's manual.

18 Based upon the above, it is my opinion that imposition and allocation of overtime are not
19 subjects of mandatory bargaining and should be left to the discretion of the employer.

20 DATED THIS 23rd day of July 1999.

21 LOCAL GOVERNMENT EMPLOYEE-
22 MANAGEMENT RELATIONS BOARD

23 By 
24 KAREN MCKAY, Member

