

1 STATE OF NEVADA  
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
3 RELATIONS BOARD  
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5 INTERNATIONAL ASSOCIATION OF  
6 FIREFIGHTERS, LOCAL 1908,

7 Complainant,

8 vs.

9 CLARK COUNTY,

10 Respondent.

ITEM NO. 571

CASE NO. A1-045774

ORDER

11 For Complainant: Keen L. Ellsworth, Esq.  
12 Ellsworth, Moody & Bennion

13 For Respondent: Carolyn C. Campbell, Esq.  
14 Clark County District Attorney's Office

15 On October 29, 2003, Complainant INTERNATIONAL ASSOCIATION OF  
16 FIREFIGHTERS, LOCAL 1908 (hereinafter "Association") filed a Verified Complaint with the  
17 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD (hereinafter  
18 "Board"). On November 19, 2003, Respondent CLARK COUNTY (hereinafter "County") filed  
19 an Answer.

20 On January 16, 2004, the County filed a Motion for Deferral of Proceedings. The  
21 Association filed an opposition on February 5, 2004 and on February 17, 2004, filed a  
22 Supplement to the opposition. The County responded to the supplement on February 17, 2004.

23 The Association and the County filed their pre-hearing statements on January 21, 2004.

24 The Board held deliberations on said motion on March 2, 2004 and March 22, 2004,  
25 noticed in accordance with Nevada's Open Meeting Law. Based upon the deliberations,

26 IT IS HEREBY ORDERED that the Motion for Deferral is granted with the parties to  
27 give a written status report 6 months from the date of this order.

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1 IT IS FURTHER ORDERED that the parties are to report back to the Board within thirty  
2 (30) days of the completion of the process, giving either an amended complaint or a stipulation  
3 to dismiss.

4 DATED this 31<sup>st</sup> day of March, 2004.

5 LOCAL GOVERNMENT EMPLOYEE-  
6 MANAGEMENT RELATIONS BOARD

7 BY:   
8 JANET TROST, ESQ., Chairman

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10 BY:   
11 TAMARA E. BARENGO, Vice-Chairman

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1 **DISSENTING OPINION**

2 I dissent from the majority's deferral of this complaint.

3 This Board's adoption and application of the deferral doctrine was laid out in the case of  
4 I.A.F.F. #731 v. City of Reno, EMRB Item No. 257, Case No. A1-045466, wherein the Board  
5 said: "It is the Board's policy to encourage parties, whenever possible to exhaust their remedies  
6 under the contractual dispute resolution systems contained in their collective bargaining  
7 agreement before seeking relief from the LGEMRB. Thus, where the parties have not exhausted  
8 their contractual grievance arbitration provisions, the Board will not exercise its discretion to  
9 hear a complaint unless there is a clear showing of special circumstances or extreme prejudice."  
10 In its lead-in to the enumeration of this principle, the Board said: "Labor disputes sometimes  
11 involve conduct constituting both a labor agreement violation and an unfair labor practice."  
12 Therefore, the "deferral doctrine" is usually relied upon by the Board where a dispute has arisen  
13 under a currently effective collective bargaining agreement containing an arbitration provision  
14 which may be utilized to resolve the issue.

15 Complainants uniformly oppose application of the deferral doctrine and respondents  
16 frequently use it to create delay of Board proceedings.

17 NRS 288 was enacted by the Nevada Legislature created this Board to decide whether  
18 unfair labor practices have occurred. No other tribunal has been empowered, in Nevada, to make  
19 such determinations at the trial level. No arbitrator, factfinder or mediator has such authority.

20 This case involves the failure of negotiations to culminate in a mutually agreeable  
21 collective bargaining agreement between firemen and Clark County. Subsequently, the  
22 employer unilaterally discontinued making retirement contributions for extra time worked. This  
23 matter has been submitted to an arbitrator for resolution pursuant to NRS 288.215, a special  
24 section applicable only to firemen and police officers and their employers. The arbitrator's  
25 authority is strictly limited to selecting between each party's final offer [NRS 288.215 (10)] She  
26 may not "split the baby" and it is apparent the section contemplates assessing the financial ability  
27 of the employer to pay [see Sections 7 and 11(b)].

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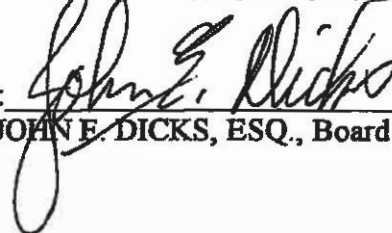
1 The Complainant here alleges the employer failed to negotiate a mandatory subject (NRS  
2 288.150) and failed to negotiate in good faith. If true, both allegations would amount to unfair  
3 labor practices. The Section 215 arbitrator cannot decide these two issues, only the Board may.

4 Perhaps the majority hopes that if the Section 215 arbitrator resolves the  
5 financial/economic benefit issues, the unfair labor practice matters will also go away. I think  
6 not. Unfair labor practices are serious matters, particularly in a state where strikes are illegal.  
7 Therefore, unfair labor practice charges should not be brought lightly nor to gain advantage in  
8 negotiations (although, of course, this is done. However, the Board may levy sanctions may lie  
9 for frivolous prosecutions).

10 This Board should, as NRS 288 mandates, hear this matter in due course. Justice delayed  
11 is truly justice denied.

12 DATED this 31<sup>st</sup> day of March, 2004.

13 LOCAL GOVERNMENT EMPLOYEE-  
14 MANAGEMENT RELATIONS BOARD

15 BY:   
16 JOHN E. DICKS, ESQ., Board Member  
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