

STATE OF NEVADA  
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF  
FIRE FIGHTERS, LOCAL 1908,

Complainant,

vs.

COUNTY OF CLARK, STATE OF  
NEVADA; CLARK COUNTY FIRE  
DEPARTMENT,

Respondents.

ITEM NO. 622

CASE NO. A1-045824

**DECISION**

For Complainant: W. David Holsberry, Esq.

For Respondent: Carolyn C. Campbell, Esq.

**I. PROCEDURAL HISTORY**

The parties to this action held a meeting on November 3, 2004 to discuss the Telestaff policy at issue in this matter. Telestaff is an automated staffing software program that is used to allocate overtime hours among Clark County Fire Department employees. After the discussion of the Telestaff policy at the November 3rd meeting, a grievance was filed by the INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 1908, ("Association") on November 7, 2004 to enforce a prior agreement to update the Telestaff policy. At a subsequent meeting held on November 15, 2004 the parties to this action discussed the grievance filed by the Association, and it was at that point that the CLARK COUNTY FIRE DEPARTMENT ("Department"), stated for the first time that their position was that Telestaff issues were a mandatory bargaining subject with the Association and that it was their right as management to implement and use such a software program to allocate overtime among Department employees.

On November 18, 2004, another meeting was held between the parties to this action and at that meeting the Department distributed a new Telestaff policy that made changes to the

1 policy that had been in existence since February 19, 2003. The Department's position relating to  
2 the use of the Telestaff system was reduced to writing on November 19, 2004.

3 After exhausting their administrative remedies, the Association filed the instant  
4 Complaint with the Local Government Employee-Management Relations Board ("EMRB") on  
5 May 2, 2005. Pre-Hearing Briefs were submitted by the parties on or about June 15, 2005. A  
6 hearing of the matter, noticed in accordance with Nevada's Open Meeting Law, was held on  
7 October 11, 2005. A transcript of that proceeding was prepared and received by the EMRB on  
8 November 1, 2005. The Respondents submitted their Post-Hearing Brief to the EMRB on  
9 January 13, 2006, and the Complainant filed its Brief on January 17, 2006.

10 The EMRB considered the briefs and arguments submitted by the parties as well as all  
11 supporting documentation. The matter was decided by the EMRB at its meeting held on  
12 February 1, 2006, noticed in accordance with Nevada's Open Meeting Law. The EMRB's  
13 findings as to the Association's Complaint are set forth in its Discussion, Findings of Fact and  
14 Conclusions of Law, which follow:

## 15 II. DISCUSSION

16 This dispute concerns whether the Clark County Fire Department's "Telestaff" policy is a  
17 mandatory bargaining subject within the meaning of NRS 288.150. The Telestaff program and  
18 associated policies and procedures provide the only way in which overtime hours are allocated to  
19 Department employees.

20 The February 19, 2003 Memorandum to all Department employees explains the Telestaff  
21 policy and outlines "Penalty Periods" on page 5 of 6 as follows:

22 **Auto Fill-No Call:** Personnel who have filled vacancies during Auto Fill-No Call  
23 will be assessed a 45-calendar day penalty for not working the  
24 scheduled/mandatory overtime without an approved excuse for the first offense.  
25 The penalty period will increase to a 90-calendar day penalty with a documented  
26 oral warning with a second offense within a 12-month period as part of  
27 progressive discipline.

28 **Sign Up Suppression:** A 14-calendar day penalty period will be assessed for  
personnel who have made themselves available and fail to respond within the ten  
(10) minute period or rejects an opportunity during Sign Up Suppression.

**Emergency Hire:** A 14-calendar day penalty period will be assessed for  
personnel who have made themselves available and fail to respond within a three  
(3) minute period or rejects an opportunity during Emergency Hire.

1 **Scorch the Earth:** During Scorch the Earth an employee will not be charged a  
2 14-calendar day penalty for not answering. However, an opportunity count will  
3 be added to their history. If the employee rejects the opportunity they will be  
4 assessed a 14-calendar day penalty.

5 Clearly, a progressive discipline procedure has been implemented by the Department P  
6 association with the use of the Telestaff program and the allocation of overtime hours.  
7 Therefore, the EMRB must review whether the policies and procedures implemented by the  
8 Department fall under the mandatory negotiation requirement of the relevant Nevada Revised  
9 Statutes.

10 NRS 288.150 provides in pertinent part as follows:

11 **NRS 288.150 Negotiations by employer with recognized employee  
12 organization: Subjects of mandatory bargaining; matters reserved to  
13 employer without negotiation.**

14 1. Except as provided in subsection 4, every local government  
15 employer shall negotiate in good faith through one or more representatives  
16 of its own choosing concerning the mandatory subjects of bargaining set  
17 forth in subsection 2 with the designated representatives of the recognized  
18 employee organization, if any, for each appropriate bargaining unit among  
19 its employees. If either party so requests, agreements reached must be  
20 reduced to writing.

21 2. The scope of mandatory bargaining is limited to:

22 (a) Salary or wage rates or other forms of direct monetary  
23 compensation. (Emphasis added.)

24 Additionally, the Association has claimed that the Department has committed a  
25 prohibited practice in violation of NRS 288.270 for failing to negotiate mandatory bargaining  
26 issues. The Association contends that the Telestaff policies and procedures, specifically the  
27 allocation of overtime and any penalties assessed for failing to accept overtime assignments,  
28 should have been negotiated with the Association as part of the Collective bargaining  
Agreement. NRS 288.270(1)(e) states as follows:

29 **NRS 288.270 Employer or representative; employee or employee  
30 organization.**

31 1. It is a prohibited practice for a local government employer or its designated  
32 representative willfully to:

33 (e) Refuse to bargain collectively in good faith with the exclusive  
34 representative as required in NRS 288.150. Bargaining collectively includes the  
35 entire bargaining process, including mediation and fact-finding, provided for in  
36 this chapter.

1 The Department contends that the Association's EMRB Complaint is untimely because  
2 the Telestaff policy change was distributed via the email Memorandum on February 19, 2003,  
3 and that is the date that affected employees should have reasonably known of any alleged  
4 contract violation. The Department further argues that the Telestaff policy is not a subject of  
5 mandatory collective bargaining and that it falls within the discretion of management to assure  
6 appropriate staffing levels, without resorting to negotiations with the Association.

7 The Association contends that their Complaint in this matter was filed in a timely manner  
8 because up until November 15, 2004 the Department had bi-laterally negotiated changes in the  
9 Telestaff policy with the Association in accordance with the Collective Bargaining Agreement  
10 and relevant statutes. It was not until a meeting that was held on November 15, 2004 that the  
11 Association had notice that the Department believed that the Telestaff policy was not subject to  
12 negotiation. The Association further contends that any changes to the Telestaff policy fall  
13 within the requirement of mandatory bargaining under NRS 288.150 as it directly and  
14 significantly relates to employees hours, wages and working conditions, and that the Department  
15 cannot unilaterally change the policy and procedures associated therewith during the term of the  
16 agreement without the consent of the Association.

17 In a prior decision relating to similar issues as those at hand, this EMRB found that  
18 "although overtime allocation is not specifically mentioned as a mandatory subject of bargaining  
19 in NRS 288.150, it is a form of wage rate or other form of monetary compensation, or in the  
20 alternative, it is significantly related to those subjects mentioned therein, and therefore is a  
21 subject of mandatory bargaining." Truckee Meadows Firefighters Local 2487 etc. v. Truckee  
22 Meadows Fire Protective District, EMRB Case No. A1-045650, July 23, 1999. That decision by  
23 the EMRB was upheld on judicial review in the Second Judicial District Court in Case number  
24 CV99-04489.

### 25 III. FINDINGS OF FACT

26 1. That the parties agree that Telestaff is the procedure through which overtime is  
27 allocated to Department employees.

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1           2.     That employees who decline an offer of overtime are subject to being denied  
2 overtime opportunities for up to 90-calendar days as defined in the penalties outlined in  
3 February 19, 2003 Memorandum issued by the Department.

4           3.     That at all times prior to November 15, 2004 the Department and the Association  
5 bilaterally negotiated concerns regarding the Telestaff policy.

6           4.     That a grievance was filed by the Association on November 7, 2004 to enforce  
7 Department's earlier commitment to meet and update the Telestaff procedures, mandatory  
8 callbacks, and penalties. Further, the Department was to inform all employees of such updates

9           5.     That at a November 15, 2004 meeting to discuss the grievance the Association  
10 was first given notice that the Department's position was that Telestaff issues were not subject to  
11 mandatory bargaining.

12          6.     That on November 18, 2004 a meeting was held between the parties to this action  
13 and at that meeting the Department distributed a new Telestaff policy that made unilateral  
14 changes to the prior policy dated February 19, 2003.

15          7.     That the Association filed the instant Complaint with the EMRB on May 2, 2005  
16 within six (6) months of when the Department first took the position that the Telestaff policy was  
17 not a mandatory bargaining subject, and within six (6) months of when the Department  
18 announced and implemented unilateral changes to the Telestaff policy pursuant to NRS  
19 288.110(4).

#### 20 **IV. CONCLUSIONS OF LAW**

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

24          2.     That the Department is a local government employer as defined by NRS 288.060.

25          3.     That the Association is an employee organization as defined by NRS 288.040.

26          4.     That the issues involved herein appear significantly related to wage rate or other  
27 monetary compensation, which are mandatory subjects for collective bargaining negotiation  
28 pursuant to the Nevada Revised Statutes.

1           5.       That the EMRB finds the Complainant's explanation of the earlier events, (events  
2 prior to the filing of their instant EMRB Complaint), and the three- year course of conduct  
3 between the parties, to be believable as to why they did not file a grievance or EMRB complaint  
4 prior to May 2, 2005. If Respondent wishes to avail itself of an earlier event as a trigger date for  
5 the six (6) month statute of limitations found in NRS 288.110(4), then they must make it plain to  
6 the Complainant what that event date is and why it is relevant in the instant matter.

7           6.       That the EMRB upholds its earlier decision in Truckee Meadows Firefighters  
8 Local 2487 etc. v. Truckee Meadows Fire Protective District, EMRB Case No. A1-045650, and  
9 applies herein the finding that "although overtime allocation is not specifically mentioned as a  
10 mandatory subject of bargaining in NRS 288.150, it is a form of wage rate or other form of  
11 monetary compensation, or in the alternative, it is significantly related to those subjects  
12 mentioned therein, and therefore is a subject of mandatory bargaining."

13          7.       That it is clearly within management's discretion and prerogative to use the  
14 Telestaff software program and to set the number of overtime hours to be offered, and nothing in  
15 this Decision affects management's rights to direct and assign work to an employee, to determine  
16 appropriate staffing levels and work performance standards, the right to determine the content of  
17 the workday, or to apply any other provision found in NRS 288.150 that is not a subject of  
18 mandatory bargaining.

19          8.       That the allocation of overtime, any disciplinary action taken if and when an  
20 employee declines to work said overtime, and any policies and procedures that are associated  
21 with such allocation of overtime hours and discipline are required to be negotiated pursuant to  
22 the EMRB's prior decision in Truckee Meadows Firefighters Local 2487 etc. v. Truckee  
23 Meadows Fire Protective District, EMRB Case No. A1-045650.

24 **V.     DECISION AND ORDER**

25       IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Department's  
26 allocation of overtime among employees is a mandatory subject for bargaining.

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1 IT IS FURTHER ORDERED that the Department's existing policies and procedures for  
2 allocating and scheduling overtime shall not be unilaterally changed during the term of a  
3 collective bargaining agreement with the Association.

4 IT IS FURTHER ORDERED that reasonable fees and costs should be awarded to the  
5 Association and that the Association is hereby ORDERED to submit its documents and records  
6 in support of its request for fees and costs and documenting the amount due within ten (10) days  
7 from the date of this order.

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

11 DATED this 2<sup>nd</sup> day of May, 2006.

12 LOCAL GOVERNMENT EMPLOYEE-  
13 MANAGEMENT RELATIONS BOARD

14 BY: 

15 JOHN E. DICKS, ESQ., Chairman

16 BY: 

17 JANET TROST, ESQ., Vice-Chairman