

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

WASHOE COUNTY SHERIFF'S
SUPERVISORY DEPUTIES ASSOCIATION)
and WASHOE COUNTY SHERIFF'S)
DEPUTIES ASSOCIATION,)

Complainant,

vs.

WASHOE COUNTY,

Respondent.

ITEM: 789

CASE NO. A1-046052

ORDER

For Complainant: Washoe County Sheriff's Supervisory Deputies Association and
Washoe County Sheriff's Deputies Association and their attorney
Michael E. Langton, Esq.

For Respondent: Washoe County and their attorney David Watts-Vial, Esq.

This matter came on before the State of Nevada, Local Government Employee-
Management Relations Board ("Board"), for consideration and decision pursuant to the
provisions of the Local Government Employee-Management Relations Act ("the Act"); NAC
Chapter 288, NRS chapter 233B, and was properly noticed pursuant to Nevada's open meeting
laws. A hearing was held in this matter on October 8, and 10, 2013 in Reno, Nevada.

Complainants in this case are two employee organizations- the Washoe County Sheriff's
Deputies Association and the Washoe County Sheriff's Supervisory Deputies Association
(collectively "the Associations"). The Associations are recognized bargaining agents who
represent individuals employed by Washoe County through its Sheriff's Department.

The complaint in this matter asserts that Respondent Washoe County acted in violation of
NRS 288.270(1)(e). Specifically, the Associations assert that the County reduced the wages of its
members by 1.375% effective July 18, 2011. The Associations argue that the County

1 implemented this wage reduction without bargaining over it and that this wage reduction was a
2 unilateral change to a mandatory subject of bargaining.

3 The County acknowledges that it did reduce the employees' wages by 1.375%, yet denies
4 that a prohibited labor practice has occurred. The County asserts first of all that it was permitted
5 to make this wage reduction by the terms of the collective bargaining agreements which were in
6 effect at the time. Additionally, the County asserts that it was powerless to avoid the wage
7 reductions as the reductions were dictated to it by the Public Employees Retirement System
8 ("PERS").
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10 Affirmative Defenses

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12 Initially, we address the affirmative defenses raised by the County. The County asserted
13 two affirmative defenses in this case which it argues should result in a dismissal of the complaint
14 before reaching the merits of the complaint.

15 The County argues that the claims in this case are really a claim for a breach of the
16 collective bargaining agreements and that the Associations did not exhaust their remedies under
17 the agreements. The County argues that on this basis the complaint should be dismissed. We
18 disagree.
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20 The complaint in this matter plainly asserts that the County committed a statutory
21 violation; in particular a violation of NRS 288.270(1)(e). Such allegations fall within the
22 exclusive jurisdiction of this Board. City of Reno v. Reno Police Protective Association, 118
23 Nev. 889, 59 P.3d 1212 (2002). The County has not asserted that any of the circumstances
24 which invoke the limited deferral doctrine, as stated in City of Reno, are present in this case. In
25 fact, such an assertion would be inconsistent with the County's argument which rests upon the
26 premise that there was no grievance proceeding at all. Where the criteria outlined by the limited
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1 deferral doctrine are absent, the Board retains exclusive jurisdiction to decide allegations of
2 statutory violations of the Act. City of Reno at 896-897, 59 P.3d at 1217-1218; NRS 288.110(2);
3 NRS 288.280.

4 The County's second argument asserts that the complaint is barred by the six-month
5 statute of limitations of NRS 288.110(4). This six-month statute of limitations begins running
6 when a party receives unequivocal notice of a final adverse action. City of North Las Vegas v.
7 State, Local Government Employee-Management Relations Board, 127 Nev. Adv. Op. 57, 261
8 P.3d 1071, 1077 (2011).

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10 The County argues that the complaint was not filed with this Board until January 17,
11 2012, but that the County had advised the Associations of its intent to reduce wages on June 24,
12 2011. The June 24, 2011 date is irrelevant because it is the actual occurrence of the event, rather
13 than some pre-occurrence indication of intent, that determines the six-month limitations period.
14 Pershing County Law Enforcement Association v. Pershing County, Item No. 725C, EMRB
15 Case No. A1-045974 (May 17, 2013). see also Cone v. Nevada Service Employees Union, 116
16 Nev. 473, 477, 998 P.2d 1178, 1181, n. 2 (2000).

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18 The County acknowledged, and the evidence bears out, that July 18, 2011 was the
19 effective date of the salary reduction. The County also acknowledged that the complaint was
20 filed on January 17, 2012. This is plainly within "6 months after the occurrence which is the
21 subject of the complaint." NRS 288.110(4).

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23 Therefore the Board will not dismiss the complaint as requested by the County.

24 Analysis

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26 The Act requires a local government employer such as the County to bargain with a
27 recognized bargaining agent over certain terms and conditions which are listed in NRS
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1 288.150(2). Salary, wage rate and other direct forms of monetary compensation are mandatory
2 subjects of bargaining. NRS 288.150(2)(a).

3 The bargaining obligation entails an obligation for a local government employer to
4 bargain in good faith. NRS 288.270(1)(e). An employer breaches its obligation to bargain in
5 good faith when it makes unilateral changes to one or more of the mandatory subjects of
6 bargaining without first bargaining for the change with the recognized bargaining agent. City of
7 Reno. This Board has previously recognized that such unilateral changes constitute a *per se*
8 violation of NRS 288.270(1)(e). Las Vegas Police Protective Ass'n v. City of Las Vegas, Item
9 No. 248, EMRB Case No. A1-045461 (Aug. 15, 1990) (citing NLRB v. Katz, 369 U.S. 736,
10 (1962)).
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12 Typically the Board determines a unilateral change claim by ascertaining first what were
13 the bargained-for terms before the alleged change occurred, then ascertaining what were the
14 terms of employment after the alleged change, and then comparing the two to determine
15 whether a change to a mandatory subject of bargaining in fact occurred. SEIU, Local 1107 v.
16 Clark County, Item No. 713A, EMRB Case No. A1-045965 (Oct. 5, 2010).
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18 The Board first looks to the bargained-for terms concerning salary and in particular the
19 bargained for terms that pertain to increases in the contribution rate to PERS.
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21 Excerpts from the applicable collective bargaining agreement between the Deputies
22 Association and the County were introduced into evidence at the hearing. Notably, Article 15 of
23 that agreement contains the provisions relating to employee salaries. After establishing the salary
24 schedule, by reference to an Exhibit A, the agreement contains the following language:
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26 The salaries shown in Exhibit A of this Agreement are subject to
27 change during the term of the Agreement due to increases or
28 decreases in the retirement contribution for Nevada's Public
Employee Retirement System in accordance with NRS 286.421.

1 The County argues that this provision allowed it to decrease employee salaries to
2 correspond with the increase in retirement contribution mandated by PERS. The Deputies
3 Association argues that this required the County to first negotiate the PERS increase.

4 The County's argument is well-taken. The bargained-for terms stated in the agreement
5 did allow for an adjustment to the deputies' salaries in the event of a PERS increase, just as had
6 occurred in this case. The Deputies Association did not raise the argument or present evidence
7 to show that the salary reduction went beyond the amount of the increase in the retirement
8 contribution as determined by PERS. Therefore we conclude that the evidence in this case
9 shows that the County did not make changes to the bargained-for terms concerning employee
10 salary outside of the bargaining process. In such cases, no unilateral change occurs. Bisch v. Las
11 Vegas Metropolitan Police Dep't., 129 Nev. Adv. Op. 36, 302 P.3d 1108, 1115, n.5 (2013).
12 Accordingly, the Board concludes that the County did not commit a prohibited labor practice
13 relative to the Deputies Association in this case.

14 The applicable agreement between the County and the Supervisory Association also
15 contained language that addressed the effect of a possible modification of retirement
16 contributions. Article 13 of that agreement concerns employee salaries. Within Article 13, the
17 agreement states:

18 The County shall continue to pay one hundred percent (100%) of
19 the cost of the retirement contribution for the State of Nevada
20 Public Employees Retirement System in accordance with NRS
21 286. Provided, should the contribution rate be modified and an
22 offset to wage increases be provided pursuant to NRS 286, Exhibit
23 A shall be adjusted accordingly.

24 At the hearing, Steve Watson, who was the Chief Negotiator for the County for this
25 agreement and Don Gill, President of the Supervisory Association each testified as to the intent
26 of this provision. Mr. Watson asserted that this provision held that the County would adjust the
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1 salary schedule to comply with a PERS-mandated increase in the retirement contribution rate.
2 Mr. Gill, on cross-examination, also agreed that this provision permitted the County to reduce
3 the salary schedule in the event of a PERS increase, and that this provision was negotiated and
4 agreed-to by the Association. The Associations argued that such wage reductions were
5 historically negotiated back in subsequent agreements. This appears to be a separate issue, and in
6 any event there was no evidence to suggest that the County was refusing to negotiate over salary
7 or wage rates on subsequent agreements. Like the Deputies Association, the Supervisory
8 Association did not argue or present evidence to show that the salary reduction in this case went
9 beyond the scope of the PERS increase.
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12 The evidence in this case demonstrates that the bargained-for salary terms relating to a
13 PERS increase allowed the County to adjust the salary schedule by imposing a 1.375% reduction
14 to comply with the increase determined by PERS.
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16 Because the County adhered to the bargained-for terms of the agreement, we conclude
17 that the County did not commit a unilateral change in this instance.

18 We note that the Associations' assertion that the County is in violation of NRS
19 286.421(9) by splitting the cost of PERS rate increase through a salary reduction is beyond the
20 authority of this Board, and we decline to address that argument.
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22 The Board has also considered the merits of this case and determined that an award of
23 costs pursuant to NRS 288.110(6) is not warranted.

24 Based upon the forgoing, the Board makes the following findings of fact and conclusions
25 of law.
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FINDINGS OF FACT

1. Complainants Washoe County Sheriff's Deputies Association and Washoe County Sheriff's Supervisory Deputies Association are recognized bargaining agents and were each a party to a collective bargaining agreement with Respondent Washoe County.

2. Each of the respective collective bargaining agreements contained bargained-for terms pertaining to employee salary and addressed the contingency of a modification to retirement contribution rates as determined by the Public Employees Retirement System.

3. Effective July 18, 2011 the County reduced employee salaries for employees in the bargaining units represented by the Associations by 1.375%

4. The County's reason for reducing employee salaries was to comply with an increase in the retirement contribution rate determined by PERS.

5. The amount of the salary reduction did not exceed the amount of the salary reduction to cover increased retirement contribution rates as determined by PERS.

6. There is no decision from an arbitrator concerning a grievance which covers the same subject as the occurrence which forms the basis of the complaint in this matter.

7. The Associations filed their complaint with this Board on January 17, 2012.

8. If any of the foregoing findings is more appropriately construed a conclusion of law, it may be so construed.

CONCLUSIONS OF LAW

1. The Board is authorized to hear and determine complaints arising under the Local Government Employee-Management Relations Act.

2. The Board has jurisdiction over the parties and the subject matters of the Complaint on file herein pursuant to the provisions of the Act.

1 3. It is not appropriate to apply the limited-deferral doctrine stated in City of Reno in this
2 case.

3 4. The complaint filed by the Associations was timely filed pursuant to NRS 288.110(4).

4 5. Salary and wage rates are a mandatory subject of bargaining pursuant to NRS
5 288.150(2)(a).

6 5. The Associations and the County had bargained-for salary terms that addressed the event
7 of a PERS increase.

8 6. The collective bargaining agreement between the Washoe County Sherriff's Deputies
9 Association and Washoe County reflected the parties' bargained-for terms.

10 7. The bargained-for salary terms between the Washoe County Sherriff's Deputies
11 Association and Washoe County permitted the County to reduce the wages listed on the salary
12 schedule to correspond to an increase in the retirement contribution rate determined by PERS.

13 8. The County did not unilaterally change the terms and conditions of employment relative
14 to the members of the Washoe County Sherriff's Deputies Association when it reduced salaries
15 by 1.375% on July 18, 2011.

16 9. The collective bargaining agreement between the Washoe County Sherriff's Supervisory
17 Deputies Association and Washoe County reflected the parties' bargained-for terms.

18 10. The bargained-for salary terms between the Washoe County Sherriff's Supervisory
19 Deputies Association and Washoe County permitted the County to reduce the wages listed on the
20 salary schedule to correspond to an increase in the retirement contribution rate determined by
21 PERS.

11. The County did not unilaterally change the terms and conditions of employment relative to the members of the Washoe County Sherriff's Supervisory Deputies Association when it reduced salaries by 1.375% on July 18, 2011.

12. An award of costs pursuant to NRS 288.110(6) is not warranted in this case.

13. If any of the foregoing conclusions is more appropriately construed a finding of fact, it may be so construed.

ORDER

It is hereby ordered that the Board finds in favor of Respondent Washoe County as set forth above.

It is further order that each party shall bear its own fees and costs incurred in this matter.

DATED the 17th day of October, 2013.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: _____


PHILIP E. LARSON, Chairman

BY: _____


SANDRA MASTERS, Vice-Chairman

BY: _____


BRENT C. ECKERSLEY, ESQ., Board Member