Item No. 92

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

Wendy Piccinini, Complainant	)	
vs.	)	Case No. A1-045322
The County of White Pine, a political subdividion of The State of Nevada, and Dean E. Saderup, Sheriff of White Pine County, Respondents	)	

D E C I S I O N

On October 25, 1979, the Local Government Employee-Management Relations Board held a hearing in the above matter; the hearing was properly noticed and posted pursuant to Nevada's Open Meeting Law. At the conclusion of the hearing, the Board rendered a verbal decision in the matter. This written decision is prepared in conformity with NRS 233B.125 which requires that the final decision contain findings of fact and conclusions of law separately stated.

By complaint filed April 27, 1979, Wendy Piccinini alleges that she was discharged from her employment as a White Pine County Deputy Sheriff because of her sex, because of a personal reason and because of a personal affilitation contrary to the provisions of NRS 288.270 (1) (f). In addition to denying the Complainant's allegations, the Respondent's answer asserts that all Sheriff's Deputies serve at the pleasure of the Sheriff pursuant to NRS 248.040 (3).

As required by EMRB Rule 3.01, the Complainant and the Respondents submitted their Prehearing Statements; concurrently however, the Respondents made request for the following Declaratory Rulings:

1.) Whether Complainant, Wendy Piccinini, as an appointed Deputy Sheriff, was an employee or a public officer.

2.) Whether Complainant, Wendy Piccinini, as a public officer is subject to the jurisdiction of the Local Government Employee-Management Relations Act.

3.) Whether Complainant's, Wendy Piccinini, appointment as a Deputy Sheriff expired automatically December 31, 1978.

4.) Whether Complainant, Wendy Piccinini, as an appointed Deputy Sheriff, had any constitutional or statutory basis upon which to base a reasonable expectation of continued employment beyond the term of the appointing authority.

5.) Whether Respondent, Sheriff of White Pine County, may remove a Deputy at his pleasure pursuant to NRS 248.030 (3) absent constitutionally prohibited discrimination.

6.) Whether the language of NRS 288.270 (1) (f) was intended to include marriage as a basis for claims of discrimination.

7.) Whether the language of NRS 288.270 (1) (f) was intended to include personal animosity as a basis for claims of discrimination.

8.) Whether the no spouse employment policy adopted by Respondent, Sheriff of White Pine County, constitutes a per se violation of complainant's constitutional or statutory rights against sex discrimination.

EMRB Rule 4.075 governs the board's consideration of petitions for declaratory rulings and in accord with subsection two (2) of rule 4.075, the board deferred ruling on the Respondents requests and set the matter for hearing.

Prior to hearing testimony on the complaint itself, the board heard argument on the Respondent's written motion to dismiss. The board denied the motion and proceeded to hear testimony on the complaint.

Testimony at the October 25, 1979, hearing revealed that the complainant was appointed a Deputy Sheriff by former Sheriff Archie C. Robison and served as a dispatcher from February, 1974, through December 31, 1978. In October, 1976, the complainant married Robert Piccinini, who was then, and remains a White Pine County Deputy Sheriff. Mr. Piccinini began his employment with the Sheriff's Department in 1964.

On or about December 12, 1978, the complainant received a letter from the Sheriff-elect, (Respondent) Dean Saderup, which indicated that she would not be retained as a Deputy Sheriff when he assumed office on January 1, 1979. In subsequent explanation of his decision not to retain the complainant, the Sheriff offered the provisions of NRS 248.040[1] as well as his policy not to employ spouses with the department.

Although on sick leave at the time, the Complainant's final day of employment as a Deputy Sheriff was December 31, 1978. At no time on or subsequent to January 1, 1979, did Ms. Piccinini serve in the White Pine County Sheriff's Department under Sheriff Dean Saderup.

At the conclusion of the complainant's case, the board heard argument on the Respondent's oral motion to dismiss. The board denied the motion and proceeded to consider the Respondent's request for declaratory rulings.

FOOTNOTE 1: NRS 248.040 provides as follows:

248.040 Deputies.

1. Except as provided in subsection 4, each sheriff may appoint, in writing signed by him, one or more deputies, who may perform all the duties devolving on the sheriff of the county.

2. No deputy sheriff is qualified to act as such unless he has taken an oath to discharge the duties of the office faithfully and impartially.
The oath shall be certified on the back of his appointment and filed in the office of the county auditor.

3. Except as provided in subsection 4, the sheriff may remove his deputy or deputies at pleasure. The sheriff may require of his deputies such bonds as to him shall seem proper.

4. The sheriff of a metropolitan police department may appoint one or more police officers who shall have the same powers and duties as deputy sheriffs. The appointment and removal of such police officers by the sheriff or a metropolitan police department shall be only in accordance with the provisions of the civil service system for such department.

The board ruled as a matter of law that the appointment of complainant Wendy Piccinini as a Deputy Sheriff expired December 31, 1978. It is a well established priniciple of law that a Deputy Sheriff's term of office is limited to that of the Sheriff who appointed him or her. Day v County of King, 312 P2d 637 (Wash., 1957). See also NRS 248.040.

The board concluded that this determination was dispositive of the case before it. In addition to the board's ruling of law, testimony revealed that Wendy Piccinini's employment did in fact expire December 31, 1978, at the same time that former Sheriff Archie Robison's term of office expired. Sheriff Saderup elected not to appoint Ms. Piccinini as a Deputy Sheriff in his administration. It is therefore clear that because the complainant was legally not a member of The White Pine County Sheriff's Department on January 1, 1979 (since her appointment by Archie Robison expired December 31, 1978) she could not have been illegally terminated by Sheriff Dean Saderup as alleged in her complaint. In short, the board found the controlling issue to focus upon the Sheriff's power of appointment of Deputies rather than upon his power of termination.

In so reaching its decision, the board expressly reserved addressing or ruling upon the additional requests for declaratory rulings as sought by the Respondent. Further, the board neither reached nor decided the issues of discrimination involving sex, personal reason or personal affilitation as alleged by the Complainant.

FINDINGS OF FACT

(1) That Wendy Piccinini was a local government employee employed by the County of White Pine, Nevada, as a Deputy Sheriff.

(2) That The White Pine County Sheriff's Office Employees Association is a local government employees organization.

(3) That the County of White Pine, Nevada, is a local government employer.

(4) That Wendy Piccinini was appointed a Deputy Sheriff by former Sheriff Archie Robison and served as a dispatcher from February, 1974, through December 31, 1978.

(5) That in October, 1976, Ms. Piccinini married Robert Piccinini, who began his employment with the Sheriff's Department in 1964 and currently remains a White Pine County Deputy Sheriff.

(6) That on or about December 12, 1978, Ms. Piccinini received a letter from the Respondent, Sheriff-elect Dean Saderup, which indicated that she would not be retained as a Deputy Sheriff when he took office on January 1, 1979.

(7) That Ms. Piccinini's final day of employement as a Deputy Sheriff was December 31, 1978, and at no time on or subsequent to January 1, 1979, did Ms. Piccinini serve in The White Pine County Sheriff's Department under Dean Saderup.

(8) That Ms. Piccinini properly followed the grievance procedure as outlined in The White Pine County Sheriff's Office Employee's Association, Inc. Wage and Benefit Agreement ratified on April 4, 1978.

(9) That following Ms. Piccinini's December 24, 1978, request for a grievance hearing a public meeting with The White Pine County Commissioners was held on February 13, 1979.

CONCLUSIONS OF LAW

(1) That the Local Government Employee-Management Relations Board possesses original jurisdiction over the parties

and subject matter of this complaint.

(2) That Wendy Piccinini was a local government employee within the term as defined in NRS 288.050.

(3) That The White Pine County Sheriff's Office Employees Association is a local government employee organization within the term as defined in NRS 288.040.

(4) That The County of White Pine, through the Sheriff's Department of White Pine County, is a local government employer within the term as defined in NRS 288.060.

(5) That the appointment of Wendy Piccinini as a Deputy Sheriff expired December 31, 1978, at the same time that former Sheriff Archie Robison's term of office expired.

The requested relief is denied and the complaint dismissed. Each party shall bear its own costs and attorney's fees.

Dated this 29th day of November 1979.

Dorothy Eisenberg, Board Chairman

Carole Vilardo, Vice Chairman

Earl Collins, Member

cc: Certified Mail:
Robert J. Johnston
Steven G. McGuire