STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

LAS VEGAS VALLEY WATER DISTRICT, Petitioner, -vs- WATER EMPLOYEES ASSOCIATION and LAS VEGAS VALLEY PUBLIC EMPLOYEES ASSOCIATION, Respondents.	**ITEM NO. 251** CASE NO. A1-045462 **DECISION**

For the Petitioner: Gregory E. Smith, Esq.
SMITH & KOTCHKA

For the Respondent - WEA: Patricia S. Waldeck, Esq.

For the Respondent - LVVPEA: Audrey Benton, Representative

STATEMENT OF THE CASE

In 1972, the Las Vegas Valley Water District ("District") recognized the Water Employees Association ("WEA") as the exclusive bargaining agent of a bargaining unit of the District's field employees. In 1983, the clerical employees were added to the bargaining unit by agreement between the WEA and the District and the parties commenced to negotiate a labor contract for the expanded unit.

The labor contract expired on June 30, 1987. Negotiations for a successor contract commenced in November, 1987 and continued for two (2) years until the parties submitted the unresolved issues for factfinding in October, 1989.

On November 2, 1989, the Las Vegas Valley Public

Employees Association ("LVVPEA") requested recognition fr the District for clerical employees.

On November 29, 1989, the District petitioned the Local Government Employee-Management Relations Board ("Board") for a Declaratory Order designating an appropriate bargaining unit of clerical employees and for a bargaining election to determine the exclusive representative of that unit.

The WEA, the recognized employee organization for the existing combined bargaining unit of field and clerical employees, objected to the severance of the unit claiming that the petition had been filed in an untimely manner, that there was no justification for a withdrawal of recognition of the clerical employees, and that the existing bargaining unit met the community of interest criterion established by the Board.

The LVVPEA for its part, supported the petition claiming that the existing bargaining unit was established without addressing the requisite community of interest standard, that the clerical employees were an appropriate unit, and that the majority of clerical employees did not wish to be represented by WEA.

On April 27, 1990, the Board conducted a hearing on this matter in Las Vegas, Nevada. At the opening of the hearing, the parties presented a stipulation of thirty-seven (37) facts and exhibits including an agreement of which employee positions (except dispatchers) were field positions and which were clerical positions. The remaining issues presented fo determination were:

1. Whether this petition was filed in an untimely manner in violation of NAC 288.145.

2. Whether the District assisted the LVVPEA in its efforts to divide the bargaining unit in violation of NRS 280.270(1).

3. Whether the clerical employees lack the requisite community of interest with the field employees and should be moved from the existing bargaining unit to a clerical bargaining unit and if so,

4. Whether the dispatchers should be included in the clerical bargaining unit, and

5. Whether the WEA or the LVVPEA should be designated as the exclusive bargaining agent of the clerical unit.

The Board took the testimony of witnesses for the parties, examined evidence and heard arguments by the parties and their counsel, and reviewed the paper and pleadings on file including post-hearing briefs. From all the above, the Board has concluded that the clerical employees have a distinct community of interest, that they constitute an appropriate bargaining unit and that the exclusive representative for that unit will be determined by an election of the clerical employees.

DISCUSSION

I

THE PETITION WAS FILED IN A TIMELY MANNER.

The Board rejects the WEA's argument that NAC 288.145 prohibits the Board from hearing this case. NAC 288.145

provides:

> **Withdrawal of recognition of organization.** A local government employer shall request a hearing before the board before withdrawing recognition of an employee organization pursuant to NRS 288.160. No hearing on the withdrawal of recognition of an employee organization will be entertained during the negotiation period immediately following the February 1 deadline for notification by the employee organization of its desire to negotiate unless the local government employee organization:
>
> 1. Voluntarily withdraws as the bargaining representative; or
>
> 2. Fails to notify the employer pursuant to NRS 288.180 that it desires to negotiate.

The Board's intent in adopting this rule was to restrict the practice of withdrawing recognition of the bargaining agent by employers during negotiations as a bargaining tactic. (Also see: Water Employees Association v. Las Vegas Valley Water District, EMRB Case No. A1-045418, Item 204 (1988) This rule does not establish a bar to appeals for unit clarifications after the regular course of negotiations.

In the instant case, the District and the LVVPEA were not seeking the withdrawal of recognition from WEA, but rather a bargaining unit clarification. The Board recognizes that a unit clarification during negotiations could do the same to frustrate the collective bargaining process as a withdrawal of recognition. Here, however, the parties had engaged in collective bargaining for two (2) years, reached impasse, engaged in mediation and had scheduled binding factfinding before this petition was filed. There was no evidence that the filing of this petition interrupted the collective bargaining process.

Further, there was no contract bar in force at the time

of the petition. The contract had expired and the parties stipulated for the factfinder on December 19, 1989 that:

> The District and the WEA agree that, upon issuance of contract language by the fact finder in this case, the District will apply all terms of such contract to the clerical employees at the District but, by doing so, the District does not admit that such clerical employees are covered by the contract and the WEA will not resist the present petition before the EMRB by asserting that such clerical employees are covered by this contract.

The Board is mindful of its responsibility to maintain labor relations stability in the workplace and it does not lightly entertain petitions to carve new bargaining units from existing units. In this case, the Board recognizes that the District petitioned only after a competing union provided a showing of interest and then, at a time which avoided interrupting the bargaining process.

II

THERE IS NO EVIDENCE OF ILLEGAL ASSISTANCE TO THE LVVPEA.

The Board finds no evidence that the District assisted the LVVPEA in a manner violating NRS 288.270(1(b) which provides:

> 1. It is a prohibited practice for a local government employer or its designated representative willfully to:
>
> (b) Dominate, interfere or assist in the formation of any employee organization.

The Board recognizes the potential dangers of an employer establishing a "company union" in an effort to deny employees their rights and to frustrate the collective bargaining process. In the instant case, the District clearly favored and argued for the severance of the clerical employees

from the field units, however, the District did not exhibit a preference between WEA or LVVPEA as the clerical unit bargaining agent.

Testimony from WEA witnesses failed to establish any favored treatment of the LVVPEA by the District. Both unions used the public meeting room at the District office (Transcript at 80, 120). Use of the employee bulletin board by LVVPEA was limited to one occasion and lacked permission from the District (Transcript at 88, 121). WEA used the inter-office mail while LVVPEA did not. Leaders in both unions received regular promotions (Transcript at 76, 100).

The evidence establishes that the District played a neutral role with respect to the competing unions.

III

CLERICAL EMPLOYEES HAVE A COMMUNITY OF INTEREST SEPARATE FROM FIELD EMPLOYEES.

NRS 288.170(1) and (5) provide:

> 1. Each local government employer which has recognized one or more employee organizations shall determine, after consultation with the recognized organization or organizations, which group or groups of its employees constitute an appropriate unit of units for negotiating. The primary criterion for that determination must be the community of interest among the employees concerned.
>
> 5. If any employee organization is aggrieved by the determination of a bargaining unit, it may appeal to the board. Subject to judicial review, the decision of the board is binding upon the local government employer and employee organizations involved. The board shall apply the same criterion as specified in subsection 1.
>
> (Emphasis added.)

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In determining the legislative intent of the application of "community of interest", the Board turns to the words of Senator Carl Dodge, the primary sponsor and author of this legislation. Senator Dodge, while acknowledging the difficulty of trying to anticipate each type of bargaining unit, used a school district as an example of what he had in mind:

> . . . are probably four or five different groups of employees in a school district that would form their own bargaining units, as a result of this community of interest. I think the teachers, themselves, the professional certified people, would be a bargaining unit; <u>the office and clerical staff would be a bargaining unit because they have a community of interest</u>; the maintenance people would be a bargaining unit; possibly the bus drivers would be a bargaining unit, because again, they have communities of interest. So the only reason I am mentioning this to you is to place in proper context at least, what this community of interest would constitute. And, of course, then it would be up to the Local Government Employers to take a look at each group of employees that comes in and make the determination in their minds as to whether these people actually were in appropriate bargaining unit, or <u>whether you have employees with different communities of interest that needed to be split out in separate bargaining units</u>.
>
> Minutes of Jt. Hearing of Senate Committee on Federal, State and Local Governments and Assembly Committee on Government Affairs (Feb. 25, 1969), (emphasis added).

Further guidance is provided in <u>Kalamazoo Paper Box Corp.</u>, a unit-severance case where the NLRB enumerated the factors to be considered in determining community of interest apart from other employees:

> [A] difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills;

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> differences in job functions and amount of working time spent away from the employment or plant sites . . .; the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining. Kalamazoo Paper Box Corp., 136 NLRB 134, 137, 49 LRRM 1715 (1962). Also see: Kennecott Copper Corp., 176 NLRB 96, 71 LRRM 1188 (1969).

When the factors are applied in this case, it is clear that the clerical employees have a distinct community of interest.

The lack of common supervision between clerical and field employees is significant (Petitioner's Exhibit "A"). In the "management" system, there are forty-eight (48) clerical employees and only one (1) field employee. In the "water" system, of one hundred sixty (160) employees there are twenty (20) clerical employees and only four (4) of them report to a supervisor who also supervises field personnel. In "engineering", the fifteen (15) field employees are inspectors who report to inspector supervisors. All of the clerical employees in the engineering system report to other managers. Thus, there are only five (5) instances in the District where clerical employees report directly to the same supervisor that field employees report to.

From the job description (Joint Exhibits "Q", "R" and "S") the nature of the clerical jobs dealing with information, typewriters, computers, and telephones at their desks is significantly different from the nature of field jobs which requires outdoor work throughout the city and the utilization of heavy construction equipment, physical work, uniforms and

hard hats (Stipulation 35).

Geographically the field and clerical employees are also separate. Only seven (7) field employees (the system controllers) report to and perform their daily duties in the administration building. While twenty-three (23) other field employees report to that building, they are dispatched to the field and use a separate entrance from that for clerical employees. Five (5) clerical employees work in buildings where field employees report. The remaining clerical employees work full time in the administration building and branch offices where there are no field employees (Stipulations 23 and 24).

Field employees wear uniforms and clerical employees do not (Stipulation 28). Approximately twenty (20) field employees work swing or grave shifts while only two (2) clerical employees do so (Stipulation 29). Field employees work 87.61% of the overtime while clerical employees work 11.04% of it (Stipulation 31). The median annual wages of field employees is more than $8,500.00 higher than the median for clerical employees (Stipulation 30). Field employees work stand-by shifts, receive recuperation benefits and one-half hour for lunch. Clerical employees never receive stand-by or recuperation pay and have a one-hour lunch (Stipulation 32). In the last three years, only five (5) of the ninety-five (95) total transfers within the District have been between the field and the clerical groups (Stipulation 33).

There is overwhelming evidence supporting a separate and

distinct community of interest for clerical employees.

IV

THE DISPATCHERS SHOULD BE INCLUDED WITHIN THE CLERICAL UNIT.

The dispatchers report, along with other clerical employees, to a manager (Transcript at 41). Their wage range is close to the median clerical hourly wage (Stipulation 30). The dispatchers work in the administration building with the other clerical employees. They work inside, they sit at desks and they utilize computers, radios and telephones. They fill out paperwork and they put information into the computer. Their direct relationship with the field employees is to relay instructions to them by radio (Transcript at 44). Like clerical employees, they work the day shift and receive one hour for lunch (Stipulations 29 and 32).

Based on the evidence above, the dispatchers are appropriately included in the clerical unit.

V

A BARGAINING ELECTION IS THE PROPER MEANS TO DETERMINE THE EXCLUSIVE REPRESENTATIVE FOR THE CLERICAL UNIT.

The Board does not believe the evidence presented is sufficient to determine the desires of the majority of the clerical employees regarding their bargaining agent.

NRS 288.160(4) provides:

> If the board in good faith doubts whether any employee organization is supported by a majority of the local government employees in a particular bargaining unit, it may conduct an election by secret ballot upon the question. Subject to judicial review, the decision of the board is binding upon the local government employer and all

employee organizations involved.

Accordingly, the Board directs the Commissioner to conduct an election among the clerical employees (listed in Stipulation 26, plus the dispatchers) to determine the exclusive representative of the clerical unit.

FINDINGS OF FACT

1. That Petitioner, Las Vegas Valley Water District, is a special district and a local government employer

2. That Respondent, Water Employees Association, is a recognized employee organization authorized to be exclusive representative of the non-supervisory bargaining unit.

3. That Respondent, Las Vegas Valley Public Employees Association, is a recognized employee organization which petitioned for recognition as exclusive representative of the clerical employees.

4. That this Petition was filed after the labor contract had expired and did not interrupt the bargaining process.

5. That the WEA failed to provide sufficient evidence that the District provided illegal assistance to the LVVPEA.

6. That the District clerical employees have a distinct community of interest separate from field employees in areas of supervision, nature of job functions, work sites, hours, wages, contact with other employees and history of bargaining.

7. That dispatchers have a distinct community of interest with clerical employees.

8. That the evidence is insufficient for the Board to

determine whether the WEA or the LVVPEA represents the majority of the clerical employees.

CONCLUSIONS OF LAW

1. That the Local Government Employee-Management Relations Board possesses original jurisdiction over the parties and subject matter of this Petition pursuant to the provisions of NRS Chapter 288.

2. That Petitioner, Las Vegas Valley Water District, is a local government employer within the meaning of NRS 288.060.

3. That Respondents Water Employees Association and Las Vegas Valley Public Employees Association are employee organizations within the meaning of NRS 288.040.

4. That the intent of NAC 288.145 is to restrict the practice of withdrawing recognition of the bargaining agent by employers during negotiations.

5. That this Petition was filed in a proper and timely manner under the rules established by the Board in NAC 288.

6. That NRS 288.110(1) grants the Board the authority to make rules governing the recognition of employee organizations and the determination of bargaining units.

7. That a petition for a unit determination or unit clarification pursuant to NRS Chapter 288 may be entertained by the Board after the normal course of negotiations.

8. That the factors for determining community of interest pursuant to NRS 288.170 include wages, hours, benefits, supervision, qualifications, training and skills job functions, work site, employee contact, integration of

employee functions and bargaining history.

9. That NRS 288.170(1) contemplates that clerical employees constitute an appropriate bargaining unit because of its community of interest.

10. That where there is a sufficient showing of interest by a competing employee organization, an election among the employees affected is appropriate to determine the exclusive bargaining agent pursuant to NRS 288.160(4).

ORDER

Upon decision rendered by the Board at its meeting on July 12, 1990, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. That the District Petition be, and the same hereby is, granted;

2. That the WEA Counter-Claims be, and the same hereby are, dismissed;

3. That the District clerical employees are severed from the existing non-supervisory unit, that the clerical bargaining unit is hereby established and that the clerical employees are covered by the terms of the existing agreement until a new agreement for the clerical bargaining unit is negotiated;

4. That the parties shall cooperate with the Commissioner to conduct an election among the clerical employees to determine the exclusive representative for the clerical unit; and

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5. That each party shall bear its own costs and attorney fees in this matter.

DATED this 15th day of August, 1990.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By _____
SALVATORE C. GUGINO, Chairman

By _____
TAMARA BARENGO, Vice Chairman

By _____
HOWARD ECKER, Member