

1 STATE OF NEVADA
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD

4 ELKO GENERAL HOSPITAL,) ITEM NO. 312-B
5)
6 Petitioner,) CASE NO. A1-045537
7)
8 -vs-) ORDER DENYING MOTION
9) FOR RECONSIDERATION
10 ELKO COUNTY EMPLOYEES)
11 ASSOCIATION,)
12)
13 Respondent.)
14)

10 For Petitioner: David M. Fleishman, Esq.
11 RICHARDS, WATSON & GERSHON

12 David L. Cohen, Esq.
13 RICHARDS, WATSON & GERSHON

14 Gary D. Woodbury, Esq.
15 ATTORNEY AT LAW, Elko, Nevada

16 Anne Rieger, Administrator
17 ELKO GENERAL HOSPITAL

18 For Respondent: John R. Kidwell, Jr., Representative
19 J.R. KIDWELL, LTD.

20 Following issuance of the Board's Order Determining
21 Issues Regarding Challenged Ballots (EMRB Item No. 312) in the
22 instant case on April 1, 1993, Petitioner filed "MOTION BY
23 ELKO GENERAL HOSPITAL FOR RECONSIDERATION OF THE ORDER BY
24 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD ENTERED
25 ON APRIL 1, 1993 REGARDING REPRESENTATION ELECTION CONDUCTED
26 ON MARCH 10 AND 11, 1993; MEMORANDUM OF POINTS AND AUTHORITIES
27 IN SUPPORT THEREOF (NAC 288.240)". (In the alternative,
28 Petitioner requested that a hearing be held on the issue of
whether a re-run election should be held.) In said Motion the
hospital requested that the Board ". . . reconsider that part

1 of its Order of April 1, 1993, ordering that another election
2 be held pursuant to NAC 288.110 . . . overturn its April 1,
3 1993 Order and enter an order declaring that the Elko County
4 Employees' Association failed to obtain a majority of the
5 ballots cast in the representation election of March 10 and
6 11, 1993." The alleged basis for Petitioner's Motion, as set
7 forth in its Memorandum of Points and Authorities which was
8 attached thereto and incorporated by reference, is summarized
9 below:

10 (1) The Board should not read additional and different
11 terms into the election agreement to alter the result of
12 the election.

13 (2) The parties could have made provisions for
14 bilingual ballots and interpreters, and their not doing
15 so indicates that there was no need for such measures.

16 (3) The Board's Order of a new election is a violation
17 of Nevada Administrative Procedure Act (NRS Chapter
18 233B), for it is not supported by competent evidence.

19 (4) The Board's Order of a new election is a violation
20 of the Nevada Open Meeting Law (NRS Chapter 241) and must
21 be rescinded.

22 In its meeting of May 13, 1993, conducted pursuant to
23 Nevada's Open Meeting Law, the Board considered Petitioner's
24 aforementioned Motion For Reconsideration and Memorandum of
25 Points and Authorities. The Petitioner was notified that the
26 merits of its Motion For Reconsideration were to be considered
27 at this meeting by letter dated April 23, 1993. Petitioner's
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1 counsel sent notice (dated May 10, 1993) that it was declining
2 to participate in the reconsideration proceedings. After due
3 deliberation, the Board determined that said Motion, as well
4 as Petitioner's request (in the alternative) that hearing be
5 held on the issue of whether a re-run election should be held,
6 must be denied for the following reasons:

7 **FIRST:** Pursuant to NRS 288.110 and NRS 288.160(4),
8 it is within the Board's statutory authority to conduct
9 an election by secret ballot, if the Board in good faith
10 doubts whether any employee organization is supported by
11 a majority of the local government employees in a
12 particular bargaining unit. Under the particular facts
13 and circumstances surrounding the election of March 10
14 and 11, 1993 (In Commissioner Garmon's Memorandum to the
15 Board of March 25, 1993, he expressed concern about the
16 apparent confusion in voting which may have been due to
17 the substantial number of Hispanics voting in the
18 election and the lack of a bilingual ballot and/or
19 linguistic assistance.), the Board had reason to doubt
20 that the result of the election (an 85 to 85 tie)
21 accurately reflected whether a majority of bargaining
22 unit employees desire to have the Elko County Employees
23 Association represent them for collective bargaining
24 purposes. Accordingly, and for reasons not inconsistent
25 with the parties' election agreement (which did not
26 address any need to provide a bilingual ballot or provide
27 linguistic assistance), it was entirely appropriate under
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1 the Board's statutory authority for the Board to order
2 that another election be held to resolve said doubt.

3 SECOND: The Board's determination that another
4 election should be held was not based upon "findings of
5 fact" as implied by Petitioner, but rather because doubt
6 was cast over the election results by the failure of the
7 parties to request a bilingual ballot and/or provide
8 linguistic assistance, under the particular facts and
9 circumstances which prevailed. As indicated previously,
10 when the Board in good faith doubts whether an employee
11 organization is supported by a majority of the employees
12 in a bargaining unit, it may conduct an election by
13 secret ballot. NRS 288.160(4).

14 THIRD: The Board's Order Determining Issues
15 Regarding Challenged Ballots (EMRB Item No. 312) of April
16 1, 1993, ordering, in pertinent part, that another
17 election be held in the event of a tie vote, was not in
18 violation of Nevada's Open Meeting Law. The Notice of
19 Meeting dated March 16, 1993, not only notified the
20 parties that the Board would consider the issues
21 regarding the challenged ballots affecting the results of
22 the election, but also, under Item 4 of the Agenda,
23 notified the parties that the Bargaining Election of
24 March 10 and 11, 1993, was docketed for "Deliberation(s)
25 and/or Decision(s)/Order(s)." Further, Petitioner
26 received a copy (via facsimile) of Commissioner Garmon's
27 Memorandum to the Board of March 25, 1993, which contains
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1 the following paragraph on page three:

2 In the event that the Board's determination
3 of the issues results in a tie vote (85 for
4 representation by the Association and 85 against),
5 the Board may consider it appropriate, under the
6 circumstances, to order that another election be
7 held; i.e., in NLRB parlance a so-called "rerun
8 election". Since five (5) of the eligible voters
9 did not vote in the election March 10 and 11,
10 1993, it is possible that another election would
11 provide a different result.

12 The Board's decision to order that another election be held
13 arose as a remedy from its determinations regarding the
14 challenged ballots. Accordingly, even if Petitioner had not
15 been made aware that the Board might order another election in
16 the event of a tie vote (and clearly Petitioner had advance
17 notice of that possibility), under the Open Meeting Law the
18 parties need not be notified in advance of any particular
19 remedy which the Board might consider in a contested case.
20 Notice of the nature of the Board's business and an
21 opportunity to be heard are the essentials of Nevada's Open
22 Meeting Law. The record reflects plainly that both were
23 provided for.

24 For all of the reasons set forth above, the Board hereby
25 ORDERS that Petitioner's Motion For Reconsideration be DENIED.
26 For the same reasons, Petitioner's request (in the
27 alternative) that hearing be held on the issue of whether a
28 re-run election should be held is likewise DENIED.

The Board will defer going forward with the new election
until a determination has been made on the Petition For
Judicial Review in the Fourth Judicial District Court, County
of Elko, filed April 30, 1993 (Case No. 25028), seeking a

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reversal of the Board's Order Determining Issues Regarding
Challenged Ballots (EMRB Item No. 312) in Case No. A1-045537,
entered April 1, 1993.

DATED this 19th day of May, 1993.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By *Salvatore C. Gugno*
SALVATORE C. GUGINO, Chairman