

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(3) Whether or not the parties' failure to participate in mediation pursuant to NRS 288.190 and/or NRS 288.200 effectively precludes factfinding under NRS Chapter 288.

Subsequently, the Board's Commissioner advised the parties that in order for the Board to address these issues, it would be necessary that a formal complaint or petition be filed.

On December 18, 1992, the Association filed the instant Petition For A Declaratory Order on the aforementioned issues.

The Board thereafter scheduled the matter for oral argument, which was held May 6, 1993.

DISCUSSION
ISSUE NO. 1

NRS 288.060 defines "Local government employer" as "any political subdivision of this state or any public or quasi-public corporation organized under the laws of this state and includes, without limitation, counties, cities, unincorporated towns, school districts, hospital districts, irrigation districts and other special districts." (Emphasis added.) A narrow construction of this language clearly would be inappropriate and contrary to legislative intent. The language is expansive on its face. Accordingly, to effectuate the intent of the legislature, it should be interpreted broadly, to encompass rather than to exclude. Since Nevada Business Services initially recognized the Association and negotiated a collective bargaining agreement to cover employees of Nevada Business Services, its position subsequent to aforementioned request for a Panel on Binding Factfinding

1 (to the effect that Nevada Business Services cannot be
2 considered a local government employer pursuant to NRS
3 288.060) appears to be pretextual in nature.

4 After a thorough review of the record, the Board
5 concludes that Nevada Business Services meets the definition
6 of a local government employer as set forth in NRS 288.060.

7 ISSUE NO. 2

8 The failure of the Association to file the report
9 described in NRS 288.165(2) within 30 days after recognition,
10 pursuant to NRS 288.165(3); the failure of the Association to
11 file said report during November of each year, pursuant to NRS
12 288.165(1); and the failure of Nevada Business Services to
13 file, pursuant to NRS 288.161, the report described therein on
14 or before November 30 of each year, brought about or caused
15 the issues addressed herein to be raised. Accordingly, it
16 should be apparent to all concerned that compliance with the
17 provisions of NRS 288.165 and NRS 288.161 is necessary if the
18 Board is to function as intended by the legislature. However,
19 in the instant case it appears that the failure(s) to file the
20 reports in question was due to either oversight or a
21 misunderstanding of the reporting requirements. The
22 requirements are procedural rather than substantive,
23 therefore, under the prevailing facts and circumstances
24 (Nevada Business Services initially recognized the Association
25 as a local government employee organization as defined in NRS
26 288.040, negotiated a labor agreement with the Association
27 representing its employees and commenced negotiations with the
28

1 Association on a successor agreement), the Board finds tha
2 the failure(s) of the parties to comply with the statutorily
3 mandated filing requirements does not preclude factfinding
4 under NRS Chapter 288.

5 ISSUE NO. 3

6 When negotiations for a collective bargaining agreement
7 reach impasse, NRS 288.190(1) provides (for other than firemen
8 and police officers), in pertinent part:

9 Anytime before July 1, the dispute may be
10 submitted to a mediator, if both parties agree.
11 On or after July 1 but before July 5, either party
involved in negotiations may request a mediator.
...

12 NRS 288.200(1) provides (for other than firemen, police
13 officers and school district employees), in pertinent part:

14 If:

15 (a) The parties have participated in
16 mediation and by August 1, have not reached agree-
ment; or

17 (b) The bargaining unit represented by the
18 employee organization contains fewer than 30
persons,

19 either party to the dispute, at any time up to
20 September 20, may submit the dispute to an
impartial factfinder for his findings and
21 recommendations. ...

22 In the instant case, neither the Association nor Nevada
23 Business Services requested mediation pursuant to NRS
24 288.190(1). Since the parties did not participate in
25 mediation as set forth in NRS 288.200(1)(a), a resolution of
26 this issue (whether or not the parties' failure to participate
27 in mediation precludes factfinding) depends upon whether or
28 not the bargaining unit contains fewer than 30 persons. The

1 legislature, in adopting the language contained in NRS
2 288.190(1) and NRS 288.200(1), supra, clearly intended (for
3 other then firemen, police officers and school district
4 employees) that factfinding be available only to parties who
5 have participated in mediation or bargaining units containing
6 fewer than 30 persons.

7 The parties are in disagreement as to the number of
8 employees in the bargaining unit. However, during the
9 presentation of oral argument on this case, the parties
10 stipulated to the following effect:

11 In the event the Board were to decide in favor of
12 the Association on Issues No. 1 and 2, the Board
13 may request whatever factual information it deems
14 appropriate in order to resolve the dispute
15 between the parties as to the number of employees
16 in the bargaining unit.

17 Having found in favor of the Association on Issues No. 1 and 2
18 (and in the event that the parties are unable to resolve their
19 differences in the interim regarding the number of employees
20 in the bargaining unit), the parties are instructed to file
21 post-hearing briefs on the one remaining issue (whether or not
22 the parties failure to participate in mediation effectively
23 precludes factfinding) within 20 days from the date of this
24 Order. Said post-hearing briefs are to contain all
25 documentary evidence in support of the parties' respective
26 positions as to the number of employees in the bargaining
27 unit, as well as any argument and/or relevant case law in
28 support thereof.

/ / /

/ / /

1 filing requirements does not preclude factfinding under NRS
2 Chapter 288;

3 3. That whether or not the parties' failure to
4 participate in mediation effectively precludes factfinding is
5 contingent upon the number of employees in the bargaining
6 unit, pursuant to NRS 288.200(1). That fact will be
7 established either by mutual agreement between the parties or,
8 in the alternative, by determination of the Board, following
9 deliberation on the evidence and argument provided by the
10 parties in post-hearing briefs to be filed within twenty (20)
11 days from the date of this Order; and

12 4. That each party shall bear its own fees and costs in
13 the above-captioned matter.

14 DATED this 15th day of June, 1993.

15 LOCAL GOVERNMENT EMPLOYEE-
16 MANAGEMENT RELATIONS BOARD

17
18 By *Salvatore C. Gugino*
19 SALVATORE C. GUGINO, Chairman

20 By *Tamara Barengo*
21 TAMARA BARENGO, Vice Chairman

22
23 By *Howard Ecker*
24 HOWARD ECKER, Member