



1 bargaining" pursuant to NRS 288.170(4) and (6), which defines  
2 "confidential employee". In order to resolve this dispute  
3 the parties agreed to seek a ruling from the EMRB as to  
4 whether Mrs. Ealey is a "confidential employee" as defined by  
5 NRS 288.170(4) and (6). This is the only issue before the  
6 Board.

7 The Board's Discussion, Findings of Fact, Conclusions of  
8 Law, Decision and Order are set forth below:

9 DISCUSSION

10 NRS 288.170(4) and (6) provide:

11 4. Confidential employees of a local  
12 government employer must be excluded from any  
13 bargaining unit but are entitled to participate in  
14 any plan to provide benefits for a group that is  
administered by the bargaining unit of which they  
would otherwise be a member.

15 6. As used in this section, "confidential  
employee" means an employee who is involved in the  
decisions of management affecting collective  
16 bargaining. (Emphasis added.)

17 The testimony developed at the Hearing on September 10,  
18 1993, established that Esmeralda County is the only County in  
19 Nevada that does not have a high school. There are only 135  
20 students in the Esmeralda County School District. The office  
21 of the Superintendent of Schools is located in a double-wide  
22 mobile home in Goldfield, a town with a population of  
23 approximately 300. Due to the small number of students in the  
24 District, an unusually intimate relationship exists in the  
25 Superintendent's office where the Financial Clerk, Harriet  
26 Ealey, is employed. There are only three (3) persons working  
27 this office; i.e., Harriet Ealey, Eileen Mulhern and  
28

1 Superintendent Harold Tokerud.

2 The testimony developed that Eileen Mulhern functions as  
3 secretary to the School Board, as well as Superintendent  
4 Tokerud's personal secretary, and her designation as a  
5 "confidential employee" is not in dispute.

6 Superintendent Tokerud testified that during the school  
7 year he performs several functions not performed by  
8 Superintendents in larger school districts (including but not  
9 limited to teaching and transporting students to football  
10 games), as a result of which he is in the office less than 50%  
11 of his working time.

12 The small size of the school district necessitates much  
13 more flexibility in the functions performed by the employees,  
14 particularly by the three employees in the Superintendent's  
15 office. The testimony indicates that Harriet Ealey  
16 occasionally performs some of the duties normally performed by  
17 Eileen Mulhern and vice versa. Under the circumstances  
18 prevailing in the Esmeralda County School District it simply  
19 would not be practical to restrict employees to performing  
20 narrowly defined duties, as might be the case in other school  
21 districts.

22 The testimony also indicates that Harriet Ealey's  
23 functions encompass much more than contemplated by the job  
24 description for her position. Not only does she occasionally  
25 perform duties normally performed by Eileen Mulhern (who has  
26 already been designated as a "confidential employee"), but  
27 also it appears from the testimony that she has discretion to  
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1 make line-item transfers; she costs out proposals made as a  
2 part of collective bargaining and the Superintendent reli  
3 upon her advice regarding the financial status of the  
4 District.

5 In view of that previously stated, the Board believes  
6 that the instant case presents unique circumstances which  
7 require a broader interpretation of NRS 288.170(4) and (6)  
8 than would ordinarily apply. It is clear in the instant case  
9 that Harriet Ealey has a special relationship to the  
10 District's management which mitigates against considering her  
11 as a typical bargaining unit employee for collective  
12 bargaining purposes. Under the National Labor Relations Act  
13 such a special relationship is grounds for excluding the  
14 employee from the bargaining unit as a "confidential  
15 employee". ITT Grinnell, 253 NLRB 584, 106 LRRM 1024 (1980).  
16 Also, where an employee acts in a confidential capacity, the  
17 fact that a "relatively small percentage" of the employee's  
18 time is spent performing confidential duties does not detract  
19 from that employee's confidential status. Reymond Baking Co.,  
20 249 NLRB 1100, 104 LRRM 1253 (1980).

21 For all the reasons set forth above, the Board finds  
22 that the Financial Clerk, Harriet Ealey, of the District is a  
23 "confidential employee" under NRS 288.170(6) and must be  
24 excluded from the bargaining unit pursuant to NRS 288.170(4).

#### 25 FINDINGS OF FACT

26 1. That the Appellant, Esmeralda County Support Staff  
27 Organization, is a local government employee organization.  
28

1           2.     That the Respondent, Esmeralda County School  
2 District, is a local government employer.

3           3.     That on or about March 16, 1993, the Esmeralda  
4 County Support Staff Organization was recognized by the  
5 District as the exclusive bargaining agent for the support  
6 staff employees of the District, including the Financial  
7 Clerk, Harriet Ealey.

8           4.     The District objected to the inclusion of Harriet  
9 Ealey in the bargaining unit on the premise that she is a  
10 "confidential employee".

11          5.     The parties agreed to seek a ruling from the EMRB as  
12 to whether Mrs. Ealey is a "confidential employee" under NRS  
13 288.170(4) and (6).

14          6.     That, due to the small size of the Esmeralda County  
15 School District (only 135 students), a special situation  
16 exists which mitigates against restricting employees to the  
17 performance of narrowly defined duties, as might be the case  
18 in other districts, and results in employees occasionally  
19 being required to perform work normally assigned to others.

20          7.     That the unusually intimate relationship which  
21 exists in the Superintendent's office (only 3 persons work in  
22 this office), requires the Financial Clerk, Harriet Ealey, to  
23 perform work normally assigned to Eileen Mulhern, who is a  
24 "confidential employee".

25          8.     That the confidential duties occasionally performed  
26 by the Financial Clerk, Harriet Ealey, as well as the  
27 discretion she has to make line-item transfers and the  
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1 Superintendent's reliance upon her for advice regarding the  
2 financial status of the District, create a special relation-  
3 ship to management which requires that she be designated as a  
4 "confidential employee".

5 CONCLUSIONS OF LAW

6 1. That the Local Government Employee-Management  
7 Relations Board has jurisdiction over the parties and the  
8 subject matter of this "Appeal; Bargaining Unit  
9 Determination", pursuant to the provisions of NRS Chapter 288.

10 2. Under the circumstances of this particular case, the  
11 Financial Clerk, Harriet Ealey, must be considered a  
12 "confidential employee" under NRS 288.170(6) and must be  
13 excluded from the bargaining unit pursuant to NRS 288.170(4).

14 DECISION AND ORDER

15 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the  
16 Organization's Appeal is denied, without prejudice, with each  
17 side to bear its own costs and attorney's fees.

18 DATED this 13th day of October, 1993.

19 LOCAL GOVERNMENT EMPLOYEE-  
20 MANAGEMENT RELATIONS BOARD

21 By Tamara Barengo  
22 TAMARA BARENGO, Chairman

23  
24 By Susan L. Johnson  
25 SUSAN L. JOHNSON, Vice Chairman

26  
27 By Salvatore C. Gugino  
28 SALVATORE C. GUGINO, Member