

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

4 WASHOE COUNTY PROBATION)
EMPLOYEES' ASSOCIATION,)

ITEM NO. 334

5 Petitioner,)

CASE NO. A1-045547

6 -vs-)

7 ORDER GRANTING
8 RESPONDENTS' MOTIONS
9 TO DISMISS

10 WASHOE COUNTY, and WASHOE)
11 COUNTY JUVENILE COURT,)

12 Respondents.)

13 For Petitioner: Michael E. Langton, Esq.
14 LANGTON & KILBURN

15 For Respondent
16 WASHOE COUNTY: Maureen Sheppard-Griswold, Esq.
17 WASHOE COUNTY DISTRICT ATTORNEY'S OFFICE

18 For Respondent
19 WASHOE COUNTY JUVENILE COURT: Robert L. Auer, Esq.
20 ATTORNEY GENERAL'S OFFICE

21 STATEMENT OF THE CASE

22 On June 4, 1993, Petitioner filed a Petition For
23 Declaratory Order For Recognition of Washoe County Probation
24 Employees Association ("WCPEA") as the exclusive bargaining
25 agent for a unit of all persons employed by Washoe County
26 ("the County") in the Washoe County Juvenile Probation
27 Department ("the Court"), to wit: Probation Officers, Youth
28 Advisors, Clerical Employees, Cooks and Work Program
Supervisors.

On August 7, 1992, WCPEA applied for recognition as
exclusive representative of the aforesaid employees, pursuant
to the provisions of NRS 288.160. By letter dated August 21,

1 1992, to the "Board of County Commissioners" with copy to
2 WCPEA, the County took the position that employees of t.
3 Judicial District (the Court) are not considered employees of
4 the County and have no rights to bargain collectively "because
5 by definition the Juvenile Court is not a local government
6 employer as defined under NRS 288.060." Pursuant to this
7 position, the Board of County Commissioners did not grant
8 WCPEA's request for recognition, in view of which WCPEA filed
9 the instant Petition for a Declaratory Order by the Local
10 Government Employee-Management Relations Board ("Board") to
11 require Respondents to recognize WCPEA.

12 Upon receipt of the aforesaid Petition, both the County
13 and the Court filed the subject Motions to Dismiss on the
14 premise that the Court, as an entity of the judicial branch of
15 government, is not a "local government employer" as defined i.
16 NRS 288.060; therefore, this Board allegedly has no
17 jurisdiction over it or its employees.

18 DISCUSSION

19 This Board has never faced the direct question of
20 whether juvenile probation employees are entitled to
21 collectively bargain pursuant to the provisions of NRS Chapter
22 288. In the two cases decided by this Board involving
23 juvenile probation employees, this issue was never raised and
24 therefore never addressed. In the 1982 case of In the Matter
25 of the Las Vegas Police Protective Association, Metro, Inc.
26 vs. Clark County, Nevada, Case No. A1-045352, EMRB Item No.
27 148 (1982), the Board was only asked to consider the question
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1 of whether juvenile probation officers should be in a
2 bargaining unit composed of other county employees or in a
3 unit composed of law enforcement officers. The juvenile
4 probation officers were, at the time, part of the Clark County
5 Public Employees' Association. Id. at 2. This Board
6 concluded that the juvenile probation officers shared a
7 greater community of interest with the county employees than
8 with law enforcement.

9 In the other case, Clark County Public Employees
10 Association vs. County of Clark, Case No. A1-045425, EMRB Item
11 No. 215 (1988), the question involved whether discipline
12 issued to juvenile court service employees was done in
13 violation of NRS 288.270(1)(f). Like the Metro case, this
14 case did not address the issue of whether such employees have
15 enforceable collective bargaining rights under NRS Chapter
16 288.

17 In the instant dispute, both the County and the Court
18 are challenging the right of juvenile probation employees to
19 be recognized and collectively bargain pursuant to the
20 provisions of NRS Chapter 288.

21 In adjudicating this dispute, the threshold issue to be
22 determined by the Board is whether or not persons employed in
23 the Washoe County Juvenile Probation Department are employees
24 of the County or employees of the Court. If they are
25 determined to be employees of the County (a local government
26 employer as defined by NRS 288.060), they clearly would be
27 eligible for recognition under NRS 288.160. However, if they
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1 are determined to be employees of the Court, then the
2 secondary issue to be determined by the Board is whether c
3 not the Court is a local government employer as defined by NRS
4 288.060. The Board finds as follows:

5 I

6 PERSONS EMPLOYED IN THE WASHOE COUNTY
7 JUVENILE PROBATION DEPARTMENT ARE
8 EMPLOYEES OF THE COURT, NOT THE COUNTY.

9 The word "employee", defined narrowly, means "one who
10 works for wages or salary in the service of an employer."
11 Alliance Company vs. State Hospital at Butner, 855 F.2d 386,
12 389 (N.C. 1955). An essential element of the employer/
13 employee relationship is the right of control over the manner
14 or method of doing the work. National Convenience Stores,
15 Inc. vs. Fantuzzi, 94 Nev. 655, 659, 584 P.2d 689 (1978).
16 See also Martarano vs. United States, 231 F.Supp. 805 (D. Nev.
17 1964). One way of establishing the employment relationship is
18 to determine when the "employee" is under the control of the
19 "employer". The essential characteristics of the employment
20 relationship include the right to control and direct the
21 activities of the person rendering the service, or the control
22 of the manner and method in which the work is performed.
23 County of Sonoma vs. Workers Compensation Appeals Board, 272
24 Cal. Rptr. 297, 298, (CA App. 1990).

25 In Sacramento County Employees Organization vs. County
26 of Sacramento, 247 CA. Rptr. 333 (1988), a situation similar
27 to the present case was considered by the court. A labor
28 union which had represented various superior and municipal

1 court employees petitioned for a writ of mandate to compel
2 various governmental agencies to bargain collectively with
3 them under California's equivalent to our Local Government
4 Employee-Management Relations Act (i.e., the Myers-Milias
5 Brown Act "MMBA").

6 The Court determined that because the employees were
7 court employees, and not county employees, they were not
8 covered by the Act. In reaching the conclusion that the
9 employees were those of the court and not of the county, the
10 Court considered (1) the right to control the duties of the
11 employees, (2) the power to discharge employees, (3) payment
12 of salary for the nature of the services and (4) the parties'
13 belief as to the employment relationship. The Court found
14 that the employees were appointed by and serving at the
15 pleasure of the court, and the court had the exclusive right
16 to control the duties of the employees. Even though their
17 salaries were paid by the county, and they received county
18 benefits, the employees were employees of the court because
19 their duties were controlled by the court.

20 In Clark County vs. SIIS, 102 Nev. 353, 724 P.2d 201
21 (1986) the Nevada Supreme Court held that in determining
22 whether an employee-employer relationship exists:

23 ... the courts will give equal weight to several
24 different factors: (1) the degree of supervision;
25 (2) the source of wages; (3) the existence of a
26 right to hire and fire; (4) the right to control
the hours and location of employment; and (5) the
extent to which the workers' activities further
the general business concerns of the alleged
employer. Clark County at 354.

27 It is clear from the foregoing that the issue of whether
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1 or not persons employed in the Washoe County Juvenile
2 Department are employees of the County or of the Court,
3 ultimately is contingent upon the amount of control exerted by
4 the Court over these employees.

5 Chapter 62 of the Nevada Revised Statutes concerns
6 juvenile courts. Pursuant to NRS 62.020 "court" is defined to
7 include the juvenile division of the district court; and in
8 counties over 100,000 in population, like Washoe County,
9 "juvenile court" or "juvenile division" means the family
10 division of the district court. In Washoe County, the family
11 division of the district court handles juvenile matters
12 arising under Chapter 62 of the NRS.

13 Under NRS 62.105, in counties over 100,000 in
14 population, the judges of the juvenile court are required to
15 appoint a probation committee whose paramount duty is to
16 advise the court. NRS 62.105(2). The statutory
17 responsibilities of the probation committee are set forth in
18 NRS 62.105.

19 The director of juvenile services is appointed by the
20 judges of the family division of the district court, upon
21 recommendation of the probation committee. NRS 62.123. The
22 director of juvenile services is directly responsible to the
23 family court. *id.* The director of juvenile services is
24 responsible for administering the function of the family
25 court, and the director serves at the pleasure of the court
26 and is subject to removal by the court. *id.* Pursuant to
27 subsection 5 of NRS 62.123:
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The director is entitled to such staff of employees to assist in the performance of his duties as is advised by the probation committee, approved by the judge or judges of the family division, and consented to by the board or boards of county commissioners of the county or counties served by the judicial district.

The probation officers and employees of the juvenile division are appointed by the director of juvenile services, with the advice and recommendation of the probation committee. NRS 62.115. Pursuant to subsection 2 of NRS 62.115, "[p]robation officers and employees are subject to dismissal or reduction in position by the director of juvenile services." That subsection further provides:

Probation officers and employees may be reduced in position irrespective of their length of service only for cause after having been given the reasons therefor in writing and being afforded an opportunity to be heard before the director of juvenile services in answer thereto.

Subsection 4 provides:

The salaries of the probation officers, personnel of the detention home and other employees must be fixed by the director of juvenile services with the advice of the probation committee, approval of the judge of the juvenile court and consent of the board or boards of county commissioners.

Considering all the facts and case law set forth above, in the instant case it is clear that the Court directly supervises and controls the subject employees. The County provides the ministerial act of funding the wages for these employees pursuant to the County's responsibility to provide for the operation of the Court; however, the Court, through the director of juvenile services, is responsible for setting the salary of the employees (NRS 62.340 and NRS 62.112(4) and

1 for hiring and firing these employees through the director of
2 juvenile services. (NRS 62.112). The Court carries ou
3 activities which have their origin in the Nevada Constitution
4 (Article 6, Subsection 6). Juvenile probation services are
5 clearly part of the duties of the Court. There is no question
6 that juvenile court employees perform activities in
7 furtherance of the Court's functions. Young vs. Board of
8 County Commissioners, 91 Nev. at 54. If all factors are given
9 equal weight under this analysis, it must be concluded that
10 these are employees of the Court, not of the County.

11 II

12 **THE WASHOE COUNTY JUVENILE COURT (FAMILY**
13 **COURT) IS IN THE JUDICIAL BRANCH OF**
14 **GOVERNMENT AND, AS SUCH, DOES NOT MEET**
15 **THE DEFINITION OF A LOCAL GOVERNMENT**
16 **EMPLOYER, PURSUANT TO NRS 288.060.**

17 When the legislature adopted a statutory scheme for
18 public employee collective bargaining in 1969, it provided
19 that "the Board may hear and determine any complaint arising
20 from the interpretation of, or performance under, the
21 provisions of this chapter by any local government employer,
22 local government employee or employee organization." NRS
23 288.100(2) (quoted in Local Government Employers vs. General
24 Sales, 98 Nev. 94, 641 P.2d 478 (1982)).

25 The definition of "local government employer" under NRS
26 288.060 does not expressly include the courts. NRS 288.060
27 defines local government employer as "any political
28 subdivision of this state or any public or quasi public
corporation organized under the laws of this state and

1 includes, without limitation, counties, cities, unincorporated
2 towns, school districts, hospital districts, irrigation
3 districts and other special districts." In this context,
4 these local government employers would comprise the executive
5 branch of local government.

6 The Constitution of the State of Nevada distributes its
7 governmental powers into the legislative, executive and
8 judicial departments. Each department is separate from the
9 others.

10 Article 3, Section 1 of the Nevada Constitution
11 provides:

12 The powers of the Government of the State of
13 Nevada shall be divided into three separate
14 departments, - the legislative, the executive and
15 the judicial; and no persons charged with the
16 exercise of powers properly belonging to one of
these departments shall exercise any functions
that are pertaining to either of the others,
except in the cases herein expressly directed or
permitted.

17 The common source of judicial power for Nevada is
18 derived from the Nevada Constitution. Article 6, Section 1
19 states:

20 The judicial power of this state shall be vested
21 in a court system, comprised of a supreme court,
22 district courts, and justices of the peace. The
legislature may also establish, as part of the
system, courts for municipal purposes only in
incorporated cities and towns.

23 The kind of function being performed is a key element in
24 analyzing whether the separation of powers doctrine is being
25 violated. For example, NRS 244.207(1)(f) does not grant the
26 county authority to modify, forgive or amend court invoked
27 payments, which are judicial functions. The statute only
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1 permits the county to centralize billing and collection of
2 payments, which is an integral part of the financial
3 administration and accounting of county government, an
4 executive function. Although the county pays the salaries,
5 the function of the particular employees determines their
6 status.

7 In Galloway vs. Truesdell, 83 Nev. 13, 19, 422 P.2d 237
8 (1967), the Nevada Supreme Court stated that "[t]he separation
9 of powers; the independence of one branch from the other; the
10 requirement that one department cannot exercise the powers of
11 the other two is fundamental in our system of government."

12 The Court delineated the constitutionally expressed
13 powers and functions of each department and then went on to
14 state that "each possesses inherent and incidental powers that
15 are properly termed ministerial. Ministerial functions are
16 methods of implementation to accomplish or put into effect the
17 basic function of each department. No department could
18 properly function without the inherent ministerial functions.
19 Without the inherent powers of ministerial functions, each
20 department would exist in a vacuum. It would literally be
21 helpless. Because of the inherent authority of ministerial
22 functions, the three departments are thus linked together and
23 able to form a coordinated and independent system of
24 government. While the departments become a coordinated
25 efficient system under such a process, yet each department
26 must maintain its autonomy." *Id.* at 19. The Court also
27 stated that "all departments must be constantly alert to
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1 prevent prohibited encroachments, lest our fundamental system
2 of governmental division of powers be eroded. To permit even
3 one seemingly harmless prohibited encroachment and the
4 adoption of a different attitude could lead to very
5 destructive results." Id. at 22.

6 Those functions of judicial departments that can be
7 classified as judicial in nature include promulgating and
8 prescribing any and all rules necessary and desirable to
9 handle the business of courts or other judicial functions. In
10 short, everything that is a proper subject of licensing,
11 controlling and regulating can logically be asserted as
12 judicial in authority when it can legitimately be traced back
13 to and derived from the judicial power.

14 The Nevada Supreme Court has established that the
15 judicial department has inherent power to control those
16 persons directly connected with the operations of the courts.
17 This power is not vested in the County.

18 In Young vs. Board of County Commissioners, 91 Nev. 62,
19 530 P.2d 1203 (1975), the Supreme Court found that a district
20 court's reasonable budgetary request to raise a probation
21 officer's salary fell within the inherent powers of the court.
22 In addition, in City of North Las Vegas vs. James, 92 Nev.
23 292, 550 P.2d 399 (1976), the Court found that a municipal
24 judge acted within his inherent authority in relieving a
25 municipal court administrator of her duties. The authority to
26 fire this employee did not rest with the city manager.

27 For all the foregoing reasons, this Board must conclude
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1 that the Washoe County Juvenile Probation Department, a
2 division of the Washoe County Juvenile Court (Family Court),
3 does not meet the definition of a local government employer
4 under NRS 288.060. Accordingly, neither the Court nor its
5 employees are subject to the provisions of NRS Chapter 288.
6 To conclude otherwise, in the absence of clear, unambiguous
7 language expressing the legislature's intent to make the
8 courts and their employees subject to the provisions of NRS
9 Chapter 288, would infringe upon the inherent right of the
10 courts to govern their own affairs and would violate the
11 separation of powers doctrine.

12 This decision does not prevent a court and its employees
13 from voluntarily agreeing to be bound by the provisions of NRS
14 Chapter 288.

15 SUMMARY AND ORDER

16 This Board hereby finds that persons employed by the
17 Washoe County Juvenile Probation Department are employees of
18 the Court and that the Court is not subject to the provisions
19 of NRS Chapter 288. The Board, therefore, has no jurisdiction
20 over the Court or its employees. For these reasons, the Board
21 ORDERS that Respondents' Motions to Dismiss be, and hereby are
22 granted.

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1 The parties will bear their own costs and attorney's
2 fees in the above-captioned matter.

3 DATED this 18th of May, 1994.

4 LOCAL GOVERNMENT EMPLOYEE-
5 MANAGEMENT RELATIONS BOARD

6 By Tamara Barengo
7 TAMARA BARENGO, Chairman

8 By Susan L. Johnson
9 SUSAN L. JOHNSON, Vice Chairman

10 By Salvatore C. Gugino
11 SALVATORE C. GUGINO, Member
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