

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

OPERATING ENGINEERS, LOCAL 3)
OF THE INTERNATIONAL UNION OF)
OPERATING ENGINEERS, AFL-CIO,)

ITEM NO. 346

Complainant,)

-vs.-)

CASE NO. A1-045553

COUNTY OF LANDER,)

DECISION

Respondent.)

For Complainant: Michael E. Langton, Esq.
LANGTON & KILBURN

For Respondents: Zane Miles, Esq.
LANDER COUNTY DISTRICT ATTORNEY

For EMRB: Susan L. Johnson, Chairman
Salvatore C. Gugino, Vice Chairman
Tamara Barengo, Member

STATEMENT OF THE CASE

This complaint was filed on September 17, 1993, as a result of several employees being unilaterally withdrawn from the bargaining unit by the County (Respondent) and/or the Argenta Township Justice Court.

By notice dated January 13, 1994, the parties were notified that a hearing would be conducted on February 4, 1994. However, on January 31, 1994, Justice of the Peace Max W. Bunch of the Argenta Township Justice Court, applied for a Writ of Certiorari in the Sixth District Court seeking a stay of the Board's proceedings relating to employees of the Argenta Township Justice Court. The Writ of Certiorari was

1 granted by District Judge Richard A. Wagner on February 1,
2 1994, and the hearing scheduled for February 4, 1994, was
3 continued.

4 On May 6, 1994, Judge Wagner issued an Order authorizing
5 the Board to "meet and consider whether they have jurisdiction
6 to entertain the Prohibited Practices Complaint filed by the
7 Operating Engineers . . . as said Complaint relates to the
8 withdrawal of the employees of the Argenta Township
9 Court . . ." Said Order was issued by Judge Wagner pursuant
10 to stipulation of counsel for the Argenta Township Court and
11 the Board.

12 A hearing was scheduled for September 8, 1994, to
13 determine the issue of the Board's jurisdiction over employees
14 of the Argenta Township Court, as well as issues surrounding
15 the unilateral removal of employees from the bargaining unit
16 who were not alleged to be employees of the Court.

17 During opening statements by counsel, it became apparent
18 that counsel for the Argenta Township Court would not
19 stipulate to a special appearance before the EMRB for the
20 purpose of addressing the jurisdictional issues in question.
21 Additionally, the Board had no factual evidence whatsoever
22 before it to support a decision whether the employees in
23 question are bona fide Court employees and therefore outside
24 the jurisdiction of the EMRB. It was therefore concluded that
25 the proceedings as to the Board's jurisdiction over employees
26 of the Argenta Township Court would have to be continued,

1 pending the outcome of an effort by counsel for the Board and
2 Argenta Township Court to obtain Judge Wagner's approval of a
3 special appearance before the Board by counsel for Argenta
4 Township Court to determine the facts surrounding the
5 employees in dispute.

6 The argument and evidence presented subsequently at the
7 hearing on September 8, 1994, was confined to the issues
8 surrounding the County's unilateral removal from the
9 bargaining unit of the Child Support Coordinator/Investigator
10 and the Chief Deputy Clerk. However, during cross examination
11 counsel for the Complainant stipulated that the Child Support
12 Coordinator/Investigator did not belong in the bargaining
13 unit, which left the propriety of the County's unilateral
14 removal of the Chief Deputy Clerk and concurrent change in pay
15 grade as the only issue still in dispute and the subject of
16 the hearing on September 8, 1994.

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18 DISCUSSION

19 I.

20 THE DUTIES AND RESPONSIBILITIES
21 OF THE CHIEF DEPUTY CLERK POSITION
22 DO NOT WARRANT CONSIDERING SAID POSITION
23 AS SUPERVISORY OR CONFIDENTIAL

24 Testimony developed at the hearing clearly established
25 that the Chief Deputy Clerk has never hired, fired, suspended
26 or disciplined anyone; never participated in labor
27 negotiations; has no authority to make budget decisions; and
28 does not serve as the custodian of records. Further, it was

1 admitted that the transcription of confidential records from
2 closed personnel sessions or negotiations consumes less than
3 one percent of her time. Also, it was admitted that the
4 presence of the County Clerk or her Chief Deputy Clerk was not
5 required at commission meetings; ie., in the event neither is
6 present to record the meetings, a tape recorder is used. We
7 appreciate the County Clerk's foresight in appointing someone
8 capable of acting in her stead on occasion, but the practical
9 realities are that the Chief Deputy Clerk seldom, if ever,
10 exercises these theoretical duties.

11 Based on all the testimony and evidence of record, the
12 County's reasons for considering the Chief Deputy Clerk as
13 supervisory and/or confidential pursuant to NRS 288.170 (3)
14 and (4) are lacking in factual support and not supported by
15 the record.

16 II.

17 THE COUNTY'S UNILATERAL REMOVAL OF THE
18 CHIEF DEPUTY CLERK POSITION FROM THE
19 BARGAINING UNIT, AND CHANGING THE PAY GRADE
20 CONCURRENTLY THEREWITH, WITHOUT NEGOTIATION,
21 WERE PROHIBITED PRACTICES.

22 The testimony and other evidence of record firmly
23 established that the Chief Deputy Clerk/Senior Deputy Clerk
24 position held by Laurie Pluemer had been considered a part of
25 the bargaining unit since the first contract was negotiated
26 between the parties. Such was codified by the terms of the
27 contract. On or about June 18, 1993, the County notified
28 Complainant that it was unilaterally reclassifying the

1 position, changing the title to Chief Deputy Clerk and
2 excluding the position from the bargaining unit as a
3 "confidential" employee. Also, the County unilaterally
4 changed the pay grade for the position from Grade 18 to Grade
5 22. Other than the title and rate of pay, there were no
6 significant changes made in the position which was
7 unilaterally removed from the bargaining unit.

8 The changes implemented unilaterally by the County
9 involved mandatory bargaining subjects; ie., "Salary or wage
10 rates or other forms of direct monetary compensation" and "The
11 method used to classify employees in the bargaining unit."
12 (See NRS 288.150 (2) (a) and (k).)

13 Unilateral changes by an employer during the course of a
14 collective bargaining relationship concerning matters which
15 are mandatory subjects of bargaining are regarded as "per se"
16 refusals to bargain. NLRB v. Katz, 369 U.S. 736, 50 LRRM 2177
17 (1962) and Las Vegas Police Protective Association Metro, Inc.
18 vs. City of Las Vegas, Case No. A1-045461, Item No. 248
19 (1990). Also, this Board, in Reno Police Protective
20 Association v. City of Reno, Case No. A1-045390, Item No.
21 175 (1985) held that "any attempt to unilaterally implement
22 changes prior to exhaustion of procedures promulgated under
23 the public bargaining statute constitute a prohibited
24 practice." Wasco County vs. AFSCME, 46 Or.App. 859, 613 P.
25 2d 1067 (1980). Accordingly, under the circumstances of this
26 particular case, the County's unilateral removal of the Chief

1 Deputy Clerk position from the bargaining unit, and changing
2 the pay grade concurrently therewith, without negotiation,
3 were clear violations of NRS 288.150 and 288.270 (1) (e).
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6 FINDINGS OF FACT

7 1. That the Complainant, Operating Engineers, Local 3
8 of The International Union of Operating Engineers, AFC-CIO, is
9 an employee organization as defined in NRS 288.040, and the
10 recognized bargaining agent for employees of Lander County.

11 2. That the Respondent, County of Lander, is a local
12 government employer as defined by NRS 288.060.

13 3. That the Senior Deputy Clerk/Chief Deputy Clerk
14 position has been in the bargaining unit, and specifically
15 covered by the terms of the contract, from the date of the
16 first contract up to and including the contract which was in
17 effect at the time the County unilaterally removed said
18 position from the bargaining unit and concurrently changed the
19 pay grade for said position.

20 4. That there was no change, as a practical matter, in
21 the daily duties and responsibilities of the Chief Deputy
22 Clerk position which would warrant requiring said position to
23 be considered as supervisory and/or confidential.

24 5. That the County's unilateral removal of the Chief
25 Deputy Clerk position from the bargaining unit, and changing
26 the pay grade concurrently therewith, without negotiation, was
27 a prohibited practice.
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CONCLUSIONS OF LAW

1. The Local Government Employee-Management Relations Board has jurisdiction over the parties and the subject matter addressed by this Decision, pursuant to the provisions of NRS Chapter 288.

2. That the actual duties and/or responsibilities of the Chief Deputy Clerk position do not require that it be excluded from the bargaining unit and considered supervisory and/or confidential, pursuant to NRS 288.170 (3) or (4).

3. That the Respondent's (County's) unilateral removal of the Chief Deputy Clerk position from the bargaining unit, and changing the pay grade for said position concurrently therewith, without negotiation, were prohibited practices, in violation of NRS 288.150 and NRS 288.270 (1) (e).

DECISION AND ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that: (1) based on the duties and/or responsibilities being performed, the Chief Deputy Clerk position may not be excluded from the bargaining unit on the premise that it is supervisory and/or confidential; (2) that the Respondent's (County's) unilateral removal of the Chief Deputy Clerk position from the bargaining unit (and changing the pay grade for said position concurrently therewith), without negotiation, was a prohibited practice, and (3) the Respondent (County) shall immediately restore the Chief Deputy Clerk position to its bargaining unit

1 status and refrain from making any changes in said status,
2 subject to negotiation with the recognized bargaining agent
3 for said bargaining unit.

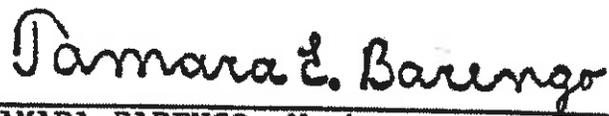
4 IT IS FURTHER ORDERED that Respondent pay to Complainant
5 \$500.00, representing attorney's fees and costs incurred by
6 Complainant in prosecuting that part of the prohibited
7 practice complaint addressed by this Decision.

8 DATED this 29th day of November, 1994.

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10 LOCAL GOVERNMENT EMPLOYEE-
11 MANAGEMENT RELATIONS BOARD

12 
13 By _____
14 SUSAN L. JOHNSON, Chairman

15
16 By 
17 SALVATORE C. GUGINO, Vice Chairman

18
19 By 
20 TAMARA BARENGO, Member