

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

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

7 Complainant,)

8 vs.)

9 COUNTY OF LANDER,)

10 Respondent.)

ITEM NO. 346-A

CASE NO. A1-045553

SUPPLEMENTAL DECISION

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

13 For Respondent: Patricia Cafferata, Esq.
14 LANDER COUNTY DISTRICT ATTORNEY

15 For EMRB: Christopher W. Voisin, Chairman
16 Tamara Barengo, Vice Chairman
17 David Goldwater, Board Member

18 STATEMENT OF THE CASE

19 This Supplemental Decision addresses that part of the
20 Complaint regarding jurisdictional issues which were not
21 addressed in the Board's Decision of November 29, 1994, Item
22 No. 346. [As stated in said Decision (Item No. 346), the
23 proceedings which pertained to the Board's jurisdiction over
24 employees of the Argenta Township Court were continued pending
25 the outcome of an effort by counsel for the Board and Argenta
26 Township Court to obtain Judge Wagner's approval of a special
27 appearance before the Board by counsel for Argenta Township
28 Court to determine the facts surrounding the employees in
dispute.]

1 On August 31, 1995, the Board received an Affidavit
2 (dated August 21, 1995), signed by Max W. Bunch, Justice of
3 the Peace of Argenta Township Justice Court, Lander County,
4 Nevada. The relevant part of said Affidavit is contained in
5 Section 2, 3, 4 and 5 thereof, quoted below:

6 "2. That you affiant, in his capacity as
7 Justice of the Peace and pursuant to his authority
8 as a Judicial Officer, has appointed certain
9 individuals as employees of the Court.

10 3. That the employees so appointed by the
11 Court are:

12 a) RUTH BISHOP, the Court Clerk,
13 assigned to court criminal matters and the office
14 manager for the court.

15 b) GINA LITTLE, the Deputy Court Clerk,
16 assigned to court traffic matters.

17 c) JO FAY CHIARA, the Deputy Court
18 Clerk, assigned to court civil matters.

19 d) Other temporary and/or part time
20 employees are retained and appointed to meet the on
21 going needs of the court as they arise.

22 4. That each of the employees work for the
23 Court, and are employees of the Judicial Branch of
24 government. That the employees are hired by the
25 Court. The Court has the exclusive prerogative to
26 retain or terminate their services, to direct their
27 effects on behalf of the Court and to set their
28 compensation, subject only to review by a higher
court, for abuse of discretion.

5. That the Court has at no time
relinquished its inherent authority, and has never
authorized Lander County, on behalf of the Court,
to negotiate with the Court's employees. The Court
has never entered into any labor contract or
agreement with any labor organization relating to
the Court's employees."

Upon receipt of the aforementioned Affidavit, the Board
docketed the Case for public comment, noticed pursuant to
Nevada's Open Meeting Law, commencing at 1:00 p.m. on
September 22, 1995, during which interested parties were
afforded an opportunity to comment, without prejudice,
regarding their respective positions as to the Board's

1 jurisdiction over employees of the courts. Attorneys Michael
2 Langton (representing Complainant in the instant Case) and
3 Bill Rogers (representing Justice of the Peace Max Bunch)
4 appeared before the Board and expressed their respective
5 positions with regard to the Board's jurisdiction.

6 Following public comment on the issue of jurisdiction,
7 the Board determined during closed deliberation as follows:

8 DISCUSSION

9 I.

10 PERSONS APPOINTED BY THE
11 JUSTICE OF THE PEACE OF ARGENTA
12 TOWNSHIP JUSTICE COURT ARE
EMPLOYEES OF THE COURT, NOT THE
COUNTY.

13 In reaching the conclusion that the employees involved
14 are employees of the Court and not of the County, the Board
15 has given equal weight to several different factors; ie., the
16 right to control the duties of the employees, the degree of
17 supervision, the source of wages, who sets the salaries, the
18 parties belief as to their employment relationship and the
19 extent to which the employees activities further the general
20 business concerns of the alleged employer. [See Sacramento
21 County Employees Organization vs. County of Sacramento, 247
22 Cal.Rptr. 333 (1988) and the Nevada Supreme Court's Decision
23 in Clark County vs. SIIS, 102 Nev. 353, 724 P.2d 201 (1986).]
24 It is clear in the instant case that the employees involved
25 were appointed by and serving at the pleasure of the court,
26 the Justice of the Peace set their salaries (subject only to
27 review by a higher court for abuse of discretion), the Court
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1 has the exclusive prerogative to retain or terminate their
2 services and the Court has the exclusive right to control
3 their duties. Accordingly, after considering all the facts
4 and arguments in evidence, public comment and case law, the
5 Board has determined that the employees involved are employees
6 of the Court, not of the County, even though their salaries
7 are paid by the County and they receive County benefits.

8 II.

9 ARGENTA TOWNSHIP JUSTICE COURT
10 IS IN THE JUDICIAL BRANCH OF
11 GOVERNMENT AND, AS SUCH, DOES
12 NOT MEET THE DEFINITION OF A
13 LOCAL GOVERNMENT EMPLOYER,
14 PURSUANT TO NRS 288.060

13 Argenta Township Justice Court is clearly in the Judicial
14 Branch of Government. As the Board stated in Case No. A1-
15 045547, Washoe County Probation Employees Association vs.
16 Washoe County and Washoe County Juvenile Court, Item No. 334
17 (5-18-94), the definition of "local government employer" under
18 NRS 288.060 does not include the courts. Accordingly, neither
19 the Court nor its employees are subject to the provisions of
20 NRS 288. To conclude otherwise, in the absence of clear,
21 unambiguous language expressing the legislatures intent to
22 make the courts and their employees subject to the provisions
23 of NRS Chapter 288, would infringe upon the inherent right of
24 the courts to govern their own affairs and would violate the
25 separation of powers doctrine.

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1 This decision should not be construed as preventing a
2 court and its employees from voluntarily agreeing to be bound
3 by the provisions of NRS 288.

4 FINDINGS OF FACT

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

9 2. That the Respondent, County of Lander, is a local
10 government employer as defined in NRS 288.060.

11 3. That the employees involved are employees of Argenta
12 Township Justice Court, not of the County.

13 4. That neither the Argenta Township Justice Court nor
14 its employees are subject to the provisions of NRS 288.

15 CONCLUSIONS OF LAW

16 1. That the persons involved are employees of the
17 Argenta Township Justice Court, not of the County, and the
18 definition of "local government employer" under NRS 288.060
19 does not include the courts.

20 2. That, neither Argenta Township Justice Court nor its
21 employees are subject to the provisions of NRS 288, in view of
22 which the Board has no jurisdiction over Argenta Township
23 Justice Court or its employees.

24 SUPPLEMENTARY DECISION AND ORDER

25 IT IS HEREBY ORDERED ADJUDGED AND DECREED that the Board
26 has no jurisdiction over Argenta Township Justice Court or its
27 employees, in view of which that part of the instant Complaint
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1 which was not addressed in the Board's Decision of November
2 29, 1994, Item No. 346, is DISMISSED.

3 Each party is to bear its own costs and attorney's fees
4 in this matter.

5 DATED this 8th day of November, 1995.

6 LOCAL GOVERNMENT EMPLOYEE-
7 MANAGEMENT RELATIONS BOARD

8
9 BY Christopher W. Voisin
CHRISTOPHER W. VOISIN, Chairman

10
11 BY Tamara Barengo
TAMARA BARENGO, Vice Chairman

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13 BY David Goldwater
DAVID GOLDWATER, Member

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