STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

JAMES P. RIEBELING, JAMES M. HAYLEY, MICHAEL A. MALDONADO, McNEAL D. BROWN and THE CITY OF NORTH LAS VEGAS HOUSING AUTHORITY SPECIAL POLICE OFFICERS ASSOCIATION, Complainants, -vs.- HOUSING AUTHORITY OF THE CITY OF NORTH LAS VEGAS, Respondent.	**ITEM NO. 358** **CASE NO. A1-045552** **DECISION**

For Complainants: Leslie M. Stovall, Esq.

For Respondent: Gregory E. Smith, Esq.
SMITH & KOTCHKA

For EMRB: Christopher W. Voisin, Vice Chairman
Tamara Barengo, Member
Vicki Hulbert, Substitute Member

STATEMENT OF THE CASE

By letter dated June 10, 1993, The City of North Las Vegas Housing Authority Special Police Officer's Association (the "Association") filed an application for recognition as the exclusive bargaining agent for Special Police Officers employed by the Housing Authority of the City of North Las Vegas (the "Housing Authority"). On June 21, 1993, the Housing Authority's Executive Director wrote Complainant Riebeling, President of the Association, advising that she was unable to act upon the application for recognition, at that

time, because he had not provided a verified membership list or signed membership cards showing that he represented a majority of the employees in the bargaining unit; also, she indicated that upon receipt of such information (a verified membership list or signed membership cards), she would review and present same to the Housing Authority's Board of Commissioners for consideration. On the same date, June 21, 1993, the Housing Authority's Board of Commissioners met and voted to abolish the positions of four of its six Special Police Officers, effective June 30, 1993, and contract out their work. The four Special Police Officers positions abolished were occupied by Complainants Riebeling, Hayley, Maldonado and Brown, who were the President, Vice President, Treasurer and Secretary, respectively, of the Association. The positions of the two remaining Special Police Officers, the occupants of which were not members of or otherwise involved with the Association, were retained.

On September 10, 1993, the instant Complaint was filed with the EMRB (the "Board"), alleging that the Association is entitled to recognition as the exclusive bargaining agent for the Housing Authority's Special Police Officers, pursuant to NAC 288.143; alleging that the actual purpose of the layoffs was to avoid the unionization of the Special Police Officers, to avoid having to bargain collectively with the Association and to retaliate against the Complainants for their organizational activity. The Complaint alleges that the

actions of the Housing Authority constitute illegal interference, restraint, coercion and discrimination which are prohibited by NRS 288.270 (a), NRS 288.270 (b), NRS 288.270 (c), and NRS 288.270 (d). As a residual issue, the Complaint also alleges that the Housing Authority violated the same provisions of the statute when its Executive Director attempted to extend Complainant Hayley's probationary period by six months, allegedly in retaliation for his participation in organizing the Association.

The Housing Authority denied the allegations contained in the Complaint and alleged that the Association is not entitled to recognition as exclusive bargaining agent for the reason that it did not follow the proper procedures and/or comply with the statutory requirements. The Housing Authority also contended that it did not violate the provisions of NRS 288 which prohibit interference, restraint, coercion and discrimination against employees who are attempting to organize and/or gain recognition for collective bargaining purposes, alleging that the positions of the Complainants were abolished for legitimate business reasons. Additionally, the Housing Authority contended that the Executive Director did not err when she refused Complainant Hayley permanent status and extended his probationary period.

The parties stipulated to the following legal issues:

"A. By laying off Riebeling, Hayley, Maldonado and/or Brown, did the Housing Authority:

(1) Interfere, restrain, or coerce Riebeling, Hayley, Maldonado and Brown in the exercise of their rights in violation of NRS 288.270 (1) (a);

(2) Interfere in the formation of the Association in violation of NRS 288.270 (1) (b);

(3) Discrimination in regard to the tenure and/or other conditions of employment of Riebeling, Hayley, Maldonado and Brown to discourage membership in the Association in violation of NRS 288.270 (1) (c); and/or

(4) Discharge Riebeling, Hayley, Maldonado and Brown because they formed, joined, and chose to be represented by the Association in violation of NRS 288.270 (1) (d)?

B. By extending Hayley's probationary period and/or denying him a step advance, did the Housing Authority:

(1) Interfere, restrain, and/or coerce Hayley in the exercise of his rights in violation of NRS 288.270 (1) (a);

(2) Interfere in the formation of the Association in violation of NRS 288.270 (1) (b);

(3) Discriminate in regard to the tenure and other conditions of employment of Hayley to discourage membership in the Association in violation of NRS 288.270 (1) (c); and/or

(4) Discriminate against Hayley because he formed, joined, and chose to be represented by the Association in violation of NRS 288.270 (1) (d)?"

In determining the above legal issues, the following factual issues were stipulated to:

"C. Whether the Housing Authority was motivated in its decisions in A and/or B above by knowledge of any attempt to unionize;

D. Whether the Housing Authority had legitimate non-discriminatory reasons for its decisions in A and/or B;

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E. Whether the Housing Authority's advanced non-discriminatory reasons for its decisions in A and/or B were pretextual;

F. Whether the Housing Authority was required to bargain or offer to bargain with the Association over its decision and or the effects of its decision in A above."

The hearing initially was scheduled to commence March 31, 1994. However, it was necessary to postpone and/or continue the hearing several times due to conflicting schedules, family emergencies, attorney and Board member substitutions, etc. The hearing eventually began on May 16, 1995, and consumed all or substantial parts of six (6) days, concluding with the closing statements by counsel for the parties on June 10, 1995.

In reaching its Decision, the Board considered the argument and evidence contained in several hundred pages of pleadings and exhibits, as well as almost 1400 pages of testimony.

The following is a Discussion of the issues, the Board's Findings of Fact and the Board's Conclusions of Law.

DISCUSSION

The provisions of NRS 288 cited by the Complainants read as follows:

PROHIBITED PRACTICES

> **288.270 Employer or representative; employee or employee organization.**
> 1. It is a prohibited practice for a local government employer or its designated

representative willfully to:
(a) Interfere, restrain or coerce any employee in the exercise of any right guaranteed under this chapter.
(b) Dominate, interfere or assist in the formation or administration of any employee organization.
(c) Discriminate in regard to hiring, tenure or any term or condition of employment to encourage or discourage membership in any employee organization.
(d) Discharge or otherwise discriminate against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this chapter, or because he has formed, joined or chosen to be represented by any employee organization.

In determining whether any of the Housing Authority's actions which form the basis of the instant Complaint constitute prohibited practices under the above-quoted provisions of NRS 288, it is appropriate that the Board first address the factual issues stipulated to by the parties.

Throughout these proceedings the Housing Authority has consistently and emphatically maintained that it had no knowledge of the organizing effort, that its decision to lay off the complainants was not motivated by union animus, and that its reasons for laying off the complainants and contracting out their work were legitimate business reasons.

The "legitimate non-discriminatory reasons" which Housing Authority management alleged were the basis for the recommendation that resulted in the decision to lay off the Complainants and contract out their work were:

(1) A concern regarding liability and the cost of obtaining general liability insurance to cover armed security guards (Special Police);

(2) The lack of adequate supervision or management for the security guards; and

(3) The conduct and/or demeanor of the security guards, allegedly as evidenced by a "flurry" or "barrage" of memos, letters and complaints which the Housing Authority received from the Complainants.

The testimony and evidence of record, however, revealed that general liability insurance in the amount of **$1,000,000**, which met the Housing Authority's specification for its armed security guards was available for an annual net premium of $21,500, which amount was well within the $50,000 budgeted for insurance, and was only $5,250 more than the annual premium for the **$500,000** general liability insurance policy which the Housing Authority had purchased to cover its armed security guards for the two previous fiscal years. This information was obscure in the recommendations which Housing Authority management presented to it's Board of Commissioners, therefore, the members of the Board of Commissioners did not have an opportunity to consider the full range of options available to them at the time they voted to eliminate the Complainants' positions and contract out their work on the premise that affordable general liability insurance was not available for in-house, armed security.

The testimony of Housing Authority witnesses, although obfuscatory and equivocal in many instances, was sufficient to establish that Housing Authority management had been concerned for years about potential liability problems created by having armed, in-house security. Ostensibly, it was this "potential

liability" (and the increase in the general liability premium allegedly related thereto) which was the Housing Authority's primary alleged "legitimate non-discriminatory reason" for the recommendation which resulted in the Board of Commissioners' decision to eliminate the Complainants' positions and contract out their work. However, it is clear from the testimony and other evidence of record that this was not the real reason for the recommendation adopted by the Board of Commissioners.

The testimony and other evidence of record established that the Housing Authority had maintained a steady stream of investments and activities designed to improve its in-house, armed security force (Special Police Officers), as evidenced by the following:

(1) A vehicle had been purchased for use of the Special Police Officers;

(2) A computer had been purchased for the office being utilized by the Special Police Officers;

(3) A policy and procedures manual was being developed for the Housing Authority's security department; and

(4) Training had been scheduled for the Special Police Officers.

These types of investments/activities are totally inconsistent with the recommendation to eliminate in-house, armed security. Rather than reflecting a prevailing consensus on the part of Housing Authority management that in-house, armed security should be eliminated and/or indicating that said elimination was imminent, these activities evidence a continuing or on-

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going commitment to maintaining the Housing Authority's in-house, armed security force.

The members of the Housing Authority's Board of Commissioners may have sincerely believed that the recommendation they adopted (elimination of the Complainants' positions and contracting out their work) was based on "legitimate non-discriminatory reasons," however, the testimony and other evidence of record established that a great deal of critical, relevant information was withheld from the Board of Commissioners. If the Board of Commissioners had been fully apprised of all the relevant facts and circumstances, it is possible (if not likely) that it would have made a different decision on June 21, 1993.

The most critical information withheld from the Board of Commissioners was the information that there was an organizing effort under way by the Housing Authority's Special Police Officers, and they (their association) had applied for recognition. Organizing for the purpose of collective bargaining is a protected activity in the State of Nevada (NRS 288), and any act by a local government employer (such as the Housing Authority) which interferes with this protected activity or is conduct which is inherently destructive of these rights, is prohibited. Accordingly, information pertaining to the organizing effort and/or the application for recognition was clearly relevant to the Board of

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Commissioners' consideration of the recommendation to eliminate the Complainant's positions and contract out their work.

Assuming, arguendo, that prior to Housing Authority management becoming aware of the organizing effort that "legitimate non-discriminatory reasons" existed for recommending that the Complainants' positions be abolished and their work contracted out, Housing Authority management's knowledge of said organizing effort substantially altered the relevant facts and circumstances surrounding their recommendation. A new and critical factor had been introduced and/or injected in the equation. It was no longer just a matter of determining whether to recommend the elimination of in-house armed security (laying off the Complainants), but how the perceived problems on which the recommendation was to be based could be addressed in the context of an environment where the employees involved are statutorily protected from arbitrary and/or unilateral discharge, pending a resolution of the organizing effort and/or collective bargaining with respect to the proposed elimination of their positions and contracting out their work.

It is clear from the testimony of Mr. William Robinson, (Chairman of the Housing Authority's Board of Commissioners at the time Complainants filed their application for recognition) that he knew of the organizing effort at least as early as

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June 1, 1993, when he received a letter dated May 30, 1993, from Complainant Riebeling, notifying him, in pertinent part-

> "The Security Officers of the Housing Authority of the City of North Las Vegas have formed our own fraternal organization. <u>We are currently in the process of having our organization recognized by the Local Government-Employee Relations Board</u>." (Emphasis supplied.)

and requesting that a job analysis and salary survey be conducted. There also was testimony by Mr. Robinson which indicates he was aware of the organizing effort even earlier (on or about April 30, 1993).

It must be pointed out here, for the record, that Mr. Robinson's strong opposition to the Housing Authority having an armed, in-house security force was clearly established and he was very obfuscatory, uncooperative and hostile during cross-examination and re-direct by counsel for the Complainants. Accordingly, any of Mr. Robinson's testimony which tends to give credence to the Association's position that the Housing Authority had knowledge of the organizing effort prior to receipt of the application for recognition, as well as prior to the Board of Commissioner's decision to eliminate the Complaints' positions and contract out their work, cannot be taken lightly.

Although, there was conflicting testimony as to whether Chairman Robinson notified the other members of the Housing Authority's Board of Commissioners of the organizing effort (and of his receipt of the application for recognition) by the Association, in view of the fact that Chairman Robinson, as

agent for the Housing Authority, knew of the organizing effort well in advance of the application for recognition, the Board must conclude that the Housing Authority was well aware of the organizing effort when it decided to lay off the Complainants and contract out their work.

Additionally, the fact that Chairman Robinson; Ian Ross, Attorney for the Housing Authority; and Wanda Thatcher, Executive Director of the Housing Authority, clearly knew of the organizing effort and application for recognition, but withheld such information from the other members of the Housing Authority's Board of Commissioners, evidences a deliberate attempt to avoid having to bargain collectively with the Association representing their in-house, armed security. The Board concluded that these individuals could not have reasonably believed that the organizing effort was irrelevant to the Board of Commissioner's consideration of the proposal to layoff the Housing Authority's Special Police Officers (security guards) and contract out their work. Both Mayor Seastrand and Commissioner Goynes testified to the effect that such information was very important and might have resulted in a different decision, if the Board of Commissioners had been made aware of it.

A more logical inference to be drawn from the failure of these individuals to make all the members of the Board of Commissioners aware of the organizing effort is that they did not want them to be aware of it. They had already determined,

upon receipt of the application for recognition, that they were going to lay off the Complainants and contract out their work. In order to assure that the Board of Commissioners would adopt and/or implement their plan without question, it was necessary to withhold from the Board of Commissioners any and all information pertaining to the organizing effort and/or application for recognition, and base their recommendation solely on the premise that they had been unable to obtain affordable general liability insurance.

While Chairman Robinson and Executive Director Thatcher were clearly aware of the organizing effort, and had some responsibility for the recommendation, it appears that Attorney Ross was the person most responsible for the Board of Commissioners' decision. As an attorney experienced in the practice of labor law, Mr. Ross knew (or should have known) that, in the context of a unionizing effort, there were adverse consequences which potentially could accrue to the Housing Authority by virtue of the Board of Commissioners adopting the recommendation to eliminate the Complainants' positions and contract out their work. As an agent for the Board of Commissioners, it was his duty and obligation to see that they were fully informed and that they did not decide such an important matter in a vacuum. He did not do so. For these reasons, as well as the expressed and/or implied indifference of Mr. Ross toward the organizing effort (and the

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effect said effort should have had on the recommendation), the Board does not view his testimony as credible.

Even if Housing Authority management had been considering laying off the Complainants and contracting out their work for a period of many months or years, it is clear that the event that triggered the decision to recommend that this action be taken was the organizing effort and/or application for recognition. Accordingly, the Board finds as follows:

I.

AS CONCERNS THE FACTS AND CIRCUMSTANCES ALLUDED TO UNDER LEGAL ISSUE "A" STIPULATED TO BY THE PARTIES, THE HOUSING AUTHORITY'S ACT OF LAYING OFF COMPLAINANTS RIEBELING, HAYLEY, MALDONADO AND BROWN WAS MOTIVATED BY ITS KNOWLEDGE OF THE COMPLAINANTS' ATTEMPT TO UNIONIZE, NOT BY LEGITIMATE NON-DISCRIMINATORY REASONS.

An essential element in proving that an employer interfered with protected activity, in most cases, is proof that the employer had knowledge of the affected employee's union activities. In the instant case, based on the testimony and evidence of record, there is no doubt that Chairman Robinson, Attorney Ross and Executive Director Thatcher (all agents for the employer) had knowledge of the organizing effort and application for recognition. The fact that they withheld this information from the other members of the Housing Authority's Board of Commissioners, in no way absolves the Board of Commissioners from the knowledge of its agents. State ex rel. Cities Service Gas Co. v. Public Service Commission, 337 Mo. 809, 85 S.W. 2d 890, 894. The prerequisite knowledge therefore was clearly established.

Further, even if the case law pertaining to *agency* was deemed inapplicable in this case, the Housing Authority has such a small number of employees (approximately 30) that the employer's knowledge of the Complainants' union activities would be inferred in the instant case. Coral Gables Convalescent Home, Inc., 234 NLRB 1198, 97 LRRM 1435 (1978).

Although the Board finds **incredible** the testimony by Housing Authority witnesses purporting to establish "legitimate non-discriminatory reasons" for the recommendation to eliminate in-house armed security (the real reason for the recommendation clearly was Housing Authority management's knowledge of the organizing effort), the motive(s) for the recommendation are not the most important factor on which the Board based its decision in the instant case. The act of eliminating the Complainants' positions and contracting out their work, was so inherently destructive of the Complainants' right to organize for collective bargaining purposes, the Board must conclude that the Housing Authority **intended** the very consequences which foreseeably and inescapably flowed from its actions. Eliminating the positions and contracting out the work of employees who are attempting to unionize certainly is discriminatory and does discourage union membership/organization; therefore, whatever the claimed overriding justification may be, this act carries with it unavoidable consequences which the employer not only foresaw

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but must have intended. NLRB v. Erie Resistor Corp., 373 US 221, 53 LRRM 2121 (1963); American Freightways Co., 124 NLRB 146, 147, 44 LRRM 1302 (1959).

II.
AS CONCERNS THE FACTS AND CIRCUMSTANCES ALLUDED TO UNDER LEGAL ISSUE "A" STIPULATED TO BY THE PARTIES, THE HOUSING AUTHORITY'S REASONS FOR LAYING OFF THE COMPLAINANTS WERE CLEARLY PRETEXTUAL.

As stated previously, the Housing Authority alleged that the recommendation which resulted in the decision to lay off the Complainants and contract out their work was based on three principle "legitimate non-discriminatory reasons"; i.e., the cost of obtaining general liability insurance, the lack of adequate supervision for security guards and the conduct/demeanor of the complainant security guards. The testimony and other evidence of record, however, failed to substantiate said allegation(s). To the contrary, an objective perusal of the testimony will reveal that affordable general liability insurance was available, and the other two "legitimate non-discriminatory reasons" were nothing more than *red herrings*, both evidencing a lack of Housing Authority resolve to deal with ineffective or incompetent supervision in a responsible manner. (Certainly it would not be unreasonable to expect competent management to address problems of a supervisory and/or disciplinary nature - such as those alluded to - in a more measured, less extreme manner than resorting to elimination of two-thirds of the employees in a department.) To accept these allegations as "legitimate non-discriminatory

reasons" for laying off the Complainants **following receipt of their application for recognition**, simply taxes the powers of reason and logic beyond their limits.

After hearing all the testimony and considering all the evidence, the Board is convinced that the Housing Authority's alleged "legitimate non-discriminatory reasons" for laying off the Complainants are essentially nothing more than a carefully crafted defense, albeit transparent, constructed after the instant Complaint was filed in an attempt to justify what are perhaps the most blatant and/or egregious violations of NRS 288 which can be committed by an employer. They are clearly pretextual in nature and cannot be considered credible.

Furthermore, and notwithstanding that stated above, the Housing Authority has advanced these alleged "legitimate non-discriminatory reasons" in an attempt to show that the recommendation which resulted in the decision to lay off the Complainants was not motivated by union animus. As the Board noted in its findings under I. above, the recommendation to eliminate the Complainants' positions and contract out their work was clearly motivated by Housing Authority management's knowledge of the organizing effort; however, motivation is not the most important factor when the act or conduct is inherently destructive of the Complainants' right to organize for collective bargaining purposes, as in the instant case. NLRB v. Erie Resistor Corp., American Freightways Co., supra.

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II.

AS CONCERNS THE FACTS AND CIRCUMSTANCES ALLUDED TO UNDER LEGAL ISSUE "A" STIPULATED TO BY THE PARTIES, UPON LEARNING OF THE ORGANIZING EFFORT, THE HOUSING AUTHORITY WAS REQUIRED TO MAINTAIN THE STATUS QUO, PENDING RESOLUTION OF THE ORGANIZING EFFORT AND/OR COLLECTIVE BARGAINING AS TO THE DESIRED CHANGES.

While the Housing Authority's motivation for the recommendation which resulted in the Board of Commissioners' decision to lay off the Complainants and contract out their work was not the most important factor on which the Board based its decision in the instant case, the actions of the Housing Authority in implementing said recommendation during the Complainants' organizing effort were not only inherently destructive of their protected rights but also appeared to be actions which were designed and intended to circumvent the Housing Authority's duty to bargain (regarding such matters as layoff procedures and subcontracting) upon recognition and/or certification of the Association as exclusive representative for employees of the Housing Authority's security department. Upon becoming aware of an organizing effort, an employer is required to maintain the status quo, pending resolution of the organizing effort and/or collective bargaining as to any desired changes in the status quo. 9 NPER CA-18090, California State University vs. California Faculty Assn. (April 29, 1987); 9 NPER NO-18191, Camden Housing Authority vs. New Jersey Civil Service Assn., Council 10 (May 22, 1987) and 9 NPER FL-18150, Pensacola Junior College vs. Pensacola Junior College Faculty Assn. (June 10, 1987). Accordingly,

the Housing Authority's unilateral act of laying off the Complainants and contracting out their work immediately after receipt of their application for recognition also constitutes a failure to bargain in good faith. Clark County Public Employees Association, SEIU Local 1107 vs. Housing Authority of the City of Las Vegas, Case No. A1-045478, Item No. 270 (July 25, 1991).

IV.
AS CONCERNS LEGAL ISSUE "A" STIPULATED TO BY THE PARTIES, IT IS CLEAR THAT BY LAYING OFF THE COMPLAINANTS THE HOUSING AUTHORITY COMMITTED PRACTICES WHICH ARE PROHIBITED BY THE PROVISIONS OF NRS 288

Having found that the Housing Authority's act of laying off the Complainants and contracting out their work was motivated by its knowledge of the Complainants' attempt to unionize (not by legitimate non-discriminatory reasons); having found that said act is inherently destructive of the Complainants' right to organize for collective bargaining purposes; and having found that said unilateral act constitutes a failure to bargain in good faith, the Board likewise finds that by committing said act the Housing Authority has engaged in practices which are clearly prohibited by the provisions of NRS 288.270 (1) (a), (b), (c), (d) and (e).

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V.

AS CONCERNS LEGAL ISSUE "B" STIPULATED TO BY THE PARTIES, THE HOUSING AUTHORITY DID NOT VIOLATE THE PROVISIONS OF NRS 288.270 (1) (a), (b), (c) AND/OR (d) WHEN IT EXTENDED THE PROBATIONARY PERIOD OF COMPLAINANT HAYLEY AND/OR DENIED HIM A STEP ADVANCE

The Board finds that the Complainants have failed to meet their burden of proof. Although Complainant Hayley was involved in the organizing effort and an officer in the Association, there was insufficient evidence to establish that his protected activities were the reason for the extension of his probationary period. Suspicion alone is not enough to conclusively establish a violation of the statute (NRS 288). Petition of Union Trust Co. of Pittsburgh, 20 A. 2d 779 (Pa. 1941).

FINDINGS OF FACT

1. That the Respondent, Housing Authority of the City of North Las Vegas, is a local government employer as defined in NRS 288.060.

2. That Complainants James P. Riebeling, James M. Hayley, Michael A. Maldonado and McNeal D. Brown were employed by Respondent as Special Police Officers in Respondent's security department.

3. That Complainants James P. Riebeling, James M. Hayley, Michael A. Maldonado and McNeal D. Brown formed an Association (The City of North Las Vegas Housing Authority Special Police Officers Association) for the purpose of

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bargaining collectively with Respondent under NRS 288, and notified Respondent of their intention by letter dated May 30, 1995.

4. That Complainants James P. Riebeling, James M. Hayley, Michael A. Maldonado and McNeal D. Brown were the President, Vice President, Treasurer and Secretary, respectively, of The City of North Las Vegas Housing Authority Special Police Officers Association.

5. That, by letter dated June 10, 1993, to the Chairman of Respondent's Board of Commissioners, The City of North Las Vegas Housing Authority Special Police Officers Association applied for recognition pursuant to the provisions of NRS 288.160 (1).

6. That, by letter dated June 21, 1993, Respondent's Executive director notified Complainant James P. Riebeling, as President of The City of North Las Vegas Housing Authority Special Police Officers Association, that she was unable to act on the application for recognition, at that time, because the application had not included a verified membership list; also, she indicated that upon receipt of such information or document, she would review same and present it to Respondent's Board of Commissioners for consideration.

7. That, on the same date, June 21, 1993, Respondent's Board of Commissioners met and adopted the recommendation of Respondent's management to the effect that four of the six Special Police Officer positions should be unilaterally

abolished and their work contracted out, effective June 30, 1995.

8. That the four Special Police Officer position unilaterally abolished were occupied by Complainants James P. Riebeling, James M. Hayley, Michael A. Maldonado and McNeal D. Brown, the officers of the City of North Las Vegas Housing Authority Special Police Officers Association.

9. That the two Special Police Officer positions which were retained were occupied by employees who were not members of the Association or otherwise involved with the Association.

10. That the unionizing efforts of Complainants James P. Riebeling, James M. Hayley, Michael A. Maldonado and McNeal D. Brown was the reason for the recommendation by Respondent's management that their positions should be unilaterally abolished and their work contracted out.

11. That the Respondent's unilateral abolishment and contracting out the work of Complainants James P. Riebeling, James M. Hayley, Michael A. Maldonado and McNeal D. Brown, who had formed an association for collective bargaining purposes and applied to Respondent for recognition, is a prohibited practice.

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 recommendation of Respondent's management to unilaterally abolish the positions of Complainants James P. Riebeling, James M. Hayley, Michael A. Maldonado and McNeal D. Brown, and contract out their work, was based on its knowledge of their unionizing efforts (which are protected activities), in view of which the implementation of said recommendation constituted interference, restraint, coercion and discrimination in violation of the provisions of NRS 288.270 (1) (a), (b), (c) and (d).

3. That Respondent's act of laying off Complainants James P. Riebeling, James M. Hayley, Michael A. Maldonado and McNeal D. Brown, and contracting out their work, was inherently destructive of their right to organize for collective bargaining purposes and, therefore, prohibited by the provisions of NRS 288.270 (1) (a), (b), (c) and (d).

4. That Respondent's act of laying off Complainants James P. Riebeling, James M. Hayley, Michael A. Maldonado and McNeal D. Brown, and contracting out their work, was designed and intended to circumvent the Housing Authority's duty to bargain collectively (regarding such matters as layoff procedures and subcontracting) upon recognition and/or certification of The City of North Las Vegas Housing Authority Special Police Officers Association, in view of which said act constitutes a failure to bargain in good faith and a violation of NRS 288.270 (1) (e).

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5. That the Complainants did not meet their burden of proof to establish that the extension of Complainant James M. Hayley's probationary period by Respondent was due to his protected activities; therefore, Respondent did not violate the provisions of NRS Chapter 288 when it extended said probationary period.

DECISION AND ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Respondent's act of unilaterally laying off Complainants Riebeling, Hayley, Maldonado and Brown, and contracting out their work, was a prohibited practice, in view of which Respondent shall compensate said Complaints for their lost earning, as follows:

1. Complainant James P. Riebeling shall be paid $20,484.
2. Complainant Michael A. Maldonado shall be paid $16,000.
3. Complainant McNeal D. Brown shall be paid $8,216.

Complainant James M. Hayley did not suffer a loss in earnings, therefore, no compensation is awarded in his case.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Respondent shall pay the reasonable costs and attorney's fees incurred by the Complainants in processing the instant Complaint before this Board. The Complainants shall submit a statement of costs and attorneys fees for the Board's consideration and deliberation within ten (10) days from date of Entry of this Order.

DATED this 24th day of July, 1995.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By _____
CHRISTOPHER VOISIN, Vice Chairman

By _____
TAMARA BARENGO, Member

By _____
VICKI HULBERT, Substitute Member