

1 **STATE OF NEVADA**  
2 **LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT**  
3 **RELATIONS BOARD**  
4

5 McGILL-RUTH CONSOLIDATED  
6 SEWER & WATER GENERAL  
IMPROVEMENT DISTRICT,  
7 Petitioner,

ITEM NO. 441A

8 vs.

CASE NO. A1-045651

9 OPERATING ENGINEERS, LOCAL NO. 3,  
Respondent;

10 OPERATING ENGINEERS, LOCAL NO. 3,  
11 Complainant,

12 vs.

CASE NO. A1-045653

13 McGILL-RUTH CONSOLIDATED  
14 SEWER & WATER GENERAL  
IMPROVEMENT DISTRICT,  
Respondent.

**DECISION**

15  
16 For Petitioner/Respondent: Gary D. Fairman, Esq.

17 For Complainant/Respondent: Paul D. McKenzie

18 **STATEMENT OF FACTS**

19 On October 10, 1998, the McGill-Ruth Consolidated Sewer & Water General Improvement  
20 District (hereinafter referred to as the "District") a water and sewer improvement district with one  
21 part-time regular and three full-time employees, filed a petition for unit clarification. The petition was  
22 amended on October 26, 1998, and requested clarification on the number of bargaining units available  
23 to it and a determination of which employees were appropriate in each unit. On November 2, 1998,  
24 the Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, AFL-  
25 CIO (hereinafter referred to as the "Union") filed a complaint alleging prohibited practices. A hearing  
26 was held before the Local Government Employee-Management Relations Board on March 18, 1999;  
27 said hearing and deliberations were notice pursuant to Nevada's Open Meeting Law. Opening

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1 statements were made by the parties, after which time the witnesses were sworn and allowed to  
2 testify, and evidence admitted. Closing arguments were made by the parties.

3 Pursuant to the Board's deliberations on March 18, 1999, the Board found as follows:

4 **DISCUSSION**

5 Witnesses included the District's C.P.A., Ken Baldwin, some of the District's actual  
6 employees, and a member of the Board for the District. The witnesses testified concerning their  
7 respective duties and responsibilities, disciplinary issues, the accounting or reporting duties, and  
8 potential problems with the classification of the employees into bargaining units. The Board  
9 conducted their own examination of the witnesses offered by both the District and the Union.

10 Testimony was offered by the District for the imposition of at least three bargaining units; i.e.,  
11 one for supervisory personnel, one for confidential employees, and a third for the remaining  
12 employees. The District deemed it inappropriate for the supervisor to belong to the same unit as the  
13 employees subject to his/her discipline. The District further felt that the office manager was privy to  
14 confidential information and it would not be desirable to have that person in the same bargaining unit  
15 as the employees. The District further complained that the union failed to provide them with a list  
16 of members.

17 The Union alleged prohibited practices in that the district initially recognized the union, began  
18 negotiations reaching tentative agreements, but then refused to negotiate further pending the  
19 determination of unit clarification. Testimony was offered concerning the number of negotiation  
20 sessions, the tentative agreements reached, and the District's later refusal to continue to bargain in  
21 good faith until the unit clarification issue was resolved.

22 **FINDINGS OF FACT**

- 23 1. That the District did recognize the Union as the exclusive bargaining agent for the  
24 employees of the District.
- 25 2. That certain tentative agreements were reached by the District and the Union.
- 26 3. That negotiations were halted pending the resolution of unit clarification.

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1 4. Although cessation of negotiations may be bad faith or a prohibited practice in certain  
2 situations, the cessation of negotiations in the current matter before the Board was not done in bad  
3 faith, but merely for the purposes of defining the appropriate bargaining units.

4 5. That the petition for unit clarification was filed to resolve that issue, while a complaint  
5 was filed on the belief that prohibited practices had occurred.

6 6. The position of Office Manager is not a confidential employee in the present situation,  
7 requiring a separate bargaining unit, and that such employee can be included in the bargaining unit  
8 representing supervisory employees.

9 7. The position of Maintenance Superintendent is currently of a supervisory nature and  
10 such should be included in the bargaining unit representing supervisory employees.

11 8. The position of the Assistant to the Superintendent and the part-time regular position  
12 can be represented by a non-supervisory bargaining unit.

### 13 CONCLUSIONS OF LAW

14 1. That the Local Government Employee-Management Relations Board has jurisdiction  
15 over the parties and the subject matters of the complaint and petition filed herein, pursuant to the  
16 provisions of NRS Chapter 288.

17 2. That the District is a local government employer as defined by NRS 288.060.

18 3. That the Union is an employee organization as defined by NRS 288.040 and is  
19 recognized as the exclusive bargaining representative for the employees at issue in accordance with  
20 NRS 288.160.

21 4. That the Union had the burden of proving its allegations that the District committed  
22 a prohibited practice by refusing to continue to negotiate in good faith.

23 5. That the District had the burden of proving the classification of bargaining units  
24 required for this improvement district.

25 6. That the District's refusal to continue negotiations with the Union was not done in bad  
26 faith nor was such a prohibited practice.

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1 7. That the positions held by the Office Manager (e.g., Vanna Feeback at this time) is  
2 not a confidential employee requiring a separate bargaining unit and that said employee can be  
3 represented by the bargaining unit representing supervisory employees.

4 8. That the position of Maintenance Superintendent currently held by Ron Pekuri is of  
5 a supervisory nature and the Maintenance Superintendent should be represented by the bargaining  
6 unit representing supervisory employees.

7 9. That the one full-time position of Assistant to the Superintendent and the one part-  
8 time regular position can be represented by a non-supervisory bargaining unit.

9 **ORDER**

10 IT IS THE JUDGMENT OF THIS BOARD, that the District shall have two (2) bargaining  
11 units, one for supervisory employees and one for non-supervisory employees.

12 IT IS FURTHER ADJUDGED AND DECREED, that the position held by the office  
13 manager is not deemed as a confidential employee and is part of the supervisory unit.

14 IT IS FURTHER ADJUDGED AND DECREED, that no prohibited practices were  
15 committed by the District.

16 DATED this 29<sup>th</sup> day of April 1999.

17 LOCAL GOVERNMENT EMPLOYEE-  
18 MANAGEMENT RELATIONS BOARD

19 By David Goldwater  
20 DAVID GOLDWATER, Chairman

21 By Karen L. McKay  
22 KAREN L. MCKAY, Vice-Chairperson

23 By James E. Wilkerson, Sr.  
24 JAMES E. WILKERSON, SR., Member