

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

5 LAS VEGAS CITY EMPLOYEES BENEFIT )  
6 AND PROTECTIVE ASSOCIATION, aka )  
7 LAS VEGAS CITY EMPLOYEES )  
8 ASSOCIATION, a Nevada Corporation; and )  
9 DIANNA REED, as named Plaintiff for NBS )  
10 EMPLOYEES, )  
11 Complainants, )

ITEM NO. 481C  
CASE NO. A1-045688

12 vs.

**DECISION**

13 CITY OF LAS VEGAS; NEVADA )  
14 BUSINESS SERVICE; SOUTHERN )  
15 NEVADA WORKFORCE INVESTMENT )  
16 BOARD; SOUTHERN NEVADA JOB )  
17 TRAINING BOARD; and THE SOUTHERN )  
18 CHIEF ELECTED OFFICIAL )  
19 CONSORTIUMS, )  
20 Respondents. )

21 For Complainants: Victor M. Perri, Esq.

22 For Respondents: Morgan Davis, Esq.  
Las Vegas City Attorney's Office

23 Yolanda T. Givens, Esq.  
24 Clark County District Attorney's Office

**STATEMENT OF THE CASE**

25 On October 30, 2000, Employees/Complainants LAS VEGAS CITY EMPLOYEES  
26 BENEFIT & PROTECTIVE ASSOCIATION a/k/a LAS VEGAS CITY EMPLOYEES  
27 ASSOCIATION, a Nevada corporation (hereafter referred to as the "Association"), and  
28 DIANNA REED filed a Complaint with the Local Government Employee Management  
Relations Board (hereafter "Board") against the CITY OF LAS VEGAS (hereafter "Las Vegas"),  
NEVADA BUSINESS SERVICE (hereafter "NBS"), SOUTHERN NEVADA WORKFORCE  
INVESTMENT BOARD (hereafter "Investment Board"), SOUTHERN NEVADA JOB  
TRAINING BOARD (hereafter "Training Board"), and the SOUTHERN CHIEF ELECTED  
OFFICIAL CONSORTIUMS (hereafter "Consortiums"). An amended complaint was filed on

1 March 13, 2001; and the respondents filed their respective responses to the same. The parties  
2 have also filed pre-hearing statements.

3 The Board heard this matter on November 14, 2001, November 16, 2001, and January 18,  
4 2002; such hearings noticed in accordance with Nevada's Open Meeting Law. On those dates,  
5 the Board heard oral arguments from counsel, received evidence, and heard testimony from eight  
6 (8) witnesses; namely, Dianna Reed, Olga Carbia, Lachelle Fortune, Robert Brewer, Richard  
7 Blue, Bill Murphy, Brent Profazier, and Tommy Ricketts.

8 The Board's findings as to Ms. Reed's and the Association's Amended Complaint are set  
9 forth in its Discussion, Findings of Fact and Conclusions of Law, which follow:

### 10 DISCUSSION

11 In approximately 1980, an agreement was entered into between the City of Las Vegas  
12 and Clark County to create a Consortium to administer the Federal Comprehensive Employment  
13 Training Act (hereafter "CETA") program. Also, at that time, a Private Industry Council  
14 (hereafter "PIC") was created.

15 In 1982, the Job Training Partnership Act (hereafter "JTPA") was enacted and an  
16 agreement was entered into by several entities, which included the cities of Las Vegas,  
17 Henderson, North Las Vegas, Boulder City, and Lincoln, Nye, Esmeralda and Clark Counties, to  
18 make up the Job Training Board. NBS was apparently created in 1983. The JTPA was  
19 eventually repealed on June 10, 2000. During this time period, the program also became known  
20 as the Southern Nevada Employment & Training Program. In 1998, the Workforce Investment  
21 Act became effective. Throughout this sequence of evolution, the participants apparently  
22 remained the same. As a matter of fact, and according to Mr. Brewer, the members of the Board  
23 of Directors for NBS, Inc. were also members of the initial PIC.

24 In approximately June 1988, however, the Association entered into a collective  
25 bargaining agreement (hereafter "CBA") with NBS. Article 21 thereof pertained to a reduction  
26 in force and/or lay-off. Article 38 thereof allowed the CBA to continue yearly unless one party  
27 notified the other of a change, amendment, modification, and/or termination of the agreement.  
28 NBS "closed" in the year 2000. NBS in this matter claims there was no reason to bargain with

1 the employees over the closure of NBS as such closure was required by law and the respondents  
2 herein were not the employers of the employees in question, including Ms. Reed.

3 Ms. Reed testified she was briefly employed by the City of Las Vegas in the summer of  
4 1983 under CETA. She believed she was a City of Las Vegas employee because she submitted  
5 her application to the City of Las Vegas, she was sworn in as a City of Las Vegas employee, she  
6 received City of Las Vegas payroll checks and a City of Las Vegas ID badge, and she was  
7 entitled to City of Las Vegas benefits (such as retirement, sick leave, grievance). She did not  
8 recall ever signing a document, or waiver, identifying her employer as NBS and not the Las  
9 Vegas/Clark County Consortium (11-14-00 Tr. p. 54). She was laid off until 1986, at which time  
10 she returned to her employment with the City of Las Vegas. She understood at that time that she  
11 was working under the Southern Nevada Employment Training Program (11-14-00 Tr. p. 47). In  
12 approximately 1988, she believed the program's name changed to the Job Training Board and  
13 NBS was her place of employment (11-14-00 Tr. p. 48), but that her responsibilities stayed the  
14 same, as did her job title. She was again laid off in 1990, and unemployment identified her  
15 employer as the City of Las Vegas (11-14-00 Tr. p. 51). She returned to NBS where she  
16 remained until 2000.

17 She was informed in 1999 that she might lose her job as a result of the Workforce  
18 Investment Act. However, Richard Blue told her that most of the employees would be  
19 considered for hire under NBS, Inc. (11-14-00 Tr. p. 78). She was of the understanding that  
20 under NBS, Inc., she would no longer be a City of Las Vegas employee (11-14-00 Tr. p. 95).  
21 Her last day of employment was June 30, 2000. At the time of the hearing, Ms. Reed was  
22 unemployed and was receiving unemployment compensation as a former City of Las Vegas  
23 employee.

24 Ms. Reed stated five NBS employees were laid off, with the other approximately 35  
25 employees continuing with NBS, Inc., at a reduced wage rate. (11-14-00 Tr. p. 94.) Ms. Reed  
26 also testified regarding an interoffice memo dated May 4, 1999 from Richard Blue, wherein it  
27 stated, "classified staff reduction will be done in accordance with the terms of the collective  
28 bargaining agreement between NBS and the City of Las Vegas Employees Association." (11-14-

1 00 Tr. p. 92; see also memo, Exhibit 9.) Ms. Reed further stated that several new employees  
2 were hired once NBS, Inc. came into existence (11-14-00 Tr. p. 193).

3 Ms. Reed also acknowledged that Mr. Murphy told her that grievances about the  
4 reduction in force/closure would not be processed inasmuch as NBS no longer existed. Other  
5 employees were present at this casual meeting and heard the comment. (11-14-00 Tr. p. 160.)  
6 Therefore, no grievances were filed. She further stated that Mr. Brewer told employees not to  
7 worry about the closure, that he would work it out with Mr. Blue (11-14-00 Tr. p. 189).

8 Ms. Brenda Davis also testified at this hearing and stated she has been with the City of  
9 Las Vegas for 26 years (11-14-00 Tr. p. 195). She claims she was never informed that she was  
10 no longer a City of Las Vegas employee (11-14-00 Tr. p. 197). Apparently several of the  
11 witnesses appearing at the hearing had signed, or were alleged to have signed, waivers  
12 acknowledging that they were not City of Las Vegas employees. Prior to Ms. Davis' lay off, she  
13 attended a staff meeting at which Mr. Brewer stated they were running out of funding; however,  
14 no one would be laid off. (11-14-00 Tr. p. 201.) She claims four permanent individuals were  
15 hired by NBS, Inc. after her lay off (11-14-00 Tr. p. 208), and she claims temporary employees  
16 were hired as well (11-14-00 Tr. p. 208). She further claims there were some employees who  
17 continued to work for NBS, Inc. with no break in service (11-14-00 Tr. p. 207). She further  
18 claims approximately five employees were never called back or given an offer. (11-14-00 Tr. p.  
19 210.)

20 The next witness was Olga Carbia. She started with the City of Las Vegas in 1984, after  
21 taking the civil service examination. She believes she is a City of Las Vegas employee as her  
22 payroll checks and benefits come from the City of Las Vegas. Although Ms. Carbia stayed with  
23 NBS, Inc. her salary was reduced from \$55,000 yearly to \$36,000.00 (11-14-00 Tr. p. 232). She  
24 was told that everyone, across the board, would receive a salary cut (11-14-00 Tr. p. 232).  
25 Subsequently, she learned certain managers did not receive a salary cut, and some were only cut  
26 a few thousand dollars (11-14-00 Tr. p. 233). At the time of the lay off with NBS, she was a  
27 member of the Association (11-14-00 Tr. p. 238). She believes the cuts are due to the Workforce  
28 Investment Board's funding; NBS, Inc. simply could not afford the Las Vegas City benefits (11-

1 14-00 Tr. p. 239). Mr. Murphy also told her that the employees staying with NBS, Inc. would  
2 lose City of Las Vegas seniority (11-14-00 Tr. p. 252). She later learned that certain managers  
3 did not sacrifice any of their wages when NBS, Inc. came into existence (11-14-00 Tr. p. 252).

4 Ms. Carbia is upset because she planned on retiring at age 60 and does not feel she can do  
5 so now with the reduced wages, she is now a probationary employee for six months, she has no  
6 seniority, and she is no longer entitled to representation by the Association. She also stated ten  
7 employees with NBS, now with NBS, Inc., remained City of Las Vegas employees "getting all  
8 the benefits" they did previously. (11-14-00 Tr. p. 256.) Some of those individuals are Richard  
9 Blue, Rosie Boulware, Sally Breach, Ana Acevedo, and Cedric Cole (11-14-00 Tr. p. 258-59).  
10 She claims NBS, Inc. has the same people doing the same jobs, and she herself is carrying the  
11 same caseload (11-14-00 Tr. p. 262). She further claims no new equipment was received by  
12 NBS, Inc., and that "everything is business as usual like we used to do before." (11-14-00 Tr. p.  
13 262.)

14 Lachelle Fortune believed she was a City of Las Vegas employee while employed at NBS  
15 because she applied for her position through the City of Las Vegas and she had to return to the  
16 City of Las Vegas for additional paperwork. (11-14-00 Tr. p. 268.) She claims she returned to  
17 NBS in the year 2000 and someone else was at her former desk and doing her job. (11-14-00 Tr.  
18 p. 268.) This is contrary to what Mr. Blue told her, that she would be placed on a call back list  
19 should a position become available. (11-14-00 Tr. p. 269.)

20 Robert Brewer was called as a witness for the County. He was a member of the PIC from  
21 1996 through 2000. He believes NBS was closed due to a federal mandate, the enactment of the  
22 Workforce Investment Act. He remained on the PIC, eventually renamed the Southern Nevada  
23 Workforce Board. He claims this Board was concerned with policy and strategy, not managing  
24 and administrating work development programs as PIC did (11-16-00 Tr. p. 34-5). He further  
25 described NBS as a service provider as well as an administrator of its programs. (11-16-00 Tr. p.  
26 116.) He admitted statements were made to everyone that their job skills were being evaluated  
27 for employment with NBS, Inc., and that the employees would retain their jobs if funding was

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1 sufficient. (11-16-00 Tr. p. 39.) The ten people on the Southern Nevada Workforce Investment  
2 Board were indeed former NBS employees (11-16-00 Tr. p. 46-7).

3 Interestingly, Clark County Deputy District Attorney Yolanda Givens prepared NBS,  
4 Inc.'s Articles of Incorporation. (11-16-00 Tr. p. 51-2.) NBS at that time was still in existence.  
5 (11-16-00 Tr. p. 51, see Exhibit 14.) Mr. Brewer also testified that the funding now being  
6 received could have been used to continue NBS; however, the PIC chose to close NBS (11-16-00  
7 Tr. p. 68). He also admitted that NBS could have gone after different funding to continue in  
8 existence. (11-16-00 Tr. p. 107.) He denied that NBS was closed to eliminate the Association  
9 and higher paid Association members (11-16-00 Tr. p. 71). He further testified that Richard  
10 Blue received a salary increase with the Workforce Investment Board (11-16-00 Tr. p. 59-60).

11 Mr. Brewer also stated that the Association made no request to negotiate with anyone, to  
12 his knowledge, about NBS' closure. (11-16-00 Tr. p. 74.) Later, he recalled that the Association  
13 did make a presentation to PIC on the reduction in NBS' force on March 15, 2000. (11-16-00  
14 Tr. p. 77-8.) He also stated that he was not "aware" of the parties' CBA, but had only heard  
15 "talk" of one. (11-16-00 Tr. p. 120.) He further stated he has never received any grievance or  
16 other type of communication from NBS employees regarding the intent to close notice dated  
17 April 4, 2000. (11-16-00 Tr. p. 123.)

18 When questioned by this Board, Mr. Brewer did not know if Article 21 of the parties'  
19 CBA was complied with, i.e., notice must be provided of any potential layoff of employees. (11-  
20 16-00 Tr. p. 79.) Mr. Brewer himself, as Chairman of the PIC, was not aware of his requirement  
21 to notify the Association of the layoff. In response to another question by the Board, Mr. Brewer  
22 did not know why Mr. Blue was named resident agent of NBS, Inc. while he (Blue) was still  
23 employed with NBS. (11-16-00 Tr. p. 84-6.)

24 Richard Blue testified he was the former Executive Director of NBS and held that  
25 position from 1995 until 2000. (11-16-00 Tr. p. 132.) He stated he did not provide notice of the  
26 reduction in force to the Association pursuant to the parties' CBA because there was no  
27 reduction in work force – NBS simply closed (11-16-00 Tr. p. 156). The decision to close NBS  
28 was partly his decision (11-16-00 Tr. p. 159). Since that decision, he has not received any

1 request from the Association to bargain over the closure (11-16-00 Tr. p. 161). The only  
2 grievance received was from Ms. Fortune, and he determined that the grievance was untimely  
3 filed. (11-16-00 Tr. p. 161.) He believes that NBS employees are not City of Las Vegas  
4 employees (11-16-00 Tr. p. 177), but that the City of Las Vegas only provided certain services to  
5 NBS in the past.

6 When questioned about him signing the Articles of Incorporation for NBS, Inc., he stated  
7 it was a "mistake" and amended Articles have since been filed. (11-16-00 Tr. p. 177-78.)

8 Bill Murphy testified that he was with NBS from 1981 through its closure on June 30,  
9 2000, although it may have had different names. (1-18-02 Tr. p. 7.) He was informed of NBS'  
10 closing in February or March 2000 at management meetings (1-18-02 Tr. p. 7-8). NBS, Inc. was  
11 formed as a nonprofit organization to compete for federal funding (1-18-02 Tr. p. 9), with new  
12 business licenses, leases, and IRS accounts. (1-18-02 Tr. p. 18.) Mr. Murphy also stated that  
13 because it was not a public agency, NBS, Inc. was denied participation in the PERS program. (1-  
14 18-02 Tr. p. 19.) Murphy was appointed the Interim Executive Director of NBS, Inc. in May  
15 2000, even though he was employed with NBS through June 2000. He was responsible for  
16 hiring employees of NBS, Inc. (1-18-02 Tr. p. 11.) He believes most of the employees hired  
17 were Union employees (1-18-02 Tr. p. 13). He does admit that certain employees would be  
18 making a lesser salary with NBS, Inc. (1-18-02 Tr. p. 36.) He himself made less money with  
19 NBS, Inc. (1-18-02 Tr. p. 29.)

20 Murphy did not notify the Association of the closure of NBS. (1-18-02 Tr. p. 25.)  
21 Murphy did admit his use of the words, "reduction in force," was a mistake in Exhibit 53 (memo  
22 to NBS staff with advice to use leave time to seek other employment). However, there was no  
23 provision in the parties' CBA concerning a closure of NBS. (1-18-02 Tr. p. 16.)

24 Brent Profaizer testified on behalf of the City of Las Vegas. He has been employed with  
25 the City of Las Vegas for approximately 20 years; currently as the Human Resource Manager  
26 with labor relations duties. (1-18-02 Tr. p. 38.) Mr. Profaizer administers agreements with the  
27 Association. (1-18-02 Tr. p. 41.) He claims the City of Las Vegas was not a party to the CBA  
28 between the Association and NBS, nor did anyone from the City of Las Vegas participate in the

1 negotiation of the agreement. (1-18-02 Tr. p. 41.) He also claims that NBS is not a department  
2 of the City of Las Vegas, and NBS employees are not City of Las Vegas employees. (1-18-02  
3 Tr. p. 45.) He did admit that the City of Las Vegas handled the basic administration for NBS,  
4 including the financial aspect and personnel matters (1-18-02 Tr. p. 45). At one time, the City of  
5 Las Vegas also provided NBS with legal advice (1-18-02 Tr. p. 45). The City of Las Vegas was  
6 not providing legal advice at the time of NBS' closure (1-18-02 Tr. p. 46). Mr. Profzaizer did  
7 draft Hearing Exhibit 11, a letter to the Association that the City of Las Vegas would offer NBS  
8 employees a promotional exam with an additional three bonus points for the examination if no  
9 grievances were filed; however, the Association could not guarantee that grievances would not  
10 be filed by its members. (1-18-02 Tr. p. 48-51.) Mr. Profzaizer did admit that these examinations  
11 are normally offered to City of Las Vegas classified employees only (1-18-02 Tr. p. 52).

12 Mr. Profzaizer did admit that PERS treated employees of NBS as City of Las Vegas  
13 employees (1-18-02 Tr. p. 60) and that he is aware of employees of NBS transferring to City of  
14 Las Vegas positions (1-18-02 Tr. p. 66).

15 Tommy Ricketts testified at the hearing as the representative of the Association. He has  
16 been its president since July 2000 (1-18-02 Tr. p. 85). Although he is aware of the Association's  
17 CBA with the City of Las Vegas (1-18-02 Tr. p. 86), he was not involved in the negotiations for  
18 that agreement (1-18-02 Tr. p. 86). He did not know if the City of Las Vegas participated in the  
19 agreement between the Association and NBS (1-18-02 Tr. p. 87), and he does not know why a  
20 separate agreement existed between NBS and the Association (1-18-02 Tr. p. 88). Concerning  
21 NBS matters, he has always involved the City of Las Vegas (1-18-02 Tr. p. 89).

22 In closing, the Association argued that NBS and NBS, Inc. are substantially identical  
23 insofar as its management, business purpose, operations, equipment, location, customers, and  
24 supervision. Under Article 21 of the parties' agreement, the Association should have been  
25 notified of the reduction in force/lay off and negotiations should have taken place. Such failure  
26 is the prohibited practice alleged by the Association. Furthermore, the involvement of the City  
27 of Las Vegas, and its joint control over the NBS employees, creates joint liability between NBS,  
28 NBS, Inc., and the City of Las Vegas.

1 According to the Investment Board, the Training Board, and the Consortiums, this is a  
2 contract interpretation matter and the Board does not have jurisdiction to hear this matter. To  
3 date, however, NBS employees have filed no grievances over the reduction in force and/or  
4 closure. Additionally, Employer/Respondents claim that the proper respondent is NBS, Inc., and  
5 it was not named as a party to this matter. Furthermore, these Employer/Respondents claim that  
6 NBS, Inc. is a private, non-profit organization, and is not subject to the provisions of NRS  
7 Chapter 288.

8 The City of Las Vegas claims that NBS employees were simply not City of Las Vegas  
9 employees and that a separate agreement existed between NBS and its employees through the  
10 Association. The City of Las Vegas employees had a different CBA. Furthermore, none of the  
11 other participants to the Consortium (e.g., Clark County, Esmeralda County, Nye Co., Boulder  
12 City, etc.) were named in this litigation.

13 Post hearing briefs were allowed and filed by the parties.

#### 14 FINDINGS OF FACT

15 1. In 1982, the JTPA was enacted and eventually repealed in the year 2000.

16 2. NBS was created in 1983 to provide job training and employment for individuals in  
17 Southern Nevada, and closed in the year 2000.

18 3. In approximately June 1988, the Association entered into a CBA with NBS, and  
19 Article 21 thereof pertained to a reduction in force and/or lay offs. The City of Las Vegas is not  
20 a party to that agreement.

21 4. Employees of NBS applied for their positions through the City of Las Vegas, received  
22 payroll checks through the City of Las Vegas, and participated in the PERS program.

23 5. Approximately 35 former NBS employees were hired by NBS, Inc., apparently at  
24 reduced salaries.

25 6. Complainant Employees acknowledged a waiver, or a document, may have been  
26 signed that the City of Las Vegas was not their employer but such information was not clearly  
27 presented to them and some employees denied that the signatures on the waivers were indeed  
28 their signatures.

1 7. NBS employees did not file grievances over the closure because they were told it was  
2 futile and that the grievances would simply not be processed.

3 8. Ms. Fortune did file a grievance, dated January 24, 2000, and claimed the date she  
4 became aware Dietra Atkinson was sitting in her chair, having replaced her, and she would not  
5 be called back was approximately June 30, 1999 (11-14-00 Tr. p. 285, l. 15-25). Mr. Blue  
6 rejected the grievance approximately January 31, 2000, as untimely (11-14-00 Tr. p. 286, l. 12-  
7 24).

8 9. NBS employees were allowed time off to seek new employment and were allowed to  
9 apply for positions with NBS, Inc.

10 10. It was later determined that certain management individuals did not receive a salary  
11 cut when NBS, Inc. came into existence, and Richard Blue actually received a salary increase.

12 11. Testimony presented during the hearing revealed that NBS could have sought the  
13 funding now being received by NBS, Inc., and could have continued in existence.

14 12. Further testimony presented at hearing revealed that different funding could have  
15 been sought to continue NBS' existence.

16 13. The written notice of NBS' closure was circulated to NBS employees; Dianna Reed  
17 received that notice as an employee although she was also a Shop Steward for the Association at  
18 the time of the receipt of the notice.

19 14. Evidence was presented that NBS, Inc.'s Articles of Incorporation were filed,  
20 naming Richard Blue as the Resident Agent, while he was still an employee of NBS, and NBS  
21 was still operational.

22 15. Because NBS, Inc. allegedly is not a public employer, its employees could not  
23 participate in PERS.

24 16. Bill Murphy was also appointed Interim Executive Director of NBS, Inc. while he  
25 was still employed with NBS, and that he is receiving a lesser salary with NBS, Inc., than he had  
26 formerly received from NBS.

27 17. Testimony was presented that in addition to numerous NBS employees remaining  
28 with NBS, Inc., similar work is still being performed; the office of NBS, Inc. is in the same

1 facility previously occupied by NBS; the equipment being used by NBS, Inc. employees was  
2 used formerly by NBS employees; supervision to a large part remain constant through the change  
3 from NBS to NBS, Inc.; and the target customers are still the same.

4 18. Other participants to the Consortium, such as Clark County, Nye County, Boulder  
5 City, and North Las Vegas, were not named as respondent parties to this matter.

6 19. NBS, Inc. was not named a party to this matter.

7 20. Should any finding of fact be more properly construed as conclusions of law, may  
8 they be so deemed.

### 9 CONCLUSIONS OF LAW

10 1. The Local Government Employee-Management Relations Board has jurisdiction over  
11 the parties and the subject matters of the complaint on file herein pursuant to the provisions of  
12 NRS Chapter 288.

13 2. Respondents are all local government employers as defined in NRS 288.060.

14 3. The Association is an employee organization as defined by NRS 288.040.

15 4. NBS and the Association are parties to a collective bargaining agreement.

16 5. That the parties' collective bargaining agreement required notice of a potential  
17 reduction in force and/or lay off "because of lack of work or lack of funds." (Emphasis added.)  
18 (Article 21 of the parties CBA.)

19 6. Pursuant to NRS 288.150(2)(v), workforce reduction is subject to mandatory  
20 bargaining. The parties admitted that no negotiations took place regarding NBS' reduction in its  
21 workforce or layoff and also acknowledged that no formal notice was sent to the Association - -  
22 only the employees received the notice. The refusal to negotiate this reduction in work force/lay  
23 off is a prohibited practice pursuant to NRS 288.270(1)(e) and NRS 288.150(2)(v). NBS went  
24 from approximately 40 employees to zero; this is a reduction in force as well as a closure in the  
25 Board's view.

26 7. NBS, Inc. is the successor of NBS in that: NBS, Inc. has approximately 35 of the  
27 employees formerly with NBS; similar work has continued in job training and employment; the  
28 place of operations is the same; the equipment utilized by the employees are the same; day-to-

1 day supervision and upper management to a large part remained the same; the hierarchy  
2 remained the same; and the target customers are still the same. Furthermore, witness Brewer  
3 acknowledged that NBS could have sought the same funding as NBS, Inc. or could have sought  
4 different or additional funding, and could have continued in existence. This theory of successor  
5 employer, or substantial continuity of the employer, has been discussed in a number of cases  
6 including, but not limited to, United Food & Commercial Workers International Union, AFL-  
7 CIO, Local 152, v. N.L.R.B., 768 F.2d 1463 (D.C. App. 1985); Premium Foods, Inc. v.  
8 N.L.R.B., 709 F.2d 623 (9<sup>th</sup> Cir. 1983), as well as the cases identified by Complainants.

9 8. As specified in the "Discussion" section above, although the job training and  
10 employment program evolved through different names, the ultimate management or controlling  
11 participants remained constant (namely, the hierarchy involved herein) and eventually NBS, Inc.  
12 replaced NBS, thus it appears Complainants' alter ego theory is appropriate in this matter.  
13 Furthermore, the CBA between NBS and the Association identifies the hierarchy and their  
14 relationship in Article 1 - Recognition (A) thereof:

15 Pursuant to the provisions of [NRS Chapter 288], Nevada Business  
16 Service as the administrative entity and grant recipient under the  
17 Job Training Partnership Act (JTPA) for the Southern Nevada  
18 Delivery Area pursuant to the Cooperative Agreement between  
19 the counties of Clark, Lincoln, Nye and Esmeralda and the  
20 cities of Boulder City, Henderson, Las Vegas and North Las  
21 Vegas, hereinafter referred to as "NBS," recognizes the Las  
22 Vegas City Employees Protection Association, Inc., hereinafter  
23 referred to as the "Association," as the exclusive representative of  
24 the hereinafter defined bargaining unit for the purpose of collective  
25 bargaining. . . . (Emphasis added.)

21 Furthermore, this agreement was signed by Yvonne Atkinson-Gates, Clark County  
22 Commissioner as Chairman of the Job Training Board (and for the governmental entities named  
23 immediately above entering into the Cooperative Agreement), Richard Blue as Executive  
24 Director of NBS, and representatives of the Association. This further evidences the existence of a  
25 relationship between the parties named herein.

26 As discussed in the City of Las Vegas's post-hearing brief (page 4), Complainants appear  
27 to rely on Crawford Door Sales Co., 26 N.L.R.B. 1144 (1976), which identified the factors to be  
28 utilized in establishing alter ego, namely: the two enterprises must have substantially identical

1 management, business purpose, operation, equipment, customers, and supervisors, as well as  
2 ownership. Such factors can be found in the present case, not only in the successor relationship  
3 between NBS and NBS, Inc., but in the hierarchy establishing and controlling NBS and NBS,  
4 Inc.

5 In addition to the above factors for establishing alter ego, Complainants have also  
6 asserted they were misrepresented to - - the employees were led to believe they were City of Las  
7 Vegas employees. For example, these employees were allowed to participate in PERS, which  
8 only employees of public entities may enjoy; the hiring process was through the City of Las  
9 Vegas; and payroll was issued through the City of Las Vegas.

10 The continuing relationship between the Respondents, including NBS, Inc., can be seen  
11 by; (a) the County drafting the Articles of Incorporation for NBS, Inc.; (b) Mr. Blue's signature  
12 on said Articles while he was still with NBS and NBS was still operational; and (c) that Mr.  
13 Murphy was appointed to a position with NBS, Inc. while he was still employed with NBS and  
14 NBS was still operational.

15 9. Anti-union animus is reflected in this matter by (a) the evidence presented that the  
16 entity at issue (NBS/NBS, Inc.) continued its operations with the same employees, at the same  
17 facility, using the same equipment, and assisting the same customer base, however, without the  
18 presence of the Association as the representative of the employees; (b) the fact that the parties  
19 refused to bargain with the Association while informing members that it would be futile to file  
20 grievances; (c) the fact that the employees retained by NBS, Inc. received a cut in pay and  
21 benefits except for the higher echelon; (d) the fact that the CBA was approaching its termination  
22 date; (e) the fact that NBS could have sought the same funding as NBS, Inc., different funding or  
23 additional funding, which would have allowed it to remain in existence; and (f) the timing of the  
24 creation of NBS, Inc., the drafting of its Articles of Incorporation and appointment of its  
25 officers/directors while NBS was still operational with those very same individuals still  
26 employed with NBS. Anti-union animus has been defined as an attempt to avoid the obligations  
27 of a collective bargaining agreement through a sham transaction or a technical change in  
28 operations. UA Local 343 et al v. Nor-Cal Plumbing, Inc., 48 F.3d 1465, 1472 (9<sup>th</sup> Cir. 1994).

1 Substantial evidence of such animus is found in this case through the documents presented and  
2 the demeanor of the witnesses during this three-day hearing, particularly Respondents'  
3 witnesses.

4 10. Based upon the testimony of Ms. Fortune, her grievance was properly denied as time  
5 barred.

6 11. As argued by Complainants, exhaustion of remedies may not be necessary if  
7 proceeding within the administrative process would be futile or serve no purpose. Pence v.  
8 Kleppe, 529 F.2d 135 (9th Cir. 1975); American Federation of Government Employees Local  
9 1668 v. Dunn, 561 F.2d 1310 (9th Cir. 1977); and Glover v. St. Louis-San Francisco Railway  
10 Co., 393 U.S. 324, 89 S.Ct. 548 (1969). See also cases cited by Complainants. It was not  
11 necessary for the Complainants to exhaust their contractual remedies as they were told that to do  
12 so would be futile as NBS was simply closing its operations and grievances would not be  
13 processed.

14 12. Should any conclusion of law be more properly construed as a finding of fact, may it  
15 be so deemed.

#### 16 DECISION AND ORDER

17 IT IS HEREBY ORDERED as follows:

18 1. The parties' collective bargaining agreement extends to NBS, Inc., as a true successor  
19 employer of NBS' employees, and that the alter ego theory is appropriate in this matter.

20 2. NBS, Inc. must continue to recognize the Association as the representative of the  
21 employees.

22 3. NBS, Inc. and all respondents, are to cease and refrain from the prohibited practices  
23 set forth above in this Decision and Order, pursuant to NRS 288.110(2); and in accordance with  
24 that statute, the respondents are to immediately restore the aggrieved employees all benefits  
25 allowed to them pursuant to the parties' collective bargaining agreement which NBS employees  
26 have been deprived of since June 30, 2000, off-set of course by any income and/or other benefits  
27 which have been received by the employees. Complainants in this matter are to provide such an  
28 accounting or reporting of benefits to this Board within thirty (30) days from the date of this

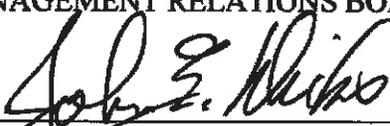
1 order, with Respondents having twenty (20) days thereafter to oppose such an accounting or  
2 reporting of employees' damages.

3 4. The parties have failed to meet the February timeline set forth in NRS 288.180(1);  
4 therefore, the collective bargaining agreement as it now exists will continue until a successor  
5 agreement can be negotiated pursuant to statute and agreement, or this matter resolved by other  
6 means.

7 5. Complainants are hereby awarded reasonable attorneys' fees and costs with proof of  
8 such fees and costs to be provided to this Board within thirty (30) days from the date of this  
9 order, with Respondents having twenty (20) days thereafter to oppose such fees and costs.

10 DATED this 18<sup>th</sup> day of April, 2002.

11 LOCAL GOVERNMENT EMPLOYEE-  
12 MANAGEMENT RELATIONS BOARD

13 BY:   
14 JOHN E. DICKS, ESQ., Chairman

15 BY:   
16 JAMES E. WILKERSON, SR., Vice-Chairman

17 BY:   
18 JANET TROST, ESQ., Member  
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