

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

5 LAS VEGAS POLICE PROTECTIVE
6 ASSOCIATION METRO, INC.,
7 Complainant,

8 vs.

9 CITY OF LAS VEGAS,
10 Respondent.

11 LAS VEGAS PEACE OFFICERS
12 ASSOCIATION,
13 Intervener.

ITEM NO. 498A

CASE NO. A1-045713

DECISION

13 For Complainant: Kathryn A. Werner, Esq.
14 John Dean Harper, Esq.
15 For Respondent: Morgan Davis, Esq.
16 For Intervener: Stephen G. DeNigris, Esq.

17 On July 5, 2001, LAS VEGAS POLICE PROTECTIVE ASSOCIATION, METRO, INC.
18 (hereafter "LVPPA") filed a Complaint for Declaratory Relief with the Local Government
19 Employee Management Relations Board (hereafter "Board") against the CITY OF LAS VEGAS
20 (hereafter "City"). The City filed its answer on July 25, 2001. On August 9, 2001, the LAS
21 VEGAS PEACE OFFICERS ASSOCIATION (hereafter "LVPOA") filed a petition to intervene.
22 The Board granted the petition on September 19, 2001. All parties have filed pre-hearing
23 statements.

24 The Board heard this matter on February 13, 2002; such hearing noticed in accordance
25 with Nevada's Open Meeting Law. The Board heard oral arguments from counsel, received
26 evidence, and heard testimony from four (4) witnesses; namely, Deputy City Marshal Pat
27 PeQueen, Sgt. Jack Manning, Brent Profaizer, and Randy Herdzina.

28 ///

1 The Board's findings as to the Complaint are set forth in it's Discussion, Findings of Fact
2 and Conclusions of Law, which follow:

3 **DISCUSSION**

4 Until recently, the LVPPA was the recognized bargaining agent for the commissioned
5 peace officers and corrections officers for the City. A collective bargaining agreement (hereafter
6 "CBA") existed between the LVPPA and the City, and is to expire on June 23, 2002.

7 In 2000, the LVPOA noticed the City of its intent to be recognized as the bargaining
8 agent for the City's Commissioned Peace Officers unit. The recognition matter came before this
9 Board in Case No. A1-045689, and the LVPPA and LVPOA agreed to an election to determine
10 which employee organization had the support of the majority of such officers. The Election
11 Agreement was offered as Exhibit 9 at the administrative hearing, and Section VII thereof states:

12 On the other hand, in the event that a majority of the eligible City
13 Corrections Officers, Municipal Court Marshals and Deputy City
14 Marshals voting in the election cast ballots in favor of different
15 employee organizations (ie, assuming one or two groups vote in
16 favor of one employee organization while one or two groups vote
17 in favor of the other employee organization), the LVPPA and the
18 LVPOA reserve the right to submit to the EMRB, in writing, the
19 issue of whether it would be appropriate to carve out separate
20 bargaining units such that each subgroup, the City Corrections
21 Officers, the City Municipal Court Marshals and the Deputy City
22 Marshals may individually determine which employee
23 organization it wishes to represent them for purposes of collective
24 bargaining. In the event that a carving out issue is ultimately
25 presented to the EMRB and following the decision of the EMRB,
26 the City shall designate the employee organization or employee
27 organizations as the recognized exclusive bargaining agent of the
28 designated bargaining unit or units, consent with the EMRB's
ruling on the carving out issue, and following certification of such
election results by the Commissioner of the EMRB.

22 An election was held and the results certified as follows: (1) that the Corrections Officers
23 voted for the LVOPA by a 100 to 3 vote; (2) that the Deputy City Marshals voted for the LVPPA
24 by a 37 to 1 vote; and (3) that the Municipal Court Marshals voted for the LVPPA by a 4 to 2
25 vote. The issue now before this Board is the appropriateness of a "carve out" of two of the units
26 from what was previously only one bargaining unit.

27 Dep. City Marshal Pat PeQueen testified on behalf of the LVPPA and that he is currently
28 on bike patrol in the City downtown area. He described himself as the regular "beat cop" for his

1 assigned area. He does not hold a LVPPA officer position. Dep. City Marshal PeQueen testified
2 he works from the RTC Center and further testified as to his chain of command. He testified he
3 had Category 1 training at the Academy for 6 months, which includes field responses, crimes in
4 progress, investigations, patrol cars and pursuit, and weapons. He identified limited contact with
5 Corrections Officers, e.g., during bookings, which he estimated at 10 to 12 times per month. He
6 described the dissimilarities with Corrections Officers as follow: they work in a closed
7 predictable environment; inmates would not normally have weapons, and the close nature of
8 backup for assistance. His job is less predictable; people he confronts may have weapons, may
9 be mentally unstable or emotionally unstable; different locations with different crimes or events
10 occurring; and little backup by other officers unless called for by radio and some time may
11 expire prior to assistance arriving.

12 Another difference is the four ten-hours per day shift. Furthermore, he cannot bid on a
13 Corrections Officer position. PeQueen did acknowledge some similarities between his officers
14 and Corrections Officers, including: all wear uniforms, all receive paychecks from the same
15 source; and all have the same grievance procedures. In his opinion, however, he feels the
16 LVPPA would provide a better representation for him and the officers similarly situated.

17 Sgt. Jack Manning also testified for the LVPPA. He has been a Corrections Officer as
18 well as a Marshal. He has been with the LVPPA for 10 years, but does not hold an officer
19 position. He too described his chain of command, as well as his duties. Those duties included
20 the service of warrants in the field, traffic stops, City employee misconduct or thefts, investigates
21 threats to Judges, and arrests individuals who fail to register as a sexual offender. He also
22 received Category I training, and believes the Corrections Officer only require 6 weeks of
23 training at the Academy. His six weeks of training as a Corrections Officer could not be utilized
24 toward his Category I training. He has a patrol car and is trained in arrest techniques, bookings,
25 and issuing citations.

26 He provides the following as his opinion of the differences between his type of officers
27 and Corrections Officers: they have a controlled environment; and their main duties are to
28 control people such as inventory of their personal property, obtain proper inmate identifications,

1 obtain medical care if needed, and supervise meals. He also believes some Corrections Officers
2 may not carry guns. He did admit, however, that there are some similarities between the units.

3 He believes the LVPPA would be a better representative for his unit because they have
4 helped him and his fellow officers in the past, and that they are more experienced in the areas he
5 may be involved, i.e., shootings and discipline. One reason for this belief is that the LVPPA also
6 represents the Las Vegas Metropolitan Police Department. He is also unsure as to the political
7 connections the LVPOA has whereas he knows the LVPPA's clout. He also likes the fact that
8 the LVPPA has local attorneys immediately available for the officers in the event of an officer
9 involved shooting whereas he believes the LVPOA uses a Washington, DC law firm.

10 Manning further testified that the LVPPA's CBA is still in effect and that organization
11 can still represent him in grievances; however, he understands that only the LVPOA can arbitrate
12 any matters. Manning further offered that members of his unit may not have voted because
13 management did not notify the officers they could leave to vote. He is still paying dues to the
14 LVPPA.

15 Brent Profaizer testified for the City as its Human Resources manager in labor relations.
16 He currently works with three unions representing various City employees. He testified that the
17 City is not opposing the "carve out" if the Board believes it is appropriate. He believes it is
18 better to negotiate with fewer unions; however, he would like to maintain a good relationship
19 with the employees and he will work with another union if that is the wishes of the employees.
20 He also provided testimony concerning the similarities between the groups, namely, grievances
21 for both would be processed through his office, all wear uniforms, all work within the City, all
22 are subjected to the same personnel rules, and all have the same promotion rules.

23 Randy Herdzina testified as president of the LVPOA. To assure some stability for the
24 officers, the LVPPA's CBA remains in effect until another one can be negotiated between the
25 City and the LVPOA. He is not aware of any animosity between the two groups of officers,
26 and he is concerned for all of the groups. It was the intent of the LVPOA to represent all of the
27 groups at issue in this matter. As a matter of fact, one Deputy Marshal is on the LVPOA's board
28 of directors. He believes all groups also have similar concerns, i.e., insurance, pay, sick leave,

1 and vacation, and that it would be better to stay together as one bargaining unit. He feels the
2 Marshals may have not voted for the LVPOA because of a fear of losing their four ten-hour days.
3 The Corrections Officers do not have four ten-hour days.

4 The LVPOA is in the process of obtaining local representation. He further feels the
5 members of LVPPA want to remain with that organization because they simply have nothing
6 else to compare with its representation. In his opinion, any dissimilarities between the groups of
7 officers involved in this matter existed while the groups were represented by LVPPA. At the
8 current time, he has approximately 120 dues-paying members (mostly Corrections Officer and he
9 believes two marshals).

10 In lieu of post-hearing briefs, attorneys for the parties presented closing statements. The
11 LVPOA argued that all employees should stay in one bargaining unit as a community of interest
12 does exist, and that community of interested existed while the groups were represented by the
13 LVPPA. According to the LVPPA, the Board should consider the election results, that the
14 Marshals units indicated their independence from the Corrections Officers, and that the marshals
15 wish to continue with the LVPPA representation.

16 FINDINGS OF FACT

17 1. The LVPPA has historically represented the officers involved in this matter in one
18 bargaining unit, and it was only recently that the Corrections Officers voted 100 to 3 for
19 representation by the LVPOA. The Corrections Officers out-number the Marshals involved in
20 this election and previously consolidated bargaining unit. The vast majority of the Marshal
21 groups involved in this matter, however, voted to continue with the LVPPA.

22 2. An election agreement was entered into by the parties acknowledging the possibility
23 that the officers/marshals may desire different representation and, in that event, the "carve out"
24 issue would be brought before this Board.

25 3. The CBA negotiated between the LVPPA and the City remains in effect at the current
26 time and the LVPOA is operating with that agreement.

27 4. Witnesses provided testimony concerning not only the officers' dissimilarities but also
28 their similarities. Differences include the officers' required training, the hours in each workday,

1 work environment and situations encountered, and the tasks performed. Similarities included
2 wearing uniforms and the benefits received.

3 5. The City wishes to continue its good relationship with its employees and will
4 negotiate with two employee organizations, rather than one, if this Board approves a "carve out."

5 6. Should any finding of fact be more properly construed as conclusions of law, may
6 they be so deemed.

7 **CONCLUSIONS OF LAW**

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

11 2. The City is a local government employer as defined in NRS 288.060.

12 3. The LVPPA and the LVPOA are employee organizations as defined by NRS 288.040.

13 4. The City and the LVPPA are parties to a CBA and that agreement is in effect at the
14 current time.

15 5. Prior to the election at issue in this matter, the LVPPA represented the Corrections
16 Officers and Marshals involved herein. The election results were certified by this Board, and it
17 was determined that the LVPOA was the appropriate representative of the Corrections Officers
18 involved herein and the LVPPA was the appropriate representative for the Marshals involved
19 herein.

20 6. Although past rulings from the NLRB and this Board have favored larger bargaining
21 units, a "community of interest among the employees concerned" for "an appropriate unit" must
22 be considered pursuant to NRS 288.170(1).

23 7. NAC 288.120 allows this Board to consider election results "as additional information
24 for its determination of a bargaining unit."

25 8. Based upon (a) the testimony of the witnesses at this administrative hearing, (b) the
26 exhibits offered at the hearing including the language of the parties' election agreement, and (c)
27 the election itself evidencing the desires of the officers involved herein, a community of interest

28 ///

1 exists for the Corrections Officers while a community of interest does exist for the Marshals
2 involved herein.

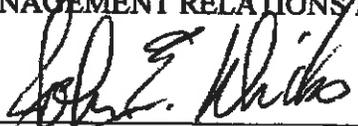
3 9. Should any conclusion of law be more properly construed as a finding of fact, may it
4 be so deemed.

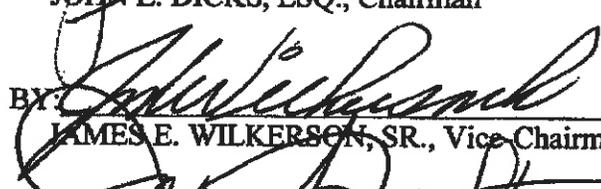
5 **DECISION AND ORDER**

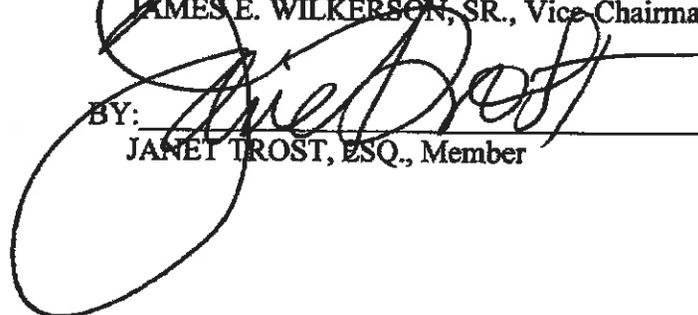
6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that substantial evidence
7 has been introduced along with the testimony of witnesses that the Municipal Court Marshals
8 and Deputy City Marshals involved in this matter should be "carved out" from the current unit.
9 The "carved out" unit of Marshals shall be represented by the LVPPA and the unit consisting of
10 Corrections Officers shall be represented by the LVPOA.

11 DATED this 20th day of March, 2002.

12 LOCAL GOVERNMENT EMPLOYEE-
13 MANAGEMENT RELATIONS BOARD

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

16 BY: 
17 JAMES E. WILKERSON, SR., Vice Chairman

18 BY: 
19 JANET TROST, ESQ., Member
20
21
22
23
24
25
26
27
28