STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1908, Complainant, vs. COUNTY OF CLARK, STATE OF NEVADA; CLARK COUNTY FIRE DEPARTMENT, Respondents.	ITEM NO. 663C CASE NO. A1-045910 **ORDER**

For Complainant: W. David Holsberry, Esq.
McCracken, Stemerman & Holsberry

For Respondents: Shaun Haley, Esq.
Fisher and Phillips, LLP

A verified document entitled "Appeal of County's Refusal to Include Certain Job Classifications Within Local 1908's Bargaining Units" was filed with the Board on June 6, 2007, by the International Association of Fire Fighters, Local 1908 ("Union"). This document named Clark County, Nevada ("County") and the Clark County Fire Department ("Department") as Respondents. The Union wanted to include the following classifications of workers into its representation: "auto and equipment specialist," "chemical engineer," "fire equipment technician," "fire mechanical supervisor," "fire protection engineer," and "materials controller." The Union claimed that these workers classifications share a "community of interest" with the employees it currently represents. The Union claimed that the County and the Department refused to voluntarily recognize it as the appropriate bargaining agent. In essence, the Union claimed that the County and the Department violated NRS and NAC chapters 288 and committed the prohibited labor practice of failure to negotiate in good faith.

An answer was filed with the Board by the County and the Department. Thereafter, both the Union and the Department filed their respective prehearing statements.

The Department claimed in its prehearing statement that these classes of workers were currently represented by the Service Employees International Union, Local 1107 ("SEIU"), and indicated that the Department declined to include these classifications within the Union's bargaining units because they were not so intricately involved in the fire suppression-prevention mission of the Department to warrant the transfer of representation. The Department further claimed that these specific classifications shared a more appropriate community of interest with the other, general unit employees represented by the SEIU, and that the inclusion of these classifications within the Union's two bargaining units would complicate further bargaining in that they did not share the same interests with other fire personnel classifications with respect to salary, benefits, and other terms and conditions of employment. It further offered in support of this lack of community of interest that two of the disputed classifications were previously removed from the Union's two bargaining units; e.g., the mechanical supervisor was removed from the Union's bargaining unit in the 1990s at the request of the Union because that position did not share a sufficient community of interest with the battalion chiefs that comprised the remainder of the bargaining unit. Allegedly, non-supervisory mechanics were removed from the rank-and-file fire fighters unit for the same reasons.

The Board entered its initial order that based upon its review of "all pleadings and documents filed to date, the Board has determined that a hearing on the complaint is not warranted pursuant to NRS 288.110(2) and NAC 288.375; therefore, the complaint before this Board is dismissed, with each party to bear their own fees and costs." The Board continued that "NRS [288.110(2)] allows the Board discretion as to whether or not to hear a complaint" and the Board decided not to exercise that discretion, especially in light of its continued application of the "community of interest" doctrine and that the community of interests of these employees had already been resolved. NAC 288.375. Additionally, and pursuant "to NAC 288.375, insufficient evidence of a violation of NRS chapter 288 was provided upon which a hearing is warranted." See Order, Item No. 663.

The Union filed a "Request for Reconsideration/Rehearing" on September 28, 2007. On October 24, 2007, the Board denied the request stating that the Union "did not identify new

evidence which would persuade this Board to hear this matter. See Order, Item No. 663A. The Union sought a writ of mandamus from the District Court, which was granted ordering this Board to conduct a hearing. Thereafter, the Board scheduled a hearing, in this matter, for October 1 and 2, 2008. A discussion of the testimony offered follows:

First, it should be noted that SEIU has agreed to the transfer of these specific workers to the Union. Hearing Exhibit 5; Transcript of Hearing on October 1, 2008 ("Tr.") p. 13. Board Member Wilkerson also inquired whether the Public Employees Retirement System has agreed to accept these additional classifications as fire fighters with respect to contributions to the system and subsequent retirement benefits. Rusty McAllister of the Union stated that the County would have to request such treatment. Tr. p. 23-4.

The first witness to be called was Ryan Beaman. He has been with the Department for 12 years and is a fire engineer. He is also the Union president. Tr. p. 26. He offered that not all employees of the fire and police departments participate in the early retirement offered by Nevada. Tr. p. 28. Employees eligible for the regular retirement include the deputy fire marshal, fire inspectors, fire plans checkers, and training instructors. Tr. p. 28. Beaman offered the following explanation:

> As the PERS system is set up, there's two different retirement systems, early retirement, regular retirement. We have some classifications that are in early retirement, such as our fire captain, fire fighters, fire engineer. And then some that are in regular retirement, fire inspector, fire plans checker, ... Tr. p. 100.

He described the operations of the department as follows:

> Well, Operations is the majority of the personnel fire suppression, fire engineer, fire captain, fire fighters. Community Preparedness would be our HAZMAT coordinator, our training division, it would be some of our logistics area. Fire & Hazard Prevention would be our fire plans reviewers, deputy fire marshals, fire inspectors, people that are enforcing the code. Support Services would be our logistics areas, would be probably our mechanics division, support services would fall under that area. And Rural Services, we have 13 rural fire stations that Clark County has, and we have two rural coordinators that Local 1908 represents in that area. Tr. p. 30.

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Beaman indicted there are 680 employees represented by the Union, and approximately 125 employees do not respond to fires. Tr. p. 32. The "number of classifications represented by the [Union] has expanded" considerably since the first CBA in 1970. Tr. p. 33. The increase has occurred in the areas of "support and prevention and community preparedness as opposed to operations." Tr. p. 34. Beaman stated that "around January, first of '04, the employees, the mechanics and – which also [included] the fire equipment specialists - - came to me and asked to join our bargaining unit." Tr. p. 35. Beaman met with SEIU executive director, Tom Beatty, and he had no problems with these classifications transferring to the Union. Tr. p. 35-6. See also Hearing Exhibit ("Ex.") 5, letter of agreement between SEIU and the Union regarding the transfer of representation. He spoke with Thom Reilly and Ray Visconti, both in management positions with the County, and they indicated that they did not object to SEIU not representing these individuals/the transfer to the Union's bargaining unit, but never signed an agreement regarding same. Tr. p. 36-7.

After that time frame, the fire protection engineer, the chemical engineer, and the materials controller also indicated a desire to be represented by the Union. Tr. p. 37. Although other witnesses offered testimony regarding the scope of their employment with the department, Beaman described the classifications seeking the Union's representation as follows:

> Auto and equipment specialist is our mechanics, individuals that work on our fire apparatuses, work on our specialty apparatuses, they work on our aircraft vehicles, they work on our HAZMAT units.
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> They're the first piece to make sure that we can get to the fire scenes or get to the emergency scenes safe. Without them - - working on our pump, to make sure we have - - be able to provide water to our fire fighters that are at the end of the nozzle. Without those working properly, we wouldn't be able to put out the emergency. . . .
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> The chemical engineer is responsible for reviewing fire plans along with fire codes, does inspections for HAZMAT areas. We have – after the Aerotech fire, we had a lot of priorities to identify areas that were needed to be identified as HAZMAT areas. . . .
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> The fire equipment technician is another person that when we respond to a fire, we wear breathing apparatuses, wear an air pack, which [enables] us to go into a burning building. Without this individual working on our apparatuses, providing annual fit test to make sure our masks fit properly in accordance with our collective bargaining agreement, we wouldn't be able to go in there and extinguish the fires. (Tr. p. 39-40.) . . .

> The fire protection engineer works closely with our plans checkers to ensure large buildings - - we have a lot of large growth going on around here in the valley, they work with our plans checkers to enforce fire codes. Without having the proper fire codes, we also are at risk when we go into these fires if the building is not up to code. . . .
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> And the materials controller is an individual that orders all of our safety equipment. He's also the individual that provides sizing for our turnouts. He's certified by the manufacturer for our turnouts to size us properly, and handles all of our safety equipment, from all of our EMS supplies to any fire equipment, nozzles, hoses. Tr. p. 41.

He further described the auto/equipment specialist as follows:

> They . . . have an automotive shop, but they also come to our fire stations, they come to the airport fire station to work on apparatuses. They respond to fire scenes to work on apparatuses that are broke down. They also service the vehicles, fuel the vehicles a emergency scenes, so they're not just in a mechanic shop. Tr. p. 71.

The six types of classifications are paid through the Department's budget although one is paid through the Airport budget to provide fire services in that area. Tr. p. All Department's rules and regulations apply to these six classifications of workers. Tr. p. 43. The auto/equipment specialist has certain certifications (Tr. p. 73) and the materials controller has certain certifications required for the positions (Tr. p. 74). The individuals in the six classifications will all wear distinctive uniforms indicating that they are with the Department. Tr. p. 102.

The fire protection engineer and chemical engineer work out of Station 18, at 575 E. Flamingo. Tr. p. 44. At the same location, the following classifications are also stationed there: fire prevention employees, fire inspectors, plan checkers, deputy fire marshals, fire investigators, and "fire administration." Tr. p. 44. The auto and equipment specialist, fire equipment technicians, the materials controller, fire training instructors, mechanics, materials controller, and the auto and equipment supervisors are stationed at the training facility on Tropicana and Arville. Tr. p. 45. He indicated that the fire fighters union represents the person in charge of air bottles and the fire mechanics for the cities of Las Vegas and Reno; and the mechanics are dedicated solely to the fire departments. Tr. p. 48. Beaman admitted that the Union does not represent hydrant technician classification, which classification is represented by SEIU. Tr. p. 52-3. He

also admitted that the chief mechanic position was removed from the battalion chief bargaining unit at the request of the Union due to the lack of community of interest, although such position is "probably pretty close" to the position of fire mechanical supervisor. Tr. p. 62-3. He also admitted that an auto/equipment specialist did not need to be a fire fighter (Tr. p. 68); that the auto/equipment specialists are not given "ranks" (Tr. p. 69). Beaman agreed that if these six classifications were brought within the Union, they would not receive premium pay (Tr. p. 85), but they will be required to submit to annual physicals (Tr. p. 86). These classifications may also not receive "safety equipment." Tr. p. 92-3. It was also noted that the County does not hire any fire inspectors for any department other than the Fire Department (Tr. p. 97); that arson investigators, public education officers, and auto/equipment specialists trained on fire equipment are only employed by the Department. Tr. p. 98. The Board inquired of this witness more specific details concerning the existence/nonexistence of these classifications in other departments within Clark County. See Tr. p. 101, 106-7. Beaman also indicated that the individuals in the six classifications, in his opinion, would say they worked for the Department rather than Clark County, "providing the same mission as to help with the [fire] suppression and also the protection of the public". Tr. p. 119. Additionally, Beaman offered the following about Union representation for these classifications:

> It gives those individuals, as we were talking, a career path to move from wherever they're at in their current position, and ultimately they can be a deputy chief, a fire chief as - - we've had people that are currently in those positions move from their ranks that they're at to that. I think it would broaden their ability to do that. Tr. p. 120.
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> Not as a fire fighter, but other positions in our collective bargaining agreement that are supervisor positions, logistics, deputy fire marshal, it gives them a career path to go that way, but not in the realm of suppression. To be a fire captain or a fire engineer, you have to have gone through an academy at the entry level to get into those positions. Tr. p. 122.

He stated that if you are "not in our bargaining unit, they can't test for those other positions, deputy fire marshal, logistic officers, they cannot test for those positions" as they are not open "to the public." Tr. p. 123.

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Raymond "Rusty" McAllister was the next witness. He has been a fire captain for 15 years, and with the Las Vegas Fire Department for 24 ½ years. Tr. p. 130. He is the current president of the Professional Fire Fighters of Nevada, a statewide organization made up of the 18 fire fighters unions throughout Nevada, with 2,450 members, and sits as a member of the Police & Fire Advisory Committee for PERS. Tr. p. 130. He stated:

> There are two retirement plans, one is the police fire fund, this is an early retirement plan, and one is the regular members fund. On the Police and Fire Advisor Committee, local government employers submit applications for certain positions to be covered underneath - - or for coverage under the police fire plan. Those go to PERS. They are evaluated, and then they are brought to the Police Fire Advisory Committee to be voted upon about whether or not they should or should not be allowed to be included in the police fire fund. Tr. p. 131.

Not all members of the fire fighter bargaining unit are covered by the early retirement plan. Tr. p. 131. He also stated that fire mechanics and fire prevention personnel are covered by the fire fighter bargaining units for the cities of Las Vegas and Reno. Tr. p. 132. He admitted that fire protection engineers are not typically included in the fire police PERS fund. Tr. p. 135. To be considered for the PERS police fire fund, there are "front line criteria," i.e., "annual physicals, a rookie academy typically or some type of fire academy, and front line protection of the public." Tr. p. 136. The early retirement plan was commenced to "maintain a youthful and vigorous work force to accomplish the front line protection of the public." Tr. p. 136. The Department contributes an additional 13% per employee, approximately, to PERS for those eligible for the early retirement police fire fund. Tr. p. 140. More specifically, he stated that the current "contribution rates for the police fire fund is thirty-three-and-a half percent of salary, and for the regular members fund it's 21.75 percent." Tr. p. 142-3.

Richard Brenner, HAZMAT coordinator, was the next witness. He was a fire protection engineer from 192 to 2004; and in 2004, he became the HAZMAT coordinator. Tr. p. 150-51. He was formerly with the Las Vegas Fire Department as a fire inspector trainee, then a fire inspector, and then assistant fire protection engineer. Tr. p. 151. He stated he works closely with the fire protection engineer (Tr. p. 153), and that:

> [W]hen we have a new business coming in or we have one of the hotels where they're going to be chlorinating their pool using some other means - - normally what we used to think of liquid chlorine, now there are more complicated processes where they're using fromine or dry chlorine, and the code interpretation on how much they can store from the standpoint of do we want ventilation in the building or in this outdoor are, do we want to store the chemicals outside, those are areas where I coordinate with the fire protection engineer and the chemical engineer on what we want to see. Tr. p. 153-54.

He stated that the fire prevention engineers were used recently with the Monte Carlo roof fire. Tr. p. 158. Regarding his involvement with the chemical engineer, he stated that he and "the chemical engineer [are] really focused on preparedness prevention. We want to interact with the various chemical companies or facility that's going to be using the chemical process so that - - we don't want to have any problems." Tr. p. 155. He identified some "problems" as the "PepCon event with the rocket fuel explosion. We had Pioneer Chlor-Alkali incident back in, I think '91. Back in 2001, we had the Aerotech incident and that was dealing with rocket fuel." Tr. p. 156-57. He stated that his "back-up is the chemical engineer." Tr. p. 159. He also provided the distinction that the counties' Building Departments are concerned with the Uniform Building Code, whereas his Department is concerned with the Uniform Fire Code. Tr. p. 160. He believes including the classifications of chemical engineer and fire protection engineer in the Union will add "more stability to the work force" and "if you're all part of one working group and you function as a team, it sure makes it a lot easier to understand how we want to deal with this. Tr. p. 163.

He believes a bachelor's degree is required for chemical and fire protection engineers but not fire fighter experience. Tr. p. 164-65. He, the chemical engineer, and fire protection engineer would be in the "cold zone" at a fire scene. Tr. p. 167-68. He provided definitions of "cold zones" and "hot zones." He also admitted on cross-examination that being in the SEIU rather than the Union did not affect the "overall mission" of the Department. Tr. p. 169.

The next witness was Stephen DiGiovanni. He has been a fire protection engineer for the Department since 2004. Tr. p. 176. He described his primary duties as:

> The primary job duty that I have is plans review over fire protection

> system submittals. So I review fire sprinkler plans, fire alarm plans, plans for fire suppression systems that are special, they're not using water, and other monitoring panels. . . . because I have an engineering degree, I tend to get assigned the plans that are on the more complex side. Tr. p. 178.

He states he does interact with fire protection engineers (Tr. p. 181) and with fire inspectors (Tr. p. 184); and that the mission of the "Fire Department is to mitigate hazards that come from fire; either we stop the spread of fire by putting the fire out, or we stop the intensity of the fire by reducing the hazard previously or putting in suppression systems to help reduce the fire." Tr. p. 185. He indicated he has a Department vehicle to respond to fires (Tr. p. 188), as others have testified; and he wears a Department uniform (Tr. p. 189). When questioned why he desired to be represented by the Union, he stated that he does not have a voice when the Union is negotiating, he cannot promote within the department, and he has more in common with the Union. Tr. p. 190-91. He acknowledged that being represented by SEIU has not hampered his ability to do his job. Tr. p. 200. He responded to the Board that the other fire protection engineers have also indicated a desire to be represented by the Union. Tr. p. 207.

The next witness was Robert Williams; and he is the chemical engineer for the Department. Tr. p. 225. He briefly described his duties as follows:

> There are two main duties . . . . The greater portion of what I do probably would be more in the realm of prevention. I look at hazardous materials plans that people submit to the Fire Department, and I see to it that the plans meet the fire code for hazardous materials for flammable and combustible liquids, and for aerosols and other hazardous materials.
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> I often will go out in the field and actually conduct inspections, particularly with our HAZMAT inspectors, so that we can assure that what we see in the field meets the criteria of the fire code.
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> The second portion of what I do is I also am tasked with having to respond as a consultant to battalion chiefs if we happen to have a hazardous material incident or fire here in Clark County. Tr. p. 226-27.

He is located at Station 18 and there are no other chemical engineers in the Department. Tr. p. 227. There is another chemical engineer employed by the County Water Reclamation District; and he does interact with that individual. Tr. p. 227. He states he works with the Deputy

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Fire Marshal, and that includes writing permits for various businesses which have hazardous materials at their business sites. Tr. p. 228. He also conducts training sessions. Tr. p. 229. Station 24 houses the hazardous material suppression team. Tr. p. 230. He indicated he has no actual backup, but that Richard Brenner "can fill in for" him. Tr. p. 234.

He is required to respond to emergencies and has a Department vehicle. Tr. p. 234. He believes he contributes to the overall mission of the Department because Clark County has "one of the larger chlorine plants in the United States. We also have one of the only titanium plants in the United States. And we also have another plant that produces a great deal of sulfuric acid as well." Tr. p. 235. Williams claims he is required to wear a uniform and is required to follow the Department's rules and regulations. Tr. p. 236.

Williams claims he interact mostly with the public and only "rarely" interacts with County agencies. Tr. p. 237. He admits that his job is not hampered by being represented by SEIU. Tr. p. 239. He indicated that "since we [at the Department] have similar functions and similar goals and similar missions, that we should have similar representation." Tr. p. 240.

Mark Flesher testified next. Tr. p. 247. He is a fire equipment technician with the Department. Id. His work site is the training center on Tropicana. Tr. p. 248. He described all the different classifications of workers stationed at that center. He stated that there are no other fire equipment technicians working for the County. Tr. p. 250. He described his job as:

> My job on a day-to-day basis consists of fit test and flow testing, the second stage regulators of fire fighters' masks. And taking care of their fit test enables the fire fighter to make sure they have a proper seal around their face so if something does happen to the SCBA, they will not get any contaminated air inside their breathing mask. Tr. p. 250.

He further described the job as:

> Making sure [the air bottles and masks] function properly when it is called upon to do so, and also train the fire scene of proper use of donning and offing, putting them on, taking them off, and small maintenance, like just changing batteries, doing their daily checks to make sure the apparatus is going to perform properly through their shift, doing high pressure and low pressure checks. Tr. p. 251.

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He states he does train members of the Union. Tr. p. 257. He does have a 24-hour response vehicle; and when he responds to emergencies, the duties are primarily to repair and service broken apparatus. Tr. p. 257-58. His supervisor is Karl Lee, a fire logistics officer and a member of the Union. Tr. p. 258-59. He is required to wear a uniform and follows the Department's rules and regulations. Tr. p. 259-60. He indicated by having SEIU as his representative, "it kinds of hampers me in getting my voice out and them not knowing what my job is on a daily basis and how it affects other people" and being represented by the Union, "they know what it takes to do my job." Tr. p. 260. He further stated that "[e]verything I do is revolved around fire suppression and suppression personnel" and others similarly situated as he belong to the fire fighters union. Tr. p. 261.

He admitted that, prior to the creation of his classification, fire fighters actually performed his job. Tr. p. 266. As for whether SEIU representation has hampered his job, he stated that it has "through progressing through the ranks and not being able to progress through the Clark County Fire Department that I feel that I could." Tr. p. 269. He also stated that he complained to SEIU about working conditions, but SEIU never got back to him. Tr. p. 270-71.

Riccardo Terzo, an auto and equipment supervisor with the Department, testified next. Tr. p. 279. He is stationed at the training center. Tr. p. 280. He supervises 5 auto/equipment specialists and 3 other employees. Tr. p. 280-81. His duties include writing specifications for fire apparatus, requisition for money for fire apparatus, respond to emergencies, and assuring conformance with all applicable standards. Tr. p. 281. He and his employees "provide preventative maintenance and repair to all fire trucks, fire engines, ambulance, specialty units, fire equipment, maintenance and repair, not only on-site but remote. We maintain all of our front line stations, 25 stations, 13 rural stations, 175 pieces of apparatus in all." Tr. p. 282. More than 50 of the pieces are ambulances. Tr. p. 300. He works with battalion chiefs in dispatching employees to emergencies and to schedule maintenance/repairs. Tr. p. 286. When backlogged, he does not bring mechanics from other shops within the County to assist. Tr. p. 304.

He has a Department assigned vehicle within which to respond to emergencies. Tr. p. 287. Terzo indicated that Karl Lee, the fire logistics officer, is his supervisor. Tr. p. 290. He is

required to wear a uniform and has to comply with the Department's rules and regulations. Tr. p. 291. He did admit that some of the maintenance/repairs he and the auto/equipment specialists perform are similar to tasks performed in a "normal auto shop." Tr. p. 298. Primary job differences include "the writing of specifications. And then secondary, working on the pumps and the aerial devices, and the light towers and the hydraulically driven generators, speciality-type equipment, such as mobile air." Tr. p. 299.

He desires representation by the Union as he believes it is better representation, that "SEIU appears to be focused towards the nurses and people of other -- people playing baseball on different type fields. I feel we're playing baseball with fire fighters." Tr. p. 305.

Witness Steve Burnard is the Department's materials controller, assigned to the training center. Transcript of hearing held on October 2, 2008 ("Tr. II") p. 4-5. He indicated his job is "basically take care of the firemen's safety gear and the apparatus that they use in fighting fire," purchasing supplies, maintaining the supply warehouse, purchasing EMS equipment and supplies, supplies for the mechanics/auto equipment specialists, purchasing vehicles/equipment, Tr. II p. 6-9. He believes there are two other material controllers employed by the County but he does not typically interact with them. Tr. II p. 10. His supervisor is Jerome Fairweather, logistics officer. Tr. II p. 10.

He indicated that it is possible for him to respond to emergencies, that he does not have a vehicle specifically assigned to him, and he does have his own turnouts. Tr. II p. 11. He indicated that his back up is Mark Flesher, life support technician. Tr. II. p. 12. He indicated that should a fire fighter be injured, that individual may be assigned to him to supervise while on light duty. Tr. II p. 12. He is required to wear a Department uniform and complies with the Department's rules and regulations. Tr. II p. 13. Burnard testified that he supports the Department's mission in that he "there's for the firemen 24/7 like they are for the County, for the people they serve and protect." Tr. II p. 14. Burnard admitted, however, that being a member of SEIU did not hamper his job. Tr. II p. 20.

Loren Polston testified that he has been with the Department for 15 years as a fire apparatus mechanic. Tr. II p. 34-5. He is stationed at the facility at Tropicana and Arville, and he

described his duties as follows: "maintain, repair fire apparatus of all types, from rescues, pumpers, squads, ladder trucks, heavy rescue, HAZMAT tables, HAZMAT rescue vehicles" and handles the Airport Rescue fire fighting equipment. Tr. II p. 36. He does have a vehicle assigned to him and is required to wear a Department uniform. Tr. II p. 41.

Although he is a member of SEIU, as are the other employees in the shop, he claimed to have no contact with other SEIU represented employees. Tr. II p. 37. More specifically, other mechanics employed by the County do not "fill in" for him. Tr. II p. 44. He indicated that he has not seen SEIU at the training center "for years." Tr. II p. 45. He admitted that belonging to SEIU has not hampered his job performance. Tr. II p. 52. He also admitted that he is a "mechanic" similar to other mechanics employed by the County.

The Department's first witness was Raymond Visconti, now an employee relations consultant for the County. Tr. II p. 61. Visconti was previously an employee of the County, and was the County's lead negotiator with the Union. Tr. II p. 62-3. He confirmed that Beaman approached him and Thom Reilly about the Union representing the additional classifications and that the County did not object to the same. Tr. II p. 63-4. Issues concerning benefits for these additional classifications arose, e.g., benefits level (early retirement), salaries, longevity pay, uniform allowances. Tr. II p. 64-6. Visconti testified that he did not see any difference between the tasks performed by these classifications and similar classifications in other County divisions. Tr. II p. 67-8. Another benefit at issue was Article 31 of the CBA. Tr. II p. 73. He estimates that the County spends "a couple million probably a year" on such a benefit. Id. He indicates that it is highly likely that an auto/equipment mechanic would be hurt on the job and would, then, be entitled to this increase benefit; and such was not the intent of Article 31. Tr. II p. 76-7. Other inapplicable portions of the CBA regarding these 6 classifications and the current employees covered by the Union's CBA are: Article 12 (safety and health, including safety gear/clothing) and Article 14 (physical exams). Tr. II p. 82-4. Visconti indicated that he would not have negotiated Article 31 and others if he had known the 6 classifications were to be added. Tr. II p. 86. He admitted, however, that he agreed the Board should determine the issue of community of interest and that if the Board "decides that there is a community of interest, that these members

would be brought into the bargaining unit" but not that all provisions would be applicable to those new classifications. Tr. II p. 88.

On cross-examination, he testified that the Union has competently represented the bargaining unit at issue and that some members of the unit are not directly involved in suppression activities. Tr. II p. 90. He also admitted that the true issue between the County and the Union was "the benefits" and not "the community of interest" issue. Tr. II p. 94. He also stated that, in his opinion, "any employee employed by that Department is involved in the mission." Tr. II p. 103. Visconti indicated that the six classifications and the remaining employees of the Department share common work sites, they are "integrated in their work with other members" of the Union, they have common supervisors, and all are paid from the Department budget. Tr. II p. 105-6.

In response to a question from the Board, Visconti stated that he "had no problem with letting [the 6 classifications] into the unit. I didn't do a community of interest test in my mind . . . ." Tr. II p. 115. He also responded to the Board that if these 6 classifications were to join the Union, it would not lead to a proliferation of associations or unions, and the transfer of these classifications to the Union would not create labor instability. Tr. II p. 120. However, he indicated the "only disruption I see in bringing these people in is that you have other similar titles, classifications in other departments that do very similar work that are not getting the same benefit. It seems like it may be considered unfair." Tr. II p. 129.

Jerry Keating, Assistant General Manager of Human Resources for the Regional Transportation Commission, testified next. Tr. II p. 133. While previously employed by the County, he negotiated between "30 or 40 Article 31s" and has negotiated the battalion chief CBA as well as be a "member of the team on probably all negotiations that have taken place from probably early 1990 forward." Tr. II p. 135. He offered his recollection of events occurring in the Department, discussions during negotiations, including discussions on benefits. More specifically, he indicated the positions of fire mechanical supervisor, logistics officer, and chief investigator were removed from the Union's supervisory CBA at the Union's request. Tr. II p. 137-38. He also stated that the positions of fire equipment technician and chemical engineer had

been in existence for quite some time with the Department and that they were previously sought after by the Union. Tr. II p. 138-39, p. 141. He believes fire protection engineers were not considered for the Union as there were other such engineers employed by the County. Tr. II p. 141. The auto/equipment specialists were also not sought after by the Union. Tr. II p. 143-44.

Prior Union officers were "vehemently opposed to having civilians" covered by the Union contract. Tr. II p. 139. The prior officers did not allegedly saw a community of interest among the employees. Tr. II p. 145.

David Johnson was the final witness, and he is the manager of automotive services, central services, and safety environmental divisions for the County. Tr. II p. 164. He testified regarding the automotive repair work required by other County employees, and concluded that "the skill sets that the employees that [he] supervised in the shop, they could do the work that are done by auto and equipment specialists at the Fire Department." Tr. II . 171.

FINDINGS OF FACT

1. The Board finds that it has jurisdiction over this matter and the parties to this dispute.

2. The Board finds and acknowledges that the statutes at issue in this matter are NRS 288.028 and NRS 288.170. The Board must determine whether a community of interest exists for the positions at issue in this matter with the remaining employees of the Fire Department or whether they share a community of interest with the other employees of Clark County.

3. The Board finds that all positions at issue in this matter are supervised by the Fire Department supervisors.

4. The Board finds that all positions at issue in this matter wear the Fire Department uniform.

5. The Board finds credibility in the witnesses' statements that the employees in the positions at issue herein are "on the Fire Department team."

6. The Board finds that all positions at issue in this matter have instances when they respond to emergencies.

7. The Board finds that all positions at issue in this matter drive vehicles clearly identified as from the Fire Department and have light bars.

8. The Board finds that all positions at issue in this matter contribute to the Fire Department's goals and purposes, e.g., fire suppression and the protection of the citizens of Clark County.

9. The Board finds that all positions at issue in this matter are paid through the Fire Department budget.

10. The Board finds that some of the positions at issue in this matter are exposed to hazards, which other County employees are not exposed to. This is especially so if the individuals at issue in this matter are called to a fire scene.

11. The Board finds that the positions at issue in this matter are involved with significantly different types of equipment than other County employees; some requiring specialized knowledge and/or skill.

12. The Board finds that the positions at issue are stationed at common facilities with Fire Department personnel.

13. The Board finds that the positions at issue in this matter have less community of interest with other County employees than with Fire Department personnel.

14. Most importantly, the employee organization for the remaining County employees, i.e., SEIU, has no opposition to the transfer of representation of the positions at issue in this matter, and such lack of opposition indicates and/or acknowledges that the positions herein have a greater community to interest with the Fire Department personnel and that they should be represented by the Complainant in this action.

15. Should any finding be more properly construed as a finding of fact, may it be so construed.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and the subject matters of the complaint on file herein pursuant to the provisions of NRS Chapter 288.

2. The Union is an employee organization serving as the exclusive bargaining agent for certain employees of the Clark County Fire Department as defined in NRS 288.027 and NRS 288.040.

3. The Department is a local governmental employer pursuant to NRS 288.060.

4. Pursuant to NRS 288.110(2), the Board may hear and determine any complaint arising out of the interpretation of, or performance under, the provisions of this chapter by any local government employer, local government employee or employee organization. The Board shall conduct a hearing within 90 days after it decides to hear a complaint. The Board, after a hearing, if it finds that the complaint is well taken, may order any person to refrain from the action complained of or to restore to the party aggrieved any benefit of which he has been deprived by that action. The Board shall issue its decision within 120 days after the hearing on the complaint is completed. Pursuant to NRS 288.110(6), the Board may award reasonable costs, which may include attorneys' fees, to the prevailing party.

5. NRS 288.028 defines a "bargaining unit" as a group of local government employees recognized by the local government employer as having sufficient community of interest appropriate for representation by an employee organization for the purpose of collective bargaining.

6. NRS 288.170 states that each "local government employer which has recognized one or more employee organizations shall determine, after consultation with the recognized organization or organizations, which group or groups of its employees constitute an appropriate unit or units for negotiating. The primary criterion for that determination must be the community of interest among the employees concerned."

7. Based upon the above two mentioned statutes, the Union's burden of proof in this matter was whether the proposed six classifications share a community of interest with those classifications already in the Bargaining Unit.

8. Based upon the above findings, the complainant employee organization has provided substantial evidence that the positions at issue in this matter share a community of interest with the Fire Department personnel and all should be represented by the Complainant.

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

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DECISION AND ORDER

BASED upon the Board's conclusion that the classifications at issue have a greater community of interest with the Fire Department personnel, rather than with other county classifications, IT IS HEREBY ORDERED that these positions shall be included in the bargaining unit exclusively represented by the International Association of Fire Fighters, Local 1908.

IT IS FURTHER ORDERED that each party shall bear their own fees and costs incurred in this action.

DATED this 10th day of February, 2009.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: _____
JANET TROST, ESQ., Chairman

BY: _____
JOHN E. DICKS, ESQ., Vice-Chairman

BY: _____
JAMES E. WILKERSON, SR., Board Member