

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

5 JUVENILE JUSTICE SUPERVISORS &
6 ASSISTANT MANAGERS ASSOCIATION,
7 INC. ,

8 Complainant,

9 vs.

10 COUNTY OF CLARK,

11 Respondents.

12) ITEM NO. 704A

13) CASE NO. A1-045953

14) **ORDER**

15 For Complainant: Richard P. McCann and Juvenile Justice Supervisors and
16 Assistant Managers Association
17 Pro se

18 For Respondent Clark County.: Yolanda T. Givens, Esq.
19 Deputy District Attorney

20 This matter came on before the State of Nevada, Local Government Employee-
21 Management Relations Board ("Board"), for consideration and decision pursuant to the
22 provisions of the Local Government Employee-Management Relations Act ("the Act"); NAC
23 Chapter 288, NRS chapter 233B, and was properly noticed pursuant to Nevada's open meeting
24 laws.

25 The Board conducted a hearing on this matter which commenced on April 22, 2010. In
26 lieu of closing arguments, the parties submitted post-hearing briefs. The parties' post-hearing
27 briefs were submitted on June 21, 2010.

28 NRS 288.140(3) states that "[a] police officer, sheriff, deputy sheriff or other law
enforcement officer may be a member of an employee organization only if such employee
organization is composed exclusively of law enforcement officers." As a practical matter, this
requirement holds that law enforcement officers are entitled to their own bargaining unit which
cannot be combined with bargaining units composed of non-law enforcement personnel, as both
units cannot be represented by the same bargaining agent under the statute.

1 The Juvenile Justice Supervisors & Assistant Managers Association (“Association”) is an
2 employee organization composed of supervisory employees of the Clark County Department of
3 Juvenile Justice Services (“JJS”). These JJS Supervisors are currently part of a larger bargaining
4 unit of supervisory employees for which the bargaining agent is the Service Employees
5 International Union (“SEIU”). Membership in SEIU is not restricted only to law enforcement
6 officers. The Association asserts in this case that JJS Supervisors are law enforcement officers
7 under NRS 288.140(3), and that as a result, the JJS Supervisors cannot be represented by SEIU
8 and that consequently they should be given their own bargaining unit.

9 The County contends that the juvenile probations officers, including the JJS Supervisors,
10 are not “law enforcement officers” for two reasons – first, the County relies upon this Board’s
11 prior decisions which address this very question and second, because the Juvenile Justice
12 Services Department is County Department and -not a law enforcement agency.

13 This is not the first time that this Board has addressed a question about whether or not
14 juvenile probation officers are law enforcement officers. In 1982, this Board considered an
15 identical question of whether the probation officers employed at the Clark County Juvenile Court
16 Services were “law enforcement” under the same statute at issue today, NRS 288.140(3). In the
17 Matter of the Las Vegas Police Protective Association, Metro, Inc. v. Clark County, Item No.
18 148, EMRB Case No. A1-045352 (Nov. 22, 1982) (the “PPA case”). The issue in that case, as in
19 this case today is “whether Probation Officers [sic] are law enforcement officers for the purposes
20 of NRS 288.140(3).” Id. at p. 2. The Board’s answer to that question in the PPA case was in the
21 negative.

22 This Board based its decision in the PPA case on three factors: 1) perceived legislative
23 intent to treat probation officers as non-law enforcement; 2) a finding that the duties of probation
24 officers differentiated from those of law enforcement officers; and 3) a finding that probation
25 officers do not take an oath of office as law enforcement officers do. Id. at p. 3. Evidence was
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1 presented by the Association addressing each of these three factors to show that circumstances
2 have changed since 1982.¹

3 We note that the term “law enforcement officer” as used in NRS 288.140(3) has not been
4 given a statutory definition. However, it is evident from the plain language used that the statute
5 was not intended to be strictly construed to apply only to a police officer or a deputy sheriff. The
6 statute certainly applies to those employees, but also is given a more expansive meaning,
7 applying to “other law enforcement officers” as well. As this Board did in 1982, we will look to
8 other statutes that address law enforcement to assist our consideration of whether the JJS
9 Supervisors now fall within the category of law enforcement.

10 The most notable of statutory changes enacted since our decision in the PPA case are the
11 legislative changes to NRS Chapter 289 which now specifically include juvenile probation
12 officers as a category of “peace officer” and grants juvenile probation officers the authority to
13 make arrests, at least when performing the duties pursuant to Title V of the Nevada Revised
14 Statutes. NRS 289.180(2). This section specifically includes the power to arrest adults as well as
15 juveniles. *Id.* Also within Chapter 289 is the inclusion of juvenile parole and probation officers
16 as Category II, peace officers in NRS 289.470(19).

17 Chapter 289 also provides for the creation of the Peace Officers Standards and Training
18 Commission, whose assigned responsibility is to “provide for and encourage the training and
19 education of persons **whose primary duty is law enforcement...**” NRS 289.510(1)(b)(emphasis
20 added). As a Category II peace officer, juvenile probation officers are subject to the training and
21 education of the Commission. See NRS 289.510(1)(c)(1); NAC 289.150 (stating mandatory
22 subjects for certification as a Category II peace officer including the laws of arrest, probable
23 cause, search and seizure, use of force, investigations and use of weapons).

24 As the Commission’s training and education is intended for persons who are considered
25 law enforcement, and the JJS Supervisors are subject to that training, we believe that this section,
26 and the other legislative changes to Chapter 289 as a whole that have been enacted since the PPA

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28 ¹ Although evidence was presented to the Board regarding the type of oath the juvenile probation officers take, we do not think that the type of oath they take is substantially important to determining if they are “law enforcement officers” under NRS 288.140(3)

1 decision are evidence of a legislative intent to treat juvenile probation officers as law
2 enforcement officers.

3 When this Board considered legislative intent in the PPA case, we looked to the fact that
4 parole and probation officers of the Department of Corrections were removed from the statutory
5 definition of police officer, as noted by the Nevada Supreme Court in Public Employees
6 Retirement Board v. Washoe County, 96 Nev. 718, 615 P.2d 972 (1980). The statutory definition
7 of police officer, for purposes of retirement, now reads that a police officer is one who is
8 “[f]illing a full-time position with a participating public employer, the principal duties of which
9 require emotional stability and physical capacity in protecting the public and enforcing the laws
10 of the State of Nevada or any of its political subdivisions.” NRS 286.061. Evidence was
11 introduced to the Board at a hearing that the JJS Supervisors have been granted the early
12 retirement benefits under this definition by the Public Employees Retirement System. Exhibit 4,
13 which was introduced into evidence, in a letter dated October 29, 2008 from PERS to the County
14 confirming that the JJS Supervisors for the Detention, Probation and Spring Mountain Youth
15 Camp Divisions had been recommended for Police/Fire coverage. This was confirmed by the
16 credible testimony of Ronald Newman, a JJS Supervisor with the Detention Division. (Tr. p.
17 100). Given these facts in evidence, we cannot say that there is legislative intent to treat JJS
18 Supervisors as non-law enforcement as there may have been in 1982.

19 The PPA case also considered the duties performed by juvenile probation officers, and
20 we also consider the duties performed by the JJS Supervisors in this case. Credible evidence was
21 presented to the Board establishing that the duties of JJS Supervisors include making arrests of
22 both juveniles and adults. Ronald Newman testified that approximately 20% of his duties
23 entailed arresting juveniles. (Tr. p. 115). Mr. Newman also testified that he has also arrested
24 adults while performing his duties. (Tr. p. 80). Tracy Kingera, a JJS Supervisor with the
25 probation division testified that her job duties were defined by enforcing court orders on
26 juveniles and making arrests. (Tr. p. 155). Ms. Kingera also confirmed that JJS Supervisors have
27 access to SCOPE, as did Fritz Reese, the Director of the Department of Juvenile Justice Services.
28 (Tr. p. 220-221).

1 Our decision in the PPA case did not note that the juvenile probation officers had the duty
2 to enforce court orders, but evidence in this case did show that enforcing court orders is an
3 important duty of the JJS Supervisors. Additionally, the PPA case noted only “limited arrest and
4 booking of juveniles” whereas evidence before us in this case shows that arrest power is no
5 longer limited only to juveniles.

6 The evidence showed that JJS Supervisors are required to maintain their POST
7 certifications, and that many times the JJS Supervisors might perform the same duties required of
8 a regular probation officer I or II, per the credible testimony of Fritz Reese. (Tr. p. 179).

9 Given the above, we believe that the Association has proved that its members, the JJS
10 Supervisors, are “law enforcement officers” under NRS 288.140(3).

11 This is also true under the precise definition of “law enforcement officers” stated by
12 authorities such as Blacks Law Dictionary as “[a] person whose duty it is to enforce the laws and
13 preserve the peace.” Blacks Law Dictionary (7th ed. 1999). JJS Supervisors satisfy this definition
14 by enforcing court orders and making arrests to preserve the peace. We also note that at least
15 one other jurisdiction has recognized that the terms “law enforcement officer” and “peace
16 officer” may be synonymous. Frazier v. Elmore, 173 S.W.2d 563, 565 (Tenn., 1943), and that
17 this Board has previously held that peace officers are “law enforcement officers” under NRS
18 288.140(3). Clark County/Clark County District Attorneys Investigators Association v. Nevada
19 Service Employees Union, Local 1107, EMRB Case No.: A1-045585, Item No. 356-B (Nov. 8,
20 1995).

21 We also reject the County’s argument that a law enforcement officer must be employed
22 by a law enforcement agency. (Post-Hearing Brief, p. 7). NRS 288.140 makes no reference to,
23 nor imposes any requirement upon law enforcement officers as being employees of a law
24 enforcement agency. It is entirely possible to be a law enforcement officer without being an
25 employee of a law enforcement agency. See City of San Antonio v. San Antonio Park Rangers
26 Assoc., 850 S.W.2d 189 (Tex.Ct.App.1992); County of Clark v. Clark County Park Ranger
27 Employees Ass'n, IUPA Local 124, 111 Nev. 1133, 901 P.2d 152 (1995). Because the probation
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1 officers' status as "law enforcement" does not depend upon employment by a law enforcement
2 agency, we do not agree with the County as to this argument.

3 The County also objects to the timing of the Association's complaint, asserting that it
4 does not fall within the "window period" for one employee organization to challenge another.
5 While Board regulations do specify an appropriate time frame, or "window period" for one
6 employee organization to challenge another, the "window period" does not apply to this case
7 because the Association is not challenging SEIU's status as bargaining agent, or seeking the
8 withdrawal of SEIU as the bargaining agent. SEIU's status as bargaining agent for the
9 supervisory bargaining unit will not be affected by this case. Only the JJS Supervisors' inclusion
10 in that bargaining unit would change.

11 Remedies

12 Having concluded that Juvenile Justice Supervisors are law enforcement officers under
13 NRS 288.140(3), it naturally follows that they may not be represented by SEIU. Because the JJS
14 Supervisors are entitled to collective representation by an employee organization under the Act, a
15 new bargaining unit must be created.

16 Under the Act, the employer has the primary responsibility for determining the extent of
17 a bargaining unit, with this Board only possessing the ability to hear appeals of an employer's
18 determination. NRS 288.170; NAC 288.130. Thus, we leave it up to Clark County to determine
19 the appropriate size and scope of the new bargaining unit subject to the statutory provisions of
20 NRS 288.170.

21 Clark County also has the primary responsibility for recognizing a bargaining agent when
22 presented with the proper documentation as outlined in NRS 288.160. The Board did not hear
23 evidence on whether or not the Association should be recognized as the bargaining agent, and we
24 will defer to the procedure for creating a bargaining unit and recognition of a bargaining agent as
25 set forth in the Act.

26 Having considered the above, the Board makes the following findings of fact and
27 conclusions of law:

1 **FINDINGS OF FACT**

- 2 1. The Juvenile Justice Supervisors of the Clark County Department of Juvenile Justice
3 Supervisors have been granted coverage under, and are participating in, the police/fire
4 retirement fund through the Public Employees Retirement System
- 5 2. The Juvenile Justice Supervisors are required to and do perform the same duties required
6 of a non-supervisory juvenile probation officer, including enforcement of court orders
7 and arrest of both juveniles and adults.
- 8 3. JJS Supervisors, in order to carry out their duties, have been granted access to SCOPE.
- 9 4. JJS Supervisors are required by their employer to attain and maintain certification as a
10 Category II peace officer pursuant to the training and education requirements established
11 by the Peace Officer Standards and Training Commission.
- 12 5. JJS Supervisors are trained and certified in traditional areas of law enforcement including
13 investigations, use of force, use of weapons, and laws of arrest and search and seizure.
- 14 6. SEIU is an employee organization that is not composed exclusively of law enforcement
15 officers.

16 **CONCLUSIONS OF LAW**

- 17 1. The EMRB has exclusive jurisdiction over claims under NRS Chapter 288.
- 18 2. Juvenile Probation Officers, such as the JJS Supervisors, are Category II Peace Officers
19 as recognized in NRS 289.180 and NRS 289.470.
- 20 3. Juvenile Probation Officers, including the JJS Supervisors, have authority to arrest both
21 juveniles as well as adults when acting in the scope of their employment as a peace
22 officer.
- 23 4. The Peace Officers Standards and Training Commission is established by NRS 289.510
24 with the primary mission of educating and training law enforcement officers.
- 25 5. As Category II Peace Officers, JJS Supervisors must be trained and certified by the Peace
26 Officers Standards and Training Commission
- 27 6. The provisions of NRS Chapter 289 which refer to juvenile probation officers were
28 enacted subsequent to this Board's decision in In the Matter of the Las Vegas Police

1 Protective Association, Metro, Inc. v. Clark County, Item No. 148, EMRB Case No. A1-
2 045352 (Nov. 22, 1982) and were not part of the basis for this Board's decision in that
3 case.

4 7. The enactment in NRS Chapter 289 indicates a legislative intent to treat juvenile
5 probation officers as law enforcement officers.

6 8. JJS Supervisors are no longer excluded from participation in the police/fire fund
7 administered by PERS.

8 9. Enforcing court orders and preserving the peace by making arrests are duties performed
9 by law enforcement officers.

10 10. The JJS Supervisors duties include enforcing court orders and preserving the peace by
11 making arrests of both juveniles and adults pursuant to their powers granted in NRS
12 289.180.

13 11. NRS 288.140(3) is not limited only to police officers and deputy sheriffs, but is construed
14 to include "other law enforcement officers" as well.

15 12. The Juvenile Justice Supervisors of the Clark County Department of Juvenile Justice
16 Services are "law enforcement officers" under NRS 288.140(3).

17 13. As law enforcement officers, the JJS Supervisors may be a member of an employee
18 organization only if that employee organization is composed exclusively of law
19 enforcement officers pursuant to NRS 288.140(3).

20 14. As local government employees, the JJS Supervisors are entitled to belong to a
21 bargaining unit and to collective representation of their bargaining unit by a recognized
22 bargaining agent.

23 15. The Association's claims presented in this case are not a challenge to the recognition of
24 SEIU as the bargaining agent for the larger supervisory bargaining unit and are not
25 constrained by the "window period" set forth in NAC 288.146.

26 **ORDER**

27 Based upon the foregoing it is hereby ordered that Clark County shall determine an
28 appropriate bargaining unit composed exclusively of law enforcement supervisors in which the

1 JJS Supervisors shall be included pursuant to the standards and procedures set forth in NRS
2 288.170 and other applicable provisions of the Act.

3 DATED this 2nd day of August, 2010.

4 LOCAL GOVERNMENT EMPLOYEE-
5 MANAGEMENT RELATIONS BOARD

6 BY: 

7 SEATON J. CURRAN, ESQ., Chairman

8 BY: 

9 SANDRA MASTERS, Vice-Chairman

10 BY: 

11 JAMES E. WILKERSON, SR. Board Member
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9 vs.

10 COUNTY OF CLARK,

11 Respondents.

CASE NO. A1-045953

NOTICE OF ENTRY OF ORDER

12 To: Richard P. McCann
13 Juvenile Justice Supervisors & Assistant Managers Assoc.

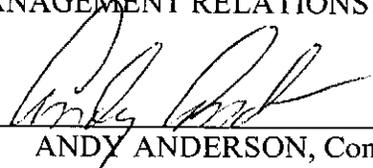
14 To: Yolanda Givens, Esq..
15 District Attorney's Officer

16 PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on
17 July 28, 2010.

18 A copy of said order is attached hereto.

19 DATED this 18th day of August, 2010.

20 LOCAL GOVERNMENT EMPLOYEE-
21 MANAGEMENT RELATIONS BOARD

22 BY 
23 ANDY ANDERSON, Commissioner
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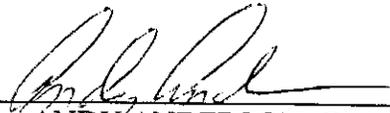
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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 18th day of August, 2010, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

***Richard P. McCann
Juvenile Justice Supervisors & Assistant Managers Assoc.
970 Empire Mesa Way
Henderson, Nevada 89011
Complainant Pro se***

***Yolanda T. Givens, Esq.
Deputy District Attorney
500 S. Grand Central Parkway
P.O. Box 552215
Las Vegas, NV 89155
Attorneys for Respondent***



ANDY ANDERSON, Commissioner