STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

NYE COUNTY LAW ENFORCEMENT ASSOCIATION, Complainant, vs. NYE COUNTY, Respondent.	ITEM: 791 CASE NO. A1-046062 **AMENDED ORDER**

For Complainant: Nye County Law Enforcement Association and their attorney Richard Sergerblom, Esq.

For Respondent: Nye County and their attorney Brian Kunzi, Esq.

This matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board"), for consideration and decision pursuant to the provisions of the Local Government Employee-Management Relations Act ("the Act"); NAC Chapter 288, NRS chapter 233B, and was properly noticed pursuant to Nevada's open meeting laws. A hearing was held in this matter on September 12, 2013 in Las Vegas, Nevada.

Prior to May 10, 2012, the juvenile probation officers of Nye County, of which there are currently a total of five, were part of a larger bargaining unit comprising all sworn peace officers in Nye County.[1] That unit is represented by the Nye County Law Enforcement Association ("NCLEA") as the bargaining agent for that unit.

At issue in this case is whether the County appropriately severed the five juvenile probation officers from the larger bargaining unit and established a new bargaining unit

[1] Prior to belonging to the law enforcement unit represented by NCLEA, the juvenile probation officers were part of a different bargaining unit represented by the Nye County Employees Association, which is a recognized organization that represents non-management regular employees of Nye County.

comprised solely of the juvenile probation officers under the terms of NRS 288.170. We conclude that the County did not follow NRS 288.170 in the particular circumstances of this case.

The actual dispute in this case arose in January of 2012 when the County received an application from a group called the Nye County Association of Juvenile Probation Officers (NCAJPO). In that application the NCAJPO proposed the creation of a bargaining unit that consisted of "all personnel of the Nye County Association of Juvenile Probation Officers who are peace officers and are not confidential employees who make decisions of management affecting collective bargaining agreements." The NCAJPO sought to be recognized as the bargaining agent for these employees.

At the hearing before the Board, the parties established the relevant facts by stipulation, which was entered as Exhibit 7. That stipulation recounts that the County met with NCLEA representatives twice, on April 26, 2012 and May 10, 2012, to discuss the issue of recognizing a new organization to represent the juvenile probation officers. When no agreement was reached at these meetings, the County immediately issued a letter dated May 10, 2012 which removed the juvenile probation officers from the unit represented by NCLEA and recognized the NCAJPO as representing a new bargaining unit comprised of the five juvenile probation officers.

The NCLEA then filed a prohibited labor practice complaint against the County, and in response the County contended that the Board should treat this matter as an appeal of its bargaining unit determination.

Analysis

The procedure for an employer to determine the scope of a bargaining unit is stated at NRS 288.170. This procedure sets forth important statutory safeguards that are intended to

maintain stability in bargaining relationships and prevent mischief in the event that an employer was inclined to abuse its authority to define the scope of a bargaining unit. As such, there are no shortcuts to the statutory process.

That process requires a local government employer that has recognized one or more employee organizations to consult with each such organization prior to determining whether a particular group of employees constitutes an appropriate bargaining unit. NRS 288.170(1). The evidence demonstrates that Nye County did not follow this process when it severed the five juvenile probation officers from the larger law enforcement unit.

Specifically, the stipulation in evidence before the Board demonstrates that Nye County met only with NCLEA and did not meet or consult with any of the other employee organizations that it has recognized. This is contrary to the County's obligations under NRS 288.170(1). Additionally, there is no indication that when the County did meet with NCLEA that it actually discussed the operative question of the juvenile probation officers community of interest with the larger bargaining unit, as it is required to do under NRS 288.170(1). Instead, the stipulation only states that the County and NCLEA only discussed whether severing the juvenile probation officers was a mandatory subject of bargaining. While the parties have apparently stipulated that there is a community of interest amongst the juvenile probation officers, there is no indication that this was discussed or agreed to before the County severed the juvenile probation officers into their own bargaining unit on May 10, 2012.

In short, the County was required to consult with each of its recognized organizations on the issue of the community of interest concerning the juvenile probation officers and any other affected employees, and to do so before taking any action to sever the juvenile probation officers from an existing bargaining unit. That did not happen in this case. Consequently, the creation of a new bargaining unit consisting of the five JPOs was in violation of NRS 288.170(1).

In order to remedy violations of the Act, the Board is authorized to restore the status quo that existed before the violation occurred. NRS 288.110(2). In order to redress the violation that occurred in

this case, the juvenile probation officers must be returned to the larger bargaining unit from whence they came.

We do note that nothing in this order precludes the County from future consideration of whether the juvenile probation officers are an appropriate bargaining unit, provided that the County follows the procedures of NRS 288.170 and that such a determination is based primarily upon the community of interest amongst all employees concerned. NRS 288.170(1). Nor does anything in this order preclude an aggrieved organization from properly filing an appeal of any future determination regarding the juvenile probation officers under NRS 288.170(5).

The Board has also considered the merits of this case and determined that an award of costs pursuant to NRS 288.110(6) is not warranted.

Based upon the forgoing, the Board makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Nye County Law Enforcement Association and Nye County were parties to a collective bargaining agreement that ran through June 30, 2012. That agreement included juvenile probation officers as classification covered by the agreement.

2. Nye County Law Enforcement Association is the recognized bargaining agent for a bargaining unit of all law enforcement personnel employed by Nye County.

3. There are currently five juvenile probation officers employed in Nye County.

4. Sometime in 2008, the juvenile probation officer positions were placed in the bargaining unit represented by Nye County Law Enforcement Association. Previously the juvenile probation officers were part of a bargaining unit represented by the Nye County Employees Association.

5. In January of 2012, Nye County received an application from a group called the Nye County Association of Juvenile Probation Officers, which requested that it be recognized as the bargaining agent for the five juvenile probation officers.

6. In addition to the Nye County Law Enforcement Association, Nye County has recognized and bargains with other employee organizations including the Nye County Employees Association.

7. The evidence in this case shows that Nye County did not discuss the issue of severing the five juvenile probation officers from the law enforcement bargaining unit with any of its recognized organizations other than the Nye County Law Enforcement Association

8. The evidence does not support an inference that the County discussed the issue of community of interest of all the affected employees with the Nye County Law Enforcement Association on April 26, 2012 or May 10, 2012.

9. On May 10, 2012 Nye County issued a letter which simultaneously created a new bargaining unit comprised of the five juvenile probation officers and recognized NCAJPO as the organization to represent that unit.

10. If any of the foregoing findings is more appropriately construed a conclusion of law, it may be so construed.

CONCLUSIONS OF LAW

1. The Board is authorized to hear and determine complaints arising under the Local Government Employee-Management Relations Act.

2. The Board has exclusive jurisdiction over the parties and the subject matters of the Complaint on file herein pursuant to the provisions of the Act.

3. The Board is authorized to hear and decide appeals of bargaining unit determinations, and this matter is properly considered as such an appeal.

4. Pursuant to NRS 288.170, a local government employer must consult with each of the organizations it has recognized on the issue of community of interest before it determines the scope of a new bargaining unit.

5. Nye County failed to follow this process when it created a new bargaining unit on May 10, 2012 without first having consulted with each of its recognized organizations.

6. The evidence shows that Nye County and the Nye County Law Enforcement Association discussed whether creation of the new unit was a mandatory subject of bargaining, but the evidence does not show that Nye County had met its obligation to consult with the Nye County Law Enforcement Association on the issue of community of interest.

7. The creation of a new bargaining unit comprised solely of juvenile probation officers was in violation of the procedures stated in NRS 288.170.

8. Pursuant to NRS 288.110(2) the Board is authorized to restore the benefits of which a party has been deprived when an employer violates the Act.

9. The Nye County Law Enforcement Association was been deprived of the benefit of having the juvenile probation officers in the unit that it represents when the County unlawfully created a new bargaining unit comprised solely of juvenile probation officers on May 10, 2012.

10. In order to remedy the violation committed by the County, the juvenile probation officer positions must be restored to the general law enforcement bargaining unit that is represented by the Nye County Law Enforcement Association.

11. An award of costs and fees is not warranted in this case.

12. If any of the foregoing conclusions is more appropriately construed a finding of fact, it may be so construed.

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ORDER

It is hereby ordered that the five juvenile probation officer positions shall be promptly restored to the bargaining unit that is represented by the Nye County Law Enforcement Association.

It is further order that each party shall bear its own fees and costs incurred in this matter.

DATED the 2nd day of December, 2013.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: _____
PHILIP E. LARSON, Chairman

BY: _____
SANDRA MASTERS, Vice-Chairman

BY: _____
BRENT C. ECKERSLEY, ESQ. Board Member

STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

NYE COUNTY LAW ENFORCEMENT ASSOCIATION, Complainant, vs. NYE COUNTY, Respondent.	CASE NO. A1-046062 **NOTICE OF ENTRY OF ORDER**

To: Nye County Law Enforcement Association and their attorney Richard Sergerblom, Esq.

To: Nye County and their attorney Brian Kunzi, Esq.

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on December 2, 2013.

A copy of said order is attached hereto.

DATED this 2nd day of December, 2013.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY Yvonne Martinez
YVONNE MARTINEZ, Executive Assistant

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 2nd day of December, 2013, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

Richard Segerblom, Esq.
700 South 3rd Street
Las Vegas, NV 89101

Brian Kunzi, Esq.
Nye County District Attorney
1520 E. Basin Avenue
Pahrump, NV 89060

Yvonne Martinez

YVONNE MARTINEZ, Executive Assistant