STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

CLARK COUNTY DEPUTY MARSHALS ASSOCIATION, Complainant, vs. CLARK COUNTY, Respondent.	ITEM: 793 CASE NO. A1-046058 **ORDER**

For Complainant: Clark County Deputy Marshals Association and their attorney Adam Levine, Esq.

For Respondent: Clark County and their attorney Yolanda T. Givens, 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 Administrative Procedures Act. A hearing was held in this matter on November 12-14, 2013 in Las Vegas, Nevada.

This case calls upon the Board to determine whether the Clark County deputy marshals are "local government employees" as defined in NRS 288.050, and therefore entitled to collective bargaining rights under the Act.

Prior to 2007, security and bailiff-type services at courthouses in Clark County were provided by the Clark County Sheriff. In 2007, the legislature changed the requirements in order to relieve the Sherriff of the obligation to attend the sessions of the District Court. 2007 Stat.

Nev. ch. 440, p. 2189. Those functions are now performed by the deputy marshals. The deputy marshals are peace officers under NRS 289.150. The day-to-day duties of the deputy marshals depend upon their particular assignment. Administrative marshals primarily provide security at the courthouse, which includes the Regional Justice Center, the Family Court facility as well as other locations. Their duties include security screenings for persons entering the courthouse as well as investigations, making arrests when called upon to do so, and other duties as necessary. Judicial marshals are marshals that are assigned to a particular judge and serve primarily in the courtroom of the judge to provide court security and perform other assignments that may be given by the individual judge. In addition, judicial marshals may assist in the courtrooms of other judges as needed and may also assist the administrative marshals with their duties.

Complainant in this case, the Clark County Deputy Marshals Association ("Association"), has brought a complaint of bad faith bargaining against Respondent Clark County. The Association purports to represent the group of employees who are employed as deputy marshals. The Association asserts that it has been recognized as a bargaining agent by the County as has demanded to bargain with the County, but that the County has simply refused to meet and negotiate a collective bargaining agreement with the Association in violation of its bargaining obligations under NRS 288.270(1)(e).

The County's response is to assert that it is not obligated to bargain with the Association under the terms of the Act because the deputy marshals are employees of the courts, not the County, and therefore are not local government employees entitled to the bargaining rights granted by the Act. The County is correct to note that courts are not local government employers under the Act. No court is listed as a local government employer under NRS 288.060. In addition, this Board has acknowledged that courts are excluded from the terms of the Act. e.g. In

the Matter of the Petition for Recognition by the Clark County Deputy Sherriff Bailiff's Assoc., Item No. 504A, EMRB Case No. A1-045722 (May 7, 2002). Thus, if the deputy marshals truly are employees of the courts rather than the County then the bargaining obligations under the Act will not apply to grant bargaining rights to the Association. As this argument is potentially dispositive, we turn to it first.

We first consider whether the employment of the deputy marshals rests with the County or with the court. "The principal means of determining employment is control over the manner and method in which an employee performs the work." Clark County School Dist. Police Officers Assoc. v. Clark County School Dist., Item No. 690B, EMRB Case No. A1-045939 (Jan. 29, 2010); N.L.R.B. v. E.C. Atkins & Co., 331 U.S. 398 (1947). The evidence at the hearing established that the control over the manner in which the deputy marshals perform their duties is provided by the court. For judicial marshals this is primarily provided by the individual judge to whom the marshal is assigned and who supervises the deputy marshal. The Board notes the testimony of Deputy Marshal Eric Prunty who confirmed that day-to-day oversight and supervision of judicial marshals is provided by the judge. Steven Grierson, the Court Executive Officer for the Eighth Judicial District Court, also testified before the Board and explained the chains of command for both administrative and judicial marshals that lie entirely within the court system. For administrative marshals, the supervision is provided by the sergeants and lieutenants, then by the Court Security Director. The chain of command then extends to the Court Executive Officer and then ultimately to the Chief Judge. For judicial marshals, Mr. Grierson corroborated Deputy Prunty's testimony that the individual judge primarily supervises a judicially-assigned deputy marshal. In addition, Jeff Wells testified that the District Court judges determine the duties, responsibilities and tasks of the deputy marshals. The Association did not present any

evidence that would contradict the conclusion that it is the court, and not the County, that controls the manner and method in which the marshals perform their duties.

Other indicia of employment include the power to discipline or discharge, payment of salary, nature of the service provided and the parties' belief as to existence of an employment relationship. See Clark County v. State Indus. Ins. System, 102 Nev. 353, 724 P.2d 201 (1986).

Evidence was also provided to the Board that the court is the entity with the ability to discipline a deputy marshal and terminate employment. In particular, the Board notes the memorandum of understanding between the Association and the District Court which addresses how the discipline of deputy marshals is to be handled. The County was not a party to this memorandum, and the Board heard evidence that the County has, in other cases, refused to follow the disciplinary process that the Association and the Courts have agreed to. This tends to confirm that disciplinary issues are in fact within the purview of the court rather than the County. Anthony Vogel, the President of the Association confirmed that disciplinary matters are governed by the memorandum, and it is the court, not the County, that is a party to that memorandum. In addition, NRS 3.310(1) states that a "deputy marshal serves at the pleasure of the judge he or she serves."

The nature of the services provided also points to the courts as the employer in this case. The duties of the deputy marshals are listed by statute, and all of the enumerated duties clearly provide a benefit to the court rather than the County. NRS 3.310(3).

It does not appear that the parties shared a common belief concerning an employment relationship. While Anthony Russo, who served as Vice-President of the Association, did testify that the Association has constantly taken the position that deputy marshals are County employees, it is evident that the County did not share that assessment. The County clearly

expressed its reservations about the deputy marshals' status as County employees when it insisted on assurances from the Association and from the court that the deputy marshals were in fact County employees before the County would recognize the Association.[1] There was evidence that the applicants for a deputy marshal position are processed through the County, which may have tended to encourage the belief that the deputy marshals were County employees. At the hearing, Jeff Wells, the Assistant County Manager explained that this was due to an interlocal agreement between the County and the court in which the County has agreed to make certain resources, including recruitment services available to the court. The County's willingness to cooperate with the court does not convert the County into the employer. In addition, the fact that the Association negotiated and agreed to a memorandum of understanding with the court covering certain terms of employment undermines the Association's contention that they believed themselves to be employees of the County.

The evidence at the hearing did establish that it is the County that pays the salary for the deputy marshals, but otherwise does not exercise control over the deputy marshals' employment.

Taken together, these facts establish in our judgment that the deputy marshals are employed by the court for purposes of NRS 288.050. Given this evidence, and looking primarily to the court's control over the manner and method in which the marshals perform their duties, we conclude that for purposes of NRS 288.050, the marshals are employees of the court.

This conclusion is consistent with other prior determinations of this Board. Previously we have determined that employees were court employees, and therefore outside the scope of the Act, where the primary control over job duties was exercised by the courts, even while a local

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[1] This is considered solely for its relevance as to the parties' belief as to the existence of an employment relationship and not for whether a local government employer may permissibly insist upon similar conditions or assurances prior to recognizing an employee organization.

government employer was responsible for paying the employees' salaries. The County points to our decision in In the Matter of the Petition for Recognition by the Clark County Deputy Sheriff Bailiff's Assoc., Item No. 504A, EMRB Case No. A1-045722 (May 7, 2002) which concerned nearly identical circumstances over employee control and payment of wages as are established this case. In addition the Board reached similar results in Washoe County Probation Employees' Association v. Washoe County, Item No. 334, EMRB Case No. A1-045547 (May 18, 1994) and in Operating Engineers Local # 3 v. County of Lander, Item No. 346A, EMRB Case No. A1-045553 (Nov. 8, 1995).

Our conclusion that the deputy marshals are employees of the court, however, does not fully resolve this matter. In this proceeding, the Association conceded that the court controls at least some of the aspects of the deputy marshals' employment, but contended that the appropriate bargaining model to adopt is what the Association referred to as the "Washington model," which is a model of partial bargaining that would require the County to bargain, but only over those mandatory subjects of bargaining over which the County has control such as payment of wages. Under this system, the mandatory subjects listed in NRS 288.150(2) which are under the control of the courts would not be subject to bargaining, but the topics over which the County has control would be subject to bargaining under the Act. The Washington model comes from the decision of the Washington Supreme Court in Zylstra v. Piva, 539 P.2d 823 (Wa. 1975).

After a careful consideration of the arguments offered by both parties, the Board concludes that the Washington model is not compatible with the Act. As noted above, the deputy marshals are employees of the court and fall outside the current definition of local government employee. The plain language of NRS 288.150(1) does not permit a local government employer to refrain from bargaining over any of the enumerated mandatory subjects

of bargaining listed in NRS 288.150(2). The exceptions to that bargaining obligation are stated in NRS 288.150(4), which does not address the issue of employment by a court. Thus, the language of NRS 288.150 does not contemplate a bargaining relationship where the employer is obligated to bargain over anything less than the full range of mandatory subjects.

Although we recognize that the Washington model would permit at least some limited degree of collective bargaining for the marshals, this Board is bound by the Act and cannot grant bargaining rights where the legislature did not. The remedy sought by the Association cannot be granted by this Board; instead the Association's recourse appears to be to the legislature.

Further, the ultimate effect of applying the Washington model in this case would be to make the County conclusively responsible for setting certain terms of employment for court employees. This Board has previously expressed a significant concern that making court employees subject to the bargaining requirements of the Act would tend to infringe upon the inherent rights and powers of the courts. Washoe County Probation Employees' Association v. Washoe County, Item 334, EMRB Case No. A1-045547 (May 18, 1994). That concern has not lessened. If anything, that concern has only been heightened in light of the recent decision of the Nevada Supreme Court in City of Sparks v. Sparks Municipal Court, 129 Nev. Adv. Op. 38, 302 P.3d 1118 (2013). In City of Sparks, the inherent authority of the courts to manage its own employees, including the rate of pay, was central to the Supreme Court's reasoning that the city council in that case could not impose a pay cut upon court employees. City of Sparks does not leave any room for this Board to require a local government employer to bargain with court employees due to the inherent authority of courts over such matters. See also Azbarea v. City of North Las Vegas, 95 Nev. 109, 110-111, 590 P.2d 399 161, 162 (1979) (reasoning that the Act

does not extend to matters that are within the inherent authority of the courts). For these reasons we decline to follow the Washington model proposed by the Association.

Finally, this case presents a genuine dispute and an award of costs under 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. Security at courthouses and judicial facilities in Clark County is provided by the deputy marshals.

2. Deputy Marshals include judicial marshals assigned to a particular judge or courtroom and administrative marshals who serve the court in general while not being assigned to a particular judge or courtroom.

3. Pursuant to the credible testimony of Deputy Marshal Eric Prunty and Steven Grierson, the chain of command for judicial marshals extends directly to the individual judge to whom a deputy marshal is assigned.

4. Pursuant to the credible testimony of Steven Grierson, the chain of command for administrative marshals extends to the sergeants and lieutenants who are also deputy marshals then to the Court security director, then to the Court Executive Officer and then ultimately to the Chief Judge.

5. The Court Security Director, and the Court Executive Officer are employees of the court.

6. The court, either through the individual judges or through its employees including the Court Security Director and the Court Executive Officer, controls the manner and method in which the deputy marshals perform their duties, responsibilities and tasks.

7. The court exercises the right to discipline and to discharge a deputy marshal.

8. The deputy marshals perform the duties listed in NRS 3.310(3), each of which is a benefit to the court rather than the County.

9. The parties did not believe in an employment relationship between the deputy marshals and the County that was exclusive.

10. Clark County clearly expressed reservations about its belief in an employment relationship with the marshals when it requested assurances that the deputy marshals were County employees before recognizing the Association.

11. Clark County is responsible to pay the salaries of the deputy marshals.

12. 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. Courts are not local government employers under NRS 288.060 and therefore employees of a court are beyond the scope of the Act.

3. For purposes of NRS 288.050, the deputy marshals at issue in this case are employees of the courts.

4. The Washington model set forth in Zylstra v. Piva, 539 P.2d 823 (Wa. 1975) is not compatible with the Act.

5. The Act does not obligate the County to bargain with the Association in this case.

6. The County did not violate any bargaining obligations under NRS 288.270(1)(e).

7. The Association's complaint is not well-taken.

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

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

ORDER

It is hereby ordered that the Board finds that the complaint filed in this matter is not well-taken.

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

DATED the 27th day of January, 2014.

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

CLARK COUNTY DEPUTY MARSHALS ASSOCIATION, Complainant, vs. CLARK COUNTY, Respondent.	CASE NO. A1-046058 **NOTICE OF ENTRY OF ORDER**

To: Clark County Deputy Marshals Association and their attorney Adam Levine, Esq.

To: Clark County and their attorney Yolanda T. Givens, Esq.

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on January 27, 2014.

A copy of said order is attached hereto.

DATED this 27th day of January, 2014.

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 27th day of January, 2014, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

Yolanda T. Givens, Esq.
Deputy District Attorney, Clark County
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Law Office of Daniel Marks
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Yvonne Martinez

YVONNE MARTINEZ, Executive Assistant