

STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

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4 NYE COUNTY LAW ENFORCEMENT
5 ASSOCIATION,

6 Complainant,

7 vs.

8 NYE COUNTY,

9 Respondent.

CASE NO. A1-046123

ORDER

ITEM NO. 805

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12 On the 10th day of June, 2015, this matter came on before the State of Nevada, Local
13 Government Employee-Management Relations Board (Board) for consideration and decision
14 pursuant to the provisions of the Local Government Employee-Management Relations Act (the
15 Act) NRS Chapter 288. The Board held an administrative hearing on this matter on June 9, 2015
16 in Las Vegas, Nevada.

17 Prior to 2008, Juvenile Probation Officers (JPOs) in Nye County were placed in Nye
18 County's general bargaining unit, which is represented by the Nye County Employees
19 Association. Although the Board was not provided with an exact date, it was established that
20 sometime in early 2008, or possibly late 2007, the County moved the JPOs out of the general
21 bargaining unit and into a law enforcement bargaining unit that is represented by the Nye County
22 Law Enforcement Association (NCLEA). The reason for this change was to bring the County
23 into compliance with NRS 288.140(3), which specifies law enforcement officers may only be a
24 member of an employee organization that is composed exclusively of other law enforcement
25 officers. JPOs are category II Peace Officers. See NRS 289.470(15). The bargaining unit
26 represented by NCLEA is composed of the County's law enforcement personnel, including its
27 deputy sheriffs, justice court bailiffs and district attorney investigators.

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1 The NCLEA continued to represent the bargaining unit, including the newly-added JPOs,
2 during negotiations for a new collective bargaining agreement in 2008, which was effective
3 through June 30, 2010, and again for negotiating a second agreement effective from July 1, 2010
4 to June 30, 2012.

5 In January of 2012, the County was presented with an application for recognition by a
6 group identified as the Nye County Juvenile Probation Officers Association (NCJPOA). The
7 request effectively asked the County to recognize NCJPOA as the bargaining agent, and by
8 extension carve the JPOs out from the law enforcement unit represented by NCLEA into a new
9 unit. At the time, there were five JPOs positions in the County. That number has since been
10 reduced to four when the JPO based in Tonopah, Nevada passed away and has not been replaced.
11 Three of the JPOs were and are members of NCJPOA.

12 In April of 2012 as the County and NCLEA met to negotiate a new collective bargaining
13 agreement he County informed NCLEA that it had received NCJPOA's request for recognition.
14 During those negotiations, NCLEA took the position that the County could not remove the JPOs
15 from the unit without first negotiating over the change with the NCLEA. The County took the
16 position that carving out a new bargaining unit was not a mandatory subject of bargaining. As
17 the County and NCLEA could not agree over how to address the request for recognition, the
18 County carved out a new bargaining unit for JPOs and recognized NCJPOA on May 10, 2012.

19 Thereafter the NCLEA challenged the County's actions before this Board. Nye County
20 Law Enforcement Association v. Nye County, Item No. 791, EMRB Case No. A1-046062 (Dec.
21 2, 2013). In that prior case, we found that the County had not properly followed the procedure
22 specified in NRS 288.170(1). The County had not consulted with NCLEA, or with any other
23 recognized bargaining agents, when considering the community of interest criterion required by
24 NRS 288.170(1). At that time, we reinstated the JPOs into the larger bargaining unit represented
25 by NCLEA, but we did not foreclose the County's ability to reconsider the community of interest
26 question by correctly following the full process mandated by NRS 288.170(1). Our order in Item
27 No. 791 did not consider the community of interest question or whether carving out a bargaining
28 unit comprised solely of JPOs was appropriate.

1 Following our order in Item No. 791, the County again pursued a carve-out of the JPOs
2 by consulting with the recognized bargaining agents. The County then issued a letter that again
3 recognized the NCJPOA as the bargaining agent for the JPOs. That letter was issued on January
4 14, 2014.

5 NCLEA again challenged the recognition before this Board by filing the instant
6 complaint, which challenges the County's decision to carve out a new unit of JPOs based on the
7 community of interest, see NRS 288.170(5), and alleged a prohibited labor practice against the
8 County for refusing to bargain over the carve-out pursuant to NRS 288.150(2) (j).

9 Prior to the hearing in this case, the County filed an amended answer to raise the issue of
10 whether the JPOs are local government employees, claiming that the JPOs are actually
11 employees of the courts rather than the County.

12 JPOs Status as Local Government Employees

13 For purposes of the Act, a "local government employee" is defined as "any person
14 employed by a local government employer." NRS 288.050. The Act further defines a "local
15 government employer" as "any political subdivision of this State or any public or quasi-public
16 corporation organized under the laws of this State and includes, without limitation, counties,
17 cities, unincorporated towns, school districts, charter schools, hospital districts, irrigation
18 districts and other special districts." NRS 288.060. While this definition is broad, it does not
19 include branches of the courts as "local government employers." e.g. In the Matter of the Petition
20 for Recognition by the Clark County Deputy Sheriff Bailiffs Association, Item No. 504A, EMRB
21 Case No. A1-045722 (May 7, 2002).

22 In order to determine whether a given employee has an employment relationship with a
23 local government employer, as opposed to a court, the Board has consistently followed the multi-
24 factor balancing approach from the Nevada Supreme Court's decision in Clark County vs. SIIS,
25 102 Nev. 353, 724 P.2d 201 (1986). See e.g. Operating Engineers Local No. 3 v. County of
26 Lander, Item No. 346-A, EMRB Case No. A1-045553 (Nov. 1995); Clark County Deputy
27 Marshals Association v. Clark County, Item No. 793, EMRB Case No. A1-046058 (Jan. 27,
28 2014). This approach calls for the Board to weigh several different factors that are indicative of

1 an employment relationship: i.e., the right to control the duties of the employees, the degree of
2 supervision, the source of wages, who sets the salaries, the parties belief as to their employment
3 relationship and the extent to which the employees activities further the general business
4 concerns of the alleged employer.

5 In this case, the evidence presented at the hearing did not adequately address these
6 factors. Based upon the lack of evidence, the Board cannot declare at this time that JPOs are not
7 local government employees under NRS 288.050. In the absence of adequate evidence, we will
8 not upset the *status quo* or the history of collective bargaining between the County and JPOs. As
9 our decision is based on the lack of evidence sufficiently addressing the Clark County factors,
10 our decision in this regard is made without prejudice.

11 The County's Obligation to Consult with NCLEA

12 NCLEA asserts a claim of bad faith bargaining because the County did not negotiate with
13 the NCLEA to remove the JPOs from the bargaining unit.

14 NRS 288.170(1) states that a local government employer shall make the initial
15 determination which groups of employees form an appropriate bargaining unit. This subsection
16 requires a local government employer to inform its decision by first consulting with the existing
17 bargaining agents and specifies that the primary criterion that must be considered by a local
18 government employer when deciding the scope of a bargaining unit is "the community of interest
19 among the employees concerned."

20 NCLEA points to NRS 288.150(j), which specifies that the recognition clause of a
21 collective bargaining agreement is a mandatory subject of bargaining. NCLEA argues that this
22 provision required the County to negotiate over the placement of the JPOs in a separate
23 bargaining unit. We disagree.

24 When considering two statutory provisions such as this, we look to give meaning to each
25 of their parts, so that they may be read harmoniously together and that none of the statutory
26 language is reduced to mere surplusage. The mandatory subjects of bargaining listed in NRS
27 288.150(2) are separate provisions from the bargaining unit recognition process. The mandatory
28 subjects of bargaining do not undermine the local government employer's prerogative to

1 determine the scope of an appropriate bargaining unit under NRS 288.170(1). See Int'l Ass'n of
2 Firefighters, Local 1265 v. City of Sparks, Item No. 136, EMRB Case No. A1-045362 (Aug. 21,
3 1982); see also Local Gov't Employee-Mgmt. Relations Bd. v. Teamsters Local Union No. 14 of
4 Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am., 98 Nev. 94, 97, 641 P.2d
5 478, 480 (1982) (applying the same standards contained in NRS 288.170 when considering a
6 request to carve out a new bargaining unit from an already-existing bargaining unit). NRS
7 288.170(1) specifically addresses an employer's obligations towards an already-recognized
8 bargaining agent when the employer seeks to define the scope of a bargaining unit. That
9 obligation is one of "consultation."

10 As we stated in Item 791, the County's obligation in this case was to consult with all he
11 recognized bargaining agents for the purpose of making a fully informed decision when it
12 considered the community of interest criterion and when it made its decision concerning the
13 scope of the bargaining unit. The County was thus not obligated to engage in full negotiations
14 with the Association about whether or not to include the JPOs in the bargaining unit.

15 To hold otherwise would render the scope of the bargaining unit subject to the give-and-
16 take of the negotiation process rather than the more objective, and more stable, community of
17 interest criterion. An overarching purpose of the Act is promoting stability in labor relations.
18 Further, a bargaining unit determination that is made by negotiations would effectively eliminate
19 the appeal procedure to this Board that is established by NRS 288.170(5).

20 As the County was not obligated to negotiate over the carve-out of the JPOs into a new
21 bargaining unit, we find that the County did not commit a prohibited labor practice when it
22 refused to negotiate over the carve-out of the JPOs into a new bargaining unit.

23 Community of Interest

24 Even though the County was not obligated to negotiate with NCLEA over the carve-out,
25 that does not necessarily mean that the carve-out was proper or that the County appropriately
26 considered the community of interest criterion.

27 NRS 288.170(5) permits an appeal of any bargaining unit determination to be made to
28 this Board for review and determination of the appropriate scope of a bargaining unit. In doing

1 so, we look primarily to the community of interest criterion. NRS 288.170(5). A community of
2 interests includes, among other considerations, similarities in duties, skills, working conditions,
3 job classifications, employee benefits, and the amount of interchange or transfer of employees,
4 integration of an employer's operations and supervision of employees. See Operating Engineers
5 Local 501 v. Las Vegas Convention and Visitors Authority, Item No. 96, EMRB Case No. A1-
6 045323 (May 5, 1980). In addition the Board generally favors larger wall-to-wall bargaining
7 units in order to minimize the practical difficulties on a local government employer that result
8 from a proliferation of bargaining units and to serve as a safeguard for employees against the
9 diluted effectiveness caused by smaller and fragmented bargaining units. See In the Matter of
10 IAFF Local 731 and City of Reno, Item No. 4 (March 6, 1972).

11 While there is no question that the JPOs have a community of interest among themselves,
12 the Board considers the community of interest question as applied to all the employees
13 concerned; this includes the other employees in the law enforcement unit represented by
14 NCLEA. See Teamsters Local Union No. 14 of Int'l Bhd. of Teamsters, Chauffeurs,
15 Warehousemen & Helpers of Am., 98 Nev. at 97, 641 P.2d at 480 (1982). The Board finds that
16 the JPOs do have a community of interest with the other law enforcement personnel in Nye
17 County.

18 Within the unit represented by NCLEA are the personnel that possess and that exercise
19 the powers of a peace officer under the provisions of NRS Chapter 289. According to the
20 stipulation of facts presented by the parties, the positions within the NCLEA unit are composed
21 of 83 deputies, investigators and sergeants of the Nye County Sheriff's Office. These employees
22 are peace officers. NRS 289.150. In addition, there are two district attorney investigators who
23 are peace officers pursuant to NRS 289.170, and two justice court bailiffs who are also peace
24 officers. NRS 289.150(4). As a unit comprised entirely of peace officers, each of these
25 employees in the unit has been certified by the Peace Officers Standards and Training
26 Commission and each these employees undergo the same or similar training as required by that
27 Commission. NAC 289.140-.150. These employees also possess the same statutory powers of a
28 peace officer, and according to the testimony of NCLEA President David Boruchowitz all the

1 positions in the unit represented by NCLEA, including JPOs, have arrest and investigative job
2 duties.

3 Like other positions within the law enforcement bargaining unit, JPOs are called upon to
4 deal with, and on occasion restrain, violent persons. The Board notes that the Class Title for
5 both JPOs and Deputy Sheriffs specify similar working conditions. The JPO Class Title states
6 that “[w]ork is performed under the following conditions: Probation officer environment –
7 subject to physical attacks.” The Deputy Sheriff Class Title states “[h]azardous conditions –
8 subject to contact with violent persons and life-threatening situations.” The fact that both
9 positions involve confronting dangerous situations weighs heavily in our community of interest
10 analysis. See In the Matter of IAFF Local 731 and City of Reno, Item No. 4 (March 6, 1972). In
11 addition we note that President Boruchowitz confirmed that the JPOs and other peace officers
12 represented by NCLEA utilized common skills to perform their job duties.

13 The Board also heard evidence of some integration between the JPOs and the Sheriff’s
14 office. Both President Boruchowitz and Officer Derek Bayer, himself a JPO, testified that JPOs
15 work closely with the Sheriff’s deputies and that JPOs are dispatched by the Sheriff’s office.
16 The Board heard evidence that JPOs and Sheriff’s deputies interact on the same cases when a
17 juvenile is involved. President Boruchowitz also testified that the JPOs and the Sheriff’s
18 deputies share interview rooms and share detention rooms.

19 The Board also heard evidence that the JPO who had been based in Tonopah had passed
20 away. A new JPO has not been hired for that location. Instead the Sheriff’s deputies in Tonopah
21 have effectively assumed that job function by handling juvenile offender issues in Tonopah, in
22 the interim between the visits of the JPO supervisor to Tonopah.

23 While the JPOs and Sheriff’s deputies do not have identical job functions, they do
24 demonstrate a degree of similarity as discussed above. And while there was no evidence of
25 transfers between JPOs and other positions in the bargaining unit, there was some evidence of
26 crossover in Tonopah where there is not a permanently assigned JPO. There was no evidence of
27 common supervision, but we do not attach any extra significance to this factor, as the bargaining
28 unit also includes district attorney investigators and the district attorney is a separately elected

1 position than is the Sheriff.

2 The Board has weighed all of these factors and finds that the JPOs do share a community
3 of interest with other peace officers in Nye County and that the inclusion of all peace officers in
4 a single bargaining unit is appropriate. In addition to the community of interest that the JPOs
5 share with other personnel in the law enforcement bargaining unit, we also recognize that leaving
6 the larger unit intact serves our long-standing preference to maintain larger bargaining units
7 where possible.

8 As the appropriate unit is to maintain the JPOs in the larger bargaining unit currently
9 represented by NCLEA, the Board will reinstate the JPOs in Nye County to that unit. The Board
10 has also determined that each party shall bear its own fees and costs in this matter.

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

13 **FINDINGS OF FACT**

14 1. Prior to late 2007 or early 2008, Juvenile Probation Officers in Nye County were
15 included in the County's general bargaining unit.

16 2. By 2008 the JPOs were moved to the bargaining unit represented by NCLEA.

17 3. Apart from the JPOs, the bargaining unit represented by NCLEA consisted of the
18 following: 83 deputies, investigators and sergeants of the Nye County Sheriff's Office, two
19 district attorney investigators, and two justice court bailiffs.

20 4. The bargaining unit represented by NCLEA ("law enforcement bargaining unit")
21 is composed entirely of employees who are identified as peace officers in NRS Chapter 289.

22 5. The employees in the law enforcement bargaining unit undergo the same or
23 similar training as established by the Nevada Peace Officer Standards and Training Commission.

24 6. The employees in the law enforcement bargaining unit have obtained and must
25 maintain certification by the Nevada Peace Officer Standards and Training Commission.

26 7. All of the employees in the law enforcement bargaining unit have job duties that
27 include investigation and arrest.

28 8. The employees in the law enforcement bargaining unit utilize similar skills to

1 perform their job functions.

2 9. The working environment for both JPOs and Sheriff's deputies includes
3 confronting dangerous situations and potential physical attacks.

4 10. JPOs work closely with Sheriff's deputies and interact on the same cases
5 involving juveniles.

6 11. JPOs and the Sheriff's deputies share interview rooms and share detention rooms.

7 12. In Tonopah, Sheriff's deputies have assisted the JPOs by performing the duties of
8 a JPO when a JPO is not physically present.

9 13. Following our decision in Item No. 791, Nye County consulted with the
10 recognized bargaining agents before carving out the JPOs from the law enforcement bargaining
11 unit.

12 14. On January 14, 2014 Nye County removed the JPOs from the law enforcement
13 bargaining unit, established the JPOs as a separate bargaining unit and recognized NCJPOA as
14 the bargaining agent for the JPOs.

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

17 CONCLUSIONS OF LAW

18 1. The Board is authorized to hear and determine appeals of a bargaining unit
19 determination pursuant to NRS 288.170(5).

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

22 3. The evidence presented at the hearing was not sufficient to enable to the Board to
23 determine whether the JPOs fall outside the definition of a "local government employee."

24 4. The County was not obligated by NRS 288.150(2)(j) to negotiate with NCLEA
25 before carving out the JPOs into a separate bargaining unit.

26 5. The County was obligated by NRS 288.170(1) to consult with NCLEA, and other
27 recognized bargaining agents, before carving out the JPOs into a separate unit.

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STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

NYE COUNTY LAW ENFORCEMENT
ASSOCIATION,

Complainant,

vs.

NYE COUNTY,

Respondent.

CASE NO. A1-046123

NOTICE OF ENTRY OF ORDER

TO: Nye County Law Enforcement Association, by and through their attorneys, Daniel Marks, Esq. and Adam Levine, Esq. and Law Office of Daniel Marks Adam Levine, and Brent D. Huntley, Esq. and Shumway Van & Hansen;


TO: Nye County, by and through their attorney, Angela Bello, Esq., Nye County District Attorney.

PLEASE TAKE NOTICE that the **ORDER** was entered in the above-entitled matter on June 22, 2015.

A copy of said order is attached hereto.

DATED this 22nd day of June 2015.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY 
MARISU ROMUALDEZ ABELLAR
Executive Assistant

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Local Government Employee-Management
3 Relations Board, and that on the 22nd day of June I served a copy of the foregoing ORDER by
4 mailing a copy thereof, postage prepaid to:

5 Law Office of Daniel Marks
6 Daniel Marks, Esq.
7 Adam Levine, Esq.
8 610 South Ninth Street
9 Las Vegas, NV 89101

10 Brent D. Huntley, Esq.
11 SHUMWAY VAN & HANSEN
12 8985 South Eastern Avenue, Suite 100
13 Las Vegas, NV 89123

14 Angela Bello, Esq.
15 Nye County District Attorney
16 P.O. Box 39
17 Pahrump, NV 89041



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MARISU ROMUALDEZ ABELLAR
Executive Assistant