

STATE OF NEVADA  
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

IN THE MATTER OF THE ELKO COUNTY )  
SHERIFF EMPLOYEE'S ORGANIZATION, )  
INC., )

ITEM NO. 208

CASE NO. A1-045424

Appellant,

v.

DECISION

THE COUNTY OF ELKO, A POLITICAL )  
SUBDIVISION OF THE STATE OF )  
NEVADA, )

Respondent.

For the Appellant: RICHARD G. BARROWS, ESQ.

For the Respondent: J. MICHAEL MEMEO, ESQ.  
DAVID L. COHEN, ESQ.

For the EMRB Board: SALVATORE C. GUGINO, ESQ., Chairman  
TAMARA BARENGO, Member  
JEFFREY L. ESKIN, ESQ., Member

STATEMENT OF THE CASE

On September 25, 1987, the ELKO COUNTY SHERIFF EMPLOYEES' ORGANIZATION, INC. ("Organization") filed its Appeal of the two determinations of the COUNTY OF ELKO ("County"): (1) That the office deputy sheriffs employed by the County are not "law enforcement officers" and are, thus, prohibited by NRSA 288.140(3) from being in the same employee organization with all other employees of the Elko County Sheriff's Office; and (2) that the lieutenant position in the Elko County Sheriff's Office is a "supervisory employee" or "administrative employee" position, so that the lieutenant is prohibited by NRSA 288.170(1) from being in the same bargaining unit as all other lower ranking employees

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2 of the Elko County Sheriff's Office. The County answer  
3 affirming both determinations.

4 The Board conducted a hearing in Elko on April 26, 1988.  
5 The organization presented evidence and argument in support of  
6 its appeal. The County presented evidence and argument in  
7 opposition to the appeal and in support of its determinations.

8 The Organization moved during the hearing to dismiss Count  
9 2, paragraphs 12-18, of its Appeal, concerning the determinatio  
10 as to the lieutenant's position. The motion was granted, and  
11 issues 2(c-g and i) of the Hearing Notice were withdrawn from  
12 decision by the Board.

13 At the conclusion of the hearing, the parties jointly  
14 requested an expedited decision of the Board without post-hearin  
15 briefs. That request was granted, and the matter was submitted  
16 for decision. The following constitutes the Board's findings of  
17 fact and conclusions of law:

18 DISCUSSION

19 Contrary to the allegations of Respondent, the situation  
20 with the Elko County Sheriff's Office employees is not dissimilar  
21 from that found in Matter of North Las Vegas Police Officers  
22 Assn., et al. v. Tharp, et al., Case No. A1-045333, Item No. 104  
23 (1980). As in Tharp, each of the complainants was appointed;  
24 each had been sworn in under oath as a Deputy Sheriff; each was  
25 issued a formal written appointment as a Deputy Sheriff by the  
26 Sheriff; each received a Sheriff's identification card and each  
27 was issued a badge labeled "Deputy Sheriff" (Tr. Exhs. 12, 13,  
28 14, 15, 17, 18). See also, Tharp at p.3.

1  
2 Although Sheriff James G. Miller testified that the female  
3 deputies were not required to attend POST or carry firearms, he  
4 nonetheless admitted that the five women were Deputy Sheriffs by  
5 statutory definition under NRS 248.040 (Tr.149). Moreover, he  
6 stated that they were so deputized in order to perform certain  
7 functions under state law that his Deputy Sheriffs were also  
8 required to do, such as performing Sheriff sales and serving  
9 civil process (Tr.142, 150). According to Sheriff Miller, they  
10 were additionally deputized to assist in the office when  
11 shorthanded (Tr.150).

12 As Deputy Sheriffs, the complainant/appellants come under  
13 the statutory definition of peace officers pursuant to NRS  
14 169.125(2); therefore, the Board holds that the female Deputy  
15 Sheriffs must, pursuant to NRS 288.140(3), belong to the same  
16 bargaining unit as the other sheriffs in the department. Had the  
17 employees in question not been sworn and deputized by the  
18 Sheriff, the Board's findings in this matter would likely have  
19 been significantly different.

#### 20 21 FINDINGS OF FACT

22 1. The Organization is a duly incorporated employee  
23 organization engaged in the representation of local government  
24 employees employed by the County in the Elko County Sheriff's  
25 Office.

26 2. That the County is a political subdivision of the State  
27 of Nevada, being one of its 17 counties, and is a local  
28 government employer as that term is used in Chapter 288 of NRS.

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2 3. That entitlement of the subject employee group to  
3 membership in the ranks of other Deputy Sheriffs is evidenced by

4 a. A written appointment as Deputy Sheriff signed by  
5 the Sheriff of the county;

6 b. Administration of an Oath of Office in which they  
7 have solemnly sworn to perform all the duties of a Deputy  
8 Sheriff;

9 c. Issuance of an identification card by the Sheriff,  
10 classifying them as "Sheriff's Officer." The reverse of these  
11 cards identifies the employees as duly appointed Peace Officers  
12 and authorizes them to perform the duties and exercise the powers  
13 of a Sheriff's Officer. Additionally, the identification card  
14 confirms that the position held is by appointment;

15 d. Badges issued by the Sheriff which conform to those  
16 issued to other departmental peace officers identifying them as a  
17 "Deputy Sheriff";

18 e. The periodic performance of duties normally reserved  
19 to uniformed personnel; such as, the service of writs of  
20 execution, service as matrons and bailiffs, and representation of  
21 the Sheriff at property sales;  
22 all of which combine to make them appropriately regarded as  
23 Deputy Sheriffs to the extent contemplated by NRS 288.140(3).

24 4. That since the "clerical" employees are "deputy  
25 sheriffs," they are among those listed in the first three  
26 categories of NRS 288.140(3); therefore, inquiry need not be  
27 made whether they are an "other law enforcement officer."  
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2 5. That since the Organization is composed only of "deputy  
3 sheriffs," including the challenged clerical Deputy Sheriffs  
4 whose duties are primarily performed in the office, the Organiza  
5 tion is composed exclusively of "law enforcement officers," as  
6 that term is used in NRSA 288.140(3).

7 6. That this conclusion is not altered by the fact that th  
8 clerical deputies only occasionally perform actual law enforce-  
9 ment functions, nor is it altered by the fact that they do not  
10 attend POST, do not carry firearms, do not make arrests, are not  
11 in the early retirement system, etc., and are not law enforcement  
12 officers in entirely the same sense as the other deputies in the  
13 Sheriff's Department.

#### 14 CONCLUSIONS OF LAW

15 1. The Organization's appeal of the County's determination  
16 came properly before the Board.

17 2. NRSA 288.140(3) provides in full:

18 "A police officer, sheriff, deputy sheriff or  
19 other law enforcement officer may be a member  
20 of an employee organization only if such  
employee organization is composed exclusively  
of law enforcement officers." (emphasis  
added)

21 3. Since the deputized clericals are "deputy sheriffs,"  
22 they are, by definition, "law enforcement officers" as the term  
23 is used in NRSA 288.140(3).

24 4. The trappings of a Deputy Sheriff which have been  
25 bestowed by the Sheriff upon these employees, in addition to the  
26 occasional law enforcement duties imposed, make it inappropriate  
27 to set them apart for purposes of collective bargaining.  
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2 5. The Sheriff Department's clerical employees who are  
3 deputy sheriffs are proper members of the employee organization  
4 composed exclusively of law enforcement officers as provided in  
5 NRSA 288.140(3).

6 6. The Appeal of the Organization, as amended by the  
7 withdrawal of the lieutenant issue, should be upheld and the  
8 County's determination reversed.

9 DECISION AND ORDER

10 Upon decision rendered by the Board at its meeting on May 4  
11 1988, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

12 1. The Organization's appeal be, and the same hereby is,  
13 upheld, and the County's determinations be, and the same hereby  
14 are, reversed.

15 2. The Sheriff Department's clerical employees who are  
16 deputy sheriffs are proper members of the Elko County Sheriff  
17 Employee's Organization, Inc., an employee organization composed  
18 exclusively of law enforcement officers, as required by NRSA  
19 288.140(3).

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2 3. Each party will bear its own costs and fees in this  
3 appeal.

4 DATED this 6th day of July, 1988.

5 LOCAL GOVERNMENT EMPLOYEE-  
6 MANAGEMENT RELATIONS BOARD

7 By Salvatore C. Gucino  
8 SALVATORE C. GUCINO, Chairman

9 By Tamara Barenco  
10 TAMARA BARENGO, Member

11 By Jeffrey L. Eskin  
12 JEFFREY L. ESKIN, Member

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