

1 BEFORE THE  
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
3 RELATIONS BOARD

4 LANDER COUNTY BOARD OF  
5 COMMISSIONERS,

6 Petitioner,

7 -vs-

8 LANDER COUNTY LAW ENFORCEMENT  
9 EMPLOYEES ASSOCIATION,

10 Respondent.

ITEM NO. 223

CASE NO. AI-045443

DECISION

11 For the Petitioner: Anthony R. Gordon, Esq.

12 For the Respondent: Larry D. Lessly, Esq.

13 For the EMRB: Tamara Barengo, Chairman  
14 Jeffrey L. Eskin  
Salvatore C. Gugino

15 STATEMENT OF THE CASE

16 This matter came before the Local Government Employee-Management  
17 Relations Board ("Board") upon the filing of a Petition For Declaratory  
18 Ruling by the Lander County Board of Commissioners ("County") seeking a  
19 determination by the Board on whether the Lander County Law Enforcement  
20 Employees Association ("Association") voluntarily withdrew itself as the  
21 exclusive bargaining representative of the local government employees in  
22 the Lander County law enforcement bargaining unit prior to February 1,  
23 1989, and was therefore not eligible under the law to negotiate monetary  
24 issues in 1989-1990.

25 In May of 1980, the Lander County Law Enforcement Employees  
26 Association ("Association") was duly recognized as the exclusive  
27 bargaining representative of the local government employees in the Lander  
28 County law enforcement bargaining unit and bargained a contract in that

1 same month. Subsequent to that, no further bargaining has taken place and  
2 the Association has been inactive.

3 On February 1, 1989, the Association served the County with a formal  
4 Notice of Intent to Negotiate a Labor Agreement for the 1989-90 fiscal  
5 year. Subsequently, they provided the County with a membership list, a  
6 pledge not to strike, and a roster of officers.

7 At its February 15, 1989 public meeting, the County acknowledged the  
8 existence of the organization as of February 15, 1989, and has entered the  
9 bargaining process on non-fiscal matters. However, the County contested  
10 the Association's majority status on February 1, 1989, and its right to  
11 bargain monetary issues for the 1989-1990 contract. The County thereafter  
12 submitted this matter in dispute to the Board for its determination.

13 In their Prehearing Statements, the parties have submitted the  
14 following issues for the Board's determination:

- 15 (1) Whether the Lander County Law Enforcement  
16 Employees Association ("Association") ceased  
17 to be supported by a majority of the local  
18 government employees in the bargaining unit  
19 in order to negotiate monetary issues for  
20 fiscal year 1989-1990.
- 21 (2) Whether the Association ceased to be supported  
22 by a majority of the local government employees  
23 in the bargaining unit under NRS 288.160(3)(c)  
24 before February 1, 1989, and therefore have, in  
25 essence, voluntarily withdrawn themselves as  
26 the bargaining representative of the Sheriff's  
27 Department employees pursuant to NRS 288.160(3)  
28 by letting the duly elected Sheriff bargain for

their position for approximately eight (8) years.

(3) Whether on February 1, 1989, the Association represented the majority of the local government employees in the bargaining unit, in order to negotiate for a fiscal year 1989-1990 collective bargaining agreement.

(4) Whether the Association lost its status as collective bargaining representative for the local government employees in the bargaining unit by being inactive in collective bargaining for eight (8) years after having been duly recognized by the County as the exclusive bargaining agent in 1980.

(5) Whether the Association, as a matter of law, was eligible to be the exclusive bargaining representative of the local government employees in the bargaining unit.

Both parties contending that there are not significant facts in controversy and neither party requesting a hearing pursuant to NAC 288.400, the Board determined to decide the matter without the necessity of a hearing, based upon all pleadings and papers on file.

## DISCUSSION

Both Nevada statutes and EMRB regulations address the withdrawal of recognition by a local government employer. NRS 288.160(3) states that:

A local government employer may withdraw recognition from an employee organization which:

(a) Fails to present a copy of each change in its constitution or bylaws, if any, or to give notice of any change in the roster of its officers, if any, and representatives;

(b) Disavows its pledge not to strike against the local government employer under any circumstances;

1 (c) Ceases to be supported by a majority of the local  
2 government employees in the bargaining unit for which it is  
3 recognized; or

4 (d) Fails to negotiate in good faith with the local  
5 government employer, if it first receives the written permission  
6 of the board.

7 NAC 288.145 states:

8 A local government employer shall request a hearing before  
9 the board before withdrawing recognition of an employee  
10 organization pursuant to NRS 288.160. No hearing on the  
11 withdrawal of recognition of an employee organization will be  
12 entertained during the negotiation period immediately following  
13 the February 1 deadline for notification by the employee  
14 organization of its desire to negotiate unless the local  
15 government employee organization:

- 16 1. Voluntarily withdraws as the bargaining representative;  
17 or
- 18 2. Fails to notify the employer pursuant to NRS 288.180  
19 that it desires to negotiate.

20 In the instant case, the County contends that the Association ceased  
21 to be supported by a majority of the local government employees in the  
22 bargaining unit on or before February 1, 1989, and therefore have, in  
23 essence, voluntarily withdrawn themselves as the bargaining  
24 representative.

25 However, the pleadings and documents submitted to the Board clearly  
26 indicate that the Association possessed majority membership status on  
27 February 1, 1989 (see Association Prehearing Statement, Exhibit "A" and  
28 Affidavit of Max W. Bunch dated April 24, 1989). Evidence indicates that,  
in fact, at least 18 of the 19 employees in the bargaining unit were, on  
that date, and continue to be, members of the Association.

From 1980 until February 1, 1989, no action whatsoever was initiated  
by the County pursuant to NRS 288.160(3) or NAC 288.145 to withdraw  
recognition.

In the same time period, the Association took no action whatsoever  
pursuant to NAC 288.145 to voluntarily withdraw as the bargaining  
representative. Inactive status, alone, does not constitute voluntary



1 withdrawal of recognition.

2 Further, during this same time period the Board took no action  
3 pursuant to NRS 288.060(3) or NAC 288.145, granting permission to the  
4 County to withdraw recognition.

5 Therefore the Board denies the Petition of the County, ruling that  
6 the Association, on February 1, 1989, was and remains, the exclusive  
7 bargaining representative of the local government employees in the Lander  
8 County law enforcement bargaining unit and has satisfied statutory  
9 requirements to negotiate a labor agreement for the 1989-1990 fiscal year,  
10 including subjects requiring the budgeting of money by the County.

11 FINDINGS OF FACT

12 1. That the Petitioner, Lander County Board of County Commissioners,  
13 is a local government employer.

14 2. That the Respondent, Lander County Law Enforcement Employees  
15 Association, is a local government employee organization.

16 3. That in May, 1980, the Association was duly recognized by the  
17 County as the exclusive representative of the local government employees  
18 in the Lander County law enforcement bargaining unit.

19 4. That bargaining occurred between the Association and the County  
20 in May, 1980. Subsequent to that bargaining, no further bargaining has  
21 occurred between the parties.

22 5. That from May, 1980, up to February 1, 1989, the Association has  
23 been inactive.

24 6. That on February 1, 1989, pursuant to NRS 288.180(1), the  
25 Association served the County with a formal Notice of Intent to Negotiate  
26 a Labor Agreement.

27 7. That subsequent to February 1, 1989, the Association submitted to  
28 the County a membership list indicating that 18 employees in the

1 bargaining unit were members as of January 31, 1989.

2 8. That from 1980 until February 1, 1989, the County took no action  
3 whatsoever pursuant to the provisions of NRS 288.160(3) or NAC 288.145 to  
4 withdraw recognition from the Association.

5 9. That from 1980 until February 1, 1989, the Association took no  
6 action whatsoever pursuant to NAC 288.145 to voluntarily withdraw as the  
7 bargaining representative.

8 10. That from 1980 until February 1, 1989, the Board took no action  
9 pursuant to NRS 288.160(3) or NAC 288.145, granting permission to the  
10 County to withdraw recognition from the Association.

11 CONCLUSIONS OF LAW

12 1. That the Local Government Employee-Management Relations Board  
13 possesses original jurisdiction over the parties and subject matter of  
14 this Petition pursuant to the provisions of NRS Chapter 288.

15 2. That the Petitioner, Lander County Board of County Commissioners,  
16 is a local government employer within the terms defined by NRS 288.060.

17 3. That the Respondent Lander County Law Enforcement Employees  
18 Association, is a recognized employee organization within the terms  
19 defined by NRS 288.040.

20 4. That NRS 288.160(3)(c) provides that a local government employer  
21 may withdraw recognition from an employee organization which ceases to be  
22 supported by a majority of the local government employees in the  
23 bargaining unit for which it is recognized.

24 5. That NAC 288.145 requires that a local government employer shall  
25 request a hearing before the board before withdrawing recognition of an  
26 employee organization pursuant to NRS 288.160.

27 6. That NAC 288.145 prohibits the entertainment of a hearing on the  
28 withdrawal of recognition of an employee organization during the

1 negotiation period immediately following the February 1 deadline for  
2 notification of intent to negotiate a labor agreement unless the local  
3 government employee organization voluntarily withdraws as the bargaining  
4 representative or fails to notify the employer pursuant to 288.180 that it  
5 desires to negotiate.

6 7. That in May 1980, pursuant to the provisions of NRS 288.160 the  
7 Association was duly recognized by the County as the exclusive  
8 representative of the local government employees in the Lander County law  
9 enforcement bargaining unit.

10 8. That from 1980 until February 1, 1989, the County took no action  
11 whatsoever pursuant to the provisions of NRS 288.160(3) or NAC 288.145 to  
12 withdraw recognition from the Association.

13 9. That from 1980 until February, 1989, the Association took no  
14 action pursuant to NAC 288.145 to voluntarily withdraw as the bargaining  
15 representative.

16 10. That from 1980 until February 1, 1989, the Board took no action  
17 pursuant to NAC 288.160(3) or NAC 288.145, granting permission to the  
18 County to withdraw recognition from the Association.

19 11. That on February 1, 1989, the Association was supported by the  
20 majority of the local government employees in the Lander County law  
21 enforcement bargaining unit.

22 12. That the Association, on February 1, 1989, was and remains, the  
23 exclusive bargaining agent of the local government employees in the Lander  
24 County law enforcement bargaining unit.

25 13. That on February 1, 1989, pursuant to NRS 288.180(1), the  
26 Association gave written notice of its desire to negotiate a labor  
27 agreement for the 1989-90 fiscal year.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party is to bear its own costs and fees in the above-entitled matter.

LOCAL GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

By Jeffrey L. Eskin  
JEFFREY L. ESKIN

By Salvatore C. Gugno  
SALVATORE C. GUGINO