

1 Employees Association ("LVVPEA") requested recognition fr
2 the District for clerical employees.

3 On November 29, 1989, the District petitioned the Local
4 Government Employee-Management Relations Board ("Board") for a
5 Declaratory Order designating an appropriate bargaining unit
6 of clerical employees and for a bargaining election to
7 determine the exclusive representative of that unit.

8 The WEA, the recognized employee organization for the
9 existing combined bargaining unit of field and clerical
10 employees, objected to the severance of the unit claiming that
11 the petition had been filed in an untimely manner, that there
12 was no justification for a withdrawal of recognition of the
13 clerical employees, and that the existing bargaining unit met
14 the community of interest criterion established by the Board.

15 The LVVPEA for its part, supported the petition claiming
16 that the existing bargaining unit was established without
17 addressing the requisite community of interest standard, that
18 the clerical employees were an appropriate unit, and that the
19 majority of clerical employees did not wish to be represented
20 by WEA.

21 On April 27, 1990, the Board conducted a hearing on this
22 matter in Las Vegas, Nevada. At the opening of the hearing,
23 the parties presented a stipulation of thirty-seven (37) facts
24 and exhibits including an agreement of which employee
25 positions (except dispatchers) were field positions and which
26 were clerical positions. The remaining issues presented fr
27 determination were:
28

1 1. Whether this petition was filed in an untimely
2 manner in violation of NAC 288.145.

3 2. Whether the District assisted the LVVPEA in its
4 efforts to divide the bargaining unit in violation of NRS
5 280.270(1).

6 3. Whether the clerical employees lack the requisite
7 community of interest with the field employees and should be
8 moved from the existing bargaining unit to a clerical
9 bargaining unit and if so,

10 4. Whether the dispatchers should be included in the
11 clerical bargaining unit, and

12 5. Whether the WEA or the LVVPEA should be designated
13 as the exclusive bargaining agent of the clerical unit.

14 The Board took the testimony of witnesses for the
15 parties, examined evidence and heard arguments by the parties
16 and their counsel, and reviewed the paper and pleadings on
17 file including post-hearing briefs. From all the above, the
18 Board has concluded that the clerical employees have a
19 distinct community of interest, that they constitute an
20 appropriate bargaining unit and that the exclusive
21 representative for that unit will be determined by an election
22 of the clerical employees.

23 DISCUSSION

24 I

25 THE PETITION WAS FILED IN A TIMELY
26 MANNER.

27 The Board rejects the WEA's argument that NAC 288.145
28 prohibits the Board from hearing this case. NAC 288.145

1 provides:

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

- 12 1. Voluntarily withdraws as the bargaining
13 representative; or
- 14 2. Fails to notify the employer pursuant to NRS
15 288.180 that it desires to negotiate.

16 The Board's intent in adopting this rule was to restrict
17 the practice of withdrawing recognition of the bargaining
18 agent by employers during negotiations as a bargaining tactic.

19 (Also see: Water Employees Association v. Las Vegas Valley
20 Water District, EMRB Case No. A1-045418, Item 204 (1988))

21 This rule does not establish a bar to appeals for unit
22 clarifications after the regular course of negotiations.

23 In the instant case, the District and the LVVPEA were
24 not seeking the withdrawal of recognition from WEA, but rather
25 a bargaining unit clarification. The Board recognizes that a
26 unit clarification during negotiations could do the same to
27 frustrate the collective bargaining process as a withdrawal of
28 recognition. Here, however, the parties had engaged in
collective bargaining for two (2) years, reached impasse,
engaged in mediation and had scheduled binding factfinding
before this petition was filed. There was no evidence that
the filing of this petition interrupted the collective
bargaining process.

 Further, there was no contract bar in force at the time

1 of the petition. The contract had expired and the parties
2 stipulated for the factfinder on December 19, 1989 that:

3 The District and the WEA agree that, upon issuance
4 of contract language by the fact finder in this
5 case, the District will apply all terms of such
6 contract to the clerical employees at the District
7 but, by doing so, the District does not admit that
8 such clerical employees are covered by the
9 contract and the WEA will not resist the present
10 petition before the EMRB by asserting that such
11 clerical employees are covered by this contract.

12 The Board is mindful of its responsibility to maintain
13 labor relations stability in the workplace and it does not
14 lightly entertain petitions to carve new bargaining units
15 from existing units. In this case, the Board recognizes that
16 the District petitioned only after a competing union provided
17 a showing of interest and then, at a time which avoided
18 interrupting the bargaining process.

19 II

20 THERE IS NO EVIDENCE OF ILLEGAL
21 ASSISTANCE TO THE LVVPEA.

22 The Board finds no evidence that the District assisted
23 the LVVPEA in a manner violating NRS 288.270(1(b) which
24 provides:

25 1. It is a prohibited practice for a local
26 government employer or its designated representa-
27 tive willfully to:

28 (b) Dominate, interfere or assist in the
formation of any employee organization.

The Board recognizes the potential dangers of an
employer establishing a "company union" in an effort to deny
employees their rights and to frustrate the collective
bargaining process. In the instant case, the District clearly
favored and argued for the severance of the clerical employees

1 from the field units, however, the District did not exhibit a
2 preference between WEA or LVVPEA as the clerical unit
3 bargaining agent.

4 Testimony from WEA witnesses failed to establish any
5 favored treatment of the LVVPEA by the District. Both unions
6 used the public meeting room at the District office
7 (Transcript at 80, 120). Use of the employee bulletin board
8 by LVVPEA was limited to one occasion and lacked permission
9 from the District (Transcript at 88, 121). WEA used the
10 inter-office mail while LVVPEA did not. Leaders in both
11 unions received regular promotions (Transcript at 76, 100).

12 The evidence establishes that the District played a
13 neutral role with respect to the competing unions.

14 III

15 CLERICAL EMPLOYEES HAVE A COMMUNITY
16 OF INTEREST SEPARATE FROM FIELD EMPLOYEES.

17 NRS 288.170(1) and (5) provide:

18 1. Each local government employer which has
19 recognized one or more employee organizations
20 shall determine, after consultation with the
21 recognized organization or organizations, which
22 group or groups of its employees constitute an
23 appropriate unit of units for negotiating. The
24 primary criterion for that determination must be
25 the community of interest among the employees
26 concerned.

27 5. If any employee organization is aggrieved by
28 the determination of a bargaining unit, it may
appeal to the board. Subject to judicial review,
the decision of the board is binding upon the
local government employer and employee organiza-
tions involved. The board shall apply the same
criterion as specified in subsection 1.

(Emphasis added.)

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1 In determining the legislative intent of the application
2 of "community of interest", the Board turns to the words of
3 Senator Carl Dodge, the primary sponsor and author of this
4 legislation. Senator Dodge, while acknowledging the
5 difficulty of trying to anticipate each type of bargaining
6 unit, used a school district as an example of what he had in
7 mind:

8 . . . are probably four or five different groups
9 of employees in a school district that would form
10 their own bargaining units, as a result of this
11 community of interest. I think the teachers,
12 themselves, the professional certified people,
13 would be a bargaining unit; the office and
14 clerical staff would be a bargaining unit because
15 they have a community of interest; the maintenance
16 people would be a bargaining unit; possibly the
17 bus drivers would be a bargaining unit, because
18 again, they have communities of interest. So the
19 only reason I am mentioning this to you is to
20 place in proper context at least, what this
21 community of interest would constitute. And, of
22 course, then it would be up to the Local
23 Government Employers to take a look at each group
24 of employees that comes in and make the
25 determination in their minds as to whether these
26 people actually were in appropriate bargaining
27 unit, or whether you have employees with different
28 communities of interest that needed to be split
out in separate bargaining units.

Minutes of Jt. Hearing of Senate Committee on
Federal, State and Local Governments and Assembly
Committee on Government Affairs (Feb. 25, 1969),
(emphasis added).

Further guidance is provided in Kalamazoo Paper Box
Corp., a unit-severance case where the NLRB enumerated the
factors to be considered in determining community of interest
apart from other employees:

[A] difference in method of wages or compensation;
different hours of work; different employment
benefits; separate supervision; the degree of
dissimilar qualifications, training and skills;

1 differences in job functions and amount of working
2 time spent away from the employment or plant sites
3 . . .; the infrequency or lack of contact with
4 other employees; lack of integration with the work
5 functions of other employees or interchange with
6 them; and the history of bargaining. Kalamazoo
7 Paper Box Corp., 136 NLRB 134, 137, 49 LRRM 1715
8 (1962). Also see: Kennecott Copper Corp., 176
9 NLRB 96, 71 LRRM 1188 (1969).

10 When the factors are applied in this case, it is clear
11 that the clerical employees have a distinct community of
12 interest.

13 The lack of common supervision between clerical and
14 field employees is significant (Petitioner's Exhibit "A"). In
15 the "management" system, there are forty-eight (48) clerical
16 employees and only one (1) field employee. In the "water"
17 system, of one hundred sixty (160) employees there are twenty
18 (20) clerical employees and only four (4) of them report to a
19 supervisor who also supervises field personnel. In
20 "engineering", the fifteen (15) field employees are inspectors
21 who report to inspector supervisors. All of the clerical
22 employees in the engineering system report to other managers.
23 Thus, there are only five (5) instances in the District where
24 clerical employees report directly to the same supervisor that
25 field employees report to.

26 From the job description (Joint Exhibits "Q", "R" and
27 "S") the nature of the clerical jobs dealing with information,
28 typewriters, computers, and telephones at their desks is
significantly different from the nature of field jobs which
requires outdoor work throughout the city and the utilization
of heavy construction equipment, physical work, uniforms and

1 hard hats (Stipulation 35).

2 Geographically the field and clerical employees are also
3 separate. Only seven (7) field employees (the system
4 controllers) report to and perform their daily duties in the
5 administration building. While twenty-three (23) other field
6 employees report to that building, they are dispatched to the
7 field and use a separate entrance from that for clerical
8 employees. Five (5) clerical employees work in buildings
9 where field employees report. The remaining clerical
10 employees work full time in the administration building and
11 branch offices where there are no field employees
12 (Stipulations 23 and 24).

13 Field employees wear uniforms and clerical employees do
14 not (Stipulation 28). Approximately twenty (20) field
15 employees work swing or grave shifts while only two (2)
16 clerical employees do so (Stipulation 29). Field employees
17 work 87.61% of the overtime while clerical employees work
18 11.04% of it (Stipulation 31). The median annual wages of
19 field employees is more than \$8,500.00 higher than the median
20 for clerical employees (Stipulation 30). Field employees work
21 stand-by shifts, receive recuperation benefits and one-half
22 hour for lunch. Clerical employees never receive stand-by or
23 recuperation pay and have a one-hour lunch (Stipulation 32).
24 In the last three years, only five (5) of the ninety-five (95)
25 total transfers within the District have been between the
26 field and the clerical groups (Stipulation 33).

27 There is overwhelming evidence supporting a separate and
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1 distinct community of interest for clerical employees.

2 IV

3 THE DISPATCHERS SHOULD BE INCLUDED
4 WITHIN THE CLERICAL UNIT.

5 The dispatchers report, along with other clerical
6 employees, to a manager (Transcript at 41). Their wage range
7 is close to the median clerical hourly wage (Stipulation 30).
8 The dispatchers work in the administration building with the
9 other clerical employees. They work inside, they sit at desks
10 and they utilize computers, radios and telephones. They fill
11 out paperwork and they put information into the computer.
12 Their direct relationship with the field employees is to relay
13 instructions to them by radio (Transcript at 44). Like
14 clerical employees, they work the day shift and receive one
15 hour for lunch (Stipulations 29 and 32).

16 Based on the evidence above, the dispatchers are
17 appropriately included in the clerical unit.

18 V

19 A BARGAINING ELECTION IS THE PROPER
20 MEANS TO DETERMINE THE EXCLUSIVE
21 REPRESENTATIVE FOR THE CLERICAL UNIT.

22 The Board does not believe the evidence presented is
23 sufficient to determine the desires of the majority of the
24 clerical employees regarding their bargaining agent.

25 NRS 288.160(4) provides:

26 If the board in good faith doubts whether any
27 employee organization is supported by a majority
28 of the local government employees in a particular
bargaining unit, it may conduct an election by
secret ballot upon the question. Subject to
judicial review, the decision of the board is
binding upon the local government employer and all

1 employee organizations involved.

2 Accordingly, the Board directs the Commissioner to
3 conduct an election among the clerical employees (listed in
4 Stipulation 26, plus the dispatchers) to determine the
5 exclusive representative of the clerical unit.

6 FINDINGS OF FACT

7 1. That Petitioner, Las Vegas Valley Water District, is
8 a special district and a local government employer

9 2. That Respondent, Water Employees Association, is a
10 recognized employee organization authorized to be exclusive
11 representative of the non-supervisory bargaining unit.

12 3. That Respondent, Las Vegas Valley Public Employees
13 Association, is a recognized employee organization which
14 petitioned for recognition as exclusive representative of the
15 clerical employees.

16 4. That this Petition was filed after the labor
17 contract had expired and did not interrupt the bargaining
18 process.

19 5. That the WEA failed to provide sufficient evidence
20 that the District provided illegal assistance to the LVVPEA.

21 6. That the District clerical employees have a distinct
22 community of interest separate from field employees in areas
23 of supervision, nature of job functions, work sites, hours,
24 wages, contact with other employees and history of bargaining.

25 7. That dispatchers have a distinct community of
26 interest with clerical employees.

27 8. That the evidence is insufficient for the Board to
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1 determine whether the WEA or the LVVPEA represents the
2 majority of the clerical employees.

3 CONCLUSIONS OF LAW

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

8 2. That Petitioner, Las Vegas Valley Water District, is
9 a local government employer within the meaning of NRS 288.060.

10 3. That Respondents Water Employees Association and Las
11 Vegas Valley Public Employees Association are employee
12 organizations within the meaning of NRS 288.040.

13 4. That the intent of NAC 288.145 is to restrict the
14 practice of withdrawing recognition of the bargaining agent by
15 employers during negotiations.

16 5. That this Petition was filed in a proper and timely
17 manner under the rules established by the Board in NAC 288.

18 6. That NRS 288.110(1) grants the Board the authority
19 to make rules governing the recognition of employee
20 organizations and the determination of bargaining units.

21 7. That a petition for a unit determination or unit
22 clarification pursuant to NRS Chapter 288 may be entertained
23 by the Board after the normal course of negotiations.

24 8. That the factors for determining community of
25 interest pursuant to NRS 288.170 include wages, hours,
26 benefits, supervision, qualifications, training and skills,
27 job functions, work site, employee contact, integration of
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1 employee functions and bargaining history.

2 9. That NRS 288.170(1) contemplates that clerical
3 employees constitute an appropriate bargaining unit because of
4 its community of interest.

5 10. That where there is a sufficient showing of
6 interest by a competing employee organization, an election
7 among the employees affected is appropriate to determine the
8 exclusive bargaining agent pursuant to NRS 288.160(4).

9 ORDER

10 Upon decision rendered by the Board at its meeting on
11 July 12, 1990, it is hereby

12 ORDERED, ADJUDGED AND DECREED as follows:

13 1. That the District Petition be, and the same hereby
14 is, granted;

15 2. That the WEA Counter-Claims be, and the same hereby
16 are, dismissed;

17 3. That the District clerical employees are severed
18 from the existing non-supervisory unit, that the clerical
19 bargaining unit is hereby established and that the clerical
20 employees are covered by the terms of the existing agreement
21 until a new agreement for the clerical bargaining unit is
22 negotiated;

23 4. That the parties shall cooperate with the
24 Commissioner to conduct an election among the clerical
25 employees to determine the exclusive representative for the
26 clerical unit; and

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1 5. That each party shall bear its own costs and
2 attorney fees in this matter.

3 DATED this 15th day of August, 1990.

4 LOCAL GOVERNMENT EMPLOYEE-
5 MANAGEMENT RELATIONS BOARD

6 By Salvatore C. Gugin
7 SALVATORE C. GUGINO, Chairman

8 By Tamara Barengo
9 TAMARA BARENGO, Vice Chairman

10 By Howard Ecker
11 HOWARD ECKER, Member
12