

STATE OF NEVADA  
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

MINERAL COUNTY PUBLIC SAFETY  
DISPATCHERS ASSOCIATION,

Complainant,

-vs-

BOARD OF COUNTY COMMISSIONERS  
OF MINERAL COUNTY AND MINERAL  
COUNTY, NEVADA,

Respondent.

ITEM NO. 265

CASE NO. A1-045482

DECISION

For the Complainant: Walter R. Tarantino, Esq.  
AITCHISON & HOAG

For the Respondent: Craig Jorgenson, Esq.  
MINERAL COUNTY DISTRICT ATTORNEY

For the EMRB: Tamara Barengo, Chairman  
Howard Ecker, Vice Chairman  
Salvatore C. Gugino, Member

STATEMENT OF THE CASE

On October 30, 1990, the Mineral County Public Safety Dispatchers Association ("Association") brought the following Complaint against the Board of County Commissioners of Mineral County and Mineral County, Nevada ("Employer") before the Local Government Employee-Management Relations Board ("Board"):

1. Respondent, BOARD OF COUNTY COMMISSIONERS OF MINERAL COUNTY AND MINERAL COUNTY, NEVADA (hereinafter referred to as "Employer" or "Respondent") are local government employers within the terms defined by NRS 288.060.

2. Complainant, MINERAL COUNTY PUBLIC SAFETY DISPATCHERS ASSOCIATION, (hereinafter referred to as "Association") is a recognized employee organization within the terms defined by NRS 288.040.

1           3.       The Association is the exclusive  
2 bargaining representative for a bargaining unit of  
Public Safety Dispatchers employed by the  
Respondent.

3           4.       The Local Government Employee-Management  
4 Relations Board has original jurisdiction over the  
parties and the subject matter of this Complaint  
pursuant to the provisions of NRS Chapter 288.

5           5.       On or about October 5, 1989, the Board of  
6 Mineral County Commissioners, meeting in official  
session, recognized and approved a separate  
bargaining unit for the Mineral County Public  
7 Safety Dispatchers.

8           6.       On or about January 31, 1990, the  
9 Association, by letter and through its designated  
agent, the Operating Engineers Local Union No. 3,  
10 notified the Employer of its intent to enter into  
collective bargaining negotiations for an initial  
agreement pursuant to the provisions of NRS  
288.180. (copy attached)

11           7.       On or about March 22, 1990, the parties  
12 met for the first negotiation session at which  
time the Association presented its initial  
contract proposals to the Employer.

13           8.       Present at the meeting referred to in  
14 paragraph 7, above, and representing the Employer  
as agents were District Attorney Larry G. Bettis  
and Deputy District Attorney Evan Beaver. The  
15 Association was represented by Richard Gleed of  
the Operating Engineers Local Union No. 3 and  
16 Mineral County Public Safety Dispatchers Jeri  
Bunch and Tina Carlson.

17           9.       At the meeting referred to in paragraph  
18 7, above, the Association and the Employer  
accepted and signed formal ground rules governing  
the negotiations for an initial agreement between  
19 the parties. (copy attached)

20           10.       In or about May, 1990, the parties, by  
telephone, scheduled a second negotiation session  
for May 24, 1990.

21           11.       In or about May, 1990 and before May 24,  
22 1990, the Employer, through its agent, Evan  
Beaver, notified the Association, through its  
agent, Richard Gleed, by telephone, that the May  
23 24, 1990 meeting was canceled and that the Board  
of County Commissioners had rejected the  
24 Association's initial contract proposals.

25           12.       On or about May 30, 1990, the Association  
presented a second set of contract proposals to  
the Employer in the form of a counter proposal to  
26 the Board's earlier rejection of its initial set of  
proposals as referred to in paragraph 11, above.  
27 (copy attached)

28           13.       By letter dated July 2, 1990, the

1 Employer notified the Association, for the first  
2 time, that the Board of County Commissioners did  
3 not intend to negotiate an initial collective  
4 bargaining agreement with the Association. The  
5 Employer further notified the Association that, in  
6 the future, the Employer would be represented by  
7 Mineral County District Attorney, Craig Jorgenson,  
8 regarding the matter. (copy attached)

9 14. After numerous telephone communications  
10 and requests to return to the bargaining table by  
11 the Association, the Employer, by letter dated  
12 September 13, 1990, reaffirmed its intent not to  
13 return to the bargaining table and negotiate an  
14 initial agreement with the Association. (copy  
15 attached)

16 15. On August 13, 1990, the Association made  
17 a formal and final demand to return to the  
18 bargaining table for the purpose of negotiating an  
19 initial agreement between the parties. (copy  
20 attached)

21 16. The formal demand referred to in  
22 paragraph 15, above, has gone unanswered by the  
23 Employer.

24 17. As of the date of this Complaint, the  
25 Employer has refused to return to the bargaining  
26 table and negotiate the terms of an initial  
27 agreement with the Association.

28 18. The Employer is obligated, pursuant to  
the provisions of NRS 288.150 and NRS 288.270 to  
bargain collectively in good faith with the  
Association, the exclusive representative of the  
recognized bargaining unit as referred to in  
paragraphs 2, 3 and 5, above.

19 19. By the Conduct [sic] alleged in  
20 paragraphs 13, 14, 16 and 17, above, the  
21 Respondent has failed to bargain in good faith by  
22 refusing to return to the bargaining table and  
23 negotiate in good faith with the exclusive  
24 representative of a recognized bargaining unit  
25 regarding the terms of an initial agreement, in  
26 violation of NRS 288.270(1)(e).

27 20. By the conduct alleged in paragraphs 13,  
28 14, 16 and 17, above the Respondent has  
derivatively interfered, restrained and coerced  
employees of the bargaining unit in the exercise  
of protected activity in violation of NRS  
288.270(1)(a).

29 In answer, the Employer stipulated to the accuracy of  
30 Allegations 1 through 18 of the Association's above-quoted  
31 Complaint, but denied Allegations 19 and 20 for reasons which

1 can be briefly stated by quoting the CONCLUSION set forth i  
2 the Employer's ANSWER TO COMPLAINT, i.e.:

3 On October 5, 1989, the County Commissioners  
4 recognized the unique position of the dispatchers  
5 and agreed to treat them as a bargaining unit. In  
6 doing so they never envisioned, or suspected that  
7 they were nullifying and extracting the  
8 dispatchers out of their current contract. The  
9 County continues to afford the dispatchers all of  
10 the rights and privileges under the County  
11 contract, and clearly if the County started to  
12 treat the dispatchers tomorrow in a way in  
13 violation of the current County contract  
14 Complainant would be in front of you next week  
15 complaining about a violation of their contract.  
16 It is the position of the Respondent that the  
17 dispatchers remain under there [sic] current  
18 contract and that the Commissioners gave them  
19 permission to bargain as a unit effective the 1991  
20 contract.

21 The Employer's aforementioned answer was not received by  
22 the Board until December 24, 1990, following which the  
23 Association filed a Motion to Dismiss Respondent's Answer and  
24 Motion For Judgment on the Pleadings, account the Employer did  
25 not file its answer within twenty (20) days as required by NAC  
26 288.220.

27 On January 9, 1991, the Employer filed a Memorandum in  
28 Opposition to Complainant's Motion to Dismiss Respondent's  
Answer and Motion For Judgment on the Pleadings, alleging:

(1) There is no provision in NAC 288.240 for  
dismissal of an answer filed within 20 days;

(2) The provisions of NAC 288.220(1) are not  
mandatory and do not preclude the respondent from  
filing an answer more than 20 days after service  
of the Complaint;

(3) The Nevada Administrative Code does not  
provide for Judgment on the Pleadings; and

/ / /



1 (4) The Complainant (Association) is not entitled  
2 to an order recognizing that all allegations in  
the Complaint are deemed to be admitted as true;  
3 and asked the Board to deny the Complainant's (Association's)  
4 Motions.

5 At a meeting held on March 15, 1991, the Board heard  
6 argument from the parties on Complainant's Motion to Dismiss  
7 Respondent's Answer and Motion For Judgment on the Pleadings.  
8 At said meeting the parties went on record as to stipulating  
9 to the facts contained in the pleadings and further stipulated  
10 to the Board rendering a decision in the instant case based on  
11 the merits of the pleadings. Following said meeting the Board  
12 issued an Order denying the Complainant's Motion to Dismiss  
13 Respondent's Answer and Motion For Judgment on the Pleadings,  
14 in accordance with the aforementioned stipulations.

#### 15 DISCUSSION

16 The parties, having stipulated to the accuracy of  
17 certain allegations contained in the Association's Complaint,  
18 supra, have thereby established the facts as set forth in  
19 Allegations 1 through 18 of said Complaint and the issues as  
20 set forth in Allegations 19 and 20 of said Complaint. The  
21 allegations set forth as 19 and 20 may be summarized as  
22 follows:

23 (1) Does the Employer's refusal to negotiate with  
24 this bargaining unit, which it has recognized,  
25 regarding the terms of an initial agreement  
constitute a prohibited practice in violation of  
NRS 288.270(1)(e)?

26 (2) Does the Employer's refusal to negotiate  
27 constitute interference, restraint and/or coercion  
28 of or against the employees of said bargaining  
unit, practices prohibited by NRS 288.270(1)(a)?

1           The parties in the instant dispute are in disagreement  
2 as to whether, by recognizing the Association as the exclusive  
3 bargaining agent for the dispatchers, the Employer intended to  
4 negotiate a labor agreement with the new bargaining unit  
5 before 1991, to become effective on or subsequent to July 1,  
6 1991. The Employer holds steadfastly to the position that,  
7 notwithstanding its recognition of the dispatchers as a  
8 separate bargaining unit, it intended that the dispatchers  
9 would remain bound to the terms and conditions of the three-  
10 year labor agreement between Mineral County and Local 39, to  
11 which the dispatchers were subject at the time the Employer  
12 recognized them as a separate bargaining unit. The  
13 Association, on the other hand, adamantly holds to the  
14 position that the parties contemplated negotiating a separate  
15 labor agreement for the new bargaining unit prior to 1991.  
16 The Association proffers the following as evidencing the  
17 intention of the parties to negotiate a new labor agreement in  
18 1990:

19           (1) Copy of letter dated October 9, 1989, from  
20 the Clerk for the Board of Mineral County  
21 Commissioners to the Mineral County Sheriff's  
22 Department Association confirming meeting of  
23 County Commissioners on October 5, 1989, during  
which a separate bargaining unit for Dispatchers  
was considered, following which the Board of  
Commissioners recognized and approved a separate  
bargaining unit for Sheriff Dispatchers.

24           (2) Copy of letter dated January 31, 1990, from  
25 the Business Representative of Operating Engineers  
26 Local No. 3 (who was assisting the Association) to  
the Mineral County Board of Commissioners, setting  
forth the Association's list of issues to be  
negotiated.

27           / / /  
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1 (3) Copy of "Ground Rules" adopted by the parties  
2 on March 22, 1990 for conducting the negotiations.

3 (4) Copy of letter dated May 30, 1990, from the  
4 aforementioned Business Representative (represent-  
5 ing the Association) to the Deputy District  
6 Attorney for Mineral County. This letter alludes  
7 to a negotiating session which apparently had been  
8 scheduled for May 24, 1990, but was postponed by  
9 the Employer, and indicated that the Dispatchers  
10 were willing to make substantial concessions in  
11 order to reach an agreement by July 1, 1990.

12 (5) Copy of letter dated July 2, 1990, from the  
13 Deputy District Attorney for Mineral County to the  
14 aforementioned Business Representative (represent-  
15 ing the Association), confirming the position  
16 of the Employer (that the Dispatchers were still  
17 bound to the terms and conditions of the  
18 three-year labor contract negotiated by Local 39  
19 when the Dispatchers were part of that bargaining  
20 unit), and alluding to the Business Manager's  
21 comment that the Employer had either expressly or  
22 by implication led the Dispatchers to believe they  
23 would be free to negotiate their own labor  
24 agreement at that time.

25 (6) Copy of letter dated September 13, 1990, from  
26 the District Attorney for Mineral County to the  
27 aforementioned Business Representative, indicating  
28 that he did not have authority from the Employer  
to enter into negotiations with the Dispatchers  
and again confirming that the Employer was opposed  
to bargaining with the Dispatchers until the new  
contract talks start for the upcoming 1991  
contracts.

(7) Copy of letter dated August 13, 1990, from  
the aforementioned Business Representatives to the  
District Attorney from Mineral County, concerning  
the Association's desire to "restart" the stalled  
negotiations.

It would be unreasonable to conclude from the sequence  
of events occurring prior to the Complaint being filed, as  
evidenced by the documents attached to the Complaint, that the  
Employer initially refused to bargain with the Association.  
It is clear from the evidence of record that negotiations of a  
preliminary nature actually commenced; e.g., the Association

1 filed notice of desire to negotiate on January 31, 1990  
2 pursuant to NRS 288.180; the parties adopted "Ground Rules"  
3 for conducting their negotiations and a negotiating session  
4 was scheduled for May 24, 1990. It is clear from the evidence  
5 of record that the Employer's belated refusal to continue with  
6 the negotiations, and its reason therefore, was an after-  
7 thought. It is pretextual in nature and evidences a complete  
8 reversal of its intentions toward the negotiations requested  
9 by the Association.

10 The National Labor Relations Board (NLRB) has  
11 established the "contract bar" doctrine which essentially  
12 provides that the existence of a current and valid labor  
13 agreement will ordinarily prevent the recognition (or the  
14 election thereof) of a new collective bargaining  
15 representative. Millbrook, Inc., 204 NLRB 1148, 83 LRRM 1482  
16 (1973). In the instant case, however, the Employer in fact  
17 did recognize a new collective bargaining unit and a new  
18 collective bargaining representative for Sheriff's  
19 Dispatchers. Relying on traditional common-law principles the  
20 Employer contended (albeit belatedly) that said Sheriff's  
21 Dispatchers were bound by the terms of the labor agreement  
22 executed on their behalf by their agent prior to recognition  
23 of the new bargaining unit, and that a mere change in agents  
24 cannot abrogate the existing labor agreement.

25 A waiver may result from either action or inaction. In  
26 the instant case, the Employer may be considered to have  
27 waived its alleged right to refuse to negotiate under the  
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1 contract bar doctrine by its initial failure to invoke said  
2 doctrine (waiver by inaction) when the Association requested  
3 negotiations on a new labor agreement. Likewise, the Employer  
4 may be considered to have waived said right when it commenced  
5 preliminary negotiations with the Association on a new labor  
6 agreement (waiver by action).

7 The NLRB generally has been reluctant to give broad  
8 effect to a waiver by inaction. Peerless Publications, Inc.,  
9 231 NLRB 244, 85 LRRM 1611 (1977). A waiver by action,  
10 however, may be given broad effect where the action manifests  
11 the clear and unmistakable intentions of the party (or  
12 parties) taking said action; e.g., a party may contractually  
13 waive its right to bargain, but where such an assertion is  
14 raised, the test applied has been whether the waiver is in  
15 "clear and unmistakable" language. Norris Indus., 231 NLRB  
16 50, 96 LRRM 1078 (1977). Here, the analogy is the action of  
17 the Employer in commencing preliminary negotiations with the  
18 Association on a new labor agreement, evidencing the "clear  
19 and unmistakable" intention of the Employer to proceed with  
20 negotiating a new labor agreement, and to affirmatively waive  
21 any right it may have had to refuse same under the contract  
22 bar doctrine.

23 The Employer's pretextual defense for refusing to  
24 proceed with the negotiations; i.e., "the County Commissioners  
25 . . . never envisioned, or suspected that they were nullifying  
26 and extracting the dispatchers out of their current contract",  
27 is belied by its action in commencing preliminary negotiations  
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1 with the Association on a new labor agreement.

2 Generally, mid-term negotiations are considered  
3 statutorily barred by the provisions of NRS Chapter 288,  
4 pursuant to the last sentence of NRS 288.180(1) and as  
5 evidenced by the time lines set forth in NRS 288.190, NRS  
6 288.200 and NRS 288.205, as well as by the contract bar  
7 doctrine, unless such mid-term negotiations are conducted by  
8 mutual consent.

9 In view of the Employer's action of commencing  
10 preliminary negotiations with the Association on a new labor  
11 agreement, ostensibly by mutual consent, the Board finds that  
12 it affirmatively waived any rights it may have had to contend  
13 that said negotiations were barred statutorily or otherwise.

14 Since the Employer has affirmatively waived any right(s),  
15 it may have had to contend that the negotiations requested  
16 were barred statutorily or otherwise, the Board considers it  
17 unnecessary and inappropriate to address the propriety of the  
18 Employer's refusal to negotiate in the context of the  
19 existence of either a contract or a statutory bar. The  
20 determinative factor in this dispute is that the Employer  
21 entered into preliminary negotiations with the Association on  
22 an initial labor agreement. By virtue of that action and that  
23 action only it was obligated to continue the negotiating  
24 process until the parties either reached agreement on all  
25 issues or until an impasse was reached. Its failure to  
26 fulfill this obligation, under the prevailing circumstances,  
27 must be considered as a refusal to bargain collectively and,  
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1 likewise, a prohibited practice as defined by NRS  
2 288.270(1)(e).

3 In finding the Employer in the instant case responsible  
4 for a refusal to bargain collectively in violation of NRS  
5 288.270(1)(e), as a result of its refusal to proceed with the  
6 negotiations it had commenced, the Board adopts the NLRB's  
7 interpretation of the analogous section of the National Labor  
8 Relations Act; i.e.

9 . . . interference, restraint, and coercion under  
10 Section 8(a)(1) of the Act does not turn on the  
11 employer's motive or whether the coercion  
12 succeeded or failed. The test is whether the  
13 employer engaged in conduct, which may reasonably  
be said, tends to interfere with the free exercise  
of employee rights under the Act. American  
Freightway Company, 124 NLRB 146, 147, 44, LRRN  
1302 (1959).

14 Clark County Classroom Teachers Assn. vs. Clark County School  
15 District, et. al., EMRB Item No. 237, Case No. A1-045435  
16 (December 13, 1989).

#### 17 FINDINGS OF FACT

18 1. That the Complainant, Mineral County Public Safety  
19 Dispatchers Association, is a local government employee  
20 organization.

21 2. That the Respondent, the Board of County  
22 Commissioners of Mineral County and Mineral County, Nevada, is  
23 a local government employer.

24 3. That the Board of Mineral County Commissioners, in a  
25 meeting held on October 5, 1989, recognized and approved a  
26 separate bargaining unit for the Sheriff's Dispatchers, who  
27 are represented before this Board by the Mineral Public Safety  
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1 Dispatchers Association.

2 4. That on January 31, 1990, the Mineral County Public  
3 Safety Dispatchers Association filed notice, pursuant to NRS  
4 288.180, of its desire to negotiate an initial labor agreement  
5 with Mineral County and/or the Mineral County Board of  
6 Commissioners.

7 5. That on March 22, 1990, the parties adopted "Ground  
8 Rules" governing the negotiations for an initial labor  
9 agreement.

10 6. That a negotiating session between the parties  
11 scheduled for May 24, 1990 was postponed or cancelled by the  
12 Employer.

13 7. That Mineral County and/or the Mineral County Board  
14 of Commissioners subsequently refused to bargain with tl  
15 Mineral County Public Safety Dispatchers Association regarding  
16 an initial labor agreement, as evidenced by the correspondence  
17 summarized below:

18 A. Letter dated May 30, 1990, wherein Mineral  
19 County Public Safety Dispatchers Association  
20 submitted revised proposals to the Deputy District  
Attorney for Mineral County, in an alleged effort  
to reach agreement by July 1, 1990.

21 B. Letter dated July 2, 1990, wherein the  
22 Deputy District Attorney for Mineral County  
23 confirmed conversation(s) he had with Mr. Dick  
24 Gleed, Business Representative for Operating  
25 Engineers Local Union No. 3 (representing the  
26 Mineral County Public Safety Dispatchers  
27 Association), regarding the position of the  
28 Mineral County Board of Commissioners that the  
Dispatchers are still bound to the terms and  
conditions of the three-year labor contract  
negotiated by Local 39 when the Dispatchers were  
part of that union. (Also, confirming that a copy  
of the minutes of the Board's October 5, 1989,  
meeting had been mailed to Mr. Gleed because of

1 his comment that the Mineral County Board of  
2 Commissioners had either expressly or by  
3 implication led the Dispatchers to believe that  
they would be free to negotiate their own labor  
agreement at that time.)

4 C. Letter dated September 13, 1990, wherein  
5 the District Attorney for Mineral County wrote Mr.  
6 Gleed advising that he had no authority from the  
7 Mineral County Board of Commissioners to enter  
8 into negotiations and that the Board of  
9 Commissioners is opposed to bargaining with the  
10 Dispatchers until the new contract talks start for  
11 the upcoming 1991 contracts. (Also, that it is  
12 the opinion of the Board of County Commissioners  
13 that they have no obligation to renegotiate what  
14 they consider to be a perfectly valid contract, to  
15 which the Dispatchers are subject, as well as the  
16 rest of the county employees. Additionally, that  
17 the minutes of the October 5, 1989 meeting of the  
18 Board of Mineral County Commissioners are silent  
19 as to whether the Commissioners or Dispatchers  
20 assumed that the Dispatchers were no longer under  
21 contract and therefore needed to negotiate anew.)

22 D. Letter dated August 13, 1990, wherein Mr.  
23 Gleed wrote the District Attorney for Mineral  
24 County in an apparent attempt to "restart" the  
25 "stalled" negotiations.

#### 26 CONCLUSIONS OF LAW

27 1. That the Local Government Employee-Management  
28 Relations Board has jurisdiction over the parties and the  
subject matter of this Complaint, pursuant to the provisions  
of NRS Chapter 288.

29 2. That the Complainant, Mineral County Public Safety  
30 Dispatchers Association, is a recognized employee organization  
31 as defined by NRS 288.040.

32 3. That the Board of County Commissioners of Mineral  
33 County and Mineral County, Nevada, is a recognized local  
34 government employer as defined by NRS 288.060.

35 4. That the Board of County Commissioners of Mineral

1 County and Mineral County, Nevada, pursuant to NRS 288.170(1,  
2 determined that the Sheriff's Dispatchers, represented by the  
3 Mineral County Public Safety Dispatchers Association,  
4 constituted an appropriate bargaining unit for negotiations.

5 5. That, upon receipt of request from the Mineral  
6 County Public Safety Dispatchers Association, to negotiate an  
7 initial labor agreement, the Board of County Commissioners of  
8 Mineral County commenced to negotiate in good faith, pursuant  
9 to NRS 288.150, but subsequently refused to continue said  
10 negotiations.

11 6. That the refusal of the Board of County  
12 Commissioners of Mineral County to continue bargaining  
13 pursuant to NRS 288.150, after it had commenced preliminary  
14 negotiations, was a prohibited practice as defined by N  
15 288.270(1)(e).

#### 16 DECISION AND ORDER

17 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

18 1. That the Association's Complaint regarding the  
19 Employer's refusal to negotiate an initial labor agreement is  
20 upheld to the extent set forth in the Board's Conclusions of  
21 Law, and the Employer shall be required to continue  
22 negotiating an initial labor agreement pursuant to the  
23 Association's request of January 31, 1990, for the 1990-91  
24 labor agreement term, which will be considered the initial  
25 labor agreement between the parties;

26 2. That the Employer and Association shall immediately  
27 resume negotiations on said initial labor agreement, if the,  
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have not already done so; and

3. That Respondent will pay attorney's fees and costs to Complainant in the amount of \$1,500.00.

DATED this 30<sup>th</sup> day of May, 1991.

LOCAL GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

By Tamara Barengo  
TAMARA BARENGO, Chairman

By Howard Ecker  
HOWARD ECKER, Vice Chairman

By Salvatore C. Gugno  
SALVATORE C. GUGINO, Member