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STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

ESMERALDA COUNTY SUPPORT STAFF)
ORGANIZATION,)
Appellant,)
-vs-)
ESMERALDA COUNTY SCHOOL DISTRICT,)
Respondent.)

ITEM NO. 322
CASE NO. A1-045548
DECISION

For the Appellant: Sandra G. Lawrence, Esq.
DYER AND MCDONALD

For the Respondent: Victor H. Schulze, II, Esq.
ESMERALDA COUNTY DISTRICT ATTORNEY

For the EMRB: Tamara Barengo, Chairman
Susan L. Johnson, Vice Chairman
Salvatore C. Gugino, Member

STATEMENT OF THE CASE

On or about March 16, 1993, the Esmeralda County Support Staff Organization ("the Organization") was recognized by the Esmeralda County School District ("the District") as the exclusive bargaining agent for the bargaining unit consisting of support staff employees of the District. At the time the District recognized the Organization as exclusive bargaining agent for the bargaining unit, the District contended that the Financial Clerk, Harriet Ealey, should be excluded from the bargaining unit because she is a "confidential employee". The Organization contended that Harriet Ealey should be included in the bargaining unit because she has a community of interest with other employees in the bargaining unit and she is not "involved in the decisions of management affecting collective

1 bargaining" pursuant to NRS 288.170(4) and (6), which defines
2 "confidential employee". In order to resolve this dispute
3 the parties agreed to seek a ruling from the EMRB as to
4 whether Mrs. Ealey is a "confidential employee" as defined by
5 NRS 288.170(4) and (6). This is the only issue before the
6 Board.

7 The Board's Discussion, Findings of Fact, Conclusions of
8 Law, Decision and Order are set forth below:

9 DISCUSSION

10 NRS 288.170(4) and (6) provide:

11 4. Confidential employees of a local
12 government employer must be excluded from any
13 bargaining unit but are entitled to participate in
14 any plan to provide benefits for a group that is
administered by the bargaining unit of which they
would otherwise be a member.

15 6. As used in this section, "confidential
employee" means an employee who is involved in the
16 decisions of management affecting collective
bargaining. (Emphasis added.)

17 The testimony developed at the Hearing on September 10,
18 1993, established that Esmeralda County is the only County in
19 Nevada that does not have a high school. There are only 135
20 students in the Esmeralda County School District. The office
21 of the Superintendent of Schools is located in a double-wide
22 mobile home in Goldfield, a town with a population of
23 approximately 300. Due to the small number of students in the
24 District, an unusually intimate relationship exists in the
25 Superintendent's office where the Financial Clerk, Harriet
26 Ealey, is employed. There are only three (3) persons working
27 this office; i.e., Harriet Ealey, Eileen Mulhern and
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1 Superintendent Harold Tokerud.

2 The testimony developed that Eileen Mulhern functions as
3 secretary to the School Board, as well as Superintendent
4 Tokerud's personal secretary, and her designation as a
5 "confidential employee" is not in dispute.

6 Superintendent Tokerud testified that during the school
7 year he performs several functions not performed by
8 Superintendents in larger school districts (including but not
9 limited to teaching and transporting students to football
10 games), as a result of which he is in the office less than 50%
11 of his working time.

12 The small size of the school district necessitates much
13 more flexibility in the functions performed by the employees,
14 particularly by the three employees in the Superintendent's
15 office. The testimony indicates that Harriet Ealey
16 occasionally performs some of the duties normally performed by
17 Eileen Mulhern and vice versa. Under the circumstances
18 prevailing in the Esmeralda County School District it simply
19 would not be practical to restrict employees to performing
20 narrowly defined duties, as might be the case in other school
21 districts.

22 The testimony also indicates that Harriet Ealey's
23 functions encompass much more than contemplated by the job
24 description for her position. Not only does she occasionally
25 perform duties normally performed by Eileen Mulhern (who has
26 already been designated as a "confidential employee"), but
27 also it appears from the testimony that she has discretion to
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1 make line-item transfers; she costs out proposals made as a
2 part of collective bargaining and the Superintendent reli
3 upon her advice regarding the financial status of the
4 District.

5 In view of that previously stated, the Board believes
6 that the instant case presents unique circumstances which
7 require a broader interpretation of NRS 288.170(4) and (6)
8 than would ordinarily apply. It is clear in the instant case
9 that Harriet Ealey has a special relationship to the
10 District's management which mitigates against considering her
11 as a typical bargaining unit employee for collective
12 bargaining purposes. Under the National Labor Relations Act
13 such a special relationship is grounds for excluding the
14 employee from the bargaining unit as a "confidential
15 employee". ITT Grinnell, 253 NLRB 584, 106 LRRM 1024 (1980).
16 Also, where an employee acts in a confidential capacity, the
17 fact that a "relatively small percentage" of the employee's
18 time is spent performing confidential duties does not detract
19 from that employee's confidential status. Reynold Baking Co.,
20 249 NLRB 1100, 104 LRRM 1253 (1980).

21 For all the reasons set forth above, the Board finds
22 that the Financial Clerk, Harriet Ealey, of the District is a
23 "confidential employee" under NRS 288.170(6) and must be
24 excluded from the bargaining unit pursuant to NRS 288.170(4).

25 FINDINGS OF FACT

26 1. That the Appellant, Esmeralda County Support Staff
27 Organization, is a local government employee organization.

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1 2. That the Respondent, Esmeralda County School
2 District, is a local government employer.

3 3. That on or about March 16, 1993, the Esmeralda
4 County Support Staff Organization was recognized by the
5 District as the exclusive bargaining agent for the support
6 staff employees of the District, including the Financial
7 Clerk, Harriet Ealey.

8 4. The District objected to the inclusion of Harriet
9 Ealey in the bargaining unit on the premise that she is a
10 "confidential employee".

11 5. The parties agreed to seek a ruling from the EMRB as
12 to whether Mrs. Ealey is a "confidential employee" under NRS
13 288.170(4) and (6).

14 6. That, due to the small size of the Esmeralda County
15 School District (only 135 students) a special situation
16 exists which mitigates against restricting employees to the
17 performance of narrowly defined duties, as might be the case
18 in other districts, and results in employees occasionally
19 being required to perform work normally assigned to others.

20 7. That the unusually intimate relationship which
21 exists in the Superintendent's office (only 3 persons work in
22 this office), requires the Financial Clerk, Harriet Ealey, to
23 perform work normally assigned to Eileen Mulhern, who is a
24 "confidential employee".

25 8. That the confidential duties occasionally performed
26 by the Financial Clerk, Harriet Ealey, as well as the
27 discretion she has to make line-item transfers and the
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1 Superintendent's reliance upon her for advice regarding the
2 financial status of the District, create a special relation-
3 ship to management which requires that she be designated as a
4 "confidential employee".

5 CONCLUSIONS OF LAW

6 1. That the Local Government Employee-Management
7 Relations Board has jurisdiction over the parties and the
8 subject matter of this "Appeal; Bargaining Unit
9 Determination", pursuant to the provisions of NRS Chapter 288.

10 2. Under the circumstances of this particular case, the
11 Financial Clerk, Harriet Ealey, must be considered a
12 "confidential employee" under NRS 288.170(6) and must be
13 excluded from the bargaining unit pursuant to NRS 288.170(4).

14 DECISION AND ORDER

15 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
16 Organization's Appeal is denied, without prejudice, with each
17 side to bear its own costs and attorney's fees.

18 DATED this 13th day of October, 1993.

19 LOCAL GOVERNMENT EMPLOYEE-
20 MANAGEMENT RELATIONS BOARD

21 By Tamara Barengo
22 TAMARA BARENGO, Chairman

23
24 By Susan L. Johnson
25 SUSAN L. JOHNSON, Vice Chairman

26
27 By Salvatore C. Gugino
28 SALVATORE C. GUGINO, Member