

1 STATE OF NEVADA  
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
3 RELATIONS BOARD

4 OPERATING ENGINEERS, LOCAL 3 )  
5 OF THE INTERNATIONAL UNION OF )  
6 OPERATING ENGINEERS, AFL-CIO, )

6 Complainant, )

7 vs. )

8 COUNTY OF LANDER, )

9 Respondent. )

ITEM NO. 346-A

CASE NO. A1-045553

SUPPLEMENTAL DECISION

10  
11 For Complainant: Michael E. Langton, Esq.  
LANGTON & KILBURN

12 For Respondent: Patricia Cafferata, Esq.  
13 LANDER COUNTY DISTRICT ATTORNEY

14 For EMRB: Christopher W. Voisin, Chairman  
15 Tamara Barengo, Vice Chairman  
David Goldwater, Board Member

16 STATEMENT OF THE CASE

17 This Supplemental Decision addresses that part of the  
18 Complaint regarding jurisdictional issues which were not  
19 addressed in the Board's Decision of November 29, 1994, Item  
20 No. 346. [As stated in said Decision (Item No. 346), the  
21 proceedings which pertained to the Board's jurisdiction over  
22 employees of the Argenta Township Court were continued pending  
23 the outcome of an effort by counsel for the Board and Argenta  
24 Township Court to obtain Judge Wagner's approval of a special  
25 appearance before the Board by counsel for Argenta Township  
26 Court to determine the facts surrounding the employees in  
27 dispute.]

1 On August 31, 1995, the Board received an Affidavit  
2 (dated August 21, 1995), signed by Max W. Bunch, Justice of  
3 the Peace of Argenta Township Justice Court, Lander County,  
4 Nevada. The relevant part of said Affidavit is contained in  
5 Section 2, 3, 4 and 5 thereof, quoted below:

6 "2. That you affiant, in his capacity as  
7 Justice of the Peace and pursuant to his authority  
8 as a Judicial Officer, has appointed certain  
9 individuals as employees of the Court.

10 3. That the employees so appointed by the  
11 Court are:

12 a) RUTH BISHOP, the Court Clerk,  
13 assigned to court criminal matters and the office  
14 manager for the court.

15 b) GINA LITTLE, the Deputy Court Clerk,  
16 assigned to court traffic matters.

17 c) JO FAY CHIARA, the Deputy Court  
18 Clerk, assigned to court civil matters.

19 d) Other temporary and/or part time  
20 employees are retained and appointed to meet the on  
21 going needs of the court as they arise.

22 4. That each of the employees work for the  
23 Court, and are employees of the Judicial Branch of  
24 government. That the employees are hired by the  
25 Court. The Court has the exclusive prerogative to  
26 retain or terminate their services, to direct their  
27 effects on behalf of the Court and to set their  
28 compensation, subject only to review by a higher  
court, for abuse of discretion.

5. That the Court has at no time  
relinquished its inherent authority, and has never  
authorized Lander County, on behalf of the Court,  
to negotiate with the Court's employees. The Court  
has never entered into any labor contract or  
agreement with any labor organization relating to  
the Court's employees."

Upon receipt of the aforementioned Affidavit, the Board  
docketed the Case for public comment, noticed pursuant to  
Nevada's Open Meeting Law, commencing at 1:00 p.m. on  
September 22, 1995, during which interested parties were  
afforded an opportunity to comment, without prejudice,  
regarding their respective positions as to the Board's

1 jurisdiction over employees of the courts. Attorneys Michael  
2 Langton (representing Complainant in the instant Case) and  
3 Bill Rogers (representing Justice of the Peace Max Bunch)  
4 appeared before the Board and expressed their respective  
5 positions with regard to the Board's jurisdiction.

6 Following public comment on the issue of jurisdiction,  
7 the Board determined during closed deliberation as follows:

8 DISCUSSION

9 I.

10 PERSONS APPOINTED BY THE  
11 JUSTICE OF THE PEACE OF ARGENTA  
12 TOWNSHIP JUSTICE COURT ARE  
EMPLOYEES OF THE COURT, NOT THE  
COUNTY.

13 In reaching the conclusion that the employees involved  
14 are employees of the Court and not of the County, the Board  
15 has given equal weight to several different factors; ie., the  
16 right to control the duties of the employees, the degree of  
17 supervision, the source of wages, who sets the salaries, the  
18 parties belief as to their employment relationship and the  
19 extent to which the employees activities further the general  
20 business concerns of the alleged employer. [See Sacramento  
21 County Employees Organization vs. County of Sacramento, 247  
22 Cal.Rptr. 333 (1988) and the Nevada Supreme Court's Decision  
23 in Clark County vs. SIIS, 102 Nev. 353, 724 P.2d 201 (1986).]  
24 It is clear in the instant case that the employees involved  
25 were appointed by and serving at the pleasure of the court,  
26 the Justice of the Peace set their salaries (subject only to  
27 review by a higher court for abuse of discretion), the Court

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1 has the exclusive prerogative to retain or terminate their  
2 services and the Court has the exclusive right to control  
3 their duties. Accordingly, after considering all the facts  
4 and arguments in evidence, public comment and case law, the  
5 Board has determined that the employees involved are employees  
6 of the Court, not of the County, even though their salaries  
7 are paid by the County and they receive County benefits.

8 II.

9 ARGENTA TOWNSHIP JUSTICE COURT  
10 IS IN THE JUDICIAL BRANCH OF  
11 GOVERNMENT AND, AS SUCH, DOES  
12 NOT MEET THE DEFINITION OF A  
13 LOCAL GOVERNMENT EMPLOYER,  
14 PURSUANT TO NRS 288.060

15 Argenta Township Justice Court is clearly in the Judicial  
16 Branch of Government. As the Board stated in Case No. A1-  
17 045547, Washoe County Probation Employees Association vs.  
18 Washoe County and Washoe County Juvenile Court, Item No. 334  
19 (5-18-94), the definition of "local government employer" under  
20 NRS 288.060 does not include the courts. Accordingly, neither  
21 the Court nor its employees are subject to the provisions of  
22 NRS 288. To conclude otherwise, in the absence of clear,  
23 unambiguous language expressing the legislatures intent to  
24 make the courts and their employees subject to the provisions  
25 of NRS Chapter 288, would infringe upon the inherent right of  
26 the courts to govern their own affairs and would violate the  
27 separation of powers doctrine.

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/ / /

1 This decision should not be construed as preventing a  
2 court and its employees from voluntarily agreeing to be bound  
3 by the provisions of NRS 288.

4 FINDINGS OF FACT

5 1. That the Complainant, Operating Engineers, Local 3  
6 of The International Union of Operating Engineers, AFL-CIO, is  
7 an employee organization as defined in NRS 288.040, and the  
8 recognized bargaining agent for employees of Lander County.

9 2. That the Respondent, County of Lander, is a local  
10 government employer as defined in NRS 288.060.

11 3. That the employees involved are employees of Argenta  
12 Township Justice Court, not of the County.

13 4. That neither the Argenta Township Justice Court nor  
14 its employees are subject to the provisions of NRS 288.

15 CONCLUSIONS OF LAW

16 1. That the persons involved are employees of the  
17 Argenta Township Justice Court, not of the County, and the  
18 definition of "local government employer" under NRS 288.060  
19 does not include the courts.

20 2. That, neither Argenta Township Justice Court nor its  
21 employees are subject to the provisions of NRS 288, in view of  
22 which the Board has no jurisdiction over Argenta Township  
23 Justice Court or its employees.

24 SUPPLEMENTARY DECISION AND ORDER

25 IT IS HEREBY ORDERED ADJUDGED AND DECREED that the Board  
26 has no jurisdiction over Argenta Township Justice Court or its  
27 employees, in view of which that part of the instant Complaint  
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1 which was not addressed in the Board's Decision of November  
2 29, 1994, Item No. 346, is DISMISSED.

3 Each party is to bear its own costs and attorney's fees  
4 in this matter.

5 DATED this 8<sup>th</sup> day of November, 1995.

6 LOCAL GOVERNMENT EMPLOYEE-  
7 MANAGEMENT RELATIONS BOARD

8 BY *Christopher W. Voisin*  
9 CHRISTOPHER W. VOISIN, Chairman

10 BY *Tamara Barenco*  
11 TAMARA BARENGO, Vice Chairman

12 BY *David Goldwater*  
13 DAVID GOLDWATER, Member

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