

STATE OF NEVADA  
LOCAL GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

JAMES P. RIEBELING, JAMES M.  
HAYLEY, MICHAEL A. MALDONADO,  
McNEAL D. BROWN and THE CITY OF  
NORTH LAS VEGAS HOUSING AUTHORITY  
SPECIAL POLICE OFFICERS  
ASSOCIATION,

Complainants,

-vs.-

HOUSING AUTHORITY OF THE CITY OF  
NORTH LAS VEGAS,

Respondent.

ITEM NO. 358

CASE NO. A1-045552

DECISION

For Complainants: Leslie M. Stovall, Esq.

For Respondent: Gregory E. Smith, Esq.  
SMITH & KOTCHKA

For EMRB: Christopher W. Voisin, Vice Chairman  
Tamara Barengo, Member  
Vicki Hulbert, Substitute Member

STATEMENT OF THE CASE

By letter dated June 10, 1993, The City of North Las Vegas Housing Authority Special Police Officer's Association (the "Association") filed an application for recognition as the exclusive bargaining agent for Special Police Officers employed by the Housing Authority of the City of North Las Vegas (the "Housing Authority"). On June 21, 1993, the Housing Authority's Executive Director wrote Complainant Riebeling, President of the Association, advising that she was unable to act upon the application for recognition, at that

1 time, because he had not provided a verified membership list  
2 or signed membership cards showing that he represented a  
3 majority of the employees in the bargaining unit; also, she  
4 indicated that upon receipt of such information (a verified  
5 membership list or signed membership cards) she would review  
6 and present same to the Housing Authority's Board of  
7 Commissioners for consideration. On the same date, June 21,  
8 1993, the Housing Authority's Board of Commissioners met and  
9 voted to abolish the positions of four of its six Special  
10 Police Officers, effective June 30, 1993, and contract out  
11 their work. The four Special Police Officers positions  
12 abolished were occupied by Complainants Riebeling, Hayley,  
13 Maldonado and Brown, who were the President, Vice President,  
14 Treasurer and Secretary, respectively, of the Association.  
15 The positions of the two remaining Special Police Officers,  
16 the occupants of which were not members of or otherwise  
17 involved with the Association, were retained.

18 On September 10, 1993, the instant Complaint was filed  
19 with the EMRB (the "Board"), alleging that the Association is  
20 entitled to recognition as the exclusive bargaining agent for  
21 the Housing Authority's Special Police Officers, pursuant to  
22 NAC 288.143; alleging that the actual purpose of the layoffs  
23 was to avoid the unionization of the Special Police Officers,  
24 to avoid having to bargain collectively with the Association  
25 and to retaliate against the Complainants for their  
26 organizational activity. The Complaint alleges that the

1 actions of the Housing Authority constitute illegal  
2 interference, restraint, coercion and discrimination which are  
3 prohibited by NRS 288.270 (a), NRS 288.270 (b), NRS 288.270  
4 (c), and NRS 288.270 (d). As a residual issue, the Complaint  
5 also alleges that the Housing Authority violated the same  
6 provisions of the statute when its Executive Director  
7 attempted to extend Complainant Hayley's probationary period  
8 by six months, allegedly in retaliation for his participation  
9 in organizing the Association.

10 The Housing Authority denied the allegations contained in  
11 the Complaint and alleged that the Association is not entitled  
12 to recognition as exclusive bargaining agent for the reason  
13 that it did not follow the proper procedures and/or comply  
14 with the statutory requirements. The Housing Authority also  
15 contended that it did not violate the provisions of NRS 288  
16 which prohibit interference, restraint, coercion and  
17 discrimination against employees who are attempting to  
18 organize and/or gain recognition for collective bargaining  
19 purposes, alleging that the positions of the Complainants were  
20 abolished for legitimate business reasons. Additionally, the  
21 Housing Authority contended that the Executive Director did  
22 not err when she refused Complainant Hayley permanent status  
23 and extended his probationary period.

24 The parties stipulated to the following legal issues:

25 "A. By laying off Riebeling, Hayley, Maldonado and/or  
26 Brown, did the Housing Authority:

- 1 (1) Interfere, restrain, or coerce Riebeling, Hayley,  
2 Maldonado and Brown in the exercise of their rights in  
3 violation of NRS 288.270 (1) (a);  
4 (2) Interfere in the formation of the Association in  
5 violation of NRS 288.270 (1) (b);  
6 (3) Discrimination in regard to the tenure and/or other  
7 conditions of employment of Riebeling, Hayley, Maldonado  
8 and Brown to discourage membership in the Association in  
9 violation of NRS 288.270 (1) (c); and/or  
10 (4) Discharge Riebeling, Hayley, Maldonado and Brown  
11 because they formed, joined, and chose to be represented  
12 by the Association in violation of NRS 288.270 (1) (d)²

13 B. By extending Hayley's probationary period and/or  
14 denying him a step advance, did the Housing Authority:

- 15 (1) Interfere, restrain, and/or coerce Hayley in the  
16 exercise of his rights in violation of NRS 288.270 (1)  
17 (a);  
18 (2) Interfere in the formation of the Association in  
19 violation of NRS 288.270 (1) (b)³  
20 (3) Discriminate in regard to the tenure and other  
21 conditions of employment of Hayley to discourage  
22 membership in the Association in violation of NRS 288.270  
23 (1) (c)⁴ and/or  
24 (4) Discriminate against Hayley because he formed,  
25 joined, and chose to be represented by the Association in  
26 violation of NRS 288.270 (1) (d)²"

27 In determining the above legal issues, the following  
28 factual issues were stipulated to:

29 "C. Whether the Housing Authority was motivated in its  
30 decisions in A and/or B above by knowledge of any attempt to  
31 unionize;

32 D. Whether the Housing Authority had legitimate non-  
33 discriminatory reasons for its decisions in A and/or B;

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1 E. Whether the Housing Authority's advanced non-  
2 discriminatory reasons for its decisions in A and/or B were  
3 pretextual;

4 F. Whether the Housing Authority was required to  
5 bargain or offer to bargain with the Association over its  
6 decision and or the effects of its decision in A above.¶

7 The hearing initially was scheduled to commence March 31,  
8 1994. However, it was necessary to postpone and/or continue  
9 the hearing several times due to conflicting schedules, family  
10 emergencies, attorney and Board member substitutions, etc.  
11 The hearing eventually began on May 16, 1995, and consumed all  
12 or substantial parts of six (6) days, concluding with the  
13 closing statements by counsel for the parties on June 10,  
14 1995.

15 In reaching its Decision, the Board considered the  
16 argument and evidence contained in several hundred pages of  
17 pleadings and exhibits, as well as almost 1400 pages of  
18 testimony.

19 The following is a Discussion of the issues, the Board's  
20 Findings of Fact and the Board's Conclusions of Law.

21 DISCUSSION

22 The provisions of NRS 288 cited by the Complainants read  
23 as follows:

24 PROHIBITED PRACTICES

25 288.270 Employer or representative;  
employee or employee organization.

26 1. It is a prohibited practice for a local  
27 government employer or its designated

1 representative willfully to:

2 (a) Interfere, restrain or coerce any  
3 employee in the exercise of any right  
4 guaranteed under this chapter.

5 (b) Dominate, interfere or assist in the  
6 formation or administration of any employee  
7 organization.

8 (c) Discriminate in regard to hiring,  
9 tenure or any term or condition of  
10 employment to encourage or discourage  
11 membership in any employee organization.

12 (d) Discharge or otherwise discriminate  
13 against any employee because he has  
14 signed or filed an affidavit, petition or  
15 complaint or given any information or  
16 testimony under this chapter, or because  
17 he has formed, joined or chosen to be  
18 represented by any employee organization.

19 In determining whether any of the Housing Authority's  
20 actions which form the basis of the instant Complaint  
21 constitute prohibited practices under the above-quoted  
22 provisions of NRS 288, it is appropriate that the Board first  
23 address the factual issues stipulated to by the parties.

24 Throughout these proceedings the Housing Authority has  
25 consistently and emphatically maintained that it had no  
26 knowledge of the organizing effort, that its decision to lay  
27 off the complainants was not motivated by union animus, and  
28 that its reasons for laying off the complainants and  
contracting out their work were legitimate business reasons.

The "legitimate non-discriminatory reasons" which Housing  
Authority management alleged were the basis for the  
recommendation that resulted in the decision to lay off the  
Complainants and contract out their work were:

- (1) A concern regarding liability and the cost of  
obtaining general liability insurance to cover  
armed security guards (Special Police)¶

1 (2) The lack of adequate supervision or management for  
2 the security guards; and

3 (3) The conduct and/or demeanor of the security guards,  
4 allegedly as evidenced by a "flurry" or "barrage"  
of memos, letters and complaints which the Housing  
Authority received from the Complainants.

5 The testimony and evidence of record, however, revealed that  
6 general liability insurance in the amount of \$1,000,000, which  
7 met the Housing Authority's specification for its armed  
8 security guards was available for an annual net premium of  
9 \$21,500, which amount was well within the \$50,000 budgeted for  
10 insurance, and was only \$5,250 more than the annual premium  
11 for the \$500,000 general liability insurance policy which the  
12 Housing Authority had purchased to cover its armed security  
13 guards for the two previous fiscal years. This information  
14 was obscure in the recommendations which Housing Authority  
15 management presented to it's Board of Commissioners,  
16 therefore, the members of the Board of Commissioners did not  
17 have an opportunity to consider the full range of options  
18 available to them at the time they voted to eliminate the  
19 Complainants' positions and contract out their work on the  
20 premise that affordable general liability insurance was not  
21 available for in-house, armed security.

22 The testimony of Housing Authority witnesses, although  
23 obfuscatory and equivocal in many instances, was sufficient to  
24 establish that Housing Authority management had been concerned  
25 for years about potential liability problems created by having  
26 armed, in-house security. Ostensibly, it was this "potential

1 liability" (and the increase in the general liability premium  
2 allegedly related thereto) which was the Housing Authority's  
3 primary alleged "legitimate non-discriminatory reason" for the  
4 recommendation which resulted in the Board of Commissioners'  
5 decision to eliminate the Complainants' positions and contract  
6 out their work. However, it is clear from the testimony and  
7 other evidence of record that this was not the real reason for  
8 the recommendation adopted by the Board of Commissioners.

9 The testimony and other evidence of record established  
10 that the Housing Authority had maintained a steady stream of  
11 investments and activities designed to improve its in-house,  
12 armed security force (Special Police Officers), as evidenced  
13 by the following:

- 14 (1) A vehicle had been purchased for use of the Special  
Police Officers;
- 15 (2) A computer had been purchased for the office being  
16 utilized by the Special Police Officers;
- 17 (3) A policy and procedures manual was being developed  
18 for the Housing Authority's security department;  
and
- 19 (4) Training had been scheduled for the Special Police  
Officers.

20 These types of investments/activities are totally inconsistent  
21 with the recommendation to eliminate in-house, armed security.  
22 Rather than reflecting a prevailing consensus on the part of  
23 Housing Authority management that in-house, armed security  
24 should be eliminated and/or indicating that said elimination  
25 was imminent, these activities evidence a continuing or on-  
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1 going commitment to maintaining the Housing Authority's in-  
2 house, armed security force.

3 The members of the Housing Authority's Board of  
4 Commissioners may have sincerely believed that the  
5 recommendation they adopted (elimination of the Complainants'  
6 positions and contracting out their work) was based on  
7 "legitimate non-discriminatory reasons," however, the  
8 testimony and other evidence of record established that a  
9 great deal of critical, relevant information was withheld from  
10 the Board of Commissioners. If the Board of Commissioners had  
11 been fully apprised of all the relevant facts and  
12 circumstances, it is possible (if not likely) that it would  
13 have made a different decision on June 21, 1993.

14 The most critical information withheld from the Board of  
15 Commissioners was the information that there was an organizing  
16 effort under way by the Housing Authority's Special Police  
17 Officers, and they (their association) had applied for  
18 recognition. Organizing for the purpose of collective  
19 bargaining is a protected activity in the State of Nevada (NRS  
20 288) and any act by a local government employer (such as the  
21 Housing Authority) which interferes with this protected  
22 activity or is conduct which is inherently destructive of  
23 these rights, is prohibited. Accordingly, information  
24 pertaining to the organizing effort and/or the application for  
25 recognition was clearly relevant to the Board of

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1 Commissioners' consideration of the recommendation to  
2 eliminate the Complainant's positions and contract out their  
3 work.

4 Assuming, arguendo, that prior to Housing Authority  
5 management becoming aware of the organizing effort that  
6 "legitimate non-discriminatory reasons" existed for  
7 recommending that the Complainants' positions be abolished and  
8 their work contracted out, Housing Authority management's  
9 knowledge of said organizing effort substantially altered the  
10 relevant facts and circumstances surrounding their  
11 recommendation. A new and critical factor had been introduced  
12 and/or injected in the equation. It was no longer just a  
13 matter of determining whether to recommend the elimination of  
14 in-house armed security (laying off the Complainants) but how  
15 the perceived problems on which the recommendation was to be  
16 based could be addressed in the context of an environment  
17 where the employees involved are statutorily protected from  
18 arbitrary and/or unilateral discharge, pending a resolution of  
19 the organizing effort and/or collective bargaining with  
20 respect to the proposed elimination of their positions and  
21 contracting out their work.

22 It is clear from the testimony of Mr. William Robinson,  
23 (Chairman of the Housing Authority's Board of Commissioners at  
24 the time Complainants filed their application for recognition)  
25 that he knew of the organizing effort at least as early as  
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1 June 1, 1993, when he received a letter dated May 30, 1993,  
2 from Complainant Riebeling, notifying him, in pertinent part-

3 "The Security Officers of the Housing Authority of  
4 the City of North Las Vegas have formed our own  
5 fraternal organization. We are currently in the  
process of having our organization recognized by  
the Local Government-Employee Relations Board."  
(Emphasis supplied.)

6 and requesting that a job analysis and salary survey be  
7 conducted. There also was testimony by Mr. Robinson which  
8 indicates he was aware of the organizing effort even earlier  
9 (on or about April 30, 1993).

10 It must be pointed out here, for the record, that Mr.  
11 Robinson's strong opposition to the Housing Authority having  
12 an armed, in-house security force was clearly established and  
13 he was very obfuscatory, uncooperative and hostile during  
14 cross-examination and re-direct by counsel for the  
15 Complainants. Accordingly, any of Mr. Robinson's testimony  
16 which tends to give credence to the Association's position  
17 that the Housing Authority had knowledge of the organizing  
18 effort prior to receipt of the application for recognition, as  
19 well as prior to the Board of Commissioner's decision to  
20 eliminate the Complaints' positions and contract out their  
21 work, cannot be taken lightly.

22 Although, there was conflicting testimony as to whether  
23 Chairman Robinson notified the other members of the Housing  
24 Authority's Board of Commissioners of the organizing effort  
25 (and of his receipt of the application for recognition) by the  
26 Association, in view of the fact that Chairman Robinson, as

1 agent for the Housing Authority, knew of the organizing effort  
2 well in advance of the application for recognition, the Board  
3 must conclude that the Housing Authority was well aware of the  
4 organizing effort when it decided to lay off the Complainants  
5 and contract out their work.

6 Additionally, the fact that Chairman Robinson; Ian Ross,  
7 Attorney for the Housing Authority; and Wanda Thatcher,  
8 Executive Director of the Housing Authority, clearly knew of  
9 the organizing effort and application for recognition, but  
10 withheld such information from the other members of the  
11 Housing Authority's Board of Commissioners, evidences a  
12 deliberate attempt to avoid having to bargain collectively  
13 with the Association representing their in-house, armed  
14 security. The Board concluded that these individuals could  
15 not have reasonably believed that the organizing effort was  
16 irrelevant to the Board of Commissioner's consideration of the  
17 proposal to layoff the Housing Authority's Special Police  
18 Officers (security guards) and contract out their work. Both  
19 Mayor Seastrand and Commissioner Goynes testified to the  
20 effect that such information was very important and might have  
21 resulted in a different decision, if the Board of  
22 Commissioners had been made aware of it.

23 A more logical inference to be drawn from the failure of  
24 these individuals to make all the members of the Board of  
25 Commissioners aware of the organizing effort is that they did  
26 not want them to be aware of it. They had already determined,

1 upon receipt of the application for recognition, that they  
2 were going to lay off the Complainants and contract out their  
3 work. In order to assure that the Board of Commissioners  
4 would adopt and/or implement their plan without question, it  
5 was necessary to withhold from the Board of Commissioners any  
6 and all information pertaining to the organizing effort and/or  
7 application for recognition, and base their recommendation  
8 solely on the premise that they had been unable to obtain  
9 affordable general liability insurance.

10 While Chairman Robinson and Executive Director Thatcher  
11 were clearly aware of the organizing effort, and had some  
12 responsibility for the recommendation, it appears that  
13 Attorney Ross was the person most responsible for the Board of  
14 Commissioners' decision. As an attorney experienced in the  
15 practice of labor law, Mr. Ross knew (or should have known)  
16 that, in the context of a unionizing effort, there were  
17 adverse consequences which potentially could accrue to the  
18 Housing Authority by virtue of the Board of Commissioners  
19 adopting the recommendation to eliminate the Complainants'  
20 positions and contract out their work. As an agent for the  
21 Board of Commissioners, it was his duty and obligation to see  
22 that they were fully informed and that they did not decide  
23 such an important matter in a vacuum. He did not do so. For  
24 these reasons, as well as the expressed and/or implied  
25 indifference of Mr. Ross toward the organizing effort (and the

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1 effect said effort should have had on the recommendation) a the  
2 Board does not view his testimony as credible.

3 Even if Housing Authority management had been considering  
4 laying off the Complainants and contracting out their work for  
5 a period of many months or years, it is clear that the event  
6 that triggered the decision to recommend that this action be  
7 taken was the organizing effort and/or application for  
8 recognition. Accordingly, the Board finds as follows:

9 I.

10 AS CONCERNS THE FACTS AND CIRCUMSTANCES ALLUDED  
11 TO UNDER LEGAL ISSUE "A" STIPULATED TO BY THE PARTIES,  
12 THE HOUSING AUTHORITY'S ACT OF LAYING OFF COMPLAINANTS  
13 RIEBELING, HAYLEY, MALDONADO AND BROWN WAS MOTIVATED BY  
14 ITS KNOWLEDGE OF THE COMPLAINANTS' ATTEMPT TO UNIONIZE,  
15 NOT BY LEGITIMATE NON-DISCRIMINATORY REASONS.

16 An essential element in proving that an employer  
17 interfered with protected activity, in most cases, is proof  
18 that the employer had knowledge of the affected employee's  
19 union activities. In the instant case, based on the testimony  
20 and evidence of record, there is no doubt that Chairman  
21 Robinson, Attorney Ross and Executive Director Thatcher (all  
22 agents for the employer) had knowledge of the organizing  
23 effort and application for recognition. The fact that they  
24 withheld this information from the other members of the  
25 Housing Authority's Board of Commissioners, in no way absolves  
26 the Board of Commissioners from the knowledge of its agents.  
27 State ex rel. Cities Service Gas Co. v. Public Service  
28 Commission, 337 Mo. 809, 85 S.W. 2d 890, 894. The  
prerequisite knowledge therefore was clearly established.

1 Further, even if the case law pertaining to agency was  
2 deemed inapplicable in this case, the Housing Authority has  
3 such a small number of employees (approximately 30) that the  
4 employer's knowledge of the Complainant's union activities  
5 would be inferred in the instant case. Coral Gables  
6 Convalescent Home, Inc., 234 NLRB 1198, 97 LRRM 1435 (1978).

7 Although the Board finds incredible the testimony by  
8 Housing Authority witnesses purporting to establish  
9 "legitimate non-discriminatory reasons" for the recommendation  
10 to eliminate in-house armed security (the real reason for the  
11 recommendation clearly was Housing Authority management's  
12 knowledge of the organizing effort) the motive(s) for the  
13 recommendation are not the most important factor on which the  
14 Board based its decision in the instant case. The act of  
15 eliminating the Complainant's positions and contracting out  
16 their work, was so inherently destructive of the Complainants'  
17 right to organize for collective bargaining purposes, the  
18 Board must conclude that the Housing Authority intended the  
19 very consequences which foreseeably and inescapably flowed  
20 from its actions. Eliminating the positions and contracting  
21 out the work of employees who are attempting to unionize  
22 certainly is discriminatory and does discourage union  
23 membership/organization; therefore, whatever the claimed  
24 overriding justification may be, this act carries with it  
25 unavoidable consequences which the employer not only foresaw

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1 but must have intended. NLRB v. Erie Resistor Corp., 373 US  
2 221, 53 LRRM 2121 (1963); American Freightways Co., 124 NLRB  
3 146, 147, 44 LRRM 1302 (1959).

4 II.  
5 AS CONCERNS THE FACTS AND CIRCUMSTANCES  
6 ALLUDED TO UNDER LEGAL ISSUE "A"  
7 STIPULATED TO BY THE PARTIES, THE HOUSING  
8 AUTHORITY'S REASONS FOR LAYING OFF THE  
9 COMPLAINANTS WERE CLEARLY PRETEXTUAL.

10 As stated previously, the Housing Authority alleged that  
11 the recommendation which resulted in the decision to lay off  
12 the Complainants and contract out their work was based on  
13 three principle "legitimate non-discriminatory reasons"; i.e.,  
14 the cost of obtaining general liability insurance, the lack of  
15 adequate supervision for security guards and the  
16 conduct/demeanor of the complainant security guards. The  
17 testimony and other evidence of record, however, failed to  
18 substantiate said allegation(s)a To the contrary, an  
19 objective perusal of the testimony will reveal that affordable  
20 general liability insurance was available, and the other two  
21 "legitimate non-discriminatory reasons" were nothing more than  
22 red herrings, both evidencing a lack of Housing Authority  
23 resolve to deal with ineffective or incompetent supervision in  
24 a responsible manner. (Certainly it would not be unreasonable  
25 to expect competent management to address problems of a  
26 supervisory and/or disciplinary nature - such as those alluded  
27 to - in a more measured, less extreme manner than resorting to  
28 elimination of two-thirds of the employees in a department.)  
To accept these allegations as "legitimate non-discriminatory



1 reasons" for laying off the Complainants following receipt of  
2 their application for recognition, simply taxes the powers of  
3 reason and logic beyond their limits.

4 After hearing all the testimony and considering all the  
5 evidence, the Board is convinced that the Housing Authority's  
6 alleged "legitimate non-discriminatory reasons" for laying off  
7 the Complainants are essentially nothing more than a carefully  
8 crafted defense, albeit transparent, constructed after the  
9 instant Complaint was filed in an attempt to justify what are  
10 perhaps the most blatant and/or egregious violations of NRS  
11 288 which can be committed by an employer. They are clearly  
12 pretextual in nature and cannot be considered credible.

13 Furthermore, and notwithstanding that stated above, the  
14 Housing Authority has advanced these alleged "legitimate non-  
15 discriminatory reasons" in an attempt to show that the  
16 recommendation which resulted in the decision to lay off the  
17 Complainants was not motivated by union animus. As the Board  
18 noted in its findings under I. above, the recommendation to  
19 eliminate the Complainants' positions and contract out their  
20 work was clearly motivated by Housing Authority management's  
21 knowledge of the organizing effort; however, motivation is not  
22 the most important factor when the act or conduct is  
23 inherently destructive of the Complainants' right to organize  
24 for collective bargaining purposes, as in the instant case.  
25 NLRB v. Erie Resistor Corp., American Freightways Co., supra.

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1 II.  
2 AS CONCERNS THE FACTS AND CIRCUMSTANCES  
3 ALLUDED TO UNDER LEGAL ISSUE "A" STIPULATED  
4 TO BY THE PARTIES, UPON LEARNING OF THE  
5 ORGANIZING EFFORT, THE HOUSING AUTHORITY  
6 WAS REQUIRED TO MAINTAIN THE STATUS QUO,  
7 PENDING RESOLUTION OF THE ORGANIZING EFFORT  
8 AND/OR COLLECTIVE BARGAINING AS TO THE DESIRED CHANGES.

9 While the Housing Authority's motivation for the  
10 recommendation which resulted in the Board of Commissioners'  
11 decision to lay off the Complainants and contract out their  
12 work was not the most important factor on which the Board  
13 based its decision in the instant case, the actions of the  
14 Housing Authority in implementing said recommendation during  
15 the Complainants' organizing effort were not only inherently  
16 destructive of their protected rights but also appeared to be  
17 actions which were designed and intended to circumvent the  
18 Housing Authority's duty to bargain (regarding such matters as  
19 layoff procedures and subcontracting) upon recognition and/or  
20 certification of the Association as exclusive representative  
21 for employees of the Housing Authority's security department.  
22 Upon becoming aware of an organizing effort, an employer is  
23 required to maintain the status quo, pending resolution of the  
24 organizing effort and/or collective bargaining as to any  
25 desired changes in the status quo. 9 NPER CA-18090,  
26 California State University vs. California Faculty Assn.  
27 (April 29, 1987) 9 NPER NO-18191, Camden Housing Authority  
28 vs. New Jersey Civil Service Assn., Council 10 (May 22, 1987)  
and 9 NPER FL-18150, Pensacola Junior College vs. Pensacola  
Junior College Faculty Assn. (June 10, 1987). Accordingly,

1 the Housing Authority's unilateral act of laying off the  
2 Complainants and contracting out their work immediately after  
3 receipt of their application for recognition also constitutes  
4 a failure to bargain in good faith. Clark County Public  
5 Employees Association, SEIU Local 1107 vs. Housing Authority  
6 of the City of Las Vegas, Case No. A1-045478, Item No. 270  
7 (July 25, 1991).

8 IV.  
9 AS CONCERNS LEGAL ISSUE "A" STIPULATED  
10 TO BY THE PARTIES, IT IS CLEAR THAT  
11 BY LAYING OFF THE COMPLAINANTS THE  
12 HOUSING AUTHORITY COMMITTED PRACTICES  
13 WHICH ARE PROHIBITED BY THE PROVISIONS  
14 OF NRS 288.

15 Having found that the Housing Authority's act of laying  
16 off the Complainants and contracting out their work was  
17 motivated by its knowledge of the Complainants' attempt to  
18 unionize (not by legitimate non-discriminatory reasons);  
19 having found that said act is inherently destructive of the  
20 Complainants' right to organize for collective bargaining  
21 purposes; and having found that said unilateral act  
22 constitutes a failure to bargain in good faith, the Board  
23 likewise finds that by committing said act the Housing  
24 Authority has engaged in practices which are clearly  
25 prohibited by the provisions of NRS 288.270 (1) (a), (b), (c),  
26 (d) and (e).

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1 V.  
2 AS CONCERNS LEGAL ISSUE "B" STIPULATED  
3 TO BY THE PARTIES, THE HOUSING AUTHORITY  
4 DID NOT VIOLATE THE PROVISIONS OF  
5 NRS 288.270 (1) (a), (b), (c) AND/OR  
6 (d) WHEN IT EXTENDED THE PROBATIONARY  
7 PERIOD OF COMPLAINANT HAYLEY AND/OR  
8 DENIED HIM A STEP ADVANCE

9 The Board finds that the Complainants have failed to meet  
10 their burden of proof. Although Complainant Hayley was  
11 involved in the organizing effort and an officer in the  
12 Association, there was insufficient evidence to establish that  
13 his protected activities were the reason for the extension of  
14 his probationary period. Suspicion alone is not enough to  
15 conclusively establish a violation of the statute (NRS 288).  
16 Petition of Union Trust Co. of Pittsburgh, 20 A. 2d 779 (Pa.  
17 1941).

18 FINDINGS OF FACT

19 1. That the Respondent, Housing Authority of the City of  
20 North Las Vegas, is a local government employer as defined in  
21 NRS 288.060.

22 2. That Complainants James P. Riebeling, James M.  
23 Hayley, Michael A. Maldonado and McNeal D. Brown were employed  
24 by Respondent as Special Police Officers in Respondent's  
25 security department.

26 3. That Complainants James P. Riebeling, James M.  
27 Hayley, Michael A. Maldonado and McNeal D. Brown formed an  
28 Association (The City of North Las Vegas Housing Authority  
Special Police Officers Association) for the purpose of

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1 bargaining collectively with Respondent under NRS 288, and  
2 notified Respondent of their intention by letter dated May 30,  
3 1995.

4 4. That Complainants James P. Riebeling, James M.  
5 Hayley, Michael A. Maldonado and McNeal D. Brown were the  
6 President, Vice President, a Treasurer and Secretary,  
7 respectively, of The City of North Las Vegas Housing Authority  
8 Special Police Officers Association.

9 5. That, by letter dated June 10, 1993, to the Chairman  
10 of Respondent's Board of Commissioners, The City of North Las  
11 Vegas Housing Authority Special Police Officers Association  
12 applied for recognition pursuant to the provisions of NRS  
13 288.160 (1)a

14 6. That, by letter dated June 21, 1993, Respondent's  
15 Executive director notified Complainant James P. Riebeling, as  
16 President of The City of North Las Vegas Housing Authority  
17 Special Police Officers Association, that she was unable to  
18 act on the application for recognition, at that time, because  
19 the application had not included a verified membership list;  
20 also, she indicated that upon receipt of such information or  
21 document, she would review same and present it to Respondent's  
22 Board of Commissioners for consideration.

23 7. That, on the same date, June 21, 1993, Respondent's  
24 Board of Commissioners met and adopted the recommendation of  
25 Respondent's management to the effect that four of the six  
26 Special Police Officer positions should be unilaterally

1 abolished and their work contracted out, effective June 30,  
2 1995.

3 8. That the four Special Police Officer position  
4 unilaterally abolished were occupied by Complainants James P.  
5 Riebeling, James M. Hayley, Michael A. Maldonado and McNeal D.  
6 Brown, the officers of the City of North Las Vegas Housing  
7 Authority Special Police Officers Association.

8 9. That the two Special Police Officer positions which  
9 were retained were occupied by employees who were not members  
10 of the Association or otherwise involved with the Association.

11 10. That the unionizing efforts of Complainants James P.  
12 Riebeling, James M. Hayley, Michael A. Maldonado and McNeal D.  
13 Brown was the reason for the recommendation by Respondent's  
14 management that their positions should be unilaterally  
15 abolished and their work contracted out.

16 11. That the Respondent's unilateral abolishment and  
17 contracting out the work of Complainants James P. Riebeling,  
18 James M. Hayley, Michael A. Maldonado and McNeal D. Brown, who  
19 had formed an association for collective bargaining purposes  
20 and applied to Respondent for recognition, is a prohibited  
21 practice.

#### 22 CONCLUSIONS OF LAW

23 1. The Local Government Employee-Management Relations  
24 Board has jurisdiction over the parties and the subject matter  
25 addressed by this Decision, pursuant to the provisions of NRS  
26 Chapter 288.

1           2. That the recommendation of Respondent's management to  
2 unilaterally abolish the positions of Complainants James P.  
3 Riebeling, James M. Hayley, Michael A. Maldonado and McNeal D.  
4 Brown, and contract out their work, was based on its knowledge  
5 of their unionizing efforts (which are protected activities),  
6 in view of which the implementation of said recommendation  
7 constituted interference, restraint, coercion and  
8 discrimination in violation of the provisions of NRS 288.270  
9 (1) (a), (b), (c) and (d).

10           3. That Respondent's act of laying off Complainants  
11 James P. Riebeling, James M. Hayley, Michael A. Maldonado and  
12 McNeal D. Brown, and contracting out their work, was  
13 inherently destructive of their right to organize for  
14 collective bargaining purposes and, therefore, prohibited by  
15 the provisions of NRS 288.270 (1) (a), (b), (c) and (d).

16           4. That Respondent's act of laying off Complainants  
17 James P. Riebeling, James M. Hayley, Michael A. Maldonado and  
18 McNeal D. Brown, and contracting out their work, was designed  
19 and intended to circumvent the Housing Authority's duty to  
20 bargain collectively (regarding such matters as layoff  
21 procedures and subcontracting) upon recognition and/or  
22 certification of The City of North Las Vegas Housing Authority  
23 Special Police Officers Association, in view of which said act  
24 constitutes a failure to bargain in good faith and a violation  
25 of NRS 288.270 (1) (e).

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1           5. That the Complainants did not meet their burden of  
2 proof to establish that the extension of Complainant James M.  
3 Hayley's probationary period by Respondent was due to his  
4 protected activities; therefore, Respondent did not violate  
5 the provisions of NRS Chapter 288 when it extended said  
6 probationary period.

7                           DECISION AND ORDER

8           IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the  
9 Respondent's act of unilaterally laying off Complainants  
10 Riebeling, Hayley, Maldonado and Brown, and contracting out  
11 their work, was a prohibited practice, in view of which  
12 Respondent shall compensate said Complaints for their lost  
13 earning, as follows:

14           1. Complainant James P. Riebeling shall be paid \$20,484.

15           2. Complainant Michael A. Maldonado shall be paid  
16                 \$16,000.

17           3. Complainant McNeal D. Brown shall be paid \$8,216.

18           Complainant James M. Hayley did not suffer a loss in  
19 earnings, therefore, no compensation is awarded in his case.

20           IT IS FURTHER ORDERED, ADJUDGED AND DECREED that  
21 Respondent shall pay the reasonable costs and attorney's fees  
22 incurred by the Complainants in processing the instant  
23 Complaint before this Board. The Complainants shall submit a  
24 statement of costs and attorneys fees for the Board's  
25 consideration and deliberation within ten (10) days from date  
26 of Entry of this Order.



1 DATED this 24th day of July, 1995.

2  
3 LOCAL GOVERNMENT EMPLOYEE-  
4 MANAGEMENT RELATIONS BOARD

5  
6 By Ch. H. Voisin  
7 ~~CHRISTOPHER~~ VOISIN, Vice Chairman

8  
9 By Tamara E. Barengo  
10 TAMARA BARENGO, Member

11  
12 By Vicki Hulbert  
13 VICKI HULBERT, Substitute Member