

1 **STATE OF NEVADA**
2 **LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT**
3 **RELATIONS BOARD**
4

5 LAS VEGAS CONSTABLES ASSOCIATION,
6 Complainant;

7 vs.

8 LAS VEGAS CONSTABLES OFFICE,
9 Respondent;

ITEM NO. 383-E

CASE NO. A1-045600

DECISION

10 LAS VEGAS CONSTABLES ASSOCIATION,
11 Applicant;

12 LAS VEGAS CONSTABLES OFFICE,
13 Petitioner;

14 and

15 WASHOE COUNTY DISTRICT ATTORNEY'S
16 OFFICE,
17 Intervenor.

18 FOR COMPLAINANT: Leslie Mark Stovall, Esq.

19 FOR RESPONDENT: William D. Kephart, Esq.
20 MORAN & ASSOCIATES

21 FOR INTERVENOR: Maureen Sheppard-Griswold, Esq.
22 WASHOE COUNTY D.A.'S OFFICE

23 **STATEMENT OF CASE**

24 On March 11, 1996, the Las Vegas Constables Association (hereinafter Association) filed a
25 Complaint alleging prohibited practices under NRS 288.270 by the Las Vegas Constables Office
26 (hereinafter Constable). An Amended Complaint alleging additional charges of prohibited practices
27 was filed January 13, 1997. The Association also filed on March 11, 1996, a Motion for Injunctive
28 Relief. On March 13, 1996, the Association filed with the Local Government Employee-Management
Relations Board (hereinafter EMRB or Board) a copy of the Application for Recognition, which had
been served on Constable Bob Nolen, seeking recognition of the Association as the collective

1 bargaining representative for the proposed unit of deputy constables employed by the Las Vegas
2 Constables Office.

3 On March 21, 1996, the Board issued an order (Item No. 379) which dealt with the issues of
4 jurisdiction and authority of the Board to grant injunctive relief and ordered a hearing. On April 11,
5 1996, Washoe County (hereinafter Washoe) filed a Petition for Leave to Intervene, along with a
6 Motion for Reconsideration or Clarification of the Order Issued March 21, 1996. The Board issued
7 two orders on April 26, 1996; First (Item No. 383-A), ordering a hearing to be conducted; and
8 Second (Item No. 383-B), granting Washoe's Petition to Intervene.

9 A hearing was conducted on May 2, 1996. The Board held deliberations on this case and
10 issued a verbal opinion which stated that the Board had jurisdiction under the provisions of NRS 288.
11 However, NRS 258 precluded the EMRB from granting any relief.

12 Prior to issuing this decision in writing, including findings of fact and conclusions of law, the
13 Board held further deliberations. On July 3, 1996, all parties were requested to file supplemental
14 briefs regarding two issues; 1) What is the relationship of the constable's office to the political
15 subdivisions of the state, to-wit: the townships and counties?; and 2) Is either the constable or
16 constable's office a representative of the political subdivision of the state, to-wit: either the county
17 of township, under NRS 288.150, and if so what impact does the same have on the jurisdiction of the
18 EMRB under NRS 288.060?

19 After deliberation on the supplemental briefs, an order (Item No. 383-C) was issued by the
20 Board on October 2, 1996, granting the Motion for Injunctive Relief, denying the Intervenor's
21 Motion for Reconsideration and ordering a hearing on the Complaint and the Application for
22 Recognition to be held.

23 On November 18, 1996, a Substitution of Attorney was filed by the Respondent.

24 On November 26, 1996, the Complainant filed a Motion to Dismiss and For Reasonable
25 Attorney's Fees. The motion addressed the Intervenor's letter of October 21, 1996, stating that,
26 unless otherwise requested by the Board, Washoe would not participate further in the hearings. Their
27 interest in this case was only on the issue of jurisdiction and thus there would be no reason for
28 Washoe to appear at the hearing. The Board agreed with the argument of Intervenor and denied the

1 Motion to Dismiss and For Reasonable Attorney's Fees.

2 A hearing was held on December 12, 1996 and continued through December 13, 1996,
3 February 13 and 14 and April 24 and 25, 1997. All remaining issues were presented during these six
4 days of hearing.

5 On February 10, 1997, two motions were filed; Respondent's Motion to Dismiss All
6 Proceeding Subsequent To the Board's May 2, 1996 Verbal Final Decision Based on the Doctrine
7 of Administrative Res Judicata or, in the alternative, Motion to Strike the Complainant's Amended
8 Complaint Due to the Reliance On the Board's Verbal Final Decision; and Motion to Stay the
9 Continuation of Hearings Until a Determination has been made on Respondent's Motion to Dismiss
10 Due to Administrative Res Judicata, or in the alternative, Motion to Strike Amended Complaint.

11 The Board heard oral argument on these motions at the hearing of February 13 and 14, 1997. The
12 Respondent argued that the Board had issued a Final Verbal Decision on May 2, 1996 and that it
13 should stand. The Complainant argued that Respondent had failed to bring this defense through its
14 counsel at any time between the May 2, 1996 Order and the subsequent days of hearing, and was
15 therefore precluded from this defense. In response to the Respondent's Motion to Dismiss All
16 Proceeding Subsequent To the Board's May 2, 1996 Verbal Final Decision Based on the Doctrine
17 of Administrative Res Judicata or, in the alternative, Motion to Strike the Complainant's Amended
18 Complaint Due to the Reliance On the Board's Verbal Final Decision, the Board issued an oral
19 decision denying the Motion to Dismiss. Chairman Voisin, in the Board's ruling stated that:

20 "Clearly, I think, as the colloquy back and forth indicated, this matter brought by Mr. Kephart
21 on behalf of his client is quite serious and is quite serious before the Board. After entertaining
22 arguments of both parties here and going into deliberations on this, it is the Board's position to deny
23 the Respondent's Motion to Dismiss the Proceedings as filed before the Board.

24 We would reaffirm in denying this motion to dismiss that we have previously issued a
25 ruling of this Board in October setting forth the jurisdictional basis of the Board and the power and
26 authority of this Board to move forward with these proceeding, and it is a matter of record, at least
27 in the minds of the Board, that the respondent's position at the last hearing in essence constituted a
28 waiver of their opposition to the petition for recognition."

1 On the Motion to Strike the Amended Complaint a verbal order was stated into the record
2 granting the Motion. The Complainant orally requested a Motion for Reconsideration. Further oral
3 arguments and deliberation by the Board resulted in the parties being requested to submit briefs on
4 the issue: "Whether the May 2, 1996 Order stating that the EMRB not interfere with the constable's
5 hiring practices can be justifiably relied upon by Mr. Nolen to hire and fire his employees at will even
6 though the board further ruled that the constable's office came under the jurisdiction of NRS 288?"
7 In other words, did the Board's May 2, 1996 determination absolve or relieve the constable from
8 complying with the provisions of NRS 288 regarding alleged conduct engaged in between May 2 and
9 October 2, 1996? Deliberations on these briefs were held by the Board on April 3, 1997 from which
10 it was determined that: The EMRB could not absolve an employer from its statutory obligation; the
11 May 2, 1996 Verbal Decision did not include findings of fact and conclusions of law stated separately.
12 Accordingly, the order may not be considered a final decision; the EMRB cannot waive the protected
13 rights provided by NRS 288. Accordingly, the Motion to Strike the Amended Complaint was
14 denied.

15 On March 18, 1997, the Respondent filed two motions; Motion for Clarification; and Motion
16 to Stay February 13, 1997 Verbal Order That Constable Nolen Bargain with the Las Vegas
17 Constables Association. An order (Item No. 383-D) was issued on April 3, 1997 granting
18 Respondent's Motion to Stay negotiations and denying their Motion for Clarification.

19 DISCUSSION AND FINDINGS OF FACT

20 I.

21 RECOGNITION OF 22 LAS VEGAS CONSTABLES ASSOCIATION

23 A. The Las Vegas Constables Association is a recognized employee organization.

24 William Kephart, counsel for Constable Nolen, stipulated to the recognition of the Association
25 in stating, "... Mr. Nolen doesn't have any problem with the Constables Association. He doesn't
26 have any problem with an organization of that effect." He further stated, "My position is that there
27 has never been a position by Mr. Nolen anti Constables Association, antiunion. There has never
28 been."

1 For clarification Chairman Voisin asked, "Are you saying basically you are not in opposition
2 to the recognition petition filed if six of the eight are valid, presume there were eight constables as
3 listed by Mr. Stovall and even removing the two, Mr. Cowan and Mr. Griffin, because of what Mr.
4 Nolen would believe to be a proper termination or either their resignation before the petition was filed
5 that we still have six out of the eight which would be a majority for recognition purposes?

6 Kephart's reply was, "Yes, we are not in any objection to that, to the recognition." The only
7 remaining issue for recognition is then, the sufficiency of the application.

8 B. The Application for Recognition is Sufficient.

9 The Application for Recognition filed by the Association on March 13, 1996, lists six deputy
10 constables as members of the Association; J. David Burress, Leonard Griffin, Richard Yohner, Paul
11 Coroneos, Mike Counterman and David Cowan. Undisputed testimony provided throughout the
12 hearing showed there was a total of eight deputy constables employed by the Las Vegas Constables
13 Office at the time the Association was formed, the two other deputies being Robert Douglas Tharp
14 and Michael Briggs. At the initial meetings forming the Association, all of the deputies were
15 members however Tharp and Briggs each testified that they elected to resign from the Association.

16 Of the remaining six members, a question arose regarding the employment status of Cowan
17 and Griffin as of the March 13, 1996 filing date. Testimony by Mr. Nolen detailed the termination
18 of Mr. Cowan and the resignation of Mr. Griffin. The specific details of each issue and the Board's
19 findings on both are offered under item III in this order. However, it is the Board's determination
20 that Mr. Griffin was wrongfully terminated and, accordingly, properly considered a member and
21 employee of the Constables Office.

22 In Clark County and Clark County Professional Traders Association; and Service
23 Employees International Union, Local 1107 (Intervenor), (Case No. A1-045601, Item No. 391-C)
24 the Board concluded that, "The effective date for determining the sufficiency of the application is the
25 date it is filed with the EMRB." This precedent, along with the determination that Mr. Griffin should
26 be considered an employee at the time of the filing, the Board finds that five of the eight deputies
27 employed by the Constables Office seek representation by the Association. Accordingly, the
28 application for recognition is deemed sufficient, showing a majority as required under NRS 288.160.

1 II.

2 DID CONSTABLE NOLEN COMMIT
3 PROHIBITED PRACTICES PURSUANT TO NRS 2882

4 Constable Nolen did engage in a prohibited practice by interfering with the organizational
5 efforts of the Las Vegas Constable's Association.

6 It is the determination of the Board, that Constable Nolen's behavior in its totality did
7 constitute a prohibited practice. The testimony reflected a compilation of a continued pattern of
8 conduct on the part of Mr. Nolen, such as failing to provide financial information as requested by the
9 Association, giving complete or inaccurate information, and making verbal threats to discourage the
10 organizational effort. Mr. Nolen's statements were often shown to lack credibility when they were
11 repeatedly refuted by the testimony of other witnesses. For example, Mr. Nolen's testimony reflects
12 that he knew nothing of the forming of an Association until contact by Mr. Stovall on March 8,
13 1996. However, this testimony was disputed by many of the Association members along with Faye
14 Duncan-Daniels and the Respondent's own witness, Douglas Tharp, all of whom acknowledged
15 having had various conversations regarding the formation of the Association with Mr. Nolen dating
16 from December 1995 through January and February 1996.

17 Additionally, Mr. Nolen stated on the record that he never had any objection to the forming
18 of an Association, yet again his testimony as well as his actions in the first days of hearings were of
19 an opposite nature.

20 Due to the conflicting testimony, the terminations of some Association members, the stated
21 and implied threats made by Mr. Nolen, it is the conclusion of this Board that Mr. Nolen has
22 committed prohibited practices pursuant to NRS 288.270.

23 III.

24 DID CONSTABLE NOLEN ENGAGE IN AN
25 UNFAIR LABOR PRACTICE BY THE
26 TERMINATION OF ANY OF THE DEPUTY CONSTABLES?

27 A. Leonard Griffin was wrongfully terminated.

28 Mr. Griffin was employed by the Las Vegas Constables Office from January 1992 until his
resignation of dated February 20, 1996 to be effective on March 1, 1996. The resignation letter
(Exhibit H) notes that Griffin was resigning due to a conflict in the office. Griffin stated he resigned

1 under pressure at the request of Mr. Nolen to either resign or be terminated. Further, Griffin testified
2 that Nolen stated that without a letter of recommendation from Constable Nolen, Griffin would find
3 it hard to find employment. Griffin also testified that Mr. Nolen stated during this conversation that
4 the Association was not going to work.

5 The employment history of Mr. Griffin that was provided reflects very little disciplinary action
6 toward Mr. Griffin until a suspension he received in late November or early December 1996. This
7 suspension occurred a short time after Mr. Griffin stated he might run for Constable and directly
8 following a discussion with Mr. Nolen regarding the Association, PERS and possible optional wage
9 proposals. Griffin was terminated only days prior to the filing of the Application for Recognition by
10 the Association of which he was a member.

11 There appeared to be no specific justification for the termination and, given Mr. Griffin's
12 involvement in the forming of the Association and the pattern of conduct of Mr. Nolen in relation
13 to the Association's members, it is the Board's decision that Mr. Griffin was wrongfully terminated
14 and is to be reinstated with back pay.

15 B. David W. Cowan was not wrongfully terminated.

16 Mr. Cowan was employed as a deputy constable from November 4, 1995 through March 15,
17 1996. Discussions had been held and a survey (exhibit E) circulated regarding an optional pay
18 structure and an agreement for a total team concept (exhibit F) which might require a reduction of
19 staff of one or more deputies. Although Mr. Tharp's actual hire date was after Mr. Cowan's, Tharp
20 held the supervisory position of Chief Deputy, making Cowan the deputy with the last hire date.

21 The Board found no foundation for a wrongful termination charge in this instance.

22 C. J. David Burress was wrongfully terminated.

23 Mr. Burress was employed as a deputy constable from July 11, 1994 to June 26, 1996 and
24 served as the President of the Association from its founding to date. The testimony given provided
25 that Burress was terminated due to an incident between him and Mr. Yohner in which Burress
26 purportedly made threats to Yohner. However, the incident was not investigated by either Constable
27 Nolen or Tharp. Absent of this incident, there is no written warnings or documentation of
28 misconduct presented in the employment history of Mr. Burress, making this incident the grounds for

1 termination to seem pretextual.

2 Given the pattern of conduct by Mr. Nolen and Mr. Burress' position as President of the
3 Association, the Board finds that Mr. Burress was wrongfully terminated pursuant to NRS 288.270.

4 D. Paul M. Coroneos was not wrongfully terminated.

5 Mr. Coroneos was employed as a deputy constable from October 1992 to his termination in
6 September 1996. Unlike the other members of the Association, testimony was provided that Mr.
7 Coroneos acted in a clearly insubordinate manner in regards to his termination. Mr. Coroneos was
8 called into the office of Mr. Nolen to meet with Nolen and Tharp regarding the taking of a check
9 against written policy. Testimony given by Nolen, Tharp, and Kelley Sheldon, a clerical staff person
10 in the Constables office. They all agreed that Coroneos lost his temper when called into Nolen's
11 office to discuss a bounced check. At one point Coroneos blocked Nolen from closing the office
12 door. His anger escalated to a point where Nolen asked staff to call the building security. Sometime
13 during this argument, Mr. Nolen fired Mr. Coroneos.

14 Insubordinate behavior to a supervisor, in and of itself, is grounds for termination in any
15 situation but especially in one of at-will employment. Regardless of organizing efforts of the
16 Association, the Board determined that Mr. Coroneos was fired for just cause.

17 CONCLUSIONS OF LAW

18 1. That the Local Government Employee-Management Relations Board has jurisdiction
19 over the parties and the subject matter of this Petition pursuant to the provisions of NRS Chapter
20 288.

21 2. That the Respondent, is a local government employer as defined by NRS 288.060.

22 3. That the Complainant, Las Vegas Constables Association, is an employee association
23 as defined by NRS 288.040.

24 4. That the Las Vegas Constables Association has appropriately filed a Petition for
25 Recognition pursuant to NRS 288.160.

26 5. That the Intervenor, Washoe County, is a party to this dispute, as provided for by the
27 provisions of NAC 288.260.

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1 6. That Constable Nolen did commit a violation of NRS 288.140 by acting in a
2 discriminatory manner against the members of the Association.

3 7. That Constable Nolen did commit a violation of NRS 288.270 in his refusal to provide
4 financial information necessary to bargain in good faith.

5 8. That Constable Nolen did commit a prohibited practice pursuant to NRS
6 288.270(1)(a-g), including but not limited to the termination of Griffin and Burress.

7 9. That Constable Nolen did not commit a prohibited practice in the terminations of
8 Cowan and Coroneos, pursuant to NRS 288.270.

9 10. That the Las Vegas Constable's Office could not justifiably rely on the order issued
10 verbally on May 2, 1996, as grounds to violate the protected rights of an employee pursuant to NRS
11 288. Moreover, that order was never issued in a written form of a final decision including findings
12 of fact and conclusions of law, therefore, pursuant to NRS 233B, the May 2, 1996 Order cannot be
13 considered a final decision by an administrative body.

14 **DECISION AND ORDER**

15 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Application for
16 Recognition is granted. Accordingly, the previously granted stay of the February 13, 1997 Verbal
17 Order that Constable Nolen Bargain with the Las Vegas Constables Association is rescinded.

18 IT IS FURTHER ORDERED that the Las Vegas Constable's Office reinstate deputies Griffin
19 and Burress along with back pay. An affidavit for reimbursement shall be submitted by the
20 Complainant's counsel for the Board's approval.

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1 IT IS FURTHER ORDERED that Mr. Nolen cease and desist from any further prohibit
2 practices under NRS 288. And that Respondent shall bear all attorneys' fees and costs.
3 Complainants' counsel shall submit to the Board an affidavit for reimbursement of attorney fees and
4 costs and reimbursements of back pay for Griffin and Burress.

5 DATED this 21st day of July 1997.

6 LOCAL GOVERNMENT EMPLOYEE-
7 GOVERNMENT RELATIONS BOARD

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

10 By *Tamara E. Barengo*
11 TAMARA BARENGO, Vice-Chairman

12 By *David Goldwater*
13 DAVID GOLDWATER, Board Member
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