

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

5 INCLINE VILLAGE GENERAL )  
6 IMPROVEMENT DISTRICT, )  
7 Petitioner, )

8 vs. )

9 OPERATING ENGINEERS, LOCAL )  
10 UNION, NO. 3, )  
11 Respondent. )

ITEM NO. 454B

CASE NO. A1-045663

DECLARATORY ORDER

12 For Petitioner: James T. Winkler, Esq.  
13 Hicks & Walt

14 For Respondent: Pete Ford  
15 Operating Engineers, Local Union No. 3

16 STATEMENT OF THE CASE

17 On September 27, 1999, a Petition for Declaratory Order was filed by Petitioner, Incline  
18 Village General Improvement District (hereafter "District"), requesting clarification of a unit  
19 consisting of Construction Supervisor, Fleet Superintendent, Pipeline Operations Supervisor, Plant  
20 Maintenance Supervisor, Plant Operations Supervisor, Purchasing Agent/Warehouse Supervisor,  
21 Utilities Customer Services Manager, Utilities Plant Superintendent, and Utilities Systems  
22 Superintendent, and its belief that the Utilities Plant Superintendent does not appear to be a proper  
23 member thereof because of his authority to direct and discipline.

24 On October 26, 1999, a Response and Rebuttal to the Petition for Declaratory Order was filed  
25 by Respondents, Operating Engineers, Local Union No. 3 (hereafter "Union") alleging that the  
26 Utilities Plant Superintendent played no different role in the peer review process than any other  
27 position, i.e., he is a leader but not a supervisor of supervisors and requested the petition be denied.

28 On November 10, 1999, the District requested a hearing on the matter.

On December 9, 1999, an order was entered scheduling a hearing and on December 15, 1999,  
an order was entered setting the hearing location.

1 On January 4, 2000, the Prehearing Brief of the District was filed. On January 6, 2000, the  
2 District filed its list of witnesses.

3 On January 10, 2000, the Union filed its Prehearing Statement and on January 18, 2000, a  
4 Prehearing Conference was with all parties participating.

5 On February 8, 2000, a Hearing was held before the Local Government Employee-  
6 Management Relations Board (hereafter "Board"), noticed in accordance with Nevada's Open  
7 Meeting Law, at which time the Board heard oral arguments from counsel, received evidence, and  
8 heard testimony from two (2) witnesses, namely Roger Eggenburg and Harvey Johnson. The  
9 Board's findings as to the District's Petition are set forth in its Discussion, Findings of Fact and  
10 Conclusions of Law, which follow.

### 11 DISCUSSION

12 Testimony at the hearing established a well-organized District with its small group of  
13 employees working in an amicable and efficient fashion through the use of a peer review system with  
14 the employees enjoying longevity at their jobs. All workers were identified along with a description  
15 of their respective duties and authority, including whether the individuals had supervisory authority  
16 and over whom.

17 Witness Johnson further testified approximately 25% of his time as the Utilities Plant  
18 Superintendent was spent in a supervisory capacity and that his duties includes, (1) supervising  
19 maintenance at the treatment plant, (2) directing maintenance at 35 pump stations and 12 storage  
20 reservoirs as well as directing its teams, (3) oversight of a 900 acre wetlands, (4) supervising lab  
21 operations, (5) managing personnel, (6) directing daily meetings, (7) approving overtime and  
22 vacations, and (8) that the position enjoys a higher spending limit.

### 23 FINDINGS OF FACT

24 1. That there currently exists a very cooperative atmosphere at the District with its current  
25 small number of long time employees.

26 2. That a peer review process exists between the employees concerning duties, management,  
27 supervision and discipline.

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1           3. That even with the well-organized peer review procedure, most responsibilities lie with  
2 the Utilities Plant Superintendent and in such a position, has the direct affect on a decision to hire,  
3 fire, reward and/or discipline, as well as settle disputes or grievances; and such duties and authority  
4 occupy a significant portion of a workday.

5           4. That there is no guarantee that such cooperative spirit and efficiency would continue but  
6 for the efforts of the current employees.

### 7                                 CONCLUSIONS OF LAW

8           1. The Local Government Employee-Management Relations Board has jurisdiction over the  
9 parties and the subject matters of the petition on file herein pursuant to the provisions of NRS  
10 Chapter 288.

11           2. The District is a local government employer as defined in NRS 288.060.

12           3. The Union is an employee organization as defined by NRS 288.040.

13           4. The Union has requested recognition of a certain unit of employees consisting of  
14 Construction Supervisor, Fleet Superintendent, Pipeline Operations Supervisor, Plant Maintenance  
15 Supervisor, Plant Operations Supervisor, Purchasing Agent/Warehouse Supervisor, Utilities  
16 Customer Services Manager, Utilities Plant Superintendent, and Utilities Systems Superintendent  
17 pursuant to NRS 288.160.

18           5. A dispute arose concerning whether the Utilities Plant Superintendent is a proper member  
19 of the proposed bargaining unit and this Board has been requested to issue a declaratory order on the  
20 issue.

21           6. That NRS 288.170 mandates that an administrative employee or supervisory employee  
22 shall not be a member of the same bargaining unit as employees under his/her direction.

23           7. That NRS 288.075 defines a supervisory employee as one who enjoys the right to hire,  
24 transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees;  
25 has the responsibility to direct other employees may adjust grievances.

26           8. That the Utilities Plant Superintendent does have similar responsibilities and authority  
27 as found in NRS 288.075.

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1 9. Therefore, the instant Utilities Plant Superintendent cannot be a member of the collective  
2 bargaining unit of his/her employees pursuant to NRS 288.075.

3 **DECISION AND ORDER**

4 IT IS HEREBY ORDERED that the refusal of the District to recognize the proposed unit is  
5 well-grounded and that the position of the Utilities Plant Superintendent cannot be a member of the  
6 proposed employee bargaining unit.

7 DATED this 29<sup>th</sup> day of February 2000.

8 LOCAL GOVERNMENT EMPLOYEE-  
9 MANAGEMENT RELATIONS BOARD

10 By *David Goldwater*  
11 DAVID GOLDWATER, Chairman

12 By *Karen L. McKay*  
13 KAREN L. MCKAY, Vice-Chairman

14 By *James E. Wilkerson*  
15 JAMES E. WILKERSON, SR., Member

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