

**STATE OF NEVADA**  
**LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT**  
**RELATIONS BOARD**

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL NO. 3,  
Complainant,

vs.

WASHOE COUNTY, NEVADA,  
Respondent.

WASHOE COUNTY EMPLOYEES  
ASSOCIATION,  
Intervenor.

ITEM NO. 474A

CASE NO. A1-045676

**DECISION**

For Complainant: Matthew J. Gauger, Esq.  
Van Bourg, Weinberg, Roger & Rosenfeld

For Respondent: Maureen Sheppard-Griswold, Esq.  
Washoe County District Attorney's Office

For Intervenor: Michael E. Langton, Esq.

**STATEMENT OF THE CASE**

On January 26, 2000, Complainant INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 3 ("LOCAL NO. 3") filed a Complaint against Respondent WASHOE COUNTY, NEVADA ("COUNTY") with the Local Government Employee-Management Relations Board ("Board") alleging the COUNTY incorrectly rejected a proposed modification of the current bargaining unit for non-supervisory employees in Washoe County.

The COUNTY filed its Answer on February 11, 2000. On August 30, 2000, a Petition to Intervene was filed by the WASHOE COUNTY EMPLOYEES ASSOCIATION ("WCEA") as a real party in interest, and a pre-hearing conference was conducted on September 15, 2000.

The Board held a hearing on October 4, 2000, noticed in accordance with Nevada's Open Meeting Law. Complainant LOCAL NO. 3 was represented by Mathew J. Gauger, Esq., Respondent COUNTY by Maureen Sheppard-Griswold, Esq., and Intervener WCEA by Michael Langton, Esq.

1 The Board heard oral argument from counsel, testimony from six (6) witnesses, received and  
2 reviewed fifty (50) hearing exhibits, and reviewed briefs submitted by counsel in forming the opinion  
3 set forth as follows:

#### 4 DISCUSSION

5 WCEA has been recognized as the representative of the bargaining unit for non-supervisory  
6 employees in Washoe County for some 27 years. (Tr. 1.). WCEA is an employee association  
7 representing the COUNTY'S professionals, administrative, clerical, and technical positions. (Tr.  
8 70 - 71; Appendix A to Exhibit 48.)

9 On August 11, 1999, LOCAL NO. 3 sent a letter to the County Board of Commissioners (the  
10 "County Commissioners") requesting a modification of the existing General Employees Bargaining  
11 Unit by creating a new Sheriff's Support Services Bargaining Unit. This new unit would be carved  
12 out (or severed) from the existing general employees bargaining unit. (Exhibit 1.)

13 Assistant County Manager Howard Reynolds prepared and sent a memorandum to the County  
14 Commissioners responding to the request and scheduled the matter for consideration on September  
15 14, 1999. Mr. Reynolds' recommended that the County Commissioners deny LOCAL NO. 3's  
16 request at the time because the request was not submitted within an appropriate window period for  
17 such a request, and that LOCAL NO. 3 be asked to resubmit its request in the month of November  
18 1999 in accordance with NAC 288.146. (Tr. 74; Exhibit 2.) Mr. Reynolds also advised the Board  
19 of the problems he saw in LOCAL 3's request. (Tr. 75; Exhibit 2.) These problems included the  
20 fact that the request represented a departmental carve out rather than a request based upon a grouping  
21 of employees with a community of interest; that the request was for some, but not all of the Sheriff's  
22 support positions; and that nearly a third of the classes requested for the carve out existed in other  
23 County departments who were not carved out. (Exhibit 2.)

24 At the September 14, 1999 board meeting, the County Commissioners denied both LOCAL  
25 NO. 3's request to carve out a new bargaining unit from the WCEA and the request that LOCAL NO.  
26 3 be certified as the exclusive representative for such a unit. The County Commissioners ordered  
27 that LOCAL NO. 3 could resubmit its request on November 1, 1999. (Exhibit 3.)

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1 On November 2, 1999, the County Commissioners received a letter from LOCAL NO. 3  
2 again requesting that a Sheriff's Support Services bargaining unit be severed from the general  
3 employees bargaining unit. (Exhibit 4.)

4 Washoe County Labor Relations Manager Steve Watson is responsible for providing advice  
5 to the County Commission with respect to the appropriateness of bargaining units. (Tr. 133.) In  
6 response to the letter of November 2, 1999 from LOCAL NO. 3, Mr. Watson met with  
7 representatives of LOCAL 3 and WCEA. (Tr. 135 - 136.) On December 12, 1999, Mr. Watson  
8 prepared and sent a memorandum to the County Commissioners, and scheduled the matter for  
9 consideration on January 11, 2000. Mr. Watson recommended that the County Commissioners deny  
10 the request for the reasons stated in his memo. (Exhibit 5.)

11 At the January 11, 2000 board meeting, the County Commissioners denied LOCAL NO. 3's  
12 request to sever a portion of the Sheriff's Office civilian personnel from the existing WCEA  
13 bargaining unit to form a new Support Services unit and denied the request to be recognized as the  
14 representative of the new unit. (Exhibit 6.)

15 WASHOE COUNTY has taken the position that the primary focus of carve out questions is  
16 the community of interest shared by employees. The community of interest standard is laid out in  
17 NRS 288.170 which provides in pertinent part:

18 Each local government employer which has recognized one or more employee  
19 organizations shall determine, after consultation with the recognized organization or  
20 organizations, which group or groups of its employees constitute an appropriate unit or  
units for negotiating. The primary criterion for that determination must be the community  
of interest among the employees concerned.

21 NRS 288.170(1).

22 An important element in community of interest is the extent of integration with other  
23 employees. One way of determining integration is to look at the transferability with other County  
24 positions in the proposed carve out. A chart showing persons moving either into or out of positions  
25 in the proposed carve out was presented. (Tr. 109 - 110; Exhibit 42.) Within the last eighteen  
26 years, fifteen people moved from a class outside the proposed carve out into a class in the proposed  
27 carve out. Within this period of time, fifteen people moved from a class included within the  
28 proposed carve out into a class outside the proposed carve out. Also within this period, only five

1 people moved from a class included within the proposed carve out in to another class included within  
2 the proposed carve out. (Exhibit 42.)

3 At the hearing on October 4, 2000, Mr. Watson testified that all employees in the non-  
4 supervisory unit of WCEA share the same wage and benefit structure. (Tr. 134.) Additionally, of  
5 the seven classes proposed for the carve out, three classes (43 percent) are found in other County  
6 departments. (Exhibit 41.) Mr. Watson testified as follows:

7 The job is occupationally based, are not unique. [sic] They  
8 have the same classifications located in a lot of numerous other  
9 departments, and the functions and the skills and the background of  
employees involved are very similar if not identical to a lot of other  
job classifications contained in the W.C.E.A. bargaining unit.

10 (Tr. 156.)

11 In making unit determinations, the EMRB has said that:

12 But in public sector determinations, efficiency of operations  
13 and effective dealings must also be considered in conjunction with  
the analysis of community of interest.

14 In the instant case, the Board balanced factors such as  
15 fragmentation or proliferation of bargaining units with the  
16 concomitant problems of whipsawing, leapfrogging and possible  
deterioration of system wide classification and benefit programs  
against the inhibition of effective contract negotiations and  
administration where the unit is too large or too all embracing.

17 Las Vegas Convention/Visitors Authority, EMRB Item No. 96, p.5.

18 Mr. Watson considered these issues and impacts in making his recommendation to the Board  
19 of County Commissioners with respect to Local 3's request. (Tr. 185; Exhibit 5.)

20 Mr. Watson testified about the impact on Washoe County if the carve-out is allowed:

21 We clearly would have an additional bargaining unit structure  
22 to have to deal with resulting in negotiations, contract administration.  
23 We would have separate contract rules that would be negotiated that  
would preclude movement between bargaining units which would be  
inappropriate.

24 Different seniority rules, which creates [sic] problems, would  
25 create a precedent for obviously any other group of employees within  
a vertical department or request that they have a separate bargaining  
unit with all of the resulting problems with proliferation of units.

26 (Tr. 157, 158.)

27 At the hearing, LOCAL 3 raised three concerns why some employees at the Sheriff's Office  
28 want a carve out. First, there was a concern that the Sheriff's Office and WCEA had the same

1 attorney to represent them. (Tr. 29 - 30.) WCEA has hired their own counsel, thereby alleviating  
2 the concern of having one attorney representing both WCEA and the Sheriff's Office. (Tr. 29; 139.)

3 Additionally, Linda Topper-Artega, a Sheriff Support Specialist C with the Washoe County  
4 Sheriff's Office, testified on this issue as follows:

5 Q: Did you ever have the occasion of representing a worker and  
6 needing help from the Association and not getting it?

A: I have never not gotten help.

7 (Tr. 33 - 34.)

8 The only case Ms. Topper-Artega could recall where WCEA declined to provide a  
9 representative concerned the discipline of a probationary employee. (Tr. 44.) The agreement  
10 between the County and the WCEA excludes probationary employees from its coverage. (Exhibit  
11 48, Art. 2, Recognition.)

12 A second concern was that everyone got a raise five or six years earlier except the Sheriff's  
13 cooks. (Tr. 30.) Addressing this issue, Assistant County Manager Howard Reynolds testified:

14 Q: And what was, what is the history on that?

15 A: Well, it wasn't just Jail Cooks. There were several classifications  
16 that did not receive a pay increase that year, as well as several  
17 classifications that received an additional increase. What the parties  
18 would do each year is to sit down and negotiate a general wage  
19 increase, and then what we would call equity salary adjustments, both  
20 up and down with respect to what is in the market. And so there were  
21 certain classifications that that year received additional pay increase  
22 and others whose pay was frozen for that bargaining agreement.

19 Q: Were any of those classifications you talked about outside of the  
20 Sheriff's Department.

A: Yes.

21 (Tr. 80 - 81.)

22 The third concern raised by LOCAL 3 was the method of overtime calculation. (Tr. 31 - 32;  
23 139.) This concern was resolved by the County in a mid-term amendment to the collective  
24 bargaining agreement with WCEA that included the non-supervisory unit. (Tr. 142 - 144; Exhibits  
25 48; Exhibits 10 and 11.)

26 In lieu of closing arguments, the parties submitted post-hearing briefs and, thereafter,  
27 deliberations were held by the Board.

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## FINDINGS OF FACT

1. WCEA has been recognized as the representative of the bargaining unit for non-supervisory employees in Washoe County for some 27 years.

2. WCEA is a bargaining association providing representation for the COUNTY'S professional, administrative, clerical, and technical positions.

3. On August 11, 1999, LOCAL NO. 3 sent a letter to the County Board of Commissioners (the "County Commissioners") requesting a modification of the existing General Employees Bargaining Unit by creating a new Sheriff's Support Services Bargaining Unit.

4. This new unit would have to be carved out (or severed) from the existing General Employees Bargaining Unit.

5. On September 14, 1999, the Board of County Commissioners denied both LOCAL NO. 3's request to carve out a new bargaining unit from the WCEA, and the request that LOCAL NO. 3 be certified as the exclusive representative for such a unit because the request was not made within an appropriate window period for requesting the same. The County Commissioners ordered that LOCAL NO. 3 could resubmit its request on November 1, 1999.

6. On November 2, 1999, the County Commissioners received a letter from LOCAL NO. 3 again requesting that a Sheriff's Support Services bargaining unit be severed from the general employees bargaining unit.

7. At the January 11, 2000 board meeting, the County Commissioners denied LOCAL NO. 3's request to sever a portion of the Sheriff's Office civilian personnel from the existing WCEA bargaining unit to form a new Support Services unit and denied its request to be recognized as the representative of the new unit.

8. That this Board has ruled previously on the issue of community of interest which cases are applicable to the present matter, namely, Las Vegas Valley Water Dist. v. Water Employees Assn. & Las Vegas Valley Public Employee Assn., EMRB Item No. 251 (August 15, 1990) (setting forth the factors to be considered) and Clark Co. v. Clark Co. Professional Traders Assn. And Service Employees Intern. Union, Local 1107, EMRB Item No. 391-C (where several similar units existed but not all such similar units were proposed for the carve out).

1           9.     All employees in the non-supervisory unit of WCEA share the same wage and benefit  
2 structure.

3           10.     Within the last eighteen years, fifteen people moved from a class outside the proposed  
4 carve out into a class in the proposed carve out. Fifteen people moved from a class included within  
5 the proposed carve out into a class outside the proposed carve out. Also within this period, only five  
6 people moved from a class included within the proposed carve out in to another class included within  
7 the proposed carve out.

8           11.     Of the seven classes proposed for the carve out, three classes (43 percent) are found  
9 in other County departments.

10          12.     WCEA has recently hired their own counsel, thereby alleviating the concern of having  
11 one attorney representing both WCEA and the Sheriff's Office.

12          13.     The agreement between the County and the WCEA excludes probationary employees  
13 from its coverage and no other evidence was presented on the alleged lack of adequate  
14 representation.

15          14.     Five or six years earlier there were several classifications that did not receive a pay  
16 increase that year, as well as several classifications that received an additional increase; however,  
17 the County justified the situation.

18          15.     Five or six years earlier some of the classifications that did not receive a pay increase  
19 were classifications outside the Sheriff's Department.

20          16.     The method of overtime calculation was addressed by the County in a mid-term  
21 amendment to the collective bargaining agreement with WCEA which included the non-supervisory  
22 unit.

23          17.     Should any finding of fact be more properly construed as conclusions of law, may  
24 they be so deemed.

#### 25                               CONCLUSIONS OF LAW

26          1.     The Local Government Employee-Relations Board has jurisdiction over the parties  
27 and the subject matter of the International Union of Operating Engineers, Local Union No. 3's  
28 Complaint pursuant to the provisions of NRS Chapter 288.

- 1           2.       Washoe County is a local government employer as defined by NRS 288.060.
- 2           3.       It is not appropriate under the community of interest standard to sever a unit of
- 3 civilian employees of the Washoe County Sheriff's Department from the existing general employees
- 4 unit.
- 5           4.       The interests of the employees and the interests of the County are better served by
- 6 keeping the larger WCEA non-supervisory unit.
- 7           5.       The County has properly determined that the employees represented within the non-
- 8 supervisory bargaining unit do not share a community of interest significantly greater than any shared
- 9 interest of the civilian employees in the Sheriff's office and that several similar units exist in the
- 10 County which are not part of the proposed carve out.

11                               **DECISION AND ORDER**

12           IT IS, THEREFORE, THE DECISION OF THIS BOARD that Complainant's request for

13 anew, separate bargaining unit for employees of the Sheriff's Support Services is denied, and should

14 the members of WCEA desire more democratic choices and options, the members should seek such

15 relief within its current bargaining unit.

16           DATED this 16<sup>th</sup> day of January, 2001.

17                               LOCAL GOVERNMENT EMPLOYEE-  
18                               MANAGEMENT RELATIONS BOARD

19           By

20                                 
KAREN L. MCKAY, Chairman

21           By

22                                 
JOHN E. DICKS, ESQ., Vice-Chairman

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