

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

5 RENO POLICE SUPERVISORY
6 AND ADMINISTRATIVE

) ITEM NO. 639

) CASE NO. A1-045865

9 **DECISION**
10
11

12 For Complainant: Michael E. Langton, Esq.

13 For Respondent: Donald L. Christensen, Esq.
14 Reno City Attorney's Office

15 **I. PROCEDURAL HISTORY**

16 On August 3, 2005, the RENO POLICE SUPERVISORY and ADMINISTRATIVE
17 EMPLOYEE ASSOCIATION ("Association") filed a prohibited practice complaint alleging
18 the CITY OF RENO ("City") failed to bargain in good faith regarding wages, hours, and
19 working conditions relating to Deputy Chiefs in violation of NRS 200.150(1), NRS 288.150(2)
20 and NRS 288.270(1)(e).

21 On August 24, 2005, the City filed its Points and Authorities in Support of Declaratory
22 Relief Claim as well as its Answer and Counterclaim. The Association filed its Answer to the
23 City's Counterclaim on September 12, 2005. The City filed its Pre-hearing Statement on
24 September 12, 2005. On January 6, 2006, the Association filed its Pre-hearing Statement. An
25 Amended Notice of hearing was filed by the Board on June 2, 2006.

26 ///

27 ///

28 ///

1 **II. DISCUSSION**

2 This dispute concerns whether the City failed to negotiate in good faith with the
3 Association and whether the designation of two Deputy Police Chiefs as confidential employees
4 by the City constitutes a prohibited practice in violation of NRS 288.270.

5 During the past five years the City selected some of the Deputy Chiefs to represent the
6 City with respect to negotiating collective bargaining agreements covering police officers and
7 certain civilian employees of the Reno Police Department. As the result of the retirement of former
8 Deputy Chiefs, the City currently only employs two Deputy Chiefs. The City has stated that they
9 have an expectation that the two remaining Deputy Chiefs will be required to serve as
10 negotiators. In fact they have participated in bargaining on behalf of one or more negotiating
11 teams representing the City with respect to the collective bargaining agreements applicable to the
12 police officers represented by the Association as well as other civilian employees. Therefore, the
13 City contends that the two Deputy Chiefs should be classified as "Confidential Employees" and
14 should thus be excluded from any bargaining unit pursuant to NRS 288.170(4) and (6).

15 The Association argues that the City must specify exactly which employees will be
16 designated as confidential employees, by name, and define what time period they will serve in
17 such capacity. They contend that the City cannot assign the only two remaining Deputy Chiefs
18 as confidential employees, excluding them both from the collective bargaining unit, arguing that
19 such a "blanket attempt to exclude an entire bargaining unit because they might sometime in the
20 future perform a 'labor nexus' function is not grounds for refusing to negotiate with [the
21 Association]."

22 Pursuant to NRS 288.150, an employer has the right to assign work-related duties to its
23 employees. Further, an employer must negotiate in good faith with a recognized employee
24 organization. In pertinent part, NRS 288.150 states the following:

- 25
26 1. Except as provided in subsection 4, every local government
27 employer shall negotiate in good faith through one or more
28 representatives of its own choosing concerning the mandatory
subjects of bargaining set forth in subsection 2 with the designated
representatives of the recognized employee organization, if any,

1 for each appropriate bargaining unit among its employees. If either
2 party so requests, agreements reached must be reduced to writing.

3 An employer's obligation to negotiate in good faith is also found in NRS 288.270 which
4 states in pertinent part that:

5 1. It is a prohibited practice for a local government employer
6 or its designated representative willfully to:

7 (e) Refuse to bargain collectively in good faith with the
8 exclusive representative as required in NRS 288.150. Bargaining
9 collectively includes the entire bargaining process, including
10 mediation and fact-finding, provided for in this chapter.

11 Thus, in order to be in compliance with the requirements of the above-cited statutes, the
12 City must negotiate in good faith with the Association as it relates to those matters specified in
13 NRS 288.150(2), including hours, wages, and working conditions. To do so, the City may assign
14 one or more of its employees as bargaining representatives under NRS 288.150(1). If an
15 employee is assigned negotiation or bargaining duties, then that employee is defined as a
16 confidential employee under NRS 288.170, which states in pertinent part, the following:

17 4. Confidential employees of the local government employer
18 must be excluded from any bargaining unit but are entitled to
19 participate in any plan to provide benefits for a group that is
20 administered by the bargaining unit of which they would
21 otherwise be a member.

22 6. As used in this section, "confidential employee" means an
23 employee who is involved in the decisions of management
24 affecting collective bargaining.

25 Therefore, if an employee is designated as a confidential employee, they *must* be
26 excluded from the bargaining unit by statute. There does not appear to be any requirement under
27 the statute to specifically designate an employee by name as a confidential employee, nor does
28 the statute appear to limit the number of employees that can be designated as such. The statute
however, does require that any such employee designated as a confidential employee must be
excluded from the bargaining unit.

1 The Board is careful to note, however, that an employer cannot intentionally design an
2 employee as a confidential employee to undermine the employee's rights to participat a
3 collective bargaining unit. In this case, the Board has not been presented with subs al
4 evidence that leads them to believe that the City intentionally designated the Deputy Chi as
5 confidential employees to undermine the Association, or the employee's rights to be part r
6 represented by the Association. The Board will closely scrutinize in the future any such
7 allegation brought to its attention as it has done in this case.

8 III. FINDINGS OF FACT

- 9 1. That the Association and the City are parties to three collective bargaining
10 agreements with effective dates of July 1, 2001 through June 30, 2005.
- 11 2. That each agreement is applicable solely to the bargaining unit described in ea h
12 respective agreement.
- 13 3. That the Association is the exclusive bargaining representative for the Deputy
14 Chiefs, Sergeants and Lieutenants for the city of Reno Police Department, with ea h
15 classification comprising a bargaining unit of its own.
- 16 4. That prior to the retirements of four Deputy Chiefs, the bargaining unit consisted of
17 six Deputy Chiefs.
- 18 5. That there are currently two Deputy Chiefs in the bargaining unit, and it was
19 expected that they will serve as negotiators.
- 20 6. That on or before February 1, 2005 the Association notified the City of its inten o
21 negotiate with respect to the conditions of employment applicable to the foregc... g
22 bargaining units it represents.
- 23 7. That the Association and the City held such negotiations.
- 24 8. That during a negotiation session held on July 25, 2005 the Association informe d
25 the City that the City's proposal to treat the Deputy Chiefs as "confidentia l
26 employees" was a prohibited practice.
- 27
- 28

1 9. That the Association filed a prohibited practice claim with this Board on August 3,
2 2005 and that the City filed a Declaratory Relief Claim via a Counterclaim relating
3 to that prohibited practice charge with this Board on August 24, 2005.

4 10. That when the City employed six Deputy Chiefs, some of the Deputy Chiefs served
5 on negotiating teams for the City with respect to negotiating conditions of
6 employment for police officers covered by collective bargaining agreements
7 between the City and the Association.

8 **IV. CONCLUSIONS OF LAW**

9 1. That the Local Government Employee-Management Relations Board has
10 jurisdiction over the parties and the subject matter of this Complaint and
11 Counterclaim pursuant to the provisions of NRS Chapter 288.

12 2. That the City is a local government employer as defined by NRS 288.060.

13 3. That the Association is an employee organization as defined by NRS 288.040.

14 4. That pursuant to NRS 288.150 an employer has the right to assign work-related
15 duties to its employees.

16 5. That the City pursuant to NRS 288.150 may assign Deputy Chiefs to negotiating
17 teams to represent the City/Department in negotiations during collective bargaining.

18 6. That if and when the City assigns a Deputy Chief to negotiate during collective
19 bargaining, that employee is deemed to be a "confidential employee" as defined by
20 NRS 288.170 (6).

21 7. That because the two remaining Deputy Chiefs are, or are reasonably expected to be
22 assigned duties making them confidential employees pursuant to NRS 288.170, they
23 must be excluded from the bargaining unit.

24 8. Substantial evidence exists that the City has negotiated in good faith concerning the
25 Deputy Chiefs' bargaining unit as negotiations were held, and the two remaining
26 Deputy Chiefs will be assigned as negotiations for their previous bargaining unit.

27 9. Substantial evidence exists that the City has not violated its duty to negotiate in
28 good faith concerning wages, hours, and working conditions for Deputy Chiefs as

1 the negotiation sessions were indeed held. As a matter of fact, the complaint alleged
2 that the parties met for approximately nine times from May 2005 to July 2005.

3 10. The other requests contained in the Complaint's prayers are rendered moot by the
4 discussion, findings of fact, conclusions, and order contained in this Decision.

5 11. As to the City's Counterclaim, the Board cannot, and will not, render a blanket order
6 that all Deputy Chiefs are confidential employees. However, in this specific case,
7 should the Deputy Chiefs be assigned to the City's negotiation team, then they will
8 fall within the classification of confidential employees as discussed herein.

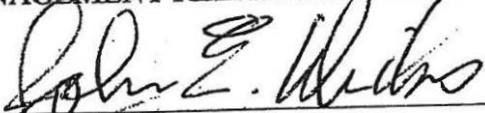
9 **V. DECISION AND ORDER**

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the City's designation
11 of the Deputy Police Chiefs as negotiators based on the facts as presented herein does not
12 constitute a prohibited labor practice in violation of NRS 288.270.

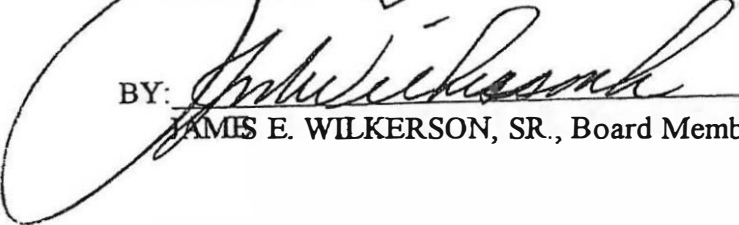
13 IT IS FURTHER ORDERED that each party shall bear its own attorney's fees and costs.

14 DATED this 8th day of December, 2006.

15 LOCAL GOVERNMENT EMPLOYEE-
16 MANAGEMENT RELATIONS BOARD

17 BY: 
18 JOHN E. DICKS, ESQ., Chairman

19 BY: 
20 JANET TROST, ESQ., Vice-Chairman

21 BY: 
22 JAMES E. WILKERSON, SR., Board Member
23
24
25
26
27
28