I. PROCEDURAL HISTORY

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

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

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

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

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

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

1. Except as provided in subsection 4, every local government employer shall negotiate in good faith through one or more 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,
for each appropriate bargaining unit among its employees. If either party so requests, agreements reached must be reduced to writing.

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

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

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

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

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

6. As used in this section, “confidential employee” means an employee who is involved in the decisions of management affecting collective bargaining.

Therefore, if an employee is designated as a confidential employee, they must be excluded from the bargaining unit by statute. There does not appear to be any requirement under the statute to specifically designate an employee by name as a confidential employee, nor does 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.
The Board is careful to note, however, that an employer cannot intentionally designate an employee as a confidential employee to undermine the employee's rights to participate in the collective bargaining unit. In this case, the Board has not been presented with substantive evidence that leads them to believe that the City intentionally designated the Deputy Chiefs as confidential employees to undermine the Association, or the employee's rights to be part represented by the Association. The Board will closely scrutinize any such allegation brought to its attention as it has done in this case.

III. FINDINGS OF FACT

1. That the Association and the City are parties to three collective bargaining agreements with effective dates of July 1, 2001 through June 30, 2005.
2. That each agreement is applicable solely to the bargaining unit described in each respective agreement.
3. That the Association is the exclusive bargaining representative for the Deputy Chiefs, Sergeants and Lieutenants for the city of Reno Police Department, with each classification comprising a bargaining unit of its own.
4. That prior to the retirements of four Deputy Chiefs, the bargaining unit consisted of six Deputy Chiefs.
5. That there are currently two Deputy Chiefs in the bargaining unit, and it was expected that they will serve as negotiators.
6. That on or before February 1, 2005 the Association notified the City of its intent to negotiate with respect to the conditions of employment applicable to the foregoing bargaining units it represents.
7. That the Association and the City held such negotiations.
8. That during a negotiation session held on July 25, 2005 the Association informed the City that the City's proposal to treat the Deputy Chiefs as "confidential employees" was a prohibited practice.
9. That the Association filed a prohibited practice claim with this Board on August 3, 2005 and that the City filed a Declaratory Relief Claim via a Counterclaim related to that prohibited practice charge with this Board on August 24, 2005.

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

IV. CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

9. Substantial evidence exists that the City has not violated its duty to negotiate in good faith concerning wages, hours, and working conditions for Deputy Chiefs as
the negotiation sessions were indeed held. As a matter of fact, the complaint alleges that the parties met for approximately nine times from May 2005 to July 2005.

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

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

V. DECISION AND ORDER

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

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

DATED this 8th day of December, 2006.

LOCAL GOVERNMENT EMPLOYEE MANAGEMENT RELATIONS BOARD

BY: [Signature]

JOHN E. DICKS, ESQ., Chairman

BY: [Signature]

TAYLOR TROST, ESQ., Vice-Chairman

BY: [Signature]

JAMES E. WILKERSON, SR., Board Member