

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

5 INTERNATIONAL ASSOCIATION OF)
6 FIRE FIGHTERS, LOCAL 1908,)

7 Complainant,)

8 vs.)

9 COUNTY OF CLARK, STATE OF)
10 NEVADA; CLARK COUNTY FIRE)
11 DEPARTMENT,)

12 Respondents.)

ITEM NO. 663C

CASE NO. A1-045910

ORDER

13 For Complainant: W. David Holsberry, Esq.
14 McCracken, Stemerman & Holsberry

15 For Respondents: Shaun Haley, Esq.
16 Fisher and Phillips, LLP

17 A verified document entitled "Appeal of County's Refusal to Include Certain Job
18 Classifications Within Local 1908's Bargaining Units" was filed with the Board on June 6, 2007,
19 by the International Association of Fire Fighters, Local 1908 ("Union"). This document named
20 Clark County, Nevada ("County") and the Clark County Fire Department ("Department") as
21 Respondents. The Union wanted to include the following classifications of workers into its
22 representation: "auto and equipment specialist," "chemical engineer," "fire equipment
23 technician," "fire mechanical supervisor," "fire protection engineer," and "materials controller."
24 The Union claimed that these workers classifications share a "community of interest" with the
25 employees it currently represents. The Union claimed that the County and the Department
26 refused to voluntarily recognize it as the appropriate bargaining agent. In essence, the Union
27 claimed that the County and the Department violated NRS and NAC chapters 288 and committed
28 the prohibited labor practice of failure to negotiate in good faith.

An answer was filed with the Board by the County and the Department. Thereafter, both
the Union and the Department filed their respective prehearing statements.

1 The Department claimed in its prehearing statement that these classes of workers were
2 currently represented by the Service Employees International Union, Local 1107 ("SEIU"), and
3 indicated that the Department declined to include these classifications within the Union's
4 bargaining units because they were not so intricately involved in the fire suppression-prevention
5 mission of the Department to warrant the transfer of representation. The Department further
6 claimed that these specific classifications shared a more appropriate community of interest with
7 the other, general unit employees represented by the SEIU, and that the inclusion of these
8 classifications within the Union's two bargaining units would complicate further bargaining in
9 that they did not share the same interests with other fire personnel classifications with respect to
10 salary, benefits, and other terms and conditions of employment. It further offered in support of
11 this lack of community of interest that two of the disputed classifications were previously
12 removed from the Union's two bargaining units; e.g., the mechanical supervisor was removed
13 from the Union's bargaining unit in the 1990s at the request of the Union because that position
14 did not share a sufficient community of interest with the battalion chiefs that comprised the
15 remainder of the bargaining unit. Allegedly, non-supervisory mechanics were removed from the
16 rank-and-file fire fighters unit for the same reasons.

17 The Board entered its initial order that based upon its review of "all pleadings and
18 documents filed to date, the Board has determined that a hearing on the complaint is not
19 warranted pursuant to NRS 288.110(2) and NAC 288.375; therefore, the complaint before this
20 Board is dismissed, with each party to bear their own fees and costs." The Board continued that
21 "NRS [288.110(2)] allows the Board discretion as to whether or not to hear a complaint" and the
22 Board decided not to exercise that discretion, especially in light of its continued application of
23 the "community of interest" doctrine and that the community of interests of these employees had
24 already been resolved. NAC 288.375. Additionally, and pursuant "to NAC 288.375, insufficient
25 evidence of a violation of NRS chapter 288 was provided upon which a hearing is warranted."
26 See Order, Item No. 663.

27 The Union filed a "Request for Reconsideration/Rehearing" on September 28, 2007. On
28 October 24, 2007, the Board denied the request stating that the Union "did not identify new

1 evidence which would persuade this Board to hear this matter. See Order, Item No. 663A. The
2 Union sought a writ of mandamus from the District Court, which was granted ordering this
3 Board to conduct a hearing. Thereafter, the Board scheduled a hearing, in this matter, for
4 October 1 and 2, 2008. A discussion of the testimony offered follows:

5 First, it should be noted that SEIU has agreed to the transfer of these specific workers to
6 the Union. Hearing Exhibit 5; Transcript of Hearing on October 1, 2008 ("Tr.") p. 13. Board
7 Member Wilkerson also inquired whether the Public Employees Retirement System has agreed
8 to accept these additional classifications as fire fighters with respect to contributions to the
9 system and subsequent retirement benefits. Rusty McAllister of the Union stated that the County
10 would have to request such treatment. Tr. p. 23-4.

11 The first witness to be called was Ryan Beaman. He has been with the Department for 12
12 years and is a fire engineer. He is also the Union president. Tr. p. 26. He offered that not all
13 employees of the fire and police departments participate in the early retirement offered by
14 Nevada. Tr. p. 28. Employees eligible for the regular retirement include the deputy fire marshal,
15 fire inspectors, fire plans checkers, and training instructors. Tr. p. 28. Beaman offered the
16 following explanation:

17 As the PERS system is set up, there's two different retirement systems,
18 early retirement, regular retirement. We have some classifications that are
19 in early retirement, such as our fire captain, fire fighters, fire engineer. And
20 then some that are in regular retirement, fire inspector, fire plans checker,
21 Tr. p. 100.

22 He described the operations of the department as follows:

23 Well, Operations is the majority of the personnel fire suppression,
24 fire engineer, fire captain, fire fighters. Community Preparedness would
25 be our HAZMAT coordinator, our training division, it would be some of our
26 logistics area. Fire & Hazard Prevention would be our fire plans reviewers,
27 deputy fire marshals, fire inspectors, people that are enforcing the code.
28 Support Services would be our logistics areas, would be probably our mechanics
division, support services would fall under that area. And Rural Services,
we have 13 rural fire stations that Clark County has, and we have two rural
coordinators that Local 1908 represents in that area. Tr. p. 30.

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1 Beaman indicated there are 680 employees represented by the Union, and approximately
2 125 employees do not respond to fires. Tr. p. 32. The “number of classifications represented by
3 the [Union] has expanded” considerably since the first CBA in 1970. Tr. p. 33. The increase has
4 occurred in the areas of “support and prevention and community preparedness as opposed to
5 operations.” Tr. p. 34. Beaman stated that “around January, first of ’04, the employees, the
6 mechanics and – which also [included] the fire equipment specialists - - came to me and asked to
7 join our bargaining unit.” Tr. p. 35. Beaman met with SEIU executive director, Tom Beatty,
8 and he had no problems with these classifications transferring to the Union. Tr. p. 35-6. See
9 also Hearing Exhibit (“Ex.”) 5, letter of agreement between SEIU and the Union regarding the
10 transfer of representation. He spoke with Thom Reilly and Ray Visconti, both in management
11 positions with the County, and they indicated that they did not object to SEIU not representing
12 these individuals/the transfer to the Union’s bargaining unit, but never signed an agreement
13 regarding same. Tr. p. 36-7.

14 After that time frame, the fire protection engineer, the chemical engineer, and the
15 materials controller also indicated a desire to be represented by the Union. Tr. p. 37. Although
16 other witnesses offered testimony regarding the scope of their employment with the department,
17 Beaman described the classifications seeking the Union’s representation as follows:

18 Auto and equipment specialist is our mechanics, individuals that
19 work on our fire apparatuses, work on our specialty apparatuses, they work
20 on our aircraft vehicles, they work on our HAZMAT units.

21 They’re the first piece to make sure that we can get to the fire
22 scenes or get to the emergency scenes safe. Without them - - working on our
23 pump, to make sure we have - - be able to provide water to our fire fighters
24 that are at the end of the nozzle. Without those working properly, we wouldn’t
25 be able to put out the emergency. . . .

26 The chemical engineer is responsible for reviewing fire plans along
27 with fire codes, does inspections for HAZMAT areas. We have – after the
28 Aerotech fire, we had a lot of priorities to identify areas that were needed
to be identified as HAZMAT areas. . . .

The fire equipment technician is another person that when we respond
to a fire, we wear breathing apparatuses, wear an air pack, which [enables]
us to go into a burning building. Without this individual working on our
apparatuses, providing annual fit test to make sure our masks fit properly
in accordance with our collective bargaining agreement, we wouldn’t be able
to go in there and extinguish the fires. (Tr. p. 39-40.) . . .

1 The fire protection engineer works closely with our plans checkers
2 to ensure large buildings - - we have a lot of large growth going on around
3 here in the valley, they work with our plans checkers to enforce fire codes.
4 Without having the proper fire codes, we also are at risk when we go into
5 these fires if the building is not up to code. . . .

6 And the materials controller is an individual that orders all of
7 our safety equipment. He's also the individual that provides sizing for our
8 turnouts. He's certified by the manufacturer for our turnouts to size us
9 properly, and handles all of our safety equipment, from all of our EMS
10 supplies to any fire equipment, nozzles, hoses. Tr. p. 41.

11 He further described the auto/equipment specialist as follows:

12 They . . . have an automotive shop, but they also come to our fire
13 stations, they come to the airport fire station to work on apparatuses. They
14 respond to fire scenes to work on apparatuses that are broke down. They
15 also service the vehicles, fuel the vehicles a emergency scenes, so they're
16 not just in a mechanic shop. Tr. p. 71.

17 The six types of classifications are paid through the Department's budget although one is
18 paid through the Airport budget to provide fire services in that area. Tr. p. All Department's rules
19 and regulations apply to these six classifications of workers. Tr. p. 43. The auto/equipment
20 specialist has certain certifications (Tr. p. 73) and the materials controller has certain
21 certifications required for the positions (Tr. p. 74). The individuals in the six classifications will
22 all wear distinctive uniforms indicating that they are with the Department. Tr. p. 102.

23 The fire protection engineer and chemical engineer work out of Station 18, at 575 E.
24 Flamingo. Tr. p. 44. At the same location, the following classifications are also stationed there:
25 fire prevention employees, fire inspectors, plan checkers, deputy fire marshals, fire investigators,
26 and "fire administration." Tr. p. 44. The auto and equipment specialist, fire equipment
27 technicians, the materials controller, fire training instructors, mechanics, materials controller, and
28 the auto and equipment supervisors are stationed at the training facility on Tropicana and Arville.
Tr. p. 45. He indicated that the fire fighters union represents the person in charge of air bottles
and the fire mechanics for the cities of Las Vegas and Reno; and the mechanics are dedicated
solely to the fire departments. Tr. p. 48. Beaman admitted that the Union does not represent
hydrant technician classification, which classification is represented by SEIU. Tr. p. 52-3. He

1 also admitted that the chief mechanic position was removed from the battalion chief bargaining
2 unit at the request of the Union due to the lack of community of interest, although such position
3 is “probably pretty close” to the position of fire mechanical supervisor. Tr. p. 62-3. He also
4 admitted that an auto/equipment specialist did not need to be a fire fighter (Tr. p. 68); that the
5 auto/equipment specialists are not given “ranks” (Tr. p. 69). Beaman agreed that if these six
6 classifications were brought within the Union, they would not receive premium pay (Tr. p. 85),
7 but they will be required to submit to annual physicals (Tr. p. 86). These classifications may also
8 not receive “safety equipment.” Tr. p. 92-3. It was also noted that the County does not hire any
9 fire inspectors for any department other than the Fire Department (Tr. p. 97); that arson
10 investigators, public education officers, and auto/equipment specialists trained on fire equipment
11 are only employed by the Department. Tr. p. 98. The Board inquired of this witness more
12 specific details concerning the existence/nonexistence of these classifications in other
13 departments within Clark County. See Tr. p. 101, 106-7. Beaman also indicated that the
14 individuals in the six classifications, in his opinion, would say they worked for the Department
15 rather than Clark County, “providing the same mission as to help with the [fire] suppression and
16 also the protection of the public”. Tr. p. 119. Additionally, Beaman offered the following about
17 Union representation for these classifications:

18 It gives those individuals, as we were talking, a career path to
19 move from wherever they’re at in their current position, and ultimately
20 they can be a deputy chief, a fire chief as - - we’ve had people that are
21 currently in those positions move from their ranks that they’re at to
22 that. I think it would broaden their ability to do that. Tr. p. 120.

23 Not as a fire fighter, but other positions in our collective
24 bargaining agreement that are supervisor positions, logistics, deputy
25 fire marshal, it gives them a career path to go that way, but not in the
26 realm of suppression. To be a fire captain or a fire engineer, you have
27 to have gone through an academy at the entry level to get into those
28 positions. Tr. p. 122.

29 He stated that if you are “not in our bargaining unit, they can’t test for those other
30 positions, deputy fire marshal, logistic officers, they cannot test for those positions” as they are
31 not open “to the public.” Tr. p. 123.

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1 Raymond "Rusty" McAllister was the next witness. He has been a fire captain for 15
2 years, and with the Las Vegas Fire Department for 24 ½ years. Tr. p. 130. He is the current
3 president of the Professional Fire Fighters of Nevada, a statewide organization made up of the 18
4 fire fighters unions throughout Nevada, with 2,450 members, and sits as a member of the Police
5 & Fire Advisory Committee for PERS. Tr. p. 130. He stated:

6 There are two retirement plans, one is the police fire fund, this
7 is an early retirement plan, and one is the regular members fund. On the
8 Police and Fire Advisor Committee, local government employers submit
9 applications for certain positions to be covered underneath - - or for
10 coverage under the police fire plan. Those go to PERS. They are evaluated,
11 and then they are brought to the Police Fire Advisory Committee to be voted
12 upon about whether or not they should or should not be allowed to be
13 included in the police fire fund. Tr. p. 131.

14 Not all members of the fire fighter bargaining unit are covered by the early retirement
15 plan. Tr. p. 131. He also stated that fire mechanics and fire prevention personnel are covered by
16 the fire fighter bargaining units for the cities of Las Vegas and Reno. Tr. p. 132. He admitted that
17 fire protection engineers are not typically included in the fire police PERS fund. Tr. p. 135. To
18 be considered for the PERS police fire fund, there are "front line criteria," i.e., "annual physicals,
19 a rookie academy typically or some type of fire academy, and front line protection of the public."
20 Tr. p. 136. The early retirement plan was commenced to "maintain a youthful and vigorous
21 work force to accomplish the front line protection of the public." Tr. p. 136. The Department
22 contributes an additional 13% per employee, approximately, to PERS for those eligible for the
23 early retirement police fire fund. Tr. p. 140. More specifically, he stated that the current
24 "contribution rates for the police fire fund is thirty-three-and-a half percent of salary, and for the
25 regular members fund it's 21.75 percent." Tr. p. 142-3.

26 Richard Brenner, HAZMAT coordinator, was the next witness. He was a fire protection
27 engineer from 192 to 2004; and in 2004, he became the HAZMAT coordinator. Tr. p. 150-51. He
28 was formerly with the Las Vegas Fire Department as a fire inspector trainee, then a fire
inspector, and then assistant fire protection engineer. Tr. p. 151. He stated he works closely with
the fire protection engineer (Tr. p. 153), and that:

1 [W]hen we have a new business coming in or we have one of the hotels
2 where they're going to be chlorinating their pool using some other means
3 -- normally what we used to think of liquid chlorine, now there are more
4 complicated processes where they're using fromine or dry chlorine, and the
5 code interpretation on how much they can store from the standpoint of do
6 we want ventilation in the building or in this outdoor are, do we want to
7 store the chemicals outside, those are areas where I coordinate with the
8 fire protection engineer and the chemical engineer on what we want to see.
9 Tr. p. 153-54.

10 He stated that the fire prevention engineers were used recently with the Monte Carlo roof
11 fire. Tr. p. 158. Regarding his involvement with the chemical engineer, he stated that he and
12 "the chemical engineer [are] really focused on preparedness prevention. We want to interact
13 with the various chemical companies or facility that's going to be using the chemical process so
14 that -- we don't want to have any problems." Tr. p. 155. He identified some "problems" as the
15 "PepCon event with the rocket fuel explosion. We had Pioneer Chlor-Alkali incident back in, I
16 think '91. Back in 2001, we had the Aerotech incident and that was dealing with rocket fuel."
17 Tr. p. 156-57. He stated that his "back-up is the chemical engineer." Tr. p. 159. He also
18 provided the distinction that the counties' Building Departments are concerned with the Uniform
19 Building Code, whereas his Department is concerned with the Uniform Fire Code. Tr. p. 160. He
20 believes including the classifications of chemical engineer and fire protection engineer in the
21 Union will add "more stability to the work force" and "if you're all part of one working group
22 and you function as a team, it sure makes it a lot easier to understand how we want to deal with
23 this. Tr. p. 163.

24 He believes a bachelor's degree is required for chemical and fire protection engineers but
25 not fire fighter experience. Tr. p. 164-65. He, the chemical engineer, and fire protection engineer
26 would be in the "cold zone" at a fire scene. Tr. p. 167-68. He provided definitions of "cold
27 zones" and "hot zones." He also admitted on cross-examination that being in the SEIU rather
28 than the Union did not affect the "overall mission" of the Department. Tr. p. 169.

29 The next witness was Stephen DiGiovanni. He has been a fire protection engineer for the
30 Department since 2004. Tr. p. 176. He described his primary duties as:

31 The primary job duty that I have is plans review over fire protection

1 system submittals. So I review fire sprinkler plans, fire alarm plans,
2 plans for fire suppression systems that are special, they're not using
3 water, and other monitoring panels. . . . because I have an engineering
4 degree, I tend to get assigned the plans that are on the more complex
5 side. Tr. p. 178.

6 He states he does interact with fire protection engineers (Tr. p. 181) and with fire
7 inspectors (Tr. p. 184); and that the mission of the "Fire Department is to mitigate hazards that
8 come from fire; either we stop the spread of fire by putting the fire out, or we stop the intensity
9 of the fire by reducing the hazard previously or putting in suppression systems to help reduce the
10 fire." Tr. p. 185. He indicated he has a Department vehicle to respond to fires (Tr. p. 188), as
11 others have testified; and he wears a Department uniform (Tr. p. 189). When questioned why he
12 desired to be represented by the Union, he stated that he does not have a voice when the Union is
13 negotiating, he cannot promote within the department, and he has more in common with the
14 Union. Tr. p. 190-91. He acknowledged that being represented by SEIU has not hampered his
15 ability to do his job. Tr. p. 200. He responded to the Board that the other fire protection
16 engineers have also indicated a desire to be represented by the Union. Tr. p. 207.

17 The next witness was Robert Williams; and he is the chemical engineer for the
18 Department. Tr. p. 225. He briefly described his duties as follows:

19 There are two main duties The greater portion of what I
20 do probably would be more in the realm of prevention. I look at hazardous
21 materials plans that people submit to the Fire Department, and I see to it
22 that the plans meet the fire code for hazardous materials for flammable and
23 combustible liquids, and for aerosols and other hazardous materials.

24 I often will go out in the field and actually conduct inspections,
25 particularly with our HAZMAT inspectors, so that we can assure that what we
26 see in the field meets the criteria of the fire code.

27 The second portion of what I do is I also am tasked with having
28 to respond as a consultant to battalion chiefs if we happen to have a
hazardous material incident or fire here in Clark County. Tr. p. 226-27.

He is located at Station 18 and there are no other chemical engineers in the Department.
Tr. p. 227. There is another chemical engineer employed by the County Water Reclamation
District; and he does interact with that individual. Tr. p. 227. He states he works with the Deputy

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1 Fire Marshal, and that includes writing permits for various businesses which have hazardous
2 materials at their business sites. Tr. p. 228. He also conducts training sessions. Tr. p. 229.
3 Station 24 houses the hazardous material suppression team. Tr. p. 230. He indicated he has no
4 actual backup, but that Richard Brenner “can fill in for” him. Tr. p. 234.

5 He is required to respond to emergencies and has a Department vehicle. Tr. p. 234. He
6 believes he contributes to the overall mission of the Department because Clark County has “one
7 of the larger chlorine plants in the United States. We also have one of the only titanium plants in
8 the United States. And we also have another plant that produces a great deal of sulfuric acid as
9 well.” Tr. p. 235. Williams claims he is required to wear a uniform and is required to follow the
10 Department’s rules and regulations. Tr. p. 236.

11 Williams claims he interact mostly with the public and only “rarely” interacts with
12 County agencies. Tr. p. 237. He admits that his job is not hampered by being represented by
13 SEIU. Tr. p. 239. He indicated that “since we [at the Department] have similar functions and
14 similar goals and similar missions, that we should have similar representation.” Tr. p. 240.

15 Mark Flesher testified next. Tr. p. 247. He is a fire equipment technician with the
16 Department. Id. His work site is the training center on Tropicana. Tr. p. 248. He described all the
17 different classifications of workers stationed at that center. He stated that there are no other fire
18 equipment technicians working for the County. Tr. p. 250. He described his job as:

19 My job on a day-to-day basis consists of fit test and flow testing,
20 the second stage regulators of fire fighters’ masks. And taking care of
21 their fit test enables the fire fighter to make sure they have a proper
22 seal around their face so if something does happen to the SCBA, they will
23 not get any contaminated air inside their breathing mask. Tr. p. 250.

24 He further described the job as:

25 Making sure [the air bottles and masks] function properly when it
26 is called upon to do so, and also train the fire scene of proper use of
27 donning and offing, putting them on, taking them off, and small maintenance,
28 like just changing batteries, doing their daily checks to make sure the
apparatus is going to perform properly through their shift, doing high
pressure and low pressure checks. Tr. p. 251.

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1 He states he does train members of the Union. Tr. p. 257. He does have a 24-hour
2 response vehicle; and when he responds to emergencies, the duties are primarily to repair and
3 service broken apparatus. Tr. p. 257-58. His supervisor is Karl Lee, a fire logistics officer and a
4 member of the Union. Tr. p. 258-59. He is required to wear a uniform and follows the
5 Department's rules and regulations. Tr. p. 259-60. He indicated by having SEIU as his
6 representative, "it kinds of hampers me in getting my voice out and them not knowing what my
7 job is on a daily basis and how it affects other people" and being represented by the Union, "they
8 know what it takes to do my job." Tr. p. 260. He further stated that "[e]verything I do is revolved
9 around fire suppression and suppression personnel" and others similarly situated as he belong to
10 the fire fighters union. Tr. p. 261.

11 He admitted that, prior to the creation of his classification, fire fighters actually
12 performed his job. Tr. p. 266. As for whether SEIU representation has hampered his job, he
13 stated that it has "through progressing through the ranks and not being able to progress through
14 the Clark County Fire Department that I feel that I could." Tr. p. 269. He also stated that he
15 complained to SEIU about working conditions, but SEIU never got back to him. Tr. p. 270-71.

16 Riccardo Terzo, an auto and equipment supervisor with the Department, testified next.
17 Tr. p. 279. He is stationed at the training center. Tr. p. 280. He supervises 5 auto/equipment
18 specialists and 3 other employees. Tr. p. 280-81. His duties include writing specifications for fire
19 apparatus, requisition for money for fire apparatus, respond to emergencies, and assuring
20 conformance with all applicable standards. Tr. p. 281. He and his employees "provide
21 preventative maintenance and repair to all fire trucks, fire engines, ambulance, specialty units,
22 fire equipment, maintenance and repair, not only on-site but remote. We maintain all of our front
23 line stations, 25 stations, 13 rural stations, 175 pieces of apparatus in all." Tr. p. 282. More than
24 50 of the pieces are ambulances. Tr. p. 300. He works with battalion chiefs in dispatching
25 employees to emergencies and to schedule maintenance/repairs. Tr. p. 286. When backlogged, he
26 does not bring mechanics from other shops within the County to assist. Tr. p. 304.

27 He has a Department assigned vehicle within which to respond to emergencies. Tr. p.
28 287. Terzo indicated that Karl Lee, the fire logistics officer, is his supervisor. Tr. p. 290. He is

1 required to wear a uniform and has to comply with the Department's rules and regulations. Tr. p.
2 291. He did admit that some of the maintenance/repairs he and the auto/equipment specialists
3 perform are similar to tasks performed in a "normal auto shop." Tr. p. 298. Primary job
4 differences include "the writing of specifications. And then secondary, working on the pumps
5 and the aerial devices, and the light towers and the hydraulically driven generators, speciality-
6 type equipment, such as mobile air." Tr. p. 299.

7 He desires representation by the Union as he believes it is better representation, that
8 "SEIU appears to be focused towards the nurses and people of other -- people playing baseball
9 on different type fields. I feel we're playing baseball with fire fighters." Tr. p. 305.

10 Witness Steve Burnard is the Department's materials controller, assigned to the training
11 center. Transcript of hearing held on October 2, 2008 ("Tr. II") p. 4-5. He indicated his job is
12 "basically take care of the firemen's safety gear and the apparatus that they use in fighting fire,"
13 purchasing supplies, maintaining the supply warehouse, purchasing EMS equipment and
14 supplies, supplies for the mechanics/auto equipment specialists, purchasing vehicles/equipment,
15 Tr. II p. 6-9. He believes there are two other material controllers employed by the County but he
16 does not typically interact with them. Tr. II p. 10. His supervisor is Jerome Fairweather, logistics
17 officer. Tr. II p. 10.

18 He indicated that it is possible for him to respond to emergencies, that he does not have a
19 vehicle specifically assigned to him, and he does have his own turnouts. Tr. II p. 11. He indicated
20 that his back up is Mark Flesher, life support technician. Tr. II. p. 12. He indicated that should a
21 fire fighter be injured, that individual may be assigned to him to supervise while on light duty.
22 Tr. II p. 12. He is required to wear a Department uniform and complies with the Department's
23 rules and regulations. Tr. II p. 13. Burnard testified that he supports the Department's mission in
24 that he "there's for the firemen 24/7 like they are for the County, for the people they serve and
25 protect." Tr. II p. 14. Burnard admitted, however, that being a member of SEIU did not hamper
26 his job. Tr. II p. 20.

27 Loren Polston testified that he has been with the Department for 15 years as a fire
28 apparatus mechanic. Tr. II p. 34-5. He is stationed at the facility at Tropicana and Arville, and he

1 described his duties as follows: “maintain, repair fire apparatus of all types, from rescues,
2 pumpers, squads, ladder trucks, heavy rescue, HAZMAT tables, HAZMAT rescue vehicles” and
3 handles the Airport Rescue fire fighting equipment. Tr. II p. 36. He does have a vehicle assigned
4 to him and is required to wear a Department uniform. Tr. II p. 41.

5 Although he is a member of SEIU, as are the other employees in the shop, he claimed to
6 have no contact with other SEIU represented employees. Tr. II p. 37. More specifically, other
7 mechanics employed by the County do not “fill in” for him. Tr. II p. 44. He indicated that he has
8 not seen SEIU at the training center “for years.” Tr. II p. 45. He admitted that belonging to SEIU
9 has not hampered his job performance. Tr. II p. 52. He also admitted that he is a “mechanic”
10 similar to other mechanics employed by the County.

11 The Department’s first witness was Raymond Visconti, now an employee relations
12 consultant for the County. Tr. II p. 61. Visconti was previously an employee of the County, and
13 was the County’s lead negotiator with the Union. Tr. II p. 62-3. He confirmed that Beaman
14 approached him and Thom Reilly about the Union representing the additional classifications and
15 that the County did not object to the same. Tr. II p. 63-4. Issues concerning benefits for these
16 additional classifications arose, e.g., benefits level (early retirement), salaries, longevity pay,
17 uniform allowances. Tr. II p. 64-6. Visconti testified that he did not see any difference between
18 the tasks performed by these classifications and similar classifications in other County divisions.
19 Tr. II p. 67-8. Another benefit at issue was Article 31 of the CBA. Tr. II p. 73. He estimates that
20 the County spends “a couple million probably a year” on such a benefit. Id. He indicates that it
21 is highly likely that an auto/equipment mechanic would be hurt on the job and would, then, be
22 entitled to this increase benefit; and such was not the intent of Article 31. Tr. II p. 76-7. Other
23 inapplicable portions of the CBA regarding these 6 classifications and the current employees
24 covered by the Union’s CBA are: Article 12 (safety and health, including safety gear/clothing)
25 and Article 14 (physical exams). Tr. II p. 82-4. Visconti indicated that he would not have
26 negotiated Article 31 and others if he had known the 6 classifications were to be added. Tr. II p.
27 86. He admitted, however, that he agreed the Board should determine the issue of community of
28 interest and that if the Board “decides that there is a community of interest, that these members

1 would be brought into the bargaining unit” but not that all provisions would be applicable to
2 those new classifications. Tr. II p. 88.

3 On cross-examination, he testified that the Union has competently represented the
4 bargaining unit at issue and that some members of the unit are not directly involved in
5 suppression activities. Tr. II p. 90. He also admitted that the true issue between the County and
6 the Union was “the benefits” and not “the community of interest” issue. Tr. II p. 94. He also
7 stated that, in his opinion, “any employee employed by that Department is involved in the
8 mission.” Tr. II p. 103. Visconti indicated that the six classifications and the remaining
9 employees of the Department share common work sites, they are “integrated in their work with
10 other members” of the Union, they have common supervisors, and all are paid from the
11 Department budget. Tr. II p. 105-6.

12 In response to a question from the Board, Visconti stated that he “had no problem with
13 letting [the 6 classifications] into the unit. I didn’t do a community of interest test in my mind . .
14 . .” Tr. II p. 115. He also responded to the Board that if these 6 classifications were to join the
15 Union, it would not lead to a proliferation of associations or unions, and the transfer of these
16 classifications to the Union would not create labor instability. Tr. II p. 120. However, he
17 indicated the “only disruption I see in bringing these people in is that you have other similar
18 titles, classifications in other departments that do very similar work that are not getting the same
19 benefit. It seems like it may be considered unfair.” Tr. II p. 129.

20 Jerry Keating, Assistant General Manager of Human Resources for the Regional
21 Transportation Commission, testified next. Tr. II p. 133. While previously employed by the
22 County, he negotiated between “30 or 40 Article 31s” and has negotiated the battalion chief CBA
23 as well as be a “member of the team on probably all negotiations that have taken place from
24 probably early 1990 forward.” Tr. II p. 135. He offered his recollection of events occurring in
25 the Department, discussions during negotiations, including discussions on benefits. More
26 specifically, he indicated the positions of fire mechanical supervisor, logistics officer, and chief
27 investigator were removed from the Union’s supervisory CBA at the Union’s request. Tr. II p.
28 137-38. He also stated that the positions of fire equipment technician and chemical engineer had

1 been in existence for quite some time with the Department and that they were previously sought
2 after by the Union. Tr. II p. 138-39, p. 141. He believes fire protection engineers were not
3 considered for the Union as there were other such engineers employed by the County. Tr. II p.
4 141. The auto/equipment specialists were also not sought after by the Union. Tr. II p. 143-44.

5 Prior Union officers were “vehemently opposed to having civilians” covered by the
6 Union contract. Tr. II p. 139. The prior officers did not allegedly saw a community of interest
7 among the employees. Tr. II p. 145.

8 David Johnson was the final witness, and he is the manager of automotive services,
9 central services, and safety environmental divisions for the County. Tr. II p. 164. He testified
10 regarding the automotive repair work required by other County employees, and concluded that
11 “the skill sets that the employees that [he] supervised in the shop, they could do the work that are
12 done by auto and equipment specialists at the Fire Department.” Tr. II . 171.

13 ***FINDINGS OF FACT***

14 1. The Board finds that it has jurisdiction over this matter and the parties to this dispute.

15 2. The Board finds and acknowledges that the statutes at issue in this matter are NRS
16 288.028 and NRS 288.170. The Board must determine whether a community of interest exists
17 for the positions at issue in this matter with the remaining employees of the Fire Department or
18 whether they share a community of interest with the other employees of Clark County.

19 3. The Board finds that all positions at issue in this matter are supervised by the Fire
20 Department supervisors.

21 4. The Board finds that all positions at issue in this matter wear the Fire Department
22 uniform.

23 5. The Board finds credibility in the witnesses' statements that the employees in the
24 positions at issue herein are “on the Fire Department team.”

25 6. The Board finds that all positions at issue in this matter have instances when they
26 respond to emergencies.

27 7. The Board finds that all positions at issue in this matter drive vehicles clearly
28 identified as from the Fire Department and have light bars.

1 8. The Board finds that all positions at issue in this matter contribute to the Fire
2 Department's goals and purposes, e.g., fire suppression and the protection of the citizens of Clark
3 County.

4 9. The Board finds that all positions at issue in this matter are paid through the Fire
5 Department budget.

6 10. The Board finds that some of the positions at issue in this matter are exposed to
7 hazards, which other County employees are not exposed to. This is especially so if the
8 individuals at issue in this matter are called to a fire scene.

9 11. The Board finds that the positions at issue in this matter are involved with
10 significantly different types of equipment than other County employees; some requiring
11 specialized knowledge and/or skill.

12 12. The Board finds that the positions at issue are stationed at common facilities with
13 Fire Department personnel.

14 13. The Board finds that the positions at issue in this matter have less community of
15 interest with other County employees than with Fire Department personnel.

16 14. Most importantly, the employee organization for the remaining County employees,
17 i.e., SEIU, has no opposition to the transfer of representation of the positions at issue in this
18 matter, and such lack of opposition indicates and/or acknowledges that the positions herein have
19 a greater community to interest with the Fire Department personnel and that they should be
20 represented by the Complainant in this action.

21 15. Should any finding be more properly construed as a finding of fact, may it be so
22 construed.

23 ***CONCLUSIONS OF LAW***

24 1. This Board has jurisdiction over the parties and the subject matters of the complaint
25 on file herein pursuant to the provisions of NRS Chapter 288.

26 2. The Union is an employee organization serving as the exclusive bargaining agent for
27 certain employees of the Clark County Fire Department as defined in NRS 288.027 and NRS
28 288.040.

1 3. The Department is a local governmental employer pursuant to NRS 288.060.

2 4. Pursuant to NRS 288.110(2), the Board may hear and determine any complaint arising
3 out of the interpretation of, or performance under, the provisions of this chapter by any local
4 government employer, local government employee or employee organization. The Board shall
5 conduct a hearing within 90 days after it decides to hear a complaint. The Board, after a hearing,
6 if it finds that the complaint is well taken, may order any person to refrain from the action
7 complained of or to restore to the party aggrieved any benefit of which he has been deprived by
8 that action. The Board shall issue its decision within 120 days after the hearing on the complaint
9 is completed. Pursuant to NRS 288.110(6), the Board may award reasonable costs, which may
10 include attorneys' fees, to the prevailing party.

11 5. NRS 288.028 defines a "bargaining unit" as a group of local government employees
12 recognized by the local government employer as having sufficient community of interest
13 appropriate for representation by an employee organization for the purpose of collective
14 bargaining.

15 6. NRS 288.170 states that each "local government employer which has recognized one
16 or more employee organizations shall determine, after consultation with the recognized
17 organization or organizations, which group or groups of its employees constitute an appropriate
18 unit or units for negotiating. The primary criterion for that determination must be the community
19 of interest among the employees concerned."

20 7. Based upon the above two mentioned statutes, the Union's burden of proof in this
21 matter was whether the proposed six classifications share a community of interest with those
22 classifications already in the Bargaining Unit.

23 8. Based upon the above findings, the complainant employee organization has provided
24 substantial evidence that the positions at issue in this matter share a community of interest with
25 the Fire Department personnel and all should be represented by the Complainant.

26 9. Should any conclusion be more properly construed as a finding of fact, may it be so
27 deemed.

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DECISION AND ORDER

BASED upon the Board's conclusion that the classifications at issue have a greater community of interest with the Fire Department personnel, rather than with other county classifications, IT IS HEREBY ORDERED that these positions shall be included in the bargaining unit exclusively represented by the International Association of Fire Fighters, Local 1908.

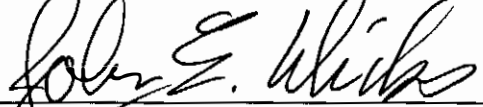
IT IS FURTHER ORDERED that each party shall bear their own fees and costs incurred in this action.

DATED this 10th day of February, 2009.


LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: 

JANET TROST, ESQ., Chairman

BY: 

JOHN E. DICKS, ESQ., Vice-Chairman

BY: 

JAMES E. WILKERSON, SR., Board Member