

1 STATE OF NEVADA
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD
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5 POLICE OFFICERS ASSOCIATION OF)
6 THE CLARK COUNTY SCHOOL)
DISTRICT/COPS N-CWA, LOCAL 9111,)

ITEM NO. 690B

7 Complainant,

CASE NO. A1-045939

8 vs.

9 CLARK COUNTY SCHOOL DISTRICT,)
10 Respondent.)

ORDER

11 For Complainant: Kerianne R. Steele, Esq.
12 Weinberg, Roger & Rosenfeld

13 For Respondents: C.W. Hoffman, Jr., Esq.
14 Clark County School District

15 On the 17th day of November, 2009, this matter came on before the State of Nevada,
16 Local Government Employee-Management Relations Board ("Board"), for consideration and
17 decision pursuant to the provisions of NRS and NAC chapters 288, NRS chapter 233B, and was
18 properly noticed pursuant to Nevada's open meeting laws.

19 The Complainant is the Police Officers Association of the Clark County School District
20 ("Association"). The Association is an employee organization representing its members, who are
21 sworn law enforcement officers of the Clark County School District Police Department
22 ("CCSDPD"). The Respondent is the Clark County School District ("the District").

23 The Association's Complaint for Declaratory Relief asks this Board to issue a declaratory
24 order that the members of the Association are "police officers" as that term is defined in NRS
25 288.215 and are therefore entitled to implement the impasse procedures set forth in NRS 288.215
26 and to order that the District engage in those same impasse procedures in an unresolved
27 arbitration before arbitrator Thomas Angelo.

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1 The District submitted an answer opposing the requested relief and denying that the
2 members of the Association satisfy the definition of “police officers” under NRS 288.215(1)(b).

3 The Complaint and Answer frame a very narrow issue for this Board to resolve. This
4 Board must determine whether or not the members of the Association satisfy the statutory
5 definition of “police officers” as that precise term is used in NRS 288.215(1)(b). If the members
6 of the Association are in fact “police officers” then they are entitled to the rights set forth in the
7 remainder of NRS 288.215 including the impasse resolution procedures.

8 NRS 288.215(1)(b) defines “police officers” as those “persons who are salaried
9 employees of a police department or other law enforcement agency organized by a political
10 subdivision of the State and whose principal duties are to enforce the law.”

11 Certain elements of this statutory definition were agreed upon by the parties and are not
12 in dispute. There was no dispute between the parties that the members of the Association are
13 persons. (Tr. p. 21), nor was there any dispute that the members of the Association are salaried
14 employees, or that the District is a political subdivision of the State of Nevada. (Tr. p. 20).
15 Finally, there was no dispute between the parties that the principal duty of the members of the
16 Association is to enforce the law. (Tr. p. 20). Of the disputed elements of the definition of
17 “police officers” in this case, the District alleges that the CCSDPD is not a “police department or
18 other law enforcement agency” and that the members of the Association are employed by the
19 District and not by the CCSDPD.

20 The District argued that even individuals who are law enforcement officers may not meet
21 the statutory definition of “police officers” under NRS 288.215(1)(b) in light of the Nevada
22 Supreme Court’s decision in *County of Clark v. Clark County Park Rangers Assoc.*, 111 Nev.
23 1133, 901 P.2d 152 (1995). Accordingly, this Board must consider this case in light of the *Park*
24 *Rangers* decision.

25 The first issue raised by the District is whether the CCSDPD is a police department or
26 other law enforcement agency. The Nevada Supreme Court in *Park Rangers* held that the park
27 rangers unit of the Clark County Department of Parks and Recreation was not a law enforcement
28 agency under NRS 288.215(1)(b). *Park Rangers* at 1137-1138, 901 P.2d at 1155. On this issue

1 the Nevada Supreme Court noted that merely possessing a component of “specialized law
2 enforcement” does not mean that a unit is necessarily a law enforcement agency. The Court then
3 looked to NRS 280.215, and concluded that there was no evidence that either that legislation or
4 the actions of the County intended that the specialized units listed in NRS 280.215 were actually
5 law enforcement agencies. *Id.* However, NRS 280.215 does not apply to school police officers
6 and *Park Rangers* does not offer guidance on the meaning of the term “law enforcement agency”
7 outside of the facts of that case, nor does it proffer a definition of that term which this Board
8 could apply in this case.

9 Recognizing that when a term is not defined in one statute it is proper to apply the
10 statutory definition of the same term from another statute in order to construe the terms in
11 harmony with each other and the applicable case law, the Board construes the plain language of
12 the term “law enforcement agency” in NRS 288.215 as consistent with the definition of the
13 same term as stated in NRS 277.035(2)(b) as “an agency, office or bureau of this state or a
14 political subdivision of this state, the primary duty of which is to enforce the law.”

15 The second issue contested by the District is whether the members of the Association are
16 salaried employees of a law enforcement agency. On this issue, the Court in *Park Rangers* noted
17 that it was “undisputed that the Rangers are salaried employees of the County or the Department
18 of Parks and Recreation.” *Park Rangers* at 1138, 901 P.2d at 155. This question is, however,
19 disputed before the Board in this case.

20 The Board notes that when a term has an established common-law meaning, such as the
21 term “employees” in NRS 288.215, the term is to be given its common-law meaning in the
22 absence of any statutory definition. *NLRB v. United Insurance Co. of America*, 390 U.S. 244
23 (1968). Accordingly, it appears as though the plain language of NRS 288.215(1)(b) compels the
24 use of the common-law test to determine if an officer is an employee of a law enforcement
25 agency.

26 Under the common-law test, the principal means of determining employment is control
27 over the manner and method in which an employee performs the work. Thus, a police officer

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1 employed by a law enforcement agency, for the purposes of NRS 288.215(1)(b) if the principal
2 control over the work he performs comes from the law enforcement agency.

3 The *Park Rangers* decision itself does not speak to the appropriate test to apply in order
4 to determine employment; and nothing within *Park Rangers* forecloses the application of the
5 common-law test to determine whether the members of the Association are employees of a law
6 enforcement agency for the purposes of NRS 288.215(1)(b).

7 The hearing on this matter took place before the Board on May 13, 2009.

8 During the hearing the Board heard testimony from Danny L. Thompson, Sergeant
9 Phillip Gervasi and Officer Michael Thomas on behalf of the Association, and from Craig
10 Kadlub, Chief of Staff for the Superintendent's Office on behalf of the District.

11 Mr. Thompson testified that he was a member of the Nevada State Assembly from 1980
12 to 1990, and that he suggested the idea of school police officers following the shooting of a
13 teacher at Valley High School. He testified that he believed that the District did in fact create a
14 police department, and that it was his intent that the school police would constitute a police
15 department. On cross-examination Mr. Thompson admitted that the assembly bill authorizing
16 school police did not originate in any committee that he sat on, and that the statute as enacted
17 does not say anything about creating a police department. He also testified that he is familiar
18 with the Commission of Accredited Law Enforcement Agencies' (CALEA) accreditation process
19 and that CALEA accreditation depends upon an audit of a department to determine if it is
20 complying with CALEA's national standards. (Tr. pp. 23-49).

21 Sgt. Phillip Gervasi was the next witness. Sgt. Gervasi testified that he is a patrol sergeant
22 with the CCSDPD and was the past President of the Association. (Tr. pp. 50-51). Sgt. Gervasi
23 testified that the CCSDPD is a "Category 2" department. (Tr. p. 64.) He explained that a
24 "Category 2" department is one that conducts patrol functions and investigations. (Tr. p. 64.)
25 However, he testified that all officers in the CCSDPD must be trained as Category 1 officers
26 (Tr. p. 68).

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1 Sgt. Gervasi testified that he is authorized to make an arrest for certain crimes anywhere
2 in the State of Nevada, and that he will stop and take action including an arrest if necessary when
3 he is traveling between school campuses. (Tr. p. 69-70).

4 Sgt. Gervasi testified that the CCSDPD has issued general orders to direct the members
5 of the Association in everything that they do and how to fulfill their responsibilities as law
6 enforcement officers. There are general orders for handling Class A felonies, for use of weapons,
7 how to wear uniforms and equipment, when to take lunch and how to call out to use the
8 restroom. (Tr. p. 84-86.) All of these general orders are issued by the CCSDPD. (Tr. p. 86). He
9 testified to the existence of a general order that states that not even the Superintendent has access
10 to the records maintained by the CCSDPD. (Tr. p. 130).

11 Sgt. Gervasi testified that certification and annual training of CCSDPD officers is
12 provided by the Peace Officer Standards and Training Commission (POST). (Tr. pp. 87-88).

13 Sgt. Gervasi testified that recruitment and testing of prospective police officers is
14 principally done by the CCSDPD, and that the hiring process is in "name only" of the District's
15 Human Resources Department. (Tr. p. 93-94). He testified that the CCSDPD initially screens an
16 applicant before Human Resources becomes involved in the hiring process. (Tr. p. 94)..

17 Sgt. Gervasi acknowledged that the CCSDPD is ultimately supervised by the
18 Superintendent of the District, but denied that other school district administrators supervise the
19 CCSDPD. (Tr. pp.101-102). On cross-examination, Sgt. Gervasi was confronted with School
20 District Regulation 4213 which states that in noncriminal justice matters site administrators
21 supervise police, but he denied that the police officers are actually supervised by these
22 administrators. (Tr. p. 104). He stated that this Regulation 4213 was superseded by changes to
23 the Nevada Revised Statutes in 1999. (Tr. p. 121)

24 Sgt. Gervasi testified that police officers evaluations are not performed by civilian
25 administrators, and are only performed by police supervisors. (Tr. pp 112-113). He testified to
26 participation in a safety task force in Searchlight, Nevada together with the Henderson Police
27 Department, Metro Police Department, the Highway Patrol, the Las Vegas City Marshals and the

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1 Boulder City Police concentrating on issuing speeding violations. (Tr. p. 119). He also testified
2 to participation in similar task forces for school enforcement and jaywalking. (Tr. p. 119-120).

3 Sgt. Gervasi testified that the CCSDPD is located in a separate building than the
4 District's offices, and maintains its own detectives unit and internal affairs unit and a record s
5 retention unit. (Tr. pp. 128-130). He also testified that the CCSDPD maintains its own complet e
6 dispatch system. (Tr. p. 73.)

7 Officer Michael Thomas was the next witness. He testified that he is a patrol officer with
8 the CCSDPD, and current president of the Association (Tr. p. 149-150). He testified that he is
9 not supervised by any civilian. (Tr. p. 151-152). He testified that he is familiar with CALEA
10 accreditation, that CALEA accreditation is only open to law enforcement agencies, and that the
11 CCSDPD is listed on the CALEA website in Exhibit 12 (Tr. pp. 153-156). He testified that
12 typical duties of a CCSDPD officer include being called out to residences off of school property
13 and tagging unattended vehicles for removal both on and off of school property. (Tr. pp. 178-
14 183). He testified that the CCSDPD is a 24/7 agency. (Tr. p. 189).

15 Craig Kadlub was the only witness offered by the District. He testified that he is the
16 Chief of Staff in Superintendent's Office. (Tr. p. 197). He confirmed the accuracy of Exhibit S,
17 an Organizational Chart showing CCSDPD as a department within the Clark County School
18 District. (Tr. 198-200). He testified that the CCSDPD is funded entirely by the School District,
19 including salaries, which is in turn funded by the State. (Tr. p. 200). He testified that the facility
20 in which the CCSDPD is headquartered is also paid for by the School District. (Tr. p. 201).

21 Mr. Kadlub confirmed that the Chief of Police for the CCSDPD reports to the
22 Superintendent, but was not sure how the chain of command works within the CCSDPD. (Tr. p.
23 201). He testified that the District advertises job openings for school police officers, processes
24 the applications and does background checks on prospective employees. (Tr. pp. 202-203). He
25 later confirmed that hiring police employees is a "collaborative effort" between the District and
26 the CCSDPD. (Tr. p. 208). He also stated that promotion of police employees is "pretty much a
27 departmental decision." (Tr. p. -211).

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1 In addition to the testimony, evidentiary exhibits were admitted into evidence before the
2 Board, including a printout from the Clark County School District's website stating that the
3 CCSDPD was a "fully empowered law enforcement agency" (Exhibit 15) and a copy of Clark
4 County School District Regulation 4213, offered as Respondent's Exhibit Q, which states that
5 the Chief of Police is responsible for all police personnel and vests in the Chief of Police the
6 authority to run and administer the department, including recommending staffing needs,
7 providing for an arranging for the training of police officers, and making personnel assignments.
8 The Association also presented evidence of a grant awarded to the CCSDPD by the U.S.
9 Department of Justice Office of Community Oriented Policing Services (Exhibits 3-6, and 8-9),
10 and evidence that the CCSDPD has been accredited by CALEA. (Exhibits 10-13). The District
11 presented evidence of its own regulations regarding hiring, discipline and pay of employees
12 (Exhibits D, J and K), as well as a chart showing the internal organization of the District (Exhibit
13 S).

14 Following the conclusion of the hearing, the parties submitted post-hearing briefs to the
15 Board in lieu of closing arguments.

16 The Board, having duly considered the testimony presented at hearing, the arguments
17 presented by the parties, the applicable law including case law and the briefs submitted by the
18 parties hereby makes its Findings of Fact, Conclusions of Law and Order as follows:

19 FINDINGS OF FACT

- 20 1. The Clark County School District is a political subdivision of the state of Nevada.
- 21 2. The CCSDPD is an agency or office of the Clark County School District based upon
22 Exhibit S, the Organizational Chart offered into evidence before the Board as well as the
23 testimony presented to the Board.
- 24 3. The primary duty of the CCSDPD is to enforce the law as indicated by the agreement of
25 the parties and the testimony of Sgt. Gervasi who testified that the CCSDPD is a
26 Category 2 department (Tr. p. 64) and that all officers in the CCSDPD must be trained as
27 Category 1 law enforcement officers. (Tr. p. 68) which testimony the Board finds to be
28 credible.

- 1 4. The members of the Association are Category 1 law enforcement officers.
- 2 5. The CCSDPD has issued a number of general orders which control the specific manner
3 and method in which the members of the Association must perform their job duties.
4 These general orders emanate from the CCSDPD and control the manner and method in
5 which the members of the Association perform their work, including the proper use of
6 department weapons, how to wear their uniform and nearly every aspect of the law
7 enforcement duties performed by the members of the Association. This is supported by
8 the testimony of Sgt. Gervasi. (Tr. p. 84-86). Sgt. Gervasi testified that all of these
9 general orders are issued by the CCSDPD, which testimony the Board finds to be
10 credible. (Tr. p. 86). The Chief of Police of the CCSDPD is vested with authority to issue
11 these general orders pursuant to Exhibit Q.
- 12 6. These general orders constitute the primary control of the manner and method in which
13 members of the Association must perform their duties.
- 14 7. The District's general regulations affecting school police officers are incidental and
15 secondary to the general orders issued by the CCSDPD.
- 16 8. The District's employees do not control the work performed by the members of the
17 Association. CCSDPD officers are not answerable to general school district employees
18 according to the testimony of Sgt. Gervasi (Tr. 101-102, 104, 121) and Officer Thomas
19 (Tr. p. 151-152). The Board finds the testimony of Sgt. Gervasi and Officer Thomas to be
20 credible on these points.
- 21 9. The chain of command in the CCSDPD up to the Chief of Police, who reports directly to
22 the Superintendent, is insulated from the rest of the District per the testimony Sgt.
23 Gervasi, Officer Thomas, and Mr. Kadlub which the Board finds to be credible and
24 according to Exhibit Q.
- 25 10. The decisions regarding promotions of police employees are primarily made by the
26 CCSDPD as police officers evaluations are not performed by civilian administrators, and
27 are only performed by police supervisors, as supported by the testimony of Sgt. Gervasi
28 (Tr. pp 112-113) and by the testimony of Craig Kadlub that promotion is "pretty much a

1 departmental decision.” (Tr. p. 211). The Board finds the testimony of Sgt. Gervasi and
2 Mr. Kadlub to be credible on this point.

3 11. The law enforcement nature of the CCSDPD is distinct from the educational
4 administration purposes of the District.

5 12. The skills and training required of the members of the Association includes certification
6 by the Nevada Commission of Peace Officer Standards and Training per the testimony of
7 Sgt. Gervasi, which testimony the Board finds to be credible. (Tr. pp. 87-88).

8 13. The members of the Association perform law enforcement duties equal to those provided
9 by other police departments in Clark County per the testimony of Sgt. Gervasi who
10 testified to participation in safety task forces together with the Henderson Police
11 Department, Metro Police Department, the Highway Patrol, the Las Vegas City Marshal's
12 and the Boulder City Police, which testimony the Board finds to be credible. (Tr. pp.
13 119-120).

14 14. The members of the Association perform law enforcement duties both on and off
15 school campuses and in conjunction with other local police departments and law
16 enforcement agencies per the testimony of Sgt. Gervasi (Tr. pp. 119-120) and the
17 testimony of Officer Thomas (Tr. pp. 178-183), which testimony the Board finds to be
18 credible.

19 15. The training required of the members of the Association is not directed by the District.
20 Per the testimony of Sgt. Gervasi, such training is provided by POST, which testimony
21 the Board finds to be credible (Tr. pp. 87-88), and is arranged by the Chief of Police per
22 Exhibit Q.

23 16. The CCSDPD is not dependent upon another department within the School District for its
24 existence. Its existence is dependent only and directly upon the political subdivision itself
25 per Exhibit S. In this regard the CCSDPD is indistinguishable from town or city police
26 departments which are likewise directly dependent upon a political subdivision for their
27 existence.

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1 17. Any testimony that conflicts with the above findings of fact has been deemed by the
2 Board to be outweighed by the evidence set forth above.

3 18. If any of the foregoing findings is more appropriately construed a conclusion of law, it
4 may be so construed.

5 **CONCLUSIONS OF LAW**

6 1. The Board is authorized to hear and determine complaints for declaratory relief arising
7 under NRS Chapter 288.

8 2. The Board has jurisdiction over the parties and the subject matters of the Complaint on
9 file herein pursuant to the provisions of NRS Chapter 288.

10 3. The term "law enforcement agency" is not defined in Chapter 288.

11 4. NRS 277.035(2)(b) defines the term "law enforcement agency" as "an agency, office or
12 bureau of this state or a political subdivision of this state, the primary duty of which is to
13 enforce the law."

14 5. The definition of the term "law enforcement agency" as set forth in NRS 277.035(2)(b) is
15 consistent with the plain meaning of the term "law enforcement agency" as that term is
16 used in NRS 288.215(1)(b).

17 6. Pursuant to NRS 391.100(8), NRS 391.275(1) and NRS 289.190, the principal duty of the
18 CCSDPD is to enforce the law.

19 7. School District Police Departments are not listed as a unit of specialized law enforcement
20 in NRS 280.125(1).

21 8. The CCSDPD is a "law enforcement agency" under NRS 288.215(1)(b) because it is an
22 agency or office of a political subdivision of the State of Nevada and the primary duty of
23 the CCSDPD is to enforce the law, based upon the Findings of Fact and Conclusions of
24 Law stated above.

25 9. The terms "employees" is not defined in NRS Chapter 288, and therefore the plain
26 language of the term compels the use of the common-law test to determine employment.

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- 1 10. Under the common-law standard for employment, the essential characteristic is the right
2 to control the activities of the employee and the manner and method in which the work is
3 performed.
- 4 11. The right to control the activities of the CCSDPD officers, including the members of the
5 Association, and the manner and method in which the work is performed emanates from
6 the CCSDPD itself by virtue of the general orders issued by the CCSDPD. These general
7 orders are the instructions that are most germane to the performance of the officers'
8 duties and the authority to issue such orders is granted to the CCSDPD by Exhibit Q.
- 9 12. Other factors that are considered under the test for employment are (1) The power to
10 discharge the person claimed to be an employee; (2) the payment of salary; (3) the nature
11 of the services; and (4) the parties' belief as to the existence of an employment
12 relationship. No one factor is conclusive and the Board must weigh the factors
13 appropriately.
- 14 13. The power to discharge the employee ultimately lies with the District per the testimony of
15 Sgt. Gervasi. (Tr. p. 100).
- 16 14. The salary of the officers is paid through the District.
- 17 15. The nature of services rendered by members of the Association is fundamentally different
18 than the stated education purpose of the District in NRS 386.010(2). The purpose of the
19 District is to administer the system of public education, whereas the purpose of the
20 CCSDPD is to enforce the law. The skills and training of the members of the
21 Association, such as POST certification and training are skills and training unique to law
22 enforcement, and not to the educational purpose that the District serves.
- 23 16. Because the right to control the work and the manner and method in which the work is
24 performed, and because the nature of services provided by the CCSDPD is fundamentally
25 different than the nature of services provided by the District, the Board holds that the
26 members of the Association are employees of a law enforcement agency, for purposes of
27 NRS 288.215(1)(b).
- 28 17. The members of the Association are "police officers" under NRS 288.215(1)(b).

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18. This decision is limited to the construction of the term "police officers" as specifically defined in NRS 288.215(1)(b).

19. If any of the foregoing conclusions is more appropriately construed a finding of fact, it may be so construed.

ORDER

- 1. The Board declares that the members of the Clark County School District Police Officers Association are "police officers" as defined by NRS 288.215(1)(b);
- 2. The Board declares that the members of the Clark County School District Police Officers Association are entitled to implement the impasse procedures set forth in NRS 288.215;
- 3. CCSD shall engage in the impasse procedures set forth in NRS 288.215 regarding the remaining step increase dispute before Arbitrator Thomas Angelo.

DATED this 29th day of January, 2010.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: 
SEATON J. CURRAN, ESQ., Chairman

BY: 
JAMES E. WILKERSON, SR., Vice-Chairman

BY: 
SANDRA MASTERS, Board Member

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STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

POLICE OFFICERS ASSOCIATION OF
THE CLARK COUNTY SCHOOL
DISTRICT/COPS N-CWA, LOCAL 9111,

Complainant,

vs.

CLARK COUNTY SCHOOL DISTRICT,

Respondent.

CASE NO. A1-045939

NOTICE OF ENTRY OF ORDER

To: Kerianne R. Steele, Esq.
Weinberg, Roger & Rosenfeld

To: C.W. Hoffinan, Jr., Esq.
Clark County School District

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on
January 29, 2010.

A copy of said order is attached hereto.

DATED this 29th day of January, 2010.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

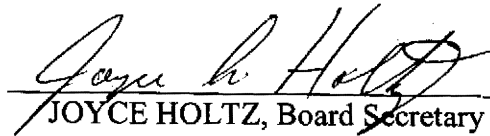
BY 
JOYCE HOLTZ, Board Secretary

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Local Government Employee-Management
3 Relations Board, and that on the 29th day of January, 2010, I served a copy of the foregoing
4 ORDER by mailing a copy thereof, postage prepaid to:

5 Kerianne R. Steele, Esq.
6 Weinberg, Roger & Rosenfeld
7 729 Evans Avenue
8 Reno, NV 89511

9 C.W. Hoffinan, Jr., Esq.
10 General Counsel
11 Clark County School District
12 5100 West Sahara Avenue
13 Las Vegas, NV 89146

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JOYCE HOLTZ, Board Secretary