

STATE OF NEVADA  
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

RENO POLICE SUPERVISORY AND  
EMPLOYEES ASSOCIATION,

Complainant,

vs.

CITY OF RENO,

Respondent.

ITEM NO. 694

CASE NO. A1-045923

**FINDINGS OF FACTS. CONCLUSIO**  
**OF LAW AND ORDER**

For Complainant: Michael E. Langton, Esq.

For Respondent: Donald Christensen, Esq.

On January 17, 2008, the Reno Police Supervisory & Employees Association ("Association") filed a complaint alleging prohibited labor practices by the City of Reno ("Reno") concerning the positions of Deputy Chiefs. The prohibited labor claim arises from a previous case involving the parties, more specifically, Board Case No. A1-045865, in which the Board ordered that when a Deputy Chief is assigned to negotiate a collective bargaining agreement ("CBA"), he is then deemed a "confidential employee" pursuant to NRS 288.170(6). The Board further ordered in that previous case that Reno should not intentionally designate an employee as a confidential employee to undermine the employee's rights to participate in the collective bargaining unit. In Case No. A1-045865, the Board did not find a prohibited labor practice by Reno.

The claim in the present matter is that Reno has failed to negotiate a subsequent CBA for the Deputy Chiefs in violation of NRS chapter 288. According to the complaint, Reno initiated a City Resolution which included that Deputy Chiefs assigned to negotiate would receive such salaries and benefits as confidential employees. The Association claims this Resolution is contradictory to the CBA by changing wages, hours, and working conditions of said Deputy

1 Chiefs. Reno filed its answer on February 7, 2008; and thereafter, the parties filed their  
2 respective prehearing statements.

3 On October 20, 2008, Reno filed a motion for summary judgment, which the Association  
4 opposed. On November 3, 2008, Reno filed a motion to amend its Answer to assert an additional  
5 affirmative defense, which the Association opposed. The matter was scheduled for hearing.  
6 Prior to the commencement of the hearing, the Board granted the Association's request to amend  
7 the caption of the pleadings; the Board denied the motion for summary judgment, without  
8 prejudice; and the Board also denied the motion to amend Reno's answer.

9 The following is a summary of the testimony offered at the hearing, and upon which the  
10 Board relied upon in its decision.

11 Dave Della was the first witness; and he has been with the Reno Police Department  
12 ("Department") for over 23 years. Hearing Transcript ("TR") p. 27. He is also President of the  
13 Association. He has been involved in negotiations on behalf of the Association on two to three  
14 CBAs. TR 27-28. He testified that the Deputy Chief position is now paid pursuant to the  
15 Resolution, and that the Resolution differs from the CBA's terms and conditions. TR 29.  
16 According to Della, it is the Association's position that the CBA is still in effect pursuant to  
17 Article 30 thereof. TR 29-30. He stated that multiple requests have been made for Reno to  
18 negotiate a new CBA, but Reno has refused to do so. TR 31-34. See Hearing Exhibits 5, 18, and  
19 20. A grievance was filed concerning the Resolution, but it was denied by the City Manager.  
20 TR 33. (Hearing Exhibits 12, 14, 15).

21 Della testified that all three Deputy Chiefs are members of the Association. In response  
22 to a question by the Board, Della stated that Reno has never withdrawn recognition of any  
23 associations. TR 42-43.

24 The next witness was Deputy Chief Steve Pitts. He has been with the Department for  
25 approximately 29 years. TR 48. He has not been trained in negotiations and he has not yet  
26 negotiated for either of the parties to this matter. He is in charge of field operations, and has  
27 approximately 250 uniformed officers report to him. TR 48-49.

1 He was promoted to Deputy Chief on December 21, 2007. He does not recall during his  
2 interview process that he was told he had to participate in negotiations. TR 49-50. Since  
3 January 16, 2008, he has not sat with anyone regarding negotiations, and has not yet received  
4 any documents to review in preparation for negotiations. TR 53.

5 He testified he was aware of the Association's grievance; and based upon Reno's  
6 unilateral change in pay (per the Resolution), his compensation was cut from \$163,669 to  
7 \$153,823. He stated that he was also not receiving longevity pay and education benefits. TR 54-  
8 56. The salary was calculated prior to him accepting the Deputy Chief position. He understood  
9 that he would be a confidential employee and that the Resolution would apply to him. TR 65.

10 He testified that, in his belief, everyone in his position has confidential duties but he  
11 could not say if he is a confidential employee. He did state that his involvement now with  
12 Association does not involve grievances. TR 70-71. In response to a question by the Board,  
13 Pitts stated that there have been no negotiation sessions, and his only involvement to date was  
14 email communications. He has not received any financial information pertaining to Reno. TR  
15 77-78. He also testified that he believes prior Deputy Chiefs have participated in negotiations  
16 but were still covered by the CBA. TR 80-82.

17 The next witness was Jim Johns. He has been a Deputy Chief since January, 1995, but  
18 has been with the Department since 1978. TR 83-84. He stated he previously participated in  
19 negotiations for Deputy Chiefs; and prior to his involvement in negotiations, Captain Bob Gally  
20 participated in negotiations for the captains' CBA. He believes Reno has recognized the  
21 Association since 1981. TR 84-85. He stated that he did represent Reno in the Deputy Chief  
22 CBA negotiations with the Association, as he wanted to make sure that the Deputy Chiefs  
23 received raises. TR 85-87. He claims the Resolution didn't impact him, but he did advise Karen  
24 Moore and Donna Dreska regarding the removal of benefits via the Resolution. TR 89-90. He  
25 stated he never negotiated on the CBA for fire department battalion chiefs, and did not believe it  
26 has even been done by a police Deputy Chief. TR 94.

27 He claims it was determined that he was a confidential employer prior to the Board's  
28 earlier decision. He is still a member of Association. but he receives longevity and education

1 allowance. He is also paid for overtime. He admitted that he and Deputy Glensor receive  
2 different benefits than other Deputy Chiefs such as Pitts. TR 91, 96-102. He expects to  
3 negotiate for Reno in the future, but he does not appreciate being on the opposite side of the table  
4 from his fellow police officers. He believes this impacts morale. By sitting on the City's side, it  
5 has had a detrimental impact on his relationship with officers and may cause him to retire early  
6 TR 107-109.

7 He has not trained Pitts for negotiation. Deputy Chief Glensor may retire in 2009. He  
8 also commented that the Association's ERISA plan is necessary as most officers have not paid  
9 into Social Security. TR 110-112.

10 He stated that the new Deputy Chief has to take a reduced benefits package and this is  
11 contradictory to the CBA. The Resolution applies to any new Deputy Chief. He believes his  
12 benefits can change as well. TR 115-16.

13 Johns admitted that he is part of management. The difference between him and the other  
14 negotiators for Reno sitting across from the Association and its police officers is the fact that he  
15 has to enter into potentially dangerous conflicts with those same police officers. TR 119-121,  
16 128. He does believe the Resolution is intended to break the Association and that City Manager  
17 Heck told him that they wanted to eliminate the CBA for Deputy Chiefs. TR 124. He believes  
18 Reno also wants to eliminate the position of Fire Department Battalion Chief. TR 131.

19 Ron Holladay was the next witness. He retired in February 2008 as a Commander with  
20 the Department. He had been with the Department for approximately 29 years. TR 135. He  
21 belonged to the Association and was on its Board of Directors. He was also a negotiator for the  
22 Association on one CBA. TR 136-137. He testified that he was interviewed for the Deputy  
23 Chief position by the Chief of Police. At that interview, he was not asked about negotiation  
24 skills nor did he discuss conducting negotiations for Reno. TR 137-138.

25 He stated he was at the October 10, 2007, City Council meeting and raised the issue of  
26 improper treatment of City employees. He was also at the December 12, 2007, City Council  
27 meeting to object to the Resolution pertaining to Deputy Chiefs. TR 157. He claims to have met  
28 with Donna Draska at least 6-8 times regarding the Deputy Chief position. He specifically

1 recalls addressing the issue of Deputy Chief Pitts' position with her in March, 2007. Ms. Draska  
2 informed him that she did not want to address Pitts' position and his treatment as a Deputy Chief  
3 as it may appear that she is negotiating. He stated that Reno simply did not want to negotiate the  
4 third Deputy Chief position as Reno wanted that position to be a confidential employee. TR  
5 174-177. Andy Green was the next witness. He is the Finance Director for Reno and has been  
6 with Reno for approximately about 7½ years. Previously, he was a city finance director in  
7 California. TR 179. He was on Reno's negotiation teams against the Association regarding  
8 CBAs for sergeants and lieutenants. He felt the Deputy Chief position was a confidential  
9 employee; and based upon that, he did not believe negotiating for a Deputy Chief CBA was  
10 necessary. TR 182-183.

11 He acknowledged signing the tentative agreement letter of June 22, 2006 (Hearing  
12 Exhibit 2). At that time, Reno had only two Deputy Chiefs. He claims Exhibit 2 only pertained  
13 to the Deputy Chiefs Jim Johns and Ron Glensor. TR 180-181. He further admitted that Deputy  
14 Chief Johns prepared the comparison found in the Record at page 62, which compared the salary  
15 and benefits for current Deputy Chiefs and future Deputy Chiefs. TR 182-183. He stated that it  
16 was Reno that made the decision that all Deputy Chiefs are confidential employees. He could  
17 not recall the date of that decision. TR 187-188.

18 He was on the negotiation team for Reno with the Firefighters, but no police officer  
19 currently sits on Reno's negotiation team for that CBA. He states that they have held several  
20 informal negotiation meetings with the Firefighters. Negotiations started about 2 years ago; and  
21 when they commenced at that time, no police officer was involved as well. This negotiation is  
22 now in "impasse" and has been for over a year. TR. 189-191.

23 He believes all Deputy Chiefs positions are confidential so if the unit went from 6 to 10  
24 Deputy Chiefs, they would all be confidential employees. TR 194. He prepared Hearing Exhibit  
25 24 regarding salary and benefits for future Deputy Chiefs. TR 195. He admits that Hearing  
26 Exhibit 2 does not indicate that it is for "current and future Deputy Chiefs" but believes it is clear  
27 that it only pertained to Deputy Chiefs Johns and Glensor. TR 197-198. He also admitted that  
28 he authored Hearing Exhibit 3. "staff report" dated July 6, 2006 regarding the agreements

1 reached and that included a "one-year letter agreement for the Deputy Chiefs." TR 199.

2 The third Deputy Chief position was not filled at time Hearing Exhibit 3 was prepar  
3 that position was filled, that Deputy Chief would not get the Cost of Living Adjus  
4 mentioned in Hearing Exhibit 3. He stated that Reno would make the decisions regarding  
5 and benefits paid to a third Deputy Chief. TR 199.

6 Upon questioning by the Board, he claims that he does not know what "T/A" means  
7 204-205. He also indicated that he did not negotiate with the Association regarding He  
8 Exhibit 2, dealing with Deputy Chiefs. He never withdrew recognition of the Association f  
9 Deputy Chiefs, yet he has treated the Deputy Chiefs as confidential employees. More  
10 specifically, he stated that legal told him that the Deputy Chief positions are confid  
11 employees and that he did not have to negotiate with the Association for that bargaining  
12 TR 205-207.

13 Regarding the Fire Department Battalion Chiefs, they are still working unde  
14 old CBA. He is "not aware" of battalion chiefs being treated as confidential empl  
15 TR 207-208.

16 Chief of Police Michael Poehlman was the next witness and indicated he had 3 pos  
17 authorized for Deputy Chiefs. TR 210-211. Pitts was accepted in 2007 as a Deputy Chief  
18 he met with Pitts after Reno's adoption of the Resolution. TR 211. He testified that he  
19 "point by point" with Pitts regarding the Resolution. He stated he discussed with Pitts th  
20 that he would assist in negotiations on behalf of Reno. TR 212. He claims that initially Pitt  
21 concerned regarding the salary and benefits being offered to him as a Deputy Chief but tha  
22 accepted the position any way. He also claimed that the City Manager wanted g  
23 participation of Deputy Chiefs in negotiation due to their abilities and capabilities. He claim  
24 3 Deputy Chiefs have negotiation assignments. TR 213-216. Johns does the negotiation  
25 the Association because of his previous involvement with the Association; Glensor is assign  
26 negotiate with employees in administration since that is his area of command; and Pitt  
27 assigned to negotiate for Reno regarding chiefs' positions since he is a Chief in Field Opera  
28 TR 216-217. He claims Pitts is "regularly" involved in management decisions affectin

1 CBAs; i.e., monthly meetings with the Association which usually involve CBA issues TR 218.  
2 He further offered that Pitts is authorized to resolve disputes with the Association, and that he  
3 does not believe there will be more than 3 Deputy Chiefs' positions. TR 220-224.

4 On examination, he stated that in 2005, Johns and Glensor were not assigned to Reno's  
5 negotiation team. He indicated that all interviewees for the Deputy Chief position knew that they  
6 would get different benefits than Johns and Glensor. He does not, however, recall using the  
7 words "confidential employee" with the interviewees. TR 226-228. He admits that Pitts was  
8 facing a "significant" cut in pay and benefits when he took the Deputy Chief position. TR 228.  
9 He also admits that he did not ask the candidates regarding their negotiation skills. TR 229-230.

10 He also offered that Reno does not have a large Human Resources ("HR") Department  
11 but that HR was impressed with Johns' negotiation skills. TR 230-231.

12 When questioned what else makes the Deputy Chiefs confidential employees, he stated  
13 that typically he and his three Deputy Chiefs are there for the labor/management command  
14 meetings. TR 236-238.

15 The Board questioned Chief Poehlman that if the Deputy Chiefs are so good at  
16 negotiations of CBAs, in addition to their regular assignments, then they should not receive  
17 lower pay and benefits. TR 247-248. He admitted that the Resolution makes it easier to look  
18 outside of the Department for a Deputy Chief, and that he wanted "options" for that position. TR  
19 255-256.

20 Kelly R. Dean was the next witness. He retired from the Department in August, 2006.  
21 He was with Reno for 29 years; 16 years were spent as a sergeant. He was also the Association's  
22 president for 10 years, and was on its negotiation team beginning April 1995, for approximately  
23 3 CBAs. TR 260. His signature appears on the tentative agreement (Hearing Exhibit 2). He  
24 claims that the term "Deputy Chief" refers to the bargaining unit, not just certain Deputy Chiefs,  
25 and that is why he signed this document. He states by eliminating the Deputy Chief bargaining  
26 unit, any new Chief of Police can bring in their own friends. TR 261-263.

27 He admitted that Reno wanted to eliminate the Deputy Chiefs' bargaining unit and  
28 "grandfather" in only Deputy Chiefs Johns and Glensor. TR 265-266.

1 Donna Dreska was the next witness. She is the Chief of Staff for Reno from July, 2007  
2 to the time of the hearing. This position is similar to Assistant City Manager. Before this  
3 position, Dreska was HR director for 1 ½ years. She has also held the positions of County  
4 Manager and City Manager from November 2005 to July 2007. TR 281-283. She claims the  
5 tentative agreement, Hearing Exhibit 2, only applied to the two current Deputy Chiefs. She  
6 stated that future Deputy Chiefs would be covered by the Resolution adopted by Reno. TR 283-  
7 285. She stated that the tentative agreement dated June 22, 2006, was for the contract term  
8 expiring May, 2006 and that there was no harm in closing the issue by entering into the tentative  
9 agreement. TR 283-284. At that time, Reno was also closing the negotiations for the sergeants  
10 and lieutenants bargaining units. TR 286. It is her opinion that there should be no Deputy  
11 Chiefs remaining in the bargaining unit as they are confidential employees. TR 303. Yet, the  
12 various forms of the resolution presented to the City Council contained contradictions to this  
13 statement and such was discussed with Ms. Dreska. TR 280-199. Dreska claims there are nine  
14 different bargaining units in Reno, and each have a separate CBA. She was lead/chief negotiator  
15 for Reno. TR 296-297. At one point, seven different units were negotiating-- in addition to her  
16 other job duties/responsibilities. It was because of this problem that the Assistant City Manager,  
17 Finance Director, and others of the HR staff, were brought in to negotiate for Reno. All of these  
18 individuals, in her belief, also feared the damage to their relationship with the members of the  
19 different units; however, it was too costly to bring in people from the outside to negotiate on  
20 behalf of Reno. TR 294-295.

21 She claims Deputy Chiefs bring in a unique prospective to negotiation: they pick up on  
22 nuances especially for the Department. She offered that Deputy Chiefs bring public safety  
23 concerns to the negotiation table. Because of the potential retirements of Deputy Chiefs Johns  
24 and Glensor, the others including the remaining Deputy Chief will have to do even more  
25 negotiations. She stated that Reno has done everything it can to not lay-off people. TR 295-301.  
26 Positions are not being filled because of the budget issues, and unless it is essential for the  
27 operation of Reno, there is no guarantee that Deputy Chiefs Johns and Glensor would be  
28 replaced. TR 301.



1 When questioned why this Deputy Chief unit is required to have a Resolution rather than  
2 a CBA, she claimed it is because of the City's reading of the confidentiality statute. TR 303a  
3 She has never had a conversation with former City Manager Jaeck, but admits that Steve  
4 Watson, Labor Relations for Washoe County, and one other person negotiate all CBAs for  
5 Washoe County and its 9 bargaining units. She also admitted that scheduling can be "tried" in  
6 order to hold the negotiation sessions at different times thus relieving some of the burden from  
7 her. TR 304-307.

8 She also claimed that there is no real urgency to assign tasks to Deputy Chief Pitts for  
9 negotiations. When Deputy Chief Pitts was assigned to negotiate, both Deputy Chiefs Johns and  
10 Glensor were not currently negotiating. Pitts will only receive on the job training at the time of  
11 negotiation. TR 309-311a

12 She also admits that at no other time has a Deputy Chief of Police participated in the  
13 negotiations for the Fire Department Battalion Chief unit. One Deputy Chief for the Fire  
14 Department sits on Reno's negotiation team but Reno has not declared him a confidential  
15 employee. TR 314-315. This individual has been a Deputy Chief in the Fire Department for at  
16 least the three years she has been with Reno. TR 316-317.

17 She claims the Association was trying to renegotiate the Deputy Chief CBA and during  
18 various discussions, Deputy Chief Johns "always" asked if they were negotiating the Deputy  
19 Chiefs' CBA, to which she replied no. She admitted that legal told her not to discuss the Deputy  
20 Chiefs' CBA as it may appear that the Reno was negotiating the same. She also stated that all  
21 Deputy Chiefs will be assigned to negotiate, especially if the number of Deputy Chiefs' positions  
22 remains at three. She also offered that City Manager McNeeley has felt this way about the  
23 Deputy Chiefs' positions for 13 years. She stated that there is no anti-union animus, but that  
24 Reno's intent is for the Deputy Chiefs to be the best at negotiations and to become more  
25 knowledgeable. TR 330-336.

26 Rather than do closing arguments, the parties elected to submit post-hearing briefs.

### 27 ***FINDINGS OF FACT***

28 1. The Association is the recognized bargaining agent for supervisory employees in the

1 Reno Police Department; and Reno has not withdrawn its recognition of the Association.

2 2. On June 22, 2006, the parties executed a memorandum concerning "Reno Police  
3 Supervisory and Administrative Employees Association's 2006 contract negotiations, Deputy  
4 Chief." (Hearing Exhibit 2.) Kelly Dean, who signed it on behalf of the Association, testified  
5 that language applied to any and all deputy chiefs, not just ones that may be designated  
6 "confidential." (TR 262-263 and 268-269.)

7 3. By letter dated January 17, 2007, the labor representative for the Association placed  
8 Reno on notice of its desire to open negotiations for "the Administrative Unit Deputy Chiefs."  
9 (Hearing Exhibit 5.)

10 4. By letter dated January 31, 2007, Reno replied to the above-referenced letter and  
11 referenced the Board's decision in Case No. A1-045865 issued on December 8, 2006, "in which  
12 it found that the two Deputy Chiefs employed by the City were both confidential employees who  
13 are prohibited by law from being included in any bargaining unit." (Hearing Exhibit 6.) The  
14 correspondence continued that "[b]y reason of the EMRB decision, neither of the currently  
15 employed Deputy Chiefs may lawfully be included in a collective bargaining unit covered by  
16 Chapter 288 of the Nevada Revised Statutes."

17 5. On or about May 23, 2007, the Reno City Council approved a "Staff Report" which  
18 stated that "[t]his resolution places the two existing Deputy Chiefs of Police in an existing salary  
19 band within the Pay for Performance System and establishes their benefits as confidential  
20 employees outside of a bargaining unit as determined by the Employee Management Relations  
21 Board. (EMRB). for the State of Nevada." The report continued noting that on "August 21st  
22 2001, City Council approved the [Association] contract which outlined the negotiated salary and  
23 benefits for these individuals. In July of 2006, City Council approved a one-year letter of  
24 agreement for the Deputy Chiefs."

25 6. Attached to a letter delivered by Ron Holladay to Councilwoman Jessica Sferrazza  
26 and other council members on or about November 7, 2007, was a letter dated March 10, 2004,  
27 from Deputy City Attorney Don Christensen to Assistant City Manager Ralph Jacck. (Hearing  
28 Exhibit 8f.) Within the letter, specifically at page 3, the Deputy City Attorney stated:

1 The deputy chief position is covered by a collective bargaining agreement between the  
2 City and the Reno Police Supervisory and Administrative Employees Association,  
3 Administrative Unit and is the only position covered by the contract. With respect to the  
4 issue of whether the City could unilaterally implement the elimination of the Deputy  
5 Chief position, the question must be addressed from whether the prospective of whether  
6 doing so would amount to a refusal to bargain with respect to mandatory topics of  
7 negotiation and whether the action could be characterized as an anti-union action.  
8 (Emphasis added.)

9  
10 On page 4 of said exhibit, the Deputy City Attorney further wrote:

11 It is also possible that a contract violation as well as a violation of NRS 288.270 may be  
12 alleged on the basis that the elimination of the Deputy Chief position was actually  
13 motivated by an anti-union intent. Anti-union animus has been defined as an attempt to  
14 avoid the obligations of a collective bargaining agreement through a sham transaction or  
15 a technical change in operations. EMRB Item No. 481C, p.13. Evidence of an  
16 employer's subjective intent is not required when the employer's conduct inherently  
17 encourages or discourages Union membership. EMRB Item No. 394, p.14, (10/24/96).  
18 Retaliation for the exercise of any right guaranteed under Chapter 288 also constitutes a  
19 prohibited practice. EMRB Item No. 277, p.6 (11/15/91).

20 7. Also attached to the letter to Councilwoman Sferrazza was a letter dated March 11,  
21 2004, from Ralph Jaeck to City Manager McNeely. (Hearing Exhibit 8(g).) Within said letter  
22 the Assistant City Manager wrote "[c]onceptually, the ideal structure would be to eliminate the  
23 Deputy Chief rank."

24 8. On December 6, 2007, two representatives from the Association met with Donna  
25 Dreska and during the meeting Ms. Dreska responded that she had been advised by legal not to  
26 discuss this matter with the Association as it may give the appearance of a negotiation session.

27 9. On December 12, 2007, the City Council considered establishing a salary band and  
28 benefits for the Deputy Chiefs of Police determined to be confidential employees. (Hearing  
Exhibit 10.)

10. A comparison of salary and benefits was provided under both the CBA and the  
Resolution: i.e., the salary and benefits under the Resolution were decreased.

11. On December 17, 2007, Association President Dave Della filed a grievance  
protesting the City resolution enacted on December 12, 2007. (Hearing Exhibit 11.) The  
grievance alleged the resolution was a "unilateral change in the Deputy Chief classification."

12. By e-mail dated December 20, 2007 (Hearing Exhibit 13), Chief of Police Poehlman  
informed "everyone" that "Steve Pitts has been promoted to Deputy Chief effective December

1 21, 2007.” At the time of the promotion and subsequent thereto, Pitts had not received any  
2 negotiation training. Furthermore, Pitts denied being informed that negotiations would be  
3 required of him.

4 13. Testimony was presented that by participating in negotiations on behalf of Reno, the  
5 Deputy Chiefs feel that such impacts police morale and their working relationship with fellow  
6 police officers.

7 14. On December 26, 2007, Chief Michael Poehlman denied the grievance contending  
8 “this is not a grievable matter.” President Della appealed to the City Manager. (Hearing Exhibit  
9 14.)

10 15. By letter dated January 4, 2008, City Manager McNeely also denied the grievance  
11 stating, in relevant part: “[T]he position has been determined to be a confidential position and  
12 therefore is excluded from the bargaining unit per NRS 288.” (Hearing Exhibit 15.) In response  
13 to the City Manager's denial of the grievance, Della demanded arbitration pursuant to the parties'  
14 CBA. (Hearing Exhibit 16.)

15 16. The parties never did negotiate a successor agreement for the Deputy Chiefs  
16 bargaining unit prior to the hearing held November 17 and November 18, 2008. (TR 32.)

17 17. Testimony was presented that by the elimination of the Deputy Chiefs' bargaining  
18 unit, police chiefs will be unrestricted as to who they hire for the Deputy Chiefs' positions.

19 18. The Board recognizes that the City of Reno is experiencing a bleak economy.

20 19. Should any finding of fact be more properly construed as a conclusion of law, may it  
21 be so deemed.

## 22 **CONCLUSIONS OF LAW**

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

25 2. The Association is an employee organization serving as the bargaining agent for the  
26 Deputy Chiefs of Reno, Washoe County, Nevada, as defined in NRS 288.027 and NRS 288.040.

27 3. The Department and the City of Reno are local governmental employers pursuant to  
28 NRS 288.060.

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

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

14           6. NRS 288.170 states in part as follows:

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

19               (5) If any employee organization is aggrieved by the determination of a  
20 bargaining unit, it may appeal to the Board. Subject to judicial review, the decision of the  
21 Board is binding upon the local government employer and employee organizations  
22 involved. The Board shall apply the same criterion as specified in subsection 1.

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

25           7. Pursuant to applicable case law, the Board concludes that it is not improper to look to  
26 cases interpreting the National Labor Relations Act when appropriate.

27           8. These individuals were assigned to duties which established that they could be  
28 classified as confidential employees. However, the Board concludes that, according to the  
witnesses' testimony, one had yet to be involved in any negotiations, one had not received any  
training in negotiations, and one had not received any financial information pertaining to the City  
of Reno for purposes of negotiations. Thus, the negotiation assignments appear to be bogus  
assignments.

1           9. By improperly placing all individuals in potentially confidential positions, the Board  
2 concludes that the City of Reno has improperly eliminated the bargaining unit at issue in this  
3 matter. By claiming all members of the unit are "confidential employees" because of their  
4 assignments to negotiations at some point in time in the future, thus eliminating the unit, the City  
5 of Reno has committed a prohibited labor practice pursuant to NRS 288.270(1)(a).

6           10. Substantial evidence exists in the record that these individuals are not involved in the  
7 decisions of management affecting collective bargaining; and the Board concludes that these  
8 individuals are not true "confidential employees." Credible evidence was presented that Deputy  
9 Chief Pitts was assigned to negotiations but has not yet participated in negotiations nor received  
10 any training in negotiations nor has he received any financial information pertaining to the City  
11 of Reno; that the City of Reno has been previously warned in a prior Board decision that by  
12 making all employees "confidential employees," such an act can be construed as a prohibited  
13 labor practice by improperly eliminating a bargaining unit; that the entire unit has been  
14 eradicated without a plausible reason as to why the entire unit had to be involved in negotiations  
15 on behalf of the City of Reno; that credible testimony was offered that the morale of the  
16 Department has been impacted by the Deputy Chiefs having to negotiate against the police  
17 officers with respect to pay and benefits; that the differential in pay and benefits between the  
18 Deputy Chiefs is improper; that the fire battalion chiefs are either not participating in  
19 negotiations and/or have not been deemed confidential employees and no credible reason was  
20 offered why these individuals were treated differently than the Deputy Chiefs at issue in this  
21 matter; the testimony of witnesses, such as Johns' testimony, indicated that the City of Reno  
22 intended to eliminate the bargaining unit, thus allowing the Chief of Police to bring in anyone for  
23 a Deputy Chief position; and that one witness, Donna Dreska, indicated that City Manager  
24 McNeeley has had a long standing desire to eradicate the bargaining unit at issue in this matter,  
25 and by making each and every Deputy Chief a part of the City of Reno's negotiation team, the  
26 desired result of the employer has been achieved.

27           11. The Board concludes that by differentiating in pay and benefits, the City of Reno has  
28 violated NRS 288.170(4). Even though certain individuals may be deemed confidential

1 employees, they are entitled to participate in any plan benefiting the unit at issue.

2 12. The Board concludes that the City of Reno had a duty to negotiate and that the City  
3 of Reno breached that duty by refusing to negotiate. See, for example, Ms. Dreska's testimony.

4 13. The Board concludes that its prior admonition to the City of Reno that "an employer  
5 cannot intentionally designate an employee as a confidential employee to undermine the  
6 employee's rights to participate in a collective bargaining unit" is applicable to this case as the  
7 Board concludes that the employer in this matter improperly designated employees as  
8 "confidential employees" to undermine the rights of said Deputy Chief employees to participate  
9 in their collectively bargained unit. Anti-union animus is also seen in the denial of the grievance  
10 filed by the Complainant concerning those allegations also raised in this matter and evidence of a  
11 long-standing desire/intent to eradicate this bargaining unit by officials from the City of Reno.

12 14. Should any conclusion be more properly construed as a finding of fact, may it be so  
13 deemed.

#### 14 ***DECISION AND ORDER***

15 Based upon the above, the Board decides and orders as follows:

16 1. The Board finds that the City of Reno has committed a prohibited labor practice in this  
17 matter, i.e., it has violated NRS 288.270(1). It has improperly attempted to make all Deputy  
18 Chiefs "confidential employees" by assigning such Deputy Chiefs to negotiate on behalf of the  
19 City of Reno, when in fact, some have not yet received negotiation training, some have not yet  
20 been provided with confidential financial information pertaining to the City of Reno, and some  
21 have not yet participated in negotiations. By assigning these individuals to the City of Reno's  
22 negotiation teams, the City of Reno has effectively eradicated this specific bargaining unit,  
23 especially in light of the City of Reno's treatment of similar employees located in the City's Fire  
24 Department who are not treated as confidential employees. This appears to be interference,  
25 restraint, and/or coercion of employees, and their employee organization, and is a violation of  
26 NRS 288.270(1)(a). Based thereon, this Board ORDERS the City of Reno to cease and desist  
27 such prohibited labor practices.

28 2. The Board finds that the City of Reno has committed a prohibited labor practice in

1 refusing to negotiate with the Complainant in this action and such is a violation of NRS  
2 288.270(1)(e); and HERBY ORDERS the City of Reno to cease and desist such prohibited labor  
3 practice and to commence negotiations with the Complainant in this matter on the collective  
4 bargaining agreement on behalf of the Deputy Chiefs.

5 3. IT IS HEREBY ORDERED that fees and costs are awarded to the Complainant.  
6 Complainant is to file an application for fees and costs, with all necessary supporting  
7 documentation, within 15 days from the date of this Order. Respondent has ten days thereafter to  
8 oppose the same; and a reply can be filed by the Complainant pursuant to this Board's rules.

9 4. IT IS FURTHER ORDERED that even though employees may be deemed  
10 "confidential employees," said employees are entitled to the pay and benefits offered to others in  
11 that specific bargaining unit pursuant to a collective bargaining agreement; thus, in the instant  
12 matter, the City of Reno is ORDERED to make all Deputy Chiefs whole for any differential in  
13 pay and benefits, in order to assure complete compliance with the parties' collective bargaining  
14 agreement. Such should be accomplished within thirty (30) days from the date of this order.

15 5. IT IS ADDITIONALLY ORDERED that the City of Reno post the attached Notice of  
16 Prohibited Labor Practice for a period of ninety (90) days from the date of this Order. Said  
17 notice shall be posted in a conspicuous place, available for observation by all, and said notice  
18 shall not be altered, defaced, or covered by other material, and the Commissioner of this Board is  
19 instructed to view the posting at any time convenient to the Commissioner during the regular  
20 office hours of 8 am until 5 pm.

21 DATED this 3rd day of April, 2009.

22 LOCAL GOVERNMENT EMPLOYEE-  
23 MANAGEMENT RELATIONS BOARD

24 BY: 

JANET TROST, ESQ., Chairman

25 BY: 

JOHN E. DICKS, ESQ., Vice Chairman

26 BY: 

JAMES E. WILKERSON, SR., Board Member



JIM GIBBONS  
Governor

DIANNE CORNWALL  
Director

STATE OF NEVADA



Members of the Board  
JANET TROST, ESQ., Chairman  
JOHN E. DICKS, ESQ., Vice-Chairman  
JAMES E. WILKERSON, SR., Board Member

JOYCE HOLTZ  
Board Secretary

DEPARTMENT OF BUSINESS AND INDUSTRY  
**LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD**

2501 E. Sahara Avenue, Suite 203, Las Vegas, Nevada 89104  
(702) 486-4504 • Fax (702) 486-4355  
[www.emrb.state.nv.us](http://www.emrb.state.nv.us)

April 3, 2009

**NOTICE TO EMPLOYEES AND EMPLOYEE ORGANIZATIONS MEMBERS**

POSTED PURSUANT TO AN ADMINISTRATIVE DECISION RENDERED AFTER A CONTESTED HEARING BEFORE THE  
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

**NEVADA LAW PROHIBITS THE FOLLOWING ACTS BY EMPLOYERS:**

- A) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under NRS chapter 288.
- B) Dominate or interfere in the formation or administration of any employee organization.
- C) Discriminate in regard to hiring, tenure or any term or condition of employment to encourage or discourage membership in any employee organization.
- D) Discharge or otherwise discriminate against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under NRS chapter 288, or because he has formed, joined or chosen to be represented by any employee organization.
- E) Refuse to bargain collectively in good faith with the respective representative as required by NRS 288.150.
- F) Discriminate because of race, color, religion, sex, age, physical, or visual handicap, national origin or because of political or personal reasons or affiliations.
- G) Fail to provide the information required by NRS 288.180.

**WE WILL NOT do anything that interferes with these rights.**

More particularly, we will not assign duties which establish a member of a bargaining unit as a "confidential employee" as a pretext for the eradication of the bargaining unit, in violation of NRS chapter 288.

We will promptly make whole any employee pay or benefits guaranteed by the applicable CBA for that employee's bargaining unit, which an employee has been denied by this employer's prohibited labor practices.

CHARGED PARTIES: City of Reno and the Reno Police Department.

Dated: \_\_\_\_\_ By \_\_\_\_\_  
City Representative

Dated: \_\_\_\_\_ By \_\_\_\_\_  
Police Department Representative

The Local Government Employee-Management Relations Board is a Nevada State Agency created to enforce the provisions of NRS chapter 288. To find out more about your rights under the Local Government Employee-Management Relations Act and how to file a complaint alleging prohibited labor practices, you may obtain information from the Board's website: [www.emrb.state.nv.us](http://www.emrb.state.nv.us).

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE. THIS NOTICE MUST REMAIN POSTED FOR 90 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE BOARD'S OFFICES AT 702-486-4505.