

STATE OF NEVADA  
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

CLARK COUNTY DEPUTY MARSHALS  
ASSOCIATION,

Complainant,

vs.

CLARK COUNTY,

Respondent.

ITEM: 793

CASE NO. A1-046058

**ORDER**

For Complainant: Clark County Deputy Marshals Association and their attorney  
Adam Levine, Esq.

For Respondent: Clark County and their attorney Yolanda T. Givens, Esq.

This matter came on before the State of Nevada, Local Government Employee-  
Management Relations Board ("Board"), for consideration and decision pursuant to the  
provisions of the Local Government Employee-Management Relations Act ("the Act"); NAC  
Chapter 288, NRS chapter 233B, and was properly noticed pursuant to Nevada's Administrative  
Procedures Act. A hearing was held in this matter on November 12-14, 2013 in Las Vegas,  
Nevada.

This case calls upon the Board to determine whether the Clark County deputy marshals  
are "local government employees" as defined in NRS 288.050, and therefore entitled to  
collective bargaining rights under the Act.

Prior to 2007, security and bailiff-type services at courthouses in Clark County were  
provided by the Clark County Sheriff. In 2007, the legislature changed the requirements in order  
to relieve the Sherriff of the obligation to attend the sessions of the District Court. 2007 Stat.

1 Nev. ch. 440, p. 2189. Those functions are now performed by the deputy marshals. The deputy  
2 marshals are peace officers under NRS 289.150. The day-to-day duties of the deputy marshals  
3 depend upon their particular assignment. Administrative marshals primarily provide security at  
4 the courthouse, which includes the Regional Justice Center, the Family Court facility as well as  
5 other locations. Their duties include security screenings for persons entering the courthouse as  
6 well as investigations, making arrests when called upon to do so, and other duties as necessary.  
7 Judicial marshals are marshals that are assigned to a particular judge and serve primarily in the  
8 courtroom of the judge to provide court security and perform other assignments that may be  
9 given by the individual judge. In addition, judicial marshals may assist in the courtrooms of  
10 other judges as needed and may also assist the administrative marshals with their duties.

13 Complainant in this case, the Clark County Deputy Marshals Association  
14 ("Association"), has brought a complaint of bad faith bargaining against Respondent Clark  
15 County. The Association purports to represent the group of employees who are employed as  
16 deputy marshals. The Association asserts that it has been recognized as a bargaining agent by  
17 the County as has demanded to bargain with the County, but that the County has simply refused  
18 to meet and negotiate a collective bargaining agreement with the Association in violation of its  
19 bargaining obligations under NRS 288.270(1)(e).

21 The County's response is to assert that it is not obligated to bargain with the Association  
22 under the terms of the Act because the deputy marshals are employees of the courts, not the  
23 County, and therefore are not local government employees entitled to the bargaining rights  
24 granted by the Act. The County is correct to note that courts are not local government employers  
25 under the Act. No court is listed as a local government employer under NRS 288.060. In  
26 addition, this Board has acknowledged that courts are excluded from the terms of the Act. e.g. In  
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1 the Matter of the Petition for Recognition by the Clark County Deputy Sherriff Bailiff's Assoc.  
2 Item No. 504A, EMRB Case No. A1-045722 (May 7, 2002). Thus, if the deputy marshals truly  
3 are employees of the courts rather than the County then the bargaining obligations under the Act  
4 will not apply to grant bargaining rights to the Association. As this argument is potentially  
5 dispositive, we turn to it first.  
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7 We first consider whether the employment of the deputy marshals rests with the County  
8 or with the court. "The principal means of determining employment is control over the manner  
9 and method in which an employee performs the work." Clark County School Dist. Police  
10 Officers Assoc. v. Clark County School Dist., Item No. 690B, EMRB Case No. A1-045939 (Jan.  
11 29, 2010); N.L.R.B. v. E.C. Atkins & Co., 331 U.S. 398 (1947). The evidence at the hearing  
12 established that the control over the manner in which the deputy marshals perform their duties is  
13 provided by the court. For judicial marshals this is primarily provided by the individual judge to  
14 whom the marshal is assigned and who supervises the deputy marshal. The Board notes the  
15 testimony of Deputy Marshal Eric Prunty who confirmed that day-to-day oversight and  
16 supervision of judicial marshals is provided by the judge. Steven Grierson, the Court Executive  
17 Officer for the Eighth Judicial District Court, also testified before the Board and explained the  
18 chains of command for both administrative and judicial marshals that lie entirely within the court  
19 system. For administrative marshals, the supervision is provided by the sergeants and lieutenants,  
20 then by the Court Security Director. The chain of command then extends to the Court Executive  
21 Officer and then ultimately to the Chief Judge. For judicial marshals, Mr. Grierson corroborated  
22 Deputy Prunty's testimony that the individual judge primarily supervises a judicially-assigned  
23 deputy marshal. In addition, Jeff Wells testified that the District Court judges determine the  
24 duties, responsibilities and tasks of the deputy marshals. The Association did not present any  
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1 evidence that would contradict the conclusion that it is the court, and not the County, that  
2 controls the manner and method in which the marshals perform their duties.

3 Other indicia of employment include the power to discipline or discharge, payment of  
4 salary, nature of the service provided and the parties' belief as to existence of an employment  
5 relationship. See Clark County v. State Indus. Ins. System, 102 Nev. 353, 724 P.2d 201 (1986).  
6

7 Evidence was also provided to the Board that the court is the entity with the ability to  
8 discipline a deputy marshal and terminate employment. In particular, the Board notes the  
9 memorandum of understanding between the Association and the District Court which addresses  
10 how the discipline of deputy marshals is to be handled. The County was not a party to this  
11 memorandum, and the Board heard evidence that the County has, in other cases, refused to  
12 follow the disciplinary process that the Association and the Courts have agreed to. This tends to  
13 confirm that disciplinary issues are in fact within the purview of the court rather than the County.  
14 Anthony Vogel, the President of the Association confirmed that disciplinary matters are  
15 governed by the memorandum, and it is the court, not the County, that is a party to that  
16 memorandum. In addition, NRS 3.310(1) states that a "deputy marshal serves at the pleasure of  
17 the judge he or she serves."  
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20 The nature of the services provided also points to the courts as the employer in this case.  
21 The duties of the deputy marshals are listed by statute, and all of the enumerated duties clearly  
22 provide a benefit to the court rather than the County. NRS 3.310(3).  
23

24 It does not appear that the parties shared a common belief concerning an employment  
25 relationship. While Anthony Russo, who served as Vice-President of the Association, did testify  
26 that the Association has constantly taken the position that deputy marshals are County  
27 employees, it is evident that the County did not share that assessment. The County clearly  
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1 expressed its reservations about the deputy marshals' status as County employees when it  
2 insisted on assurances from the Association and from the court that the deputy marshals were in  
3 fact County employees before the County would recognize the Association.<sup>1</sup> There was  
4 evidence that the applicants for a deputy marshal position are processed through the County,  
5 which may have tended to encourage the belief that the deputy marshals were County  
6 employees. At the hearing, Jeff Wells, the Assistant County Manager explained that this was due  
7 to an interlocal agreement between the County and the court in which the County has agreed to  
8 make certain resources, including recruitment services available to the court. The County's  
9 willingness to cooperate with the court does not convert the County into the employer. In  
10 addition, the fact that the Association negotiated and agreed to a memorandum of understanding  
11 with the court covering certain terms of employment undermines the Association's contention  
12 that they believed themselves to be employees of the County.  
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15 The evidence at the hearing did establish that it is the County that pays the salary for the  
16 deputy marshals, but otherwise does not exercise control over the deputy marshals' employment.  
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18 Taken together, these facts establish in our judgment that the deputy marshals are  
19 employed by the court for purposes of NRS 288.050. Given this evidence, and looking primarily  
20 to the court's control over the manner and method in which the marshals perform their duties, we  
21 conclude that for purposes of NRS 288.050, the marshals are employees of the court.  
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23 This conclusion is consistent with other prior determinations of this Board. Previously we  
24 have determined that employees were court employees, and therefore outside the scope of the  
25 Act, where the primary control over job duties was exercised by the courts, even while a local  
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28 <sup>1</sup> This is considered solely for its relevance as to the parties' belief as to the existence of an employment relationship  
and not for whether a local government employer may permissibly insist upon similar conditions or assurances prior  
to recognizing an employee organization.

1 government employer was responsible for paying the employees' salaries. The County points to  
2 our decision in In the Matter of the Petition for Recognition by the Clark County Deputy Sheriff  
3 Bailiff's Assoc., Item No. 504A, EMRB Case No. A1-045722 (May 7, 2002) which concerned  
4 nearly identical circumstances over employee control and payment of wages as are established  
5 this case. In addition the Board reached similar results in Washoe County Probation Employees'  
6 Association v. Washoe County, Item No. 334, EMRB Case No. A1-045547 (May 18, 1994) and  
7 in Operating Engineers Local # 3 v. County of Lander, Item No. 346A, EMRB Case No. A1-  
8 045553 (Nov. 8, 1995).

9  
10 Our conclusion that the deputy marshals are employees of the court, however, does not  
11 fully resolve this matter. In this proceeding, the Association conceded that the court controls at  
12 least some of the aspects of the deputy marshals' employment, but contended that the appropriate  
13 bargaining model to adopt is what the Association referred to as the "Washington model," which  
14 is a model of partial bargaining that would require the County to bargain, but only over those  
15 mandatory subjects of bargaining over which the County has control such as payment of wages.  
16 Under this system, the mandatory subjects listed in NRS 288.150(2) which are under the control  
17 of the courts would not be subject to bargaining, but the topics over which the County has  
18 control would be subject to bargaining under the Act. The Washington model comes from the  
19 decision of the Washington Supreme Court in Zylstra v. Piva, 539 P.2d 823 (Wa. 1975).

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21 After a careful consideration of the arguments offered by both parties, the Board  
22 concludes that the Washington model is not compatible with the Act. As noted above, the  
23 deputy marshals are employees of the court and fall outside the current definition of local  
24 government employee. The plain language of NRS 288.150(1) does not permit a local  
25 government employer to refrain from bargaining over any of the enumerated mandatory subjects  
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1 of bargaining listed in NRS 288.150(2). The exceptions to that bargaining obligation are stated in  
2 NRS 288.150(4), which does not address the issue of employment by a court. Thus, the language  
3 of NRS 288.150 does not contemplate a bargaining relationship where the employer is obligated  
4 to bargain over anything less than the full range of mandatory subjects.  
5

6 Although we recognize that the Washington model would permit at least some limited  
7 degree of collective bargaining for the marshals, this Board is bound by the Act and cannot grant  
8 bargaining rights where the legislature did not. The remedy sought by the Association cannot be  
9 granted by this Board; instead the Association's recourse appears to be to the legislature.  
10

11 Further, the ultimate effect of applying the Washington model in this case would be to  
12 make the County conclusively responsible for setting certain terms of employment for court  
13 employees. This Board has previously expressed a significant concern that making court  
14 employees subject to the bargaining requirements of the Act would tend to infringe upon the  
15 inherent rights and powers of the courts. Washoe County Probation Employees' Association v.  
16 Washoe County, Item 334, EMRB Case No. A1-045547 (May 18, 1994). That concern has not  
17 lessened. If anything, that concern has only been heightened in light of the recent decision of the  
18 Nevada Supreme Court in City of Sparks v. Sparks Municipal Court, 129 Nev. Adv. Op. 38, 302  
19 P.3d 1118 (2013). In City of Sparks, the inherent authority of the courts to manage its own  
20 employees, including the rate of pay, was central to the Supreme Court's reasoning that the city  
21 council in that case could not impose a pay cut upon court employees. City of Sparks does not  
22 leave any room for this Board to require a local government employer to bargain with court  
23 employees due to the inherent authority of courts over such matters. See also Azbarea v. City of  
24 North Las Vegas, 95 Nev. 109, 110-111, 590 P.2d 399 161, 162 (1979) (reasoning that the Act  
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1 does not extend to matters that are within the inherent authority of the courts). For these reasons  
2 we decline to follow the Washington model proposed by the Association.

3 Finally, this case presents a genuine dispute and an award of costs under NRS 288.110(6)  
4 is not warranted.

5 Based upon the forgoing, the Board makes the following findings of fact and conclusions  
6 of law.  
7

### 8 **FINDINGS OF FACT**

9 1. Security at courthouses and judicial facilities in Clark County is provided by the deputy  
10 marshals.

11 2. Deputy Marshals include judicial marshals assigned to a particular judge or courtroom  
12 and administrative marshals who serve the court in general while not being assigned to a  
13 particular judge or courtroom.  
14

15 3. Pursuant to the credible testimony of Deputy Marshal Eric Prunty and Steven Grierson,  
16 the chain of command for judicial marshals extends directly to the individual judge to whom a  
17 deputy marshal is assigned.  
18

19 4. Pursuant to the credible testimony of Steven Grierson, the chain of command for  
20 administrative marshals extends to the sergeants and lieutenants who are also deputy marshals  
21 then to the Court security director, then to the Court Executive Officer and then ultimately to the  
22 Chief Judge.  
23

24 5. The Court Security Director, and the Court Executive Officer are employees of the court.

25 6. The court, either through the individual judges or through its employees including the  
26 Court Security Director and the Court Executive Officer, controls the manner and method in  
27 which the deputy marshals perform their duties, responsibilities and tasks.  
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1 7. The court exercises the right to discipline and to discharge a deputy marshal.

2 8. The deputy marshals perform the duties listed in NRS 3.310(3), each of which is a benefit  
3 to the court rather than the County.

4 9. The parties did not believe in an employment relationship between the deputy marshals  
5 and the County that was exclusive.

6 10. Clark County clearly expressed reservations about its belief in an employment  
7 relationship with the marshals when it requested assurances that the deputy marshals were  
8 County employees before recognizing the Association.

9 11. Clark County is responsible to pay the salaries of the deputy marshals.

10 12. If any of the foregoing findings is more appropriately construed a conclusion of law, it  
11 may be so construed.

#### 12 CONCLUSIONS OF LAW

13 1. The Board is authorized to hear and determine complaints arising under the Local  
14 Government Employee-Management Relations Act.

15 2. Courts are not local government employers under NRS 288.060 and therefore employees  
16 of a court are beyond the scope of the Act.

17 3. For purposes of NRS 288.050, the deputy marshals at issue in this case are employees of  
18 the courts.

19 4. The Washington model set forth in Zylstra v. Piva, 539 P.2d 823 (Wa. 1975) is not  
20 compatible with the Act.

21 5. The Act does not obligate the County to bargain with the Association in this case.

22 6. The County did not violate any bargaining obligations under NRS 288.270(1)(e).

23 7. The Association's complaint is not well-taken.

1 8. An award of costs and fees is not warranted in this case.

2 9. If any of the foregoing conclusions is more appropriately construed a finding of fact, it  
3 may be so construed.  
4

5 **ORDER**

6 It is hereby ordered that the Board finds that the complaint filed in this matter is not well-  
7 taken.

8 It is further order that each party shall bear its own fees and costs incurred in this matter.

9 DATED the 27<sup>th</sup> day of January, 2014.  
10

11 LOCAL GOVERNMENT EMPLOYEE-  
12 MANAGEMENT RELATIONS BOARD

13  
14 BY:   
15 PHILIP E. LARSON, Chairman  
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17  
18 BY:   
19 SANDRA MASTERS, Vice-Chairman  
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21  
22 BY:   
23 BRENT C. ECKERSLEY, Esq. Board Member  
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CLARK COUNTY DEPUTY MARSHALS  
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CASE NO. A1-046058

**NOTICE OF ENTRY OF ORDER**

To: Clark County Deputy Marshals Association and their attorney Adam Levine, Esq.

To: Clark County and their attorney Yolanda T. Givens, Esq.

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on  
January 27, 2014.

A copy of said order is attached hereto.

DATED this 27<sup>th</sup> day of January, 2014.

LOCAL GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

BY

  
YVONNE MARTINEZ, Executive Assistant

