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STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL 1245,

Complainant,

v.

TRUCKEE MEADOWS WATER
AUTHORITY,

Respondent.

Case No. 2017-002

ORDER

ITEM NO. 825

On September 12, 2017, this matter came before the State of Nevada, Local Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Local Government-Management Relations Act (the "Act"), NAC Chapter 288 and NRS Chapter 233B. The Board held a two-day administrative hearing on this matter on August 14 and 15, 2017.

International Brotherhood of Electrical Workers Local Union 1245 ("Local 1245") filed its Amended Prohibited Practices Complaint due to Truckee Meadows Water Authority's ("TMWA") refusal to bring into the existing Local 1245 bargaining unit the Chemist, Microbiologist, and Water Quality Specialist classifications working within the Water Quality group at TMWA. The five employees in these classifications each signed authorization cards seeking representation by Local 1245. Pursuant to NRS 288.170, Local 1245 appealed to this Board TMWA's determination to exclude those classifications from the existing bargaining unit.

Prior to the hearing, the parties submitted a Stipulation of Admitted Facts. Local 1245 has been the exclusive bargaining agent for some non-supervisory TMWA employees since 2001. The recognized bargaining unit includes TMWA employees in the Customer Service, Finance, Field and Meter Services, Operations Maintenance, Water Operations, Hydro/Diesel Generation, Facility and

1 Grounds Maintenance, and Distribution work groups. The CBA between TMWA and Local 1245,
2 covered the term of July 1, 2012, to June 30, 2015. The Addendum to the CBA extended its term to
3 July 1, 2015, to June 30, 2017. The employees covered by the CBA were referred to as the "Existing
4 Bargaining Unit." There are approximately 110 employees in the Existing Bargaining Unit. There are
5 no other recognized bargaining units at TMWA and no union other than Local 1245 represents any
6 TMWA employees as their exclusive bargaining agent.

7 On September 16, 2016, Local 1245, through its Business Representative Patrick Waite, sent a
8 letter to TMWA General Manager Mark Foree requesting to meet and confer over the accretion of
9 employees in the Chemist, Microbiologist, and Water Quality Specialist classifications (hereinafter
10 "Water Quality Employees") into the Existing Bargaining Unit. All five employees who worked then
11 and currently work in these classifications signed authorization cards authorizing Local 1245 to
12 represent them in collective bargaining. On November 7, 2016, Mr. Foree responded to Mr. Waite
13 agreeing to recognize Local 1245 as the bargaining representatives of the Water Quality Employees and
14 to meet and confer on whether or not the Water Quality Employees could be accreted into the Existing
15 Bargaining Unit.

16 On December 12, 2016, Mr. Foree informed Local 1245, by letter to Mr. Waite, that TMWA
17 concluded that the Water Quality Employees do not share a community of interest with the Existing
18 Bargaining Unit and thus determined that the Water Quality Employees constitute a separate bargaining
19 unit. Following receipt of this letter, on January 11, 2017, Local 1245 filed a Prohibited Practices
20 Complaint, which was later amended on January 12, 2017, seeking a determination that the Water
21 Quality Employees share a community of interest with the Existing Bargaining Unit and should
22 therefore be accreted into the Existing Bargaining Unit.

23 TMWA's current organization chart was submitted as Joint Exhibit 16. The employees in the
24 Existing Bargaining Unit are highlighted in blue and the Water Quality Employees are highlighted in
25 red. As set forth in the organization chart, TMWA consists of seven departments: (1) Human
26 Resources, (2) Financial/Business Information, (3) Natural Resources Planning and Management, (4)
27 Engineering, (5) Operations and Water Quality, (6) Special Projects, and (7) Distribution, Maintenance
28 and Generation. The Existing Bargaining Unit includes the nonsupervisory customer service employees

1 and accounts payable employee in the Finance/Business Information Department.

2 The direct supervisor of all of the Water Quality Employees is the Water Quality and
3 Environmental Permitting Supervisor. This position is currently held by Kelli Burgess. This position
4 was created within the last year. Prior to its creation, the Water Quality Employees reported directly to
5 the Operations and Water Quality Manager, Paul Miller. All supervisors in the Operations and Water
6 Quality Department also reported directly to Mr. Miller. In January 2017, Andy Gebhardt became the
7 Operations and Water Quality Director. With Mr. Gebhardt's assumption of the Director position, the
8 Operations and Water Quality Manager position was eliminated. Currently, Ms. Burgess and all other
9 supervisors in the Operations and Water Quality Departments directly report to the Operations and
10 Water Quality Director, Mr. Gebhardt. Mr. Gebhardt reports to TMWA's General Manager, Mark
11 Force. The employees in the Existing Bargaining Unit who work in the Operations and Water Quality
12 Department directly report to one of three supervisors: (1) the Maintenance Supervisor, a position
13 currently held by Bryce Twichell, (2) the Distribution Operations Supervisor, a position currently held
14 by Eric Mothershead, or (3) the Water Operations Supervisor, a position currently held by Will
15 Raymond. Mr. Raymond worked as a Water Quality Employee prior to his promotion to Water
16 Operations Supervisor in 2013.

17 The four (4) job classifications held by the Water Quality Employees are Senior Chemist,
18 Chemist, Senior Water Quality Specialist, and Associate Water Quality Microbiologist. The primary
19 duty of the Senior Chemist is to "conduct chemical analyses of raw and treated drinking water using
20 EPA approved methodologies and acceptable quality assurance procedures to ensure a potable water
21 supply that meets all regulatory requirements." The qualifications for this position include "[a]
22 Bachelor's degree in physical science (preferably chemistry) or equivalent experience along with
23 comprehensive knowledge of both organic and inorganic chemistry" and "five to seven years [sic]
24 experience in an analytical laboratory performing water quality analyses and laboratory duties." The
25 Senior Chemist is further required to obtain a "State of Nevada Grade II Water Distribution or Water
26 Treatment Operator certification."

27 The primary duty for employees in the Senior Water Quality Specialist position is to "work[]
28 within the TMWA Water Quality Department to meet the requirements of an EPA/State certified water

1 quality laboratory in Microbiology and conduct microbiological analyses of raw and treated drinking
2 water to ensure a potable supply that meets all regulatory requirements, for the consumer.” The
3 qualifications for this position include an “[e]ducation equivalent to an [sic] Bachelor’s degree in
4 Biology, Microbiology or Chemistry . . . along with knowledge of bacteriology and protozoology and
5 laboratory protocol” and “five years [sic] experience in microbiology and ability to complete water
6 quality analysis and laboratory functions and author corresponding reports.” The Senior Water Quality
7 Specialist is further required to obtain a “State of Nevada Grade II Water Distribution or Water
8 Treatment Operator certification.” The primary duty for the Water Quality Chemist is to “collect and
9 conduct chemical analyses using EPA approved methodologies and acceptable quality assurance
10 procedures to ensure a potable water supply that meets all regulatory requirements.” The qualifications
11 for this position include a “Bachelors [sic] degree in physical science (preferably chemistry) or
12 equivalent experience along with a comprehensive knowledge of both organic and inorganic chemistry”
13 and “two to five years’ experience in an analytical laboratory performing water quality analyses and
14 laboratory duties.” The Water Quality Chemist is further required to obtain a “State of Nevada Grade II
15 Water Distribution or Water Treatment Operator certification.”

16 The primary duty for the Associate Water Quality Microbiologist is to “conduct[]
17 microbiological analyses of raw and treated drinking water to ensure a potable supply that meets all
18 regulatory requirements for the consumer.” The qualifications for this position include an “[e]ducation
19 equivalent to a Bachelor of Science degree in Biology or Microbiology” and “one to three years of water
20 quality lab work.” The Associate Water Quality Microbiologist is further required to obtain a “State of
21 Nevada Grade II Water Distribution or Water Treatment Operator certification.”

22 The Existing Bargaining Unit includes employees in forty-four (44) different classifications. The
23 current wage rates for these classifications were set forth in Joint Exhibit 3. The CBA provides the job
24 descriptions and qualifications for each of these classifications. Positions in both the Operations and
25 Water Quality and the Distribution, Maintenance, and Generation Departments require State of Nevada
26 Grade I, II, or III Water Distribution certifications, including the following Existing Bargaining Unit
27 classifications: (1) Apprentice, Fitter; (2) Apprentice, Mechanic, Maintenance & Control, WP; (3)
28 Fitter; (4) Fitter/Welder; (5) Foreman, Mechanic, Maintenance & Control, WP, Working; (6) Foreman,

1 Working, Heavy, Water; (7) Foreman, Working, Light, Water; (8) Inspector; (9) Mechanic,
2 Maintenance & Control, Certified, WP; (10) Mechanic, Specialist, Maintenance & Control, WP; (11)
3 Serviceman, Water; (12) Specialist, Water Supply; and (13) Technician, SCADA. The Nevada Water
4 Distribution exam tests an employee's knowledge in the following areas relating to water distribution:
5 (a) security, safety, and administration (manage system, promote public relations, safety program,
6 record keeping); (b) compliance with drinking water regulations; (c) evaluation and maintenance of
7 equipment; (d) installation of equipment; (e) monitoring, evaluation and adjustment of disinfection
8 (inspections of source water); (f) operation of equipment; (g) system design, information, and
9 components; (h) system inspection, and (i) water quality parameters and sampling/laboratory analysis
10 (collecting and preserving samples, performing laboratory analysis, and interpreting laboratory
11 analysis).

12 Positions in the Operations and Water Quality Department require State of Nevada Grade I, II,
13 or III Water Distribution and Water Treatment Operator certifications, including the following Existing
14 Bargaining Unit employees: (1) Apprentice, Operator, Water Plant; (2) Foreman, Shift, Water
15 Treatment, Working; (3) Operator, Water Plant, Grade II, Treatment Only; (4) Operator, Water Plant,
16 Grade II, Treatment & Distribution; (5) Operator, Water Plant, Grade III, Treatment & Distribution; and
17 (6) Specialist, Equipment, Water Treatment. The Nevada Water Treatment exam tests an employee's
18 knowledge in the following areas relating to water treatment: (a) security, safety, and administration
19 (manage facility, respond to emergencies, safety procedures, record information); (b) laboratory
20 analyses; (c) compliance with drinking water regulations; (d) operation and maintenance of equipment
21 (evaluation of operation of equipment, operation of equipment, and maintenance of equipment); (e)
22 evaluation of characteristics of source water; and (f) monitoring, evaluation, and adjustment of
23 treatment (chemical addition, coagulation and flocculation, clarification and sedimentation, filtration,
24 residuals disposal, and additional treatment tasks).

25 The following Existing Bargaining Unit Classifications expressly require technical skills and
26 training: (1) Power Generator Technician/Hydro Certified Technician (graduated and certified by a
27 diesel technical college or has certifications for diesel controls and diesel power train engine training);
28 (2) Electrical, Plant, Hydro/Generation Technician (electrical expertise); and (3) SCADA Technician

1 (electrical and instrumentation expertise, skilled in computer logic, controls, interfacing, and system
2 integration, understanding of relatively complex technical problems and performance of a wide variety
3 of non-routine tasks, where only general methods of procedure are available). The Existing Bargaining
4 Unit also includes an Apprentice Electrical, Plant, Hydro/Generation Technician position and an
5 Apprentice SCADA Technician position. When working in one of these Apprentice positions, Existing
6 Bargaining Unit employees are acquiring the technical skills and training to work as a journeyman.

7 The job descriptions for the following Existing Bargaining Unit Classifications expressly require
8 the sampling and testing of water and chemicals: (1) Foreman, Shift, Water Treatment, Working
9 (required to relieve all subordinate capacities when required, compliance with all federal, state and local
10 government regulations); (2) Operator, Water Plant, Grade II, Treatment Only (takes samples of water
11 at established times and makes such standardized control tests as chlorine residual, coagulation tests,
12 pH, etc. as may be required, adjusts rate-of-feed of chemical dispensers accordingly, conducts daily
13 radiological monitoring, makes prescribed and special reports); (3) Operator, Water Plant, Grade II,
14 Treatment & Distribution (takes samples of water at regular intervals and makes such control tests
15 required to ensure the efficient production of a safe product for public consumption, performs tests and
16 adjusts chemical feed equipment to ensure optimal performance of treatment plant process); (4)
17 Operator, Water Plant, Grade III, Treatment & Distribution (reports unusual operating conditions and
18 special reports as required, takes samples of water at regular intervals and makes such control tests
19 required to ensure the efficient production of a safe product for public consumption, performs tests and
20 adjusts chemical feed equipment to ensure optimal performance of treatment plant process); and (5)
21 Specialist, Water Supply (takes water samples and performs simple water quality tests on both raw
22 water and finished water).

23 TMWA's employment policies are set forth in its Administrative Instructions. These
24 Administrative Instructions recognize that, "Many of TMWA's employees are members of the Local
25 Union 1245" and therefore "their employment is governed by the terms of the [CBA] in addition to
26 these Administrative Instructions. Where there is a conflict between the Administrative Instructions and
27 the CBA, the terms of the CBA will apply to collective bargaining unit employees. Thus, except where
28 Local 1245 and TMWA bargained for a different employment policy or practice, employees in the

1 Existing Bargaining Unit, the Water Quality Employees, and all other TMWA employees are governed
2 by the same employment policies and procedures. These common policies and procedures include, but
3 are not limited to, (1) equal employment opportunity and non-discrimination, (2) reasonable
4 accommodations under the Americans with Disabilities Act, (3) prohibition of unlawful harassment, (4)
5 discrimination, harassment, and retaliation complaint and investigation process, (5) information
6 technology, (6) drug and alcohol, (7) employment eligibility verification, (8) identification and key
7 cards; (9) family medical leave; (10) military leave; (11) personal use of TMWA equipment and
8 wireless communication devices; (12) vehicle use and accident prevention; and (13) health and safety
9 policies.

10 The Existing Bargaining Unit employees, Water Quality Employees, and all other TMWA
11 employees receive the same medical, dental, and vision benefits. Existing Bargaining Unit employees
12 and Water Quality Employees also have the same pension/deferred compensation benefits. All benefits
13 are administered from the same office for all TMWA employees, including the Existing Bargaining
14 Unit employees and the Water Quality Employees. Likewise, all TMWA employees submit identical
15 medical, vision and dental insurance enrollment and change forms, 457 deferred compensation plan
16 contribution forms, and survivor beneficiary designation forms to the same Human Resources
17 Department. Similarly, both the Existing Bargaining Unit employees and the Water Quality Employees
18 receive pay checks from TMWA and may choose to enroll in direct deposit by submitting the same
19 form to the same Human Resources Department. Finally, the COBRA premiums and policies are also
20 identical for all TMWA employees.

21 DISCUSSION

22 Preliminarily, TMWA asserted that it is entitled to deference in its decision to refuse accretion,
23 despite failing to cite any authority in support of this proposition. *See generally* TMWA's Pre-Hearing
24 Statement; TMWA's Closing Argument. TMWA attempts to adopt the standard of judicial review of
25 Board decisions on petitions for judicial review pursuant to NRS 233B. It is well-established that
26 Courts review questions of fact to determine whether the Board's decision was clearly erroneous or an
27 arbitrary abuse of discretion. NRS 233B.135(3)(e)-(f); *Local Gov't Employee-Mgmt. Relations Bd. v.*
28 *Gen. Sales Drivers, Delivery and Helpers, Teamsters Local Union No. 14 of Int'l Bhd. of Teamsters,*

1 *Chauffeurs, Warehousemen & Helpers of Am.*, 98 Nev. 94, 98, 641 P.2d 478, 480-81 (1982); *Wynn Las*
2 *Vegas v. Baldonado*, 129 Nev. Adv. Op. 78, 311 P.3d 1179, 1181 (2013). The proper analysis of the
3 Board's determination on judicial review is therefore "merely to ascertain whether board's findings are
4 supported by substantial evidence, or whether its decisions are on the contrary, clearly erroneous,
5 arbitrary or capricious." *Gen. Sales Drivers*, 98 Nev. at 98, 641 P.2d at 480-81. "[S]ubstantial
6 evidences [does] not include the idea of [the] court weighing the evidence to determine if a burden of
7 proof was met or whether a view was supported by a preponderance of the evidence." *State Employment*
8 *Security Dep't v. Hilton Hotels Corp.*, 102 Nev. 606, 608, 729 P.2d 497, 498-499, n.1 (1986).

9 However, the Nevada Supreme Court expressly held "that NRS 233B.135 sets out a standard of
10 judicial review, not a standard of proof", and "[a]gency adjudication should use the standard of proof
11 set out in the agency's governing statutes." *Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. Adv. Op.
12 27, 327 P.3d 487, 491 (2014). The "'substantial evidence' standard set forth in NRS 233B.135 is a
13 standard of review", not a standard of proof. *Id.* at 490. "The substantial evidence standard of review
14 thus refers to the quality and quantity of the evidence necessary to support factual determinations. It
15 contemplates deference to those determinations on review, asking only whether the facts found by the
16 administrative factfinder are reasonably supported by sufficient, worthy evidence in the record." *Id.*
17 "Thus, NRS 233B.135's standard of review does not set forth a standard of proof that administrative
18 agencies apply in their adjudicative hearings." *Id.* The Court held that "in the absence of a specific
19 governing statute", the preponderance of the evidence standard applies. *See id.*

20 This is made further evident by the fact that Courts do not have inherent appellate jurisdiction
21 over administrative agencies. *Crane v. Continental Telephone Co. of California*, 105 Nev. 399, 401,
22 775 P.2d 705, 706 (1989). Instead, the ability to conduct a judicial review is both created and
23 constrained by the Administrative Procedure Act ("APA"), NRS Chapter 233B. The judicial review
24 procedures in the APA provide the exclusive means for a court to review an administrative decision.
25 NRS 233B.130(6). Under this standard, this Court must presume the Board's decision to be reasonable
26 and lawful. NRS 233B.135(3). The Board's decision should not be disturbed unless a petitioner can
27 demonstrate an error with the decision pursuant to NRS 233B.135(3).

28 ///

Moreover, the plain language of the statute does not contemplate deference afforded to TMWA's initial determination. *See* NRS 288.170. As such, TMWA is mistaken in its argument that it is entitled to the same deferential standard of judicial review that is afforded to the Board pursuant to the APA.

NRS 288.170 provides, in pertinent part:

1. Each local government employer which has recognized one or more employee organizations shall determine, after consultation with the recognized organization or organizations, which group or groups of its employees constitute an appropriate unit or units for negotiating. The primary criterion for that determination must be the community of interest among the employees concerned.

...

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

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

A community of interest includes, among other considerations: similarities in duties, skills, working conditions, job classifications, employee benefits, and the amount of interchange or transfer of employees, integration of an employer's operations and supervision of employees. *Nye County Law Enforcement Ass'n v. Nye County*, Item No. 805, Case No. A1-046123 (2015). The Board also considers factors such as the desires of the affected employees, geographic proximity, common objectives in providing services, personnel policy, and the frequency of contact among the employees. *The Douglas County Professional Ed. Ass'n v. The Douglas County Sch. Dist.*, Item No. 230, Case No. A1-045442 (1989).

The Board generally favors larger wall-to-wall units in order to minimize the practical difficulties on a local government employer that result from a proliferation of bargaining units and to serve as a safeguard for employees against the diluted effectiveness caused by smaller and fragmented bargaining units. *Nye County Law Enforcement Ass'n v. Nye County*, Item No. 805, Case No. A1-046123 (2015).

1 “In its analysis on bargaining units in past decisions, the Board has determined that ‘a broad
2 interpretation of community of interest, although it places a responsibility on the employees to develop
3 a strong and fairly representative negotiating team from all contributing elements within each employee
4 organization, provides the most effective representation for the employees.’” *The Douglas County*
5 *Professional Ed. Ass’n v. The Douglas County Sch. Dist.*, Item No. 230, Case No. A1-045442 (1989).
6 The “interests of both local government employers and local government employees are best served by
7 establishing large bargaining units of employees rather than a proliferation of smaller units.” *Id.*

8 **Similarity in duties, skills, working conditions as well as geographic proximity, common**
9 **objectives in providing services, and the frequency of contact among employees:**

10 The Board finds these factors cut in favor of a finding of a community of interest. While the
11 affected employees do not share the same job descriptions, the Water Quality positions work side-by-
12 side with members of the existing Local 1245 bargaining unit, in a functionally interdependent fashion -
13 without working as a team, these two groups of employees could not fulfill their joint obligation to
14 ensure that water quality meets required standards. Water Quality employees work in synergistic
15 fashion with Local 1245 bargaining unit employees, who are the ones directly treating water in response
16 to Water Quality testing and input. For example, Water Quality employees will test water in the field
17 and communicate with Local 1245 Water Plant Operators to compare tested pH and chemical levels at
18 the plant, to see if adjustments are needed in plant operations. When Local 1245 unit employees fix,
19 maintain, replace, or repair water distribution systems such as pumps or pipes, they will have Water
20 Quality employees concurrently test water quality and even stand by until testing is complete, at which
21 point the Water Quality employees will give permission to the Local 1245 unit employees to proceed
22 with their work. Similarly, Water Quality employees perform testing and advise the Local 1245 crews
23 regarding disinfection and decontamination any time these crews do work that could contaminate water
24 distribution systems. In other instances, Chemists might work with plant operations to change the
25 chemical treatment of water in response to changes in river conditions. The end result is that there is
26 frequent and direct interaction and collaboration between Water Quality and Local 1245 employees
27 throughout each shift. The job descriptions for some Existing Bargaining Unit Classifications expressly
28 require the sampling and testing of water and chemicals.

Moreover, many of the Bargaining Unit employees and Water Quality Employees are required to obtain the same state certifications or similar state certifications. The evidence presented that while perhaps not required, in practice there are already highly technical and educated employees in the Existing Bargaining Unit. Moreover, there are already other classifications within the Local 1245 bargaining unit that require an equally high degree of technical skill and knowledge as the Water Quality positions, including the Electrical or SCADA Technicians who ensure that plant electrical and control systems are functioning properly. Positions in both the Operations and Water Quality and the Distribution, Maintenance, and Generation Departments require State of Nevada Grade I, II, or III Water Distribution certifications. The Nevada Water Distribution exam tests an employee's knowledge in the following areas relating to water distribution: (a) security, safety, and administration (manage system, promote public relations, safety program, record keeping); (b) compliance with drinking water regulations; (c) evaluation and maintenance of equipment; (d) installation of equipment; (e) monitoring, evaluation and adjustment of disinfection (inspections of source water); (f) operation of equipment; (g) system design, information, and components; (h) system inspection, and (i) water quality parameters and sampling/laboratory analysis (collecting and preserving samples, performing laboratory analysis, and interpreting laboratory analysis). Positions in the Operations and Water Quality Department require State of Nevada Grade I, II, or III Water Distribution and Water Treatment Operator certifications. The Nevada Water Treatment exam tests an employee's knowledge in the following areas relating to water treatment: (a) security, safety, and administration (manage facility, respond to emergencies, safety procedures, record information); (b) laboratory analyses; (c) compliance with drinking water regulations; (d) operation and maintenance of equipment (evaluation of operation of equipment, operation of equipment, and maintenance of equipment); (e) evaluation of characteristics of source water; and (f) monitoring, evaluation, and adjustment of treatment (chemical addition, coagulation and flocculation, clarification and sedimentation, filtration, residuals disposal, and additional treatment tasks).

The Water Quality group's essential function to ensure that TMWA is, in fact, providing water that meets water quality standards and regulations is indistinguishable from their counterparts in the Local 1245 bargaining unit. In other words, Water Quality employees are crucial to the continued

1 running of the entire system to the same extent that the Local 1245 unit members are, and without both
2 working in unison, TMWA would not be able to fulfill its mission in delivering clean, healthy water.

3 Examples include pump station repairs, main checks and main repairs, new construction, tank
4 repairs, well repairs, and identifying problems out in the field to get them fixed. The Board was
5 presented with evidence that Existing Bargaining Unit employees follow up and ask questions of the
6 status of tests so they can do their work. The Board saw Bargaining Unit employees collecting samples
7 that are tested in the lab by Water Quality Employees. The Board saw common workspace in the lab.
8 The Board heard testimony of how Water Quality Employees receive complaints from Bargaining Unit
9 customer services representatives and then go and investigate to resolve those complaints by seeking
10 assistance from the operators. The Board also was presented with evidence regarding shared safety
11 supplies, shared office supplies, a shared break room, shared lab space as well as the general proximity
12 to office space, the use of same or similar safety vests and hardhats, similar safety shirts used for
13 chemical exposure, the same email system. Moreover, many of the working conditions are the same
14 because the employees are all working to serve the same function, and they have common workspaces
15 and overlap in coordination.

16 Finally, in terms of geographic proximity, Local 1245 members and Water Quality employees
17 work at the same treatment facility, with the Water Quality Lab being located directly in the middle of
18 the facility and with frequent communication between Water Quality employees and Local 1245 unit
19 employees. When not at a treatment facility, Water Quality employees are sometimes expected to
20 operate out in the field alongside Local 1245 crews performing work on the distribution system.

21 **Integration of an employer's operations and supervision of employees:**

22 The Board finds these factors cut in favor of a finding of a community of interest. Water
23 Quality employees are part of the larger Water Quality and Operations department, which has common
24 supervision by Andy Gebhardt, the Operations and Water Quality Director. Within the department are
25 the (1) Operations Maintenance, (2) Water Operations, (3) Distribution Operations, and (4) Water
26 Quality groups. With the exception of the five Water Quality employees, the remaining rank-and-file
27 employees in Water Quality and Operations—approximately 40 employees—are represented by Local
28 1245.

1 The Water Quality employees are directly supervised by Kelli Burgess, the Water Quality
2 Supervisor, who in turn works under Mr. Gebhardt. So although they have a different immediate
3 supervisor, the Water Quality group exists within the same chain of command as the Operations
4 Maintenance, Water Operations, and Distribution Operations groups represented by Local 1245.
5 Moreover, all Water Quality and Operations employees all fall under the same centralized
6 administrative and labor relations system.

7 The organizational chart submitted as Joint Exhibit 16 presented a clear picture that the Water
8 Quality Employees share the same director as many bargaining unit employees. Credible testimony was
9 presented that the Water Quality Department itself has weekly meetings not only with Water Quality
10 Supervisor Burgess but also with Operations Supervisor Raymond and Director Gebhardt.

11 **The amount of interchange or transfer of employees:**

12 The Board finds that this factor cuts against a finding of community of interest. The Water
13 Quality Employees cannot do the same job as those in the Existing Bargaining Unit. Water Quality
14 employees are specifically responsible for monitoring the output from the treatment and distribution
15 system, as opposed to working on the water system itself.

16 **Similarity in employee benefits and personnel policy:**

17 The Board finds these factors cut in favor of a finding of a community of interest. The Existing
18 Bargaining Unit employees, Water Quality Employees, and all other TMWA employees receive the
19 same medical, dental, and vision benefits. Existing Bargaining Unit employees and Water Quality
20 Employees also have the same pension/deferred compensation benefits. All benefits are administered
21 from the same office for all TMWA employees, including the Existing Bargaining Unit employees and
22 the Water Quality Employees. Likewise, all TMWA employees submit identical medical, vision and
23 dental insurance enrollment and change forms, 457 deferred compensation plan contribution forms, and
24 survivor beneficiary designation forms to the same Human Resources Department. Similarly, both the
25 Existing Bargaining Unit employees and the Water Quality Employees receive pay checks from TMWA
26 and may choose to enroll in direct deposit by submitting the same form to the same Human Resources
27 Department. Finally, the COBRA premiums and policies are also identical for all TMWA employees.

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1 Except where Local 1245 and TMWA bargained for a different employment policy or practice,
2 employees in the Existing Bargaining Unit, the Water Quality Employees, and all other TMWA
3 employees are governed by the same employment policies and procedures. These common policies and
4 procedures include, but are not limited to, (1) equal employment opportunity and non-discrimination,
5 (2) reasonable accommodations under the Americans with Disabilities Act, (3) prohibition of unlawful
6 harassment, (4) discrimination, harassment, and retaliation complaint and investigation process, (5)
7 information technology, (6) drug and alcohol, (7) employment eligibility verification, (8) identification
8 and key cards; (9) family medical leave; (10) military leave; (11) personal use of TMWA equipment
9 and wireless communication devices; (12) vehicle use and accident prevention; and (13) health and
10 safety policies.

11 **Employee choice:**

12 The Board finds this factor cuts in favor of a finding of a community of interest. The testimony
13 presented was unanimous in favor of accretion from those seeking to be accreted into the Existing
14 Bargaining Unit as well as many of Existing Bargaining Unit employees.

15 Taking all the factors into consideration as well as the Board's preference for larger wall-to-wall
16 units in order to serve as a safeguard for employees against the diluted effectiveness caused by smaller
17 and fragmented bargaining units as well as a broad interpretation of community of interest, the Board
18 finds that the Water Quality employees share a community of interest with the Existing Bargaining Unit
19 employees.

20 Finally, based on the facts in this case and the issues presented, the Board declines to award
21 costs and fees in this matter.

22 **FINDINGS OF FACT**

23 1. Local 1245 has been the exclusive bargaining agent for some non-supervisory TMWA
24 employees since 2001.

25 2. There are approximately 110 employees in the Existing Bargaining Unit, and there are no
26 other recognized bargaining units at TMWA and no union other than Local 1245 represents any TMWA
27 employees as their exclusive bargaining agent.

28 ///

1 3. The direct supervisor of all of the Water Quality Employees is the Water Quality and
2 Environmental Permitting Supervisor.

3 4. TMWA's employment policies are set forth in its Administrative Instructions.

4 5. Where there is a conflict between the Administrative Instructions and the CBA, the terms
5 of the CBA will apply to collective bargaining unit employees.

6 6. Thus, except where Local 1245 and TMWA bargained for a different employment policy
7 or practice, employees in the Existing Bargaining Unit, the Water Quality Employees, and all other
8 TMWA employees are governed by the same employment policies and procedures.

9 7. These common policies and procedures include, but are not limited to (1) equal
10 employment opportunity and non-discrimination, (2) reasonable accommodations under the Americans
11 with Disabilities Act, (3) prohibition of unlawful harassment, (4) discrimination, harassment, and
12 retaliation complaint and investigation process, (5) information technology, (6) drug and alcohol, (7)
13 employment eligibility verification, (8) identification and key cards; (9) family medical leave; (10)
14 military leave; (11) personal use of TMWA equipment and wireless communication devices; (12)
15 vehicle use and accident prevention; and (13) health and safety policies.

16 8. The Existing Bargaining Unit employees, Water Quality Employees, and all other
17 TMWA employees receive the same medical, dental, and vision benefits.

18 9. Existing Bargaining Unit employees and Water Quality Employees also have the same
19 pension/deferred compensation benefits. All benefits are administered from the same office for all
20 TMWA employees, including the Existing Bargaining Unit employees and the Water Quality
21 Employees.

22 10. All TMWA employees submit identical medical, vision and dental insurance enrollment
23 and change forms, 457 deferred compensation plan contribution forms, and survivor beneficiary
24 designation forms to the same Human Resources Department.

25 11. The Existing Bargaining Unit employees and the Water Quality Employees receive pay
26 checks from TMWA and may choose to enroll in direct deposit by submitting the same form to the
27 same Human Resources Department.

28 12. The COBRA premiums and policies are also identical for all TMWA employees.

1 13. The Water Quality positions work side-by-side with members of the existing Local 1245
2 bargaining unit, in a functionally interdependent fashion.

3 14. Water Quality employees work in synergistic fashion with Local 1245 bargaining unit
4 employees, who are the ones directly treating water in response to Water Quality testing and input.

5 15. There is frequent and direct interaction and collaboration between Water Quality and
6 Local 1245 employees throughout each shift.

7 16. The job descriptions for some Existing Bargaining Unit Classifications expressly require
8 the sampling and testing of water and chemicals.

9 17. Many of the Bargaining Unit employees and Water Quality Employees are required to
10 obtain the same state certifications or similar state certification.

11 18. In practice, there are already highly technical and educated employees in the Existing
12 Bargaining Unit.

13 19. There are other classifications within the Local 1245 bargaining unit that require an
14 equally high degree of technical skill and knowledge as the Water Quality positions.

15 20. Positions in both the Operations and Water Quality and the Distribution, Maintenance,
16 and Generation Departments require State of Nevada Grade I, II, or III Water Distribution certifications.

17 21. Positions in the Operations and Water Quality Department require State of Nevada
18 Grade I, II, or III Water Distribution and Water Treatment Operator certifications.

19 22. The Water Quality group's essential function, to ensure that TMWA is providing water
20 that meets water quality standards and regulations, is indistinguishable from their counterparts in the
21 Local 1245 bargaining unit.

22 23. Many of the working conditions are the same for Existing Bargaining Unit employees
23 and Water Quality Employees.

24 24. Local 1245 members and Water Quality employees work at the same treatment facility,
25 with the Water Quality Lab being located directly in the middle of the facility and with frequent
26 communication between Water Quality employees and Local 1245 unit employees.

27 25. When not at a treatment facility, Water Quality employees are expected to operate out in
28 the field alongside Local 1245 crews performing work on the distribution system.

26. Water Quality employees are part of the larger Water Quality and Operations department, which has common supervision by Andy Gebhardt, the Operations and Water Quality Director.

27. Water Quality employees are directly supervised by Kelli Burgess, the Water Quality Supervisor, who in turn works under Mr. Gebhardt.

28. Although they have a different immediate supervisor, the Water Quality group exists within the same chain of command as the Operations Maintenance, Water Operations, and Distribution Operations groups represented by Local 1245.

29. All Water Quality and Operations employees all fall under the same centralized administrative and labor relations system.

30. The Water Quality Employees cannot do the same job as those in the Existing Bargaining Unit.

31. Both Existing Bargaining Unit employees and that of those seeking to be accreting into the Existing Bargaining Unit.

32. If any of the foregoing findings is more appropriately construed as a conclusion of law, it may be so construed.

CONCLUSIONS OF LAW

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

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

3. NRS 233B.135 sets out a standard of judicial review, not a standard of proof, and agency adjudication should use the standard of proof set out in the agency's governing statutes.

4. The substantial evidence standard set forth in NRS 233B.135 is a standard of review, not a standard of proof.

5. NRS 233B.135's standard of review does not set forth a standard of proof that administrative agencies apply in their adjudicative hearings.

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1 6. In the absence of a specific governing statute, the preponderance of the evidence
2 standard applies.

3 7. The plain language of the statute does not contemplate deference afforded to TMWA's
4 initial determination.

5 8. TMWA is mistaken in its argument that it is entitled to the same deferential standard of
6 judicial review that is afforded to the Board pursuant to the APA.

7 9. NRS 288.170 provides that the primary criterion for that determination must be the
8 community of interest among the employees concerned.

9 10. A community of interest includes, among other considerations: similarities in duties,
10 skills, working conditions, job classifications, employee benefits, and the amount of interchange or
11 transfer of employees, integration of an employer's operations and supervision of employees.

12 11. The Board also considers factors such as the desires of the affected employees,
13 geographic proximity, common objectives in providing services, personnel policy, and the frequency of
14 contact among the employees.

15 12. The Board generally favors larger wall-to-wall units in order to minimize the practical
16 difficulties on a local government employer that result from a proliferation of bargaining units and to
17 serve as a safeguard for employees against the diluted effectiveness caused by smaller and fragmented
18 bargaining units.

19 13. In its analysis on bargaining units in past decisions, the Board has determined that 'a
20 broad interpretation of community of interest, although it places a responsibility on the employees to
21 develop a strong and fairly representative negotiating team from all contributing elements within each
22 employee organization, provides the most effective representation for the employees.

23 14. If any of the foregoing conclusions is more appropriately construed as a finding of fact, it
24 may be so construed.

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DATED this 29 day of September, 2017.

By: 
BRENT ECKERSLEY, ESQ., Chair

By: Philip E. Larson
PHILIP LARSON, Board Member

