

FILED

JUL 15 2019

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

NYE COUNTY MANAGEMENT
EMPLOYEES ASSOCIATION,

Petitioner,

vs.

NYE COUNTY,

Respondent.

CASE NO. 2018-012

NOTICE OF ENTRY OF ORDER

To: Petitioner and its attorneys of record, Adam Levine, Esq. and the Law Office of Daniel Marks;

To: Respondent and its attorneys of record, Nicolas Crosby, Esq. and Marquis Aurbach Coffing.

PLEASE TAKE NOTICE that the **ORDER** was entered in the above-entitled matter on July 15, 2019.

A copy of said order is attached hereto.

DATED this 15th day of July, 2019.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY

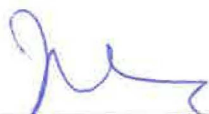

MARISU ROMUALDEZ ABELLAR
Executive Assistant

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Government Employee-Management Relations Board, and that on the 16th day of July, 2019, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

Law Office of Daniel Marks
Daniel Marks, Esq.
Adam Levine, Esq.
610 South Ninth Street
Las Vegas, NV 89101

Nick D. Crosby, Esq.
MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, NV 89145



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GOVERNMENT EMPLOYEE-MANAGEMENT
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NYE COUNTY MANAGEMENT
EMPLOYEES ASSOCIATION,

Complainant,

v.

NYE COUNTY,

Respondent.

Case No. 2018-012

PANEL E

ORDER

ITEM NO. 844

On May 29, 2019, this matter came before Panel E of the State of Nevada, Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Government-Management Relations Act (the "Act"), NAC Chapter 288 and NRS Chapter 233B. The Board held a 2-day administrative hearing on this matter on April 9-10, 2019¹.

The Collective Bargaining Agreement ("CBA") between Complainant and Respondent for which Complainant seeks accretion of the Deputy District Attorneys ("DDAs") provides that the following classifications are covered by the CBA: (a) Assistant Planning Director; (b) Database Manager; (c) Director, Emergency Management Services; (d) Director, Management Information System; (e) Director, NWRPO; (f) Director, Planning; (g) Director, Public Works; (h) Director, Human Services; (i) Engineer (In Training); (j) Geoscience Manager; (k) Geoscientist I; (l) Geoscientist II; (m) Geoscientist III; (n) Geotechnical Representative; (o) Manager, Facility Operations; (p) Manager, Human Services; (q) Network Engineer; (r) Principle Planner; (s) Public Information Officer; (t) Road Superintendent; and (u) Utilities Superintendent.

¹ At the time of the hearing and deliberation on the matter, the name of the agency was the Local Government Employee-Management Relations Board, and the name of the Act was the Local Government Employee-Management Relations Act. Both were changed with the enactment of SB135 on June 12, 2019.

1 The parties stipulated that that none of the classifications identified in the CBA (Article 4) share
2 the same duties as a DDA. The parties also stipulated that they “don’t swap job duties” in relation to
3 whether is interchange between the classifications and the DDAs.

4 Between February and April 2018, the DDAs communicated to Respondent their desire to be
5 included in the NCMEA bargaining unit. Ultimately, a Settlement Agreement and MOU were drafted.
6 The proposed Settlement Agreement and MOU were placed on the Board of County Commissioners’
7 agenda for action in November 2018. While the item was initially approved, it was later moved and
8 approved for reconsideration. In January 2019, the motion to vote on the item did not receive a second,
9 and therefore died for a lack thereof.

10 DISCUSSION

11 NRS 288.170 provides, in pertinent part:

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

17 ...

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

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

25 A community of interest includes, among other considerations: similarities in duties, skills,
26 working conditions, job classifications, employee benefits, and the amount of interchange or transfer of
27 employees, integration of an employer’s operations and supervision of employees. *Nye County Law*
28 *Enforcement Ass’n v. Nye County*, Item No. 805, Case No. A1-046123 (2015); *Int’l Brotherhood of*
Electrical Workers Local 1245 v. Truckee Meadows Water Auth., Case No. 2017-002, Item No. 825
(2017). 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

1 among the employees. *The Douglas County Professional Ed. Ass'n v. The Douglas County Sch. Dist.*,
2 Item No. 230, Case No. A1-045442 (1989); *Int'l Brotherhood of Electrical Workers Local 1245*, Case
3 No. 2017-002, Item No. 825 (2017).

4 "Because this is an area where special expertise is needed, the Board has exceptionally broad
5 discretion in determining an appropriate unit." *Pac. Sw. Airlines v. N.L.R.B.*, 587 F.2d 1032, 1037 (9th
6 Cir. 1978).

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

9 On balance, the Board finds these factors cut against a finding of a community of interest.

10 The parties stipulated that that none of the classifications identified in the CBA (Article 4) share
11 the same duties as a DDA. The evidence also established this includes their specific actual job duties.
12 The evidence further clearly established that the DDAs do not have a similarity in skills with the
13 bargaining unit at issue. Darrin Tuck, Nye County Public Works Utility Superintendent and President
14 of the NCMEA, admitted during the hearing that the DDAs do not share the same skills as the
15 bargaining unit employees. The skills required to be a DDAs are not similar to any of the job
16 classifications listed above (*e.g.*, public works, engineer, geoscientists, geotechnical representative,
17 facilities operations, road superintendent, utilities superintendent). None of these classifications require
18 admission to the State Bar of Nevada, nor do any of these classifications prosecute cases before the
19 Court. *See also, e.g., Pac. Sw. Airlines*, 587 F.2d at 1042 ("The most reliable indicium of common
20 interests among employees is similarity in their skills, duties, and working conditions.").

21 Further, as noted by the Board, although the position of NWPRO Director lists a preference for
22 an advanced degree, this was a preference and not a requirement as in the DDA classification. *But see*
23 *Nye County Law Enforcement Ass'n v. Nye County*, Case No. A1-046123 (2015) (noting that all
24 employees are peace officers and have been certified by the Peace Officers and Standards Training
25 Commission and each of these employees undergo the same or similar training as required by the
26 Commission).

27 The testimony also established that the DDAs do not work side-by-side with the bargaining unit
28 employees, except for a few isolated incidents. The DDAs were only able to identify a handful of times

1 when they had an opportunity to interact or work with the bargaining unit employees. For example, as
2 to when the DA's Office worked with the Director of Planning to obtain a history of a sign placement as
3 well as a general reference by a DDA who worked with the Public Information Officer to provide
4 information for press releases.

5 In *Int'l Brotherhood of Electrical Workers Local 1245 v. Truckee Meadows Water Auth.*, Case
6 No. 2017-002, Item No. 825 (2017), the Water Quality positions worked side-by-side with members of
7 the existing Local 1245 bargaining unit, in a functionally interdependent fashion - without working as a
8 team, these two groups of employees could not fulfill their joint obligation to ensure that water quality
9 meets required standards. However, here, there was seldom similarity in working conditions, and
10 infrequency in contact. While Complainant argued the DDA and the bargaining unit share a common
11 objective of generally providing services to the citizens of Nye County, this expansive generality does
12 not hold much water. See *contra, e.g., Truckee Meadows Water Auth.*, Case No. 2017-002, Item No.
13 825.

14 Finally, in terms of geographic proximity, while the building which houses the DDAs is on the
15 same property as one of the classifications, the majority of the other positions are located at two other
16 complexes, 1 to 3 miles away.

17 **Integration of an employer's operations, amount of interchange or transfer of employees,**
18 **and supervision of employees:**

19 The Board finds these factors cut against a finding of a community of interest.

20 As indicated, the parties also stipulated that bargaining unit employees "don't swap job duties"
21 with the DDAs in relation to whether there is interchange. Moreover, the evidence was undisputed that
22 none of the bargaining unit members share the same supervisory hierarchy or common supervision as
23 the DDAs. The DDAs report to and are supervised by the DA. None of the DDAs report to the County
24 Manager.

25 In *Truckee Meadows Water Auth.*, however, Water Quality employees were part of the larger
26 Water Quality and Operations department, which had common supervision by Andy Gebhardt, the
27 Operations and Water Quality Director. Water Quality employees were directly supervised by Kelli
28 Burgess, the Water Quality Supervisor, who in turn worked under Mr. Gebhardt. So although they have

1 a different immediate supervisor, the Water Quality group exists within the same chain of command.
2 Moreover, credible testimony was presented that the Water Quality Department itself had weekly
3 meetings not only with Water Quality Supervisor Burgess but also with Operations Supervisor
4 Raymond and Director Gebhardt.

5 Next, in *Truckee Meadows Water Auth.*, the Board found that the amount of interchange or
6 transfer of employees cut against a finding of community of interest as the Water Qualify Employees
7 could not do that same job as those in the existing bargaining unit. It is undisputed in this case that the
8 same holds true. *But see Nye County Law Enforcement Ass'n v. Nye County*, Case No. A1-046123
9 (2015) (noting that all employees work closely with the Sheriff's deputies, JPOs are dispatched by the
10 Sheriff's Office, and they share interview and detention rooms).

11 **Similarity in employee benefits, personnel policy and employee choice:**

12 The Board finds these factors cut in favor of a finding of a community of interest. The DDAs
13 pay scale is based upon the pay scale identified in the NCMEA, and they have the same personnel
14 policy that governs all employees of the County, along with sharing the same benefits.²

15 The testimony presented was also in favor of accretion from that of those seeking to be accreted
16 into the existing bargaining unit.

17 **Request to be represented by Local 14 and Equitable Estoppel**

18 Complainant filed their Complaint with this Board seeking a finding that the DDAs share a
19 community of interest with the other bargaining eligible supervisors and accretion into the NCMEA
20
21

22 ² While not determinative here, the Board notes however that in NRS 252.070(6), the Legislature
23 afforded a merit personnel system (which would encompass a just cause standard) to DDAs who are
24 employed by a county with a population of at least 700,000. The legislative history of the bill shows
25 there was not an intent to extend such rights to DDAs in the smaller counties (*i.e.*, Graham stated it
26 would not be appropriate for smaller counties in connection with Senator Raggio's concern related to
27 the district attorney of a county historically had the right to appoint and retain the DDAs). Furthermore,
28 NRS 288.140(4)(c) precludes a deputy district attorney assigned to a "civil law division, department or
agency" from being a member in an employee organization. Testimony at the hearing established that
the DDAs are sometimes required to perform both criminal and civil duties. One job classification
expressly covered civil work. While the majority of the DDAs indicated they were assigned to the
criminal division, the DA's office has a civil division and the DA has the authority to assign DDAs to
that department as needed.

1 bargaining unit. The Second Amended Notice of Hearing stated the issues to be addressed at the
2 hearing were:

3 **Complainants Statement of Issues:** Whether the criminal prosecutors employed
4 by the Nye County District Attorney's Office should be accreted into and
5 represented by the Nye County Management Employees Association, or
6 alternatively be forced to form their own bargaining unit.

7 **Respondent's Statement of Issues:** Do the Criminal Deputy District Attorneys
8 share a community of interest with the other bargaining eligible supervisors
9 employed by the County, despite the numerous distinctions between the two
10 groups.

11 Neither party filed an objection to the said notice. Respondent, in its Supplement to Pre-Hearing
12 Statement, requested that in the event that the Board concludes that there is not an appropriate or
13 sufficient community of interest, then the criminal prosecutors wish this Board to recognize Teamsters
14 Local 14 as their exclusive bargaining representative.

15 The Board finds it would be inappropriate to do so at this stage.³ Not only did Complainant not
16 include this request in its Complaint, nor did they object to the Second Amended Notice of Hearing, the
17 request fails to comply with the statutory requirements. NRS 288.160 requires an employee organization
18 to present a copy of its constitution and bylaws, if any; a roster of its officers, if any, and representatives;
19 and a pledge in writing not to strike against the local government employer under any circumstances. If
20 an employee organization, at or after the time of its application for recognition, presents a verified
21 membership list showing that it represents a majority of the employees in a bargaining unit, and if the
22 employee organization is recognized by the local government employer, it shall be the exclusive
23 bargaining agent of the local government employees in that bargaining unit.

24 The Board was not presented with sufficient evidence that Complainant met all of the
25 requirements above. *See also* NAC 288.143 ("The local government employer may challenge the
26 sufficiency of the application for recognition by filing a petition, in the form of a pleading, with the

27 ³ NRS 233B.121(1) and (2) require parties in contested cases to receive reasonable notice of matters to
28 be litigated. Failure to comply with the statutory notice requirements of the APA results in an invalid
order which must be set aside. *Coury v. Whittlesea-Bell Luxury Limousine*, 102 Nev. 302, 308, 721
P.2d 378 (1986). The APA further restricts agency discretion to rule only on matters officially noticed.
NRS 233B.121(9). The pleadings serve as the "outer measure of materiality". *See also Laabs v. City of*
Victorville, 163 Cal. App. 4th 1242, 1253, 78 Cal. Rptr. 3d 372, 381-82 (2008); *Hutton v. Fid. Nat'l*
Title Co., 213 Cal. App. 4th 486, 493, 152 Cal. Rptr. 3d 584, 590 (2013) (stating that "moving party
need not refute liability on some theoretical possibility not included in the pleading").

1 Board within 10 days after receipt of the application.”). If Complainant feels this is in error,
2 Complainant should file a petition for rehearing as provided in NAC 288.364. The Board also notes that
3 NRS 288.160 is plain and unambiguous that if the employee organization presents a verified
4 membership list and is recognized, Board involvement is generally not required.

5 In the same vein, for the first time, Complainant in its Fourth Pre-Hearing Statement argued that
6 equitable estoppel applies to the current matter. Preliminarily, the Board was inclined to not rule on this
7 issue because it was not asserted in the Complaint, due to the late nature of its presentation, and because
8 the Board determines here only that the DDAs do not share a community of interest with the bargaining
9 unit.

10 Regardless, the Board finds equitable estoppel is not warranted in this case and was not
11 established. Complainant argues that the County knew that there was an issue as to whether the DDAs
12 should be part of the NCMEA bargaining unit or their own bargaining unit; intentionally led the union to
13 believe that it would permit the DDAs into the bargaining unit by entering into negotiations with union;
14 the union mistakenly believed that the County was bargaining in good faith and that Mark Ricciardi had
15 authority to make a deal; and the union relied to its detriment upon such representation by giving up the
16 Director of ER Management Service positions in return for the DDAs, and agreeing to continue the
17 hearing of this matter which was originally set for January 9, 2019.

18 In *Red Coats, Inc.*, 328 NLRB 205 (1999), the NLRB found that the Respondent was equitably
19 estopped from challenging the appropriateness of the units when it extended voluntary recognition. The
20 NLRB identified the essential elements of equitable estoppel as knowledge, intent, mistaken belief, and
21 detrimental reliance. However, here there was no voluntary recognition. *See also Complaint*, at ¶ 7
22 (“Despite the request for recognition as part of the NCMEA bargaining unit, Nye County has
23 continuously failed to take timely action to recognize the NCMEA as the exclusive bargaining
24 representative of the Criminal Deputy District Attorneys.”); *but see Red Coats, Inc.*, 328 NLRB 205
25 (1999) (“By voluntarily recognizing the Union, and then insisting in negotiations that the parties bargain
26 on a single-location basis, the Respondent induced the Union to believe that the Respondent would forgo
27 any challenge to the Union's status based on a unit appropriateness argument.”).

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Moreover, it was credibly established that the MOU required approval by the County Commission which was not received, including the removal of the director of the EMS position and addition of the DDAs assigned to the criminal division. A commissioner made a motion to put this off until there was a full board at the next meeting and allow her time to check out a concern that came to her on the phone. This motion passed. At a later meeting, the motion failed for lack of a second. It was further stipulated that because the MOU changes the CBA, the statute requires approval for the MOU. The Board of County Commissioners ultimately did not approve the settlement agreement. Testimony established that to this day, the board has taken no action to either recognize the DDAs as part of the NCMEA. *See also Kern, Inyo & Mono Ctys. Bldg. & Constr. Trades Council & Golden Queen Mining Co., LLC*, No. 31-CE-129697, 2015 WL 8138319 (Dec. 7, 2015) (“In this narrow line of cases [including *Red Coats, Inc.*, *Alpha Associates*, and *R.P.C., Inc.*] involving withdrawal of recognition based upon a Union merger issue two years prior, the untimely challenge of a voluntary recognition, and an RC petition filed contrary to a Union's agreement, the Board held that in these narrow circumstances estoppel may apply. The facts of those cases are inapposite here.); *Oak Harbor Freight Lines, Inc. v. Nat'l Labor Relations Bd.*, 855 F.3d 436, 443 (D.C. Cir. 2017), *cert. denied sub nom. Oak Harbor Freight Lines, Inc. v. N.L.R.B.*, 138 S. Ct. 977, 200 L. Ed. 2d 246 (2018). In the same vein, equitable estoppel is not warranted in this matter. Furthermore, the NLRB also noted that “[t]he benefit received here by the Respondent was the avoidance of a companywide union organizing campaign and the stabilization of labor relations.” *Red Coats, Inc.*, 328 NLRB 205 (1999). However, detrimental reliance was not established here as indicated above. *See also, e.g., Shepard Exposition Servs., Inc.*, No. 11-CA-20859, 2006 WL 1666698 (June 13, 2006); *Raymond Interior Sys. & Operative Plasterers & Cement Masons Int'l Ass'n, Local Union 200*, 357 NLRB 2174, 2188 (2011) (“Estoppel will not apply where there is no reasonable reliance and where there is no harm.”).

* * *

While the Board generally favors larger wall-to-wall units and a broad interpretation of community of interest, on balance, the Board finds the factors do not cut in favor of accretion in this case. The DDAs and the bargaining unit did not share similar duties, skills or working conditions, and their contact was infrequent. Interchange or transfer among the DDAs and the bargaining unit was

1 lacking and it was uncontroverted that there is no common supervision. *See also, e.g., Pac. Sw.*
2 *Airlines*, 587 F.2d at 1042 (“there has been some interchange between the disputed employees and unit
3 members, but it has been sporadic and infrequent.”).

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

6 **FINDINGS OF FACT**

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

9 2. The CBA between Complainant and Respondent for which Complainant seeks accretion
10 of the DDA provides that the following classifications are covered by the CBA: (a) Assistant Planning
11 Director; (b) Database Manager; (c) Director, Emergency Management Services; (d) Director,
12 Management Information System; (e) Director, NWRPO; (f) Director, Planning; (g) Director, Public
13 Works; (h) Director, Human Services; (i) Engineer (In Training); (j) Geoscience Manager; (k)
14 Geoscientist I; (l); Geoscientist II; (m) Geoscientist III; (n) Geotechnical Representative; (o) Manager,
15 Facility Operations; (p) Manager, Human Services; (q) Network Engineer; (r) Principle Planner; (s)
16 Public Information Officer; (t) Road Superintendent; and (u) Utilities Superintendent.

17 3. The parties stipulated that that none of the classifications identified in the CBA (Article
18 4) share the same duties as a DDA.

19 4. The parties also stipulated that they “don’t swap job duties” in relation to whether is
20 interchange between the classifications and the DDAs.

21 5. Similarity in duties, skills, working conditions as well as geographic proximity, common
22 objectives in providing services, and the frequency of contact among employees cut against a finding of
23 a community of interest.

24 6. None of the classifications identified in the CBA (Article 4) share the same duties as a
25 DDA including their specific actual job duties.

26 7. DDAs do not have a similarity in skills with the bargaining unit at issue.

27 8. DDAs do not share the same skills as the bargaining unit employees.

1 9. The skills required to be a DDA are not similar to any of the job classifications listed
2 above (e.g., public works, engineer, geoscientists, geotechnical representative, facilities operations, road
3 superintendent, utilities superintendent).

4 10. None of these classifications require admission to the State Bar of Nevada, nor do any of
5 these classifications prosecute cases before the Court.

6 11. Although the position of NWPRO Director lists a preference for an advanced degree, this
7 was a preference and not a requirement as in the DDA classification.

8 12. DDAs do not work side-by-side with the bargaining unit employees, except for a few
9 isolated incidents.

10 13. The DDAs were only able to identify a handful of times when they had an opportunity to
11 interact or work with the bargaining unit employees.

12 14. There was seldom similarity in working conditions and infrequency in contact.

13 15. While Complainant argued the DDA and the bargaining unit share a common objective
14 of generally providing services to the citizens of Nye County, this expansive generality does not hold
15 much water.

16 16. Integration of an employer's operations, amount of interchange or transfer of employees,
17 and supervision of employees cut against a finding of a community of interest.

18 17. The evidence was undisputed that none of the bargaining unit members share the same
19 supervisory hierarchy or common supervision as the DDAs.

20 18. The DDAs report to and are supervised by the DA.

21 19. None of the DDAs report to the County Manager.

22 20. Similarity in employee benefits, personnel policy and employee choice cut in favor of a
23 finding of a community of interest.

24 21. The DDAs pay scale is based upon the pay scale identified in the NCMEA, and they
25 have the same personnel policy that governs all employees of the County, along with sharing the same
26 benefits.

27 22. DDAs are sometimes required to perform both criminal and civil duties.

28 23. One job classification expressly covered civil work.

1 24. While the majority of the DDAs indicated they were assigned to the criminal division,
2 the DA's office has a civil division and the DA has the authority to assign DDAs to that department as
3 needed.

4 25. Complainant filed their Complaint with this Board seeking a finding that the DDAs share
5 a community of interest with the other bargaining eligible supervisors and accretion into the NCMEA
6 bargaining unit.

7 26. Neither party filed an objection to the Second Amended Notice of Hearing.

8 27. Not only did Complainant not include this request in its Complaint, they did not object to
9 the Second Amended Notice of Hearing, and thus the request fails to comply with the statutory
10 requirements.

11 28. Equitable estoppel was not asserted in the Complaint.

12 29. Between February and April 2018, the DDAs communicated to Respondent their desire
13 to be included in the NCMEA bargaining unit.

14 30. Ultimately, a Settlement Agreement and MOU were drafted.

15 31. The proposed Settlement Agreement and MOU were placed on the Board of County
16 Commissioners' agenda for action in November 2018.

17 32. While the item was initially approved, it was later moved and approved for
18 reconsideration.

19 33. A commissioner made a motion to put this off until there was a full board at the next
20 meeting and allow her time to check out a concern that came to her on the phone.

21 34. This motion passed.

22 35. At a later meeting, the motion failed for lack of a second.

23 36. There was no voluntary recognition.

24 37. The Board of County Commissioners ultimately did not approve the settlement
25 agreement.

26 38. The board has taken no action to either recognize the DDAs as part of the NCMEA.

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1 39. Despite the request for recognition as part of the NCMEA bargaining unit, Nye County
2 has continuously failed to take timely action to recognize the NCMEA as the exclusive bargaining
3 representative of the Criminal Deputy District Attorneys.

4 40. MOU required approval by the County Commission which was not received, including
5 the removal of the director of the EMS position and addition of the DDAs assigned to the criminal
6 division.

7 41. It was further stipulated that because the MOU changes the CBA, the statute requires
8 approval for the MOU.

9 42. In January 2019, the motion to vote on the item did not receive a second, and therefore
10 died for a lack thereof.

11 43. Detrimental reliance was not established.

12 13 CONCLUSIONS OF LAW

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

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

18 3. NRS 288.170 provides that the primary criterion for that determination must be the
19 community of interest among the employees concerned.

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

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

26 6. The Board also considers factors such as the desires of the affected employees,
27 geographic proximity, common objectives in providing services, personnel policy, and the frequency of
28 contact among the employees.

1 7. Because this is an area where special expertise is needed, the Board has exceptionally
2 broad discretion in determining an appropriate unit.

3 8. The Board finds it would be inappropriate to do so at this stage for the Board to
4 recognize Teamsters Local 14 as their exclusive bargaining representative.

5 9. NRS 288.160 requires an employee organization to present a copy of its constitution and
6 bylaws, if any; a roster of its officers, if any, and representatives; and a pledge in writing not to strike
7 against the local government employer under any circumstances. If an employee organization, at or
8 after the time of its application for recognition, presents a verified membership list showing that it
9 represents a majority of the employees in a bargaining unit, and if the employee organization is
10 recognized by the local government employer, it shall be the exclusive bargaining agent of the local
11 government employees in that bargaining unit.

12 10. The Board was not presented with sufficient evidence that Complainant meet all of the
13 requirements above. *See also* NAC 288.143.

14 11. NRS 288.160 is plain and unambiguous that if the employee organization presents a
15 verified membership list and is recognized, Board involvement is generally not required.

16 12. Equitable estoppel is not warranted in this matter.

17 13. Equitable estoppel was not established.

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

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DATED this _____ day of July, 2019.

By: Brent Eckersley
BRENT ECKERSLEY, ESQ., Chair

By: Gary A. Cottino
GARY COTTINO, Board Member