

FILED

OCT 21 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**

**Item No. 844-B**

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 ON REHEARING AND RECONSIDERATION**  
was entered in the above-entitled matter on October 21, 2019.

A copy of said order is attached hereto.

DATED this 21st day of October 2019.

GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

BY

  
MARISU ROMUALDEZ ABELLAR  
Executive Assistant

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

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

  
MARISU ROMUALDEZ ABELLAR  
Executive Assistant

FILED

OCT 21 2019

STATE OF NEVADA  
E.M.R.B.

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

NYE COUNTY MANAGEMENT  
EMPLOYEES ASSOCIATION,

Complainant,

v.

NYE COUNTY,

Respondent.

Case No. 2018-012

PANEL E

**ORDER ON REHEARING AND  
RECONSIDERATION**

**Item No. 844-B**

On October 15, 2019, this matter came before 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 previously found that the Deputy District Attorneys (DDAs) do not share a sufficient community of interest with the existing bargaining unit employees. Thereafter, the Board granted Complainant's Petition for Rehearing. NCMEA requested that the Board issue an order recognizing the NCMEA as the exclusive bargaining representative of the DDAs in their own bargaining unit. Complainant argued that the Board's Order was incomplete as Complainant indicated that the prosecutors wished to be represented by NCMEA and withdrew the request for recognition by Local 14. Complainant argued that all the requisites for representation by NCMEA had been met (as part of a separate bargaining unit for the prosecutors), including requesting representation, a pledge not to strike, and the County already had the Constitution and bylaws of NCMEA.

The Board held that if the County failed to file an initial response to the Board's Order granting the Petition for Rehearing, the Board would deem that requirements had been satisfied and recognize the NCMEA as the exclusive bargaining representative of the prosecutors in their own unit. Pursuant to NAC 288.364, the Board may change or modify its original decision.

1 In the County's Response it did not contest that all the requisites for representation have been  
2 meet by NCMEA, instead arguing that the issue is premature as a legal barrier to membership in an  
3 employee organization exists. Specifically, the County argues that the DDAs cannot be members of a  
4 collective bargaining unit. NRS 252.070(6) indicates that the Legislature afforded a merit personnel  
5 system for district attorneys in counties whose population was at least 700,000. The County argues that  
6 recognition of NCMEA as the bargaining representative of Nye County prosecutors essentially  
7 circumvents the statutory provision addressing merit personnel stems for counties with populations less  
8 than 700,000, as invariably the prosecutors would be able to avail themselves to things such as a just  
9 cause for termination benefit, a benefit the Legislature only intended for prosecutors employees in  
10 counties of at least 700,000. The County also argues that NRS 288.140(4)(c) precludes DDAs assigned  
11 to a civil department or division from membership in an employee organization.

12 While the County points to language in the Board's Order arguing that "the Board recognized  
13 these statutes", the Board's language here was in relation to community of interest criteria regarding  
14 whether the DDAs share a sufficient community of interest with the existing bargaining unit employees,  
15 which the Board found they did not. The Board did not make a determination on whether the DDAs  
16 may constitute their own separate and distinct unit. Specifically, the Board found that the similarity in  
17 employee benefits, personnel policy and employee choice cut in favor of finding a community of  
18 interest, also noting that the NRS 252.070(6) was "not determinative" and concluding that the  
19 legislative history of that bill showed there was no intent to extend the rights in NRS 252.070(6)<sup>1</sup> to  
20

---

21 <sup>1</sup> The Board also notes that its jurisdiction is limited to the statutory grant of authority contained in NRS  
22 Chapter 288. This is well-established. NRS 288.110(2) ("the Board may hear and determine any  
23 complaint arising out of the interpretation of, or performance under, the provisions of this chapter");  
24 *City of Reno v. Reno Police Protective Ass'n*, 98 Nev. 472, 474-75, 653 P.2d 156, 158 (1982)  
25 (upholding EMRB decision as "[t]he EMRB did not interpret the Charter."); *UMC Physicians*  
26 *Bargaining Unit v. Nevada Serv. Employees Union*, 124 Nev. 84, 89-90, 178 P.3d 709, 713 (2008) (the  
27 EMRA limits "the Board to hearing complaints... arising out of NRS Chapter 288's performance or  
28 interpretation."); *Int'l Ass'n of Fire Fighters, Local 1908 v. County of Clark*, Case No. A1-046120, Item  
No. 811 (2015) ("IAFF argues that the merit personnel system itself should have opened this  
appointment... However, it is not within our purview to determine whether or not the appointment...  
complied with the County's merit personnel system. This Board authority is limited to matters arising  
under interpretation of, or performance under, the Act"); *Simo v. City of Henderson*, Case No. A1-  
04611, Item No. 796, at 4 (2014); see e.g., *Flores v. Clark Cty.*, Case No. A1-045990, Item No. 737, at  
1-2 (2010).

1 DDAs in smaller counties. Moreover, this statute in no way provides that the prosecutors are prohibited  
2 from engaging in collective bargaining. A merit system is not synonymous with collective bargaining.  
3 The County's reasoning leads to the conclusion that no employees of Nye County or any other County  
4 other than Clark and Washoe can have collective bargaining rights under Chapter 288 which is not  
5 consistent with language or purposes and policies of the EMRA, nor the language in NRS 252.

6 As indicated, the County also argues that NRS 288.140(4)(c) precludes DDAs assigned to a civil  
7 department or division from membership in an employee organization. However, the plain language of  
8 the statute provides that only an attorney "who is assigned to a civil law division, department or agency"  
9 is excluded from membership in an employee organization. Of note, if the Legislature had intended to  
10 exclude attorneys employed by counties with a population less than 700,000, it would have provided for  
11 such an exclusion. In any event, the Board previously found that the prosecutors sometimes cover civil  
12 matters. However, this is not enough to deny them collective bargaining rights as it would be contrary  
13 to the plain language of the statute. If the Legislature had intended to excluded attorneys who  
14 sometimes handled civil work, it would have stated so, and it is not the place of the Board to engage in  
15 conjecture into what the Legislature should or would have done. *See, e.g. Zenor v. State Dep't of*  
16 *Transportation*, 134 Nev. 109, 110-11, 412 P.3d 28, 30 (2018) ("[I]t is not the business of this court to  
17 fill in alleged legislative omissions based on conjecture as to what the legislature would or should have  
18 done.").

19 Given that the County has not disputed that all the requisites for representation have been met,  
20 and there are no barriers to granting collective bargaining rights to the DDAs, the Board modifies and  
21 changes its prior decision to recognize the NCMEA as the exclusive bargaining representative of the  
22 prosecutors.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DATED this 21 day of October 2019.

By:   
BRENT ECKERSLEY, ESQ., Chair

By: Gary A. Cottino  
GARY COTTINO, Board Member