

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

IN RE:

THE ASSIGNMENT OF EXECUTIVE DEPARTMENT JOB CLASSIFICATIONS TO BARGAINING UNITS PURSUANT TO SENATE BILL 166 OF THE 82<sup>ND</sup> SESSION OF THE NEVADA LEGISLATURE

Case No. 2023-022

**DECISION, FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING ASSIGNMENTS AND OBJECTIONS RELATING TO UNITS L, M, N and O**

EN BANC

**ITEM NO. 893**

On January 8 – 10, 2024, this matter came before the State of Nevada, Government Employee-Management Relations Board (“Board”) for a hearing pursuant to the provision of the Government Employee-Management Relations Act (“EMRA”), NRS Chapter 233B, and NAC Chapter 288.<sup>1</sup> At issue were objections filed by unions to the classification assignments proposed by the Nevada Division of Human Resource Management (“DHRM”) following the enactment of SB 166.

**I. BACKGROUND**

On June 15, 2023, SB 166 was signed into law. SB 166 created four (4) new supervisory bargaining units which are:

- a. Unit L – Category I Peace Officers Supervisory Bargaining Unit;
- b. Unit M – Category II Peace Officers Supervisory Bargaining Unit;
- c. Unit N – Category III Peace Officers Supervisory Bargaining Unit; and
- d. Unit O – Fire Fighters Supervisory Bargaining Unit.

When Senate Bill 135 was signed into law in 2019, Section 53 of that bill had a temporary provision for assigning job classifications to each of the eleven (11) State bargaining units that were in place at the time. The process utilized by the Board during this period had DHRM submitting its recommendations for the more than one thousand (1,000) job classifications which assigned each of these

<sup>1</sup> The Board deliberated on the matter on February 27, 2024.

1 job classifications to one of the 11 bargaining units or to no bargaining unit (for management and  
2 confidential employees). The list was then published by the EMRB, and any labor organization then had  
3 the opportunity to file an objection to any of the recommendations on the list within twenty (20) days  
4 after its publication. Having seen that the process worked well in 2019, the Board elected to use the same  
5 process for the four new categories of supervisory positions created under SB 166.

6 The following labor organizations submitted objections to the DHRM classifications; (1) Nevada  
7 Association of Public Safety Officers; (2) Nevada Police Union; and (3) Battle Born Firefighters  
8 Association. Based upon the prehearing statements filed in this matter by the parties the issues to be  
9 addressed during the hearing were described as:

10 **A. Nevada Association of Public Safety Officers.**

- 11 1. Whether the recommendations issued by DHRM for unit L designating Staff Game  
12 Wardens, DPS Lieutenants and University Police Lieutenants are “management” was  
13 incorrect and therefore these job classifications should be included in the bargaining unit?  
14 2. Whether the recommendation issued by DHRM for Unit M designating Unit Managers,  
15 Youth Parole Bureau and AG Deputy Chief Investigator as “management” was incorrect  
16 and therefore these job classifications should be included in the bargaining unit?

17 **B. Nevada Police Union.**

- 18 1. Whether the recommendation issued by DHRM which separated the equivalent of  
19 lieutenants from the sergeant’s group because they were incorrectly assumed not to have  
20 a common community of interest is the incorrect classification?

21 **C. Battle Born Firefighter’s Association.**

- 22 1. Should the Board assign the job classification of Fire Management Officer (“FMO”) 1 to  
23 Unit O based upon the similarity of the FMO 1 position to the other six (6) supervisory  
24 job classifications within Unit O?  
25 2. Should the Board assign the job classification of FMO II to Unit O based upon the  
26 similarity of the FMO 1 position to the other six (6) supervisory job classifications within  
27 Unit O?

1 **D. State of Nevada.**

- 2 1. Determining the appropriateness of including the contested job classifications into the  
3 relevant bargaining units.

4 In sum, the issue is whether the positions described herein are supervisory positions, which may  
5 be included in one of the four new supervisory bargaining units, or management positions that are  
6 excluded from union membership.

7 **II. DISCUSSION**

8 NRS 288.400(2)(a) makes it clear that the Legislature intended to only grant certain state  
9 employees the right join unions and engage in collective bargaining. Under NRS 288.500, only  
10 “employees” have the right to become members of a bargaining unit and engage in collective bargaining.  
11 NRS 288.425(1) defines an “employee” for the purposes of NRS Chapter 288 and states:

12 **288.425. “Employee” defined**

- 13 1. “Employee” means a person who:

- 14 (a) Is employed in the classified service of the State pursuant to chapter 284 of NRS; or  
15 (b) Is employed by the Nevada System of Higher Education in the classified service of the  
16 State or is required to be paid in accordance with the pay plan for the classified service of  
17 the State.

18 Conversely, NRS 288.425(2) indicates what positions are excluded from the definition of  
19 employee when it states:

20 **2. The term does not include:**

- 21 **(a) A managerial employee whose primary function, as determined by the**  
22 **Board, is to administer and control the business of any agency, board, bureau,**  
23 **commission, department, division, elected officer or any other unit of the**  
24 **Executive Department and who is vested with discretion and independent**  
25 **judgment with regard to the general conduct and control of that agency,**  
26 **board, bureau, commission, department, division, elected officer or unit;**  
27 (b) An elected official or any person appointed to fill a vacancy in an elected office;  
(c) A confidential employee;  
(d) A temporary employee who is employed for a fixed period of 4 months or less;  
(e) A commissioned officer or an enlisted member of the Nevada National Guard;  
(f) Any person employed by the Nevada System of Higher Education who is not in  
the classified service of the State or required to be paid in accordance with the pay  
plan of the classified service of the State; or  
(g) Any person employed by the Public Employees' Retirement System who is  
required to be paid in accordance with the pay plan of the classified service of the  
State.

1 (emphasis added). Thus, a state managerial employee cannot be a member of a bargaining unit.

2 It is the State of Nevada's ("State") contention that the positions covered by this matter cannot be  
3 members of a collective bargaining unit because they are management. The union disagreed with the  
4 State and filed their objections with the Board. The Board has the authority to determine what positions  
5 are management or supervisory employees under NRS 288.110, NRS 288.138 as applied via NRS  
6 288.515 and NRS 288.425.

7 The State presented evidence that DHRM utilizes the definitions in the State's Classification  
8 Procedural Manual to define what constitutes a manager when classifying a particular position. *See* State  
9 of Nevada's Response to Objection to DHRM's Recommendation Regarding Unit Classification at pp.  
10 2-3. The State's Classification Procedural Manual states in relevant part:

11 Level 3A Technical supervisor: Responsibility for controlling work methods and procedures but  
12 does not exercise control over employees' time and conduct. Example: a budget manager in a  
13 central fiscal office establishes procedures for field offices to follow in developing and  
maintaining their budgets. (Classification Manual)

14 Level 3B Administrative supervisor: Responsibility for the time and conduct of employees (who  
15 may be at the same or higher grade level) within the context of work unit activities and agency  
16 plans and policies. This type of supervisor does not possess the technical expertise to provide  
17 specific direction regarding the work methods, assignments or workflow of the employee(s)  
supervised. Example: a non-medical hospital administrator exercises administrative supervision  
over surgeons. (Classification Manual)

18 Level 4 First-line supervisor: Responsible for establishing work assignments and standards for  
19 the quality and quantity of work performed by subordinates; evaluating performance and  
20 conducting performance appraisal interviews; providing counseling and recommending  
21 disciplinary measures; training employees and making hiring recommendations; and approving  
22 various types of leave requests. (This level may include supervision of organizationally  
subordinate line supervisors.) (Classification  
Manual)

23 Level 5 Managerial supervisor: In addition to first-line supervisory responsibility for subordinate  
24 supervisors, a manager determines organizational structure within a component of an agency;  
25 develops work plans and objectives; develops, monitors and implements policies to accomplish  
26 long-range goals; coordinates and integrates various program activities and goals into the general  
mission of the agency; prepares budgets and monitors costs and expenditures; and implements  
higher level disciplinary measures. (Classification Manual)

27 *Id.*

1 In addition, the State presented testimony that it uses NAC 284.498(5) to help determine what  
2 positions are supervisory and managerial. NAC 284.498(5) states:

3 5. As used in this section:

4 (a) “**Managerial position**” means a position which is held by an employee who:

- 5 (1) Formally evaluates supervisors;
- 6 (2) Is involved in the hiring and firing of subordinate staff;
- 7 (3) Determines organizational structure within a component of the organization; and
- 8 (4) Develops, monitors and implements policies to accomplish long-range goals.

9 (b) “**Supervisory position**” means a position which is held by an employee who:

- 10 (1) Formally evaluates staff;
- 11 (2) Is involved in the hiring and firing of subordinate staff; and
- 12 (3) Establishes policies which affect the performance or behavior of subordinate  
13 staff.

14 However, neither NAC 284.498(5), nor the definitions set forth in the State’s 2003 Classification  
15 Procedural Manual, are the correct standard to use when determining whether an employee occupies a  
16 managerial position. The correct method to determine whether someone is a manager is to use the  
17 definition set out in NRS 288.425(2)(a).

18 Based on the evidence presented, not one of the positions the State considered to be managerial  
19 was “vested with discretion and independent judgment with regard to the general conduct and control of  
20 that agency, board, bureau, commission, department, division, elected officer or unit.” *Id.* In fact, the  
21 evidence showed that the creation of all of the positions, and the classification of such, predated the  
22 language currently found in NRS 288.425(2)(a) that was created via the passage of SB 153 in 2019.

23 The State also cited to the National Labor Relations Act (“NLRA”) which excludes supervisors  
24 from the definition of an employee. *Id.* at 5. The State’s reliance on the NLRA is misplaced because the  
25 NLRA is a federal law which controls labor relations in the private sector and does not allow any  
26 supervisors to engage in collective bargaining. In contrast, this Board must look to state law, which does  
27 allow supervisors to engage in collective bargaining, to determine which employees may belong to a  
28 bargaining unit.

Furthermore, the State relied heavily on the argument that managers are the only positions that  
may supervise supervisors. This issue is a red herring because this concept is not found in the definition  
of manager under NRS 288.425(2) nor is the language found in the definition of a supervisor under NRS

1 288.138 that is applicable to state employees via NRS 288.515(4)(e). Moreover, the State admitted it is  
2 acceptable to have the Lieutenant position at the Department of Corrections be in the same unit as  
3 sergeants despite the fact the lieutenant position supervises the sergeants. Furthermore, NRS 288.170(3),  
4 which is applicable only to local government employees, was not incorporated by reference when the  
5 Legislature decided to allow State employees to join unions. This stands in marked contrast to NRS  
6 288.138 which was incorporated via reference by the Legislature.

7 In sum, the evidence presented by both parties made it clear that the process utilized by the State  
8 to classify employees does not take into account the definition of management under NRS 288.425(2)(a).  
9 Instead, the State improperly relied on its definitions found in the State's outdated 2003 Classification  
10 Procedural Manual and NAC 284.498(5).

### 11 **III. FINDINGS OF FACT**

- 12 1. The evidence showed that the creation of the positions at issue herein, and the classification  
13 of such, predated the language currently found in NRS 288.425(2)(a) that was created via the  
14 passage of SB 153 in 2019.
- 15 2. The State did not update its 2003 Classification Procedural Manual to include the new  
16 language from NRS 288.425(2).
- 17 3. The State relied primarily on the 2003 Classification Procedural Manual to determine whether  
18 the positions at issue were classified as managers.
- 19 4. The State also utilized NAC 284.498(5) to decide which positions are managerial in nature.
- 20 5. Based on the evidence presented, not one of the positions the State considered to be  
21 managerial was "vested with discretion and independent judgment with regard to the general  
22 conduct and control of that agency, board, bureau, commission, department, division, elected  
23 officer or unit" as provided under NRS 288.425(2).
- 24 6. Based on the evidence presented, none of the positions at issue herein could be deemed to be  
25 managers under NRS 288.425(2).

1 **IV. CONCLUSIONS OF LAW**

- 2 1. The legal authority and jurisdiction of the Board to hear this matter are based upon NRS  
3 288.110, NRS 288.280 and Chapter 288 of the Nevada Administrative Code.
- 4 2. The State improperly utilized its outdated 2003 Classification Procedural Manual and NAC  
5 284.498(5) to determine what constitutes a manager.
- 6 3. The correct definition of “manager” for the purposes of Chapter 288 is found in NRS  
7 288.425(2)(a).
- 8 4. NRS 288.170 and the NLRA are inapplicable to this matter.
- 9 5. Based on the evidence presented, none of the positions at issue herein are managers under  
10 NRS 288.425(2).
- 11 6. The State failed to show how any of the contested positions are managerial in nature.
- 12 7. The job classifications that were contested will be included in the applicable bargaining units.

13 **V. ORDER**

14 Based on the foregoing, it is hereby **ORDERED** as follows:

- 15 1. All of the recommendations for bargaining units L, M and O that were not contested are  
16 approved by the Board as being in those units.<sup>2</sup>
- 17 2. That the following job classifications, which were contested, are ordered by the Board to be  
18 in the appropriate bargaining units as specified below:

19 Barging Unit L:

- 20 • Staff Game Warden (Title Code 13.115)
- 21 • DPS Lieutenant (Title Code 13.204)
- 22 • University Police Lieutenant (Title Code 13.215)

23 Barging Unit M:

- 24 • Unit Manager, Youth Parole Bureau (Title Code 13.263)
- 25 • Attorney General Deputy Chief Investigator (Title Code 13.246)
- 26

27 <sup>2</sup> The parties had orally agreed that the Criminal Investigator II job would be included in bargaining unit M. Currently, no  
28 employees occupy that job classification.

Bargaining Unit O:

- Fire Management Officer II (Title Code 01.812)
- Fire Management Officer I (Title Code 01.814)

DATED this 7<sup>th</sup> day of March, 2024.

GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

BY:   
BRENT C. ECKERSLEY, Chair

BY:   
SANDRA MASTERS, Board Member

BY:   
MICHAEL A. URBAN, Board Member



STATE OF NEVADA  
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BARGAINING UNITS PURSUANT TO  
SENATE BILL 166 OF THE 82<sup>ND</sup> SESSION OF  
THE NEVADA LEGISLATURE

NOTICE OF ENTRY OF ORDER

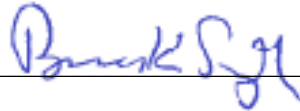
- TO: Nathan C. Holland, Esq., Deputy Attorney General for the State of Nevada;
- TO: Andrew Regenbaum, J.D. of the Nevada Association of Public Safety Officers;
- TO: Thomas J. Donaldson, Esq. of Dyer Lawrence, LLP;
- TO: Devon T. Reese, Esq. and Alex Velto, Esq. of Reese Ring Velto, PLLC.

PLEASE TAKE NOTICE that the **DECISION, FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING ASSIGNMENTS AND OBJECTIONS RELATING TO UNITS L, M, N and O** was entered in the above-entitled matter on March 7, 2024.

A copy of said order is attached hereto.

DATED this 7<sup>th</sup> day of March 2024.

GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

BY   
BRUCE K. SNYDER, Commissioner

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Government Employee-Management Relations  
3 Board, and that on the 7<sup>th</sup> day of March 2024, I served a copy of the foregoing **NOTICE OF ENTRY**  
4 **OF ORDER** by mailing a copy thereof, postage prepaid to:

5 Nevada Association of Public Safety Officers  
6 Andrew Regenbaum, J.D.  
7 145 Panama Street  
8 Henderson, NV 89015

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23 GOVERNMENT EMPLOYEE-MANAGEMENT  
24 RELATIONS BOARD

25 BY Isabel Franco

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