

1 NEVADA ASSOCIATION OF PUBLIC SAFETY OFFICERS
(CWA Local 9110, AFL-CIO)
2 RICHARD P. McCANN, J.D.
145 Panama Street
3 Henderson, NV 89015
Office: (702) 431-2677
4 Fax: (702) 822-2677
5 Cell: (702) 595-0683
E-mail: *rpmccann@hotmail.com*

FILED
August 19, 2019
State of Nevada
E.M.R.B.
10:30 a.m.

6 CLARK HILL, PLLC
7 NICHOLAS M. WIECZOREK, ESQ.
Nevada Bar No. 6170
8 3800 Howard Hughes Parkway, Suite 500
9 Las Vegas, NV 89169
Office: (702) 862-8300
10 Fax: (702) 862-8400
11 E-mail: *nwieczorek@clarkhill.com*

12 **BEFORE THE LOCAL GOVERNMENT EMPLOYEE**
13 **MANAGEMENT RELATIONS BOARD**

14
15 In re: Objections by NEVADA) **CASE NO.:** 2019-017
ASSOCIATION OF PUBLIC SAFETY)
16 OFFICERS (NAPSO), a Nevada Non-Profit)
Corporation, on behalf of all Affected State)
17 Employed Category 1, Category 2 and)
18 Category 3 Peace Officers and Supervisors,)
Petitioners.)

19
20
21 **OBJECTIONS TO RECOMMENDATIONS CONTAINED**
22 **WITHIN DEPARTMENT OF ADMINISTRATION REPORT**

23 NEVADA ASSOCIATION OF PUBLIC SAFETY OFFICERS (NAPSO), a Nevada
24 Non-Profit Corporation, on behalf of all Affected State Employed Category 1, Category 2 and
25 Category 3 Peace Officers and Supervisors, by and through its representatives, Richard P.
26 McCann, J.D. of the Nevada Association of Public Safety Officers and Nicholas M. Wieczorek,
27 Esq. of the law offices of Clark Hill, PLLC, and respectfully submit the following Objections to
28

1 the Recommendations made by the State of Nevada Department of Administration, Division of
2 Human Resources Management regarding the establishment of bargaining units as required by
3 Section 53 of Senate Bill 135 (2019).

4 **I.**

5 **UNIT "J" IS DESIGNATED AS SUPERVISORY EMPLOYEES FROM**
6 **ALL OCCUPATIONAL GROUPS – THIS DESIGNATION VIOLATES**
7 **NEVADA LAW REGARDING LAW ENFORCEMENT OFFICERS**
8 **AND THE CONCEPT OF SEPARATE BARGAINING UNITS**

9 Section 29 of Senate Bill 135 (2019) states in relevant part as follows:

10 "Sec. 29. 1. The Board shall establish *one bargaining unit* for
11 each of the following occupational groups of employees of the
Executive Department:

12 (j) *Supervisory employees from all occupational groups.*"

13 (Emphasis added).

14 The Memorandum issued by the State of Nevada Department of Administration,
15 Division of Human Resource Management, dated July 30, 2019, states in relevant part as
16 follows:
17

18 "Unit J was designed as *supervisory employees from all*
19 *occupational groups. . . .*" Page 3, line 1.

20 (Emphasis added).

21 NRS 288.170 states in relevant part as follows:

22 "Determination of bargaining unit; appeal to Board.

23 1. Each local government employer which has recognized one or
24 more employee organizations shall determine, after consultation
25 with the recognized organization or organizations, which group or
26 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."

27 (Emphasis added).
28

1 Finally, NRS 288.140 states in relevant part as follows:

2 ”3. A police officer, sheriff, deputy sheriff or other law
3 enforcement officer may be a member of an employee organization
4 only if such employee organization *is composed exclusively of law
enforcement officers.*”

5 According to the DHRM memo of July 30, 2019, **Unit A** is designated as labor,
6 maintenance, custodial and institutional employees; **Unit B** is designated as administrative and
7 clerical staff; **Unit C** is designated as technical aides, including computer programmers and tax
8 examiners); **Unit D** is designated as professional employees not providing health care, such as
9 engineers, scientists and accounts; **Unit E** is designated as professional employees who provide
10 health care, such as physical therapists; **Unit F** is designated as other non-professional
11 employees who provide health care; **Units G through I** are designated as peace officers; and
12 **Unit K** is designated as firefighters.

14 The decision to combine ALL supervisors from ALL employee classifications (**Unit J**)
15 is in direct contravention of NRS 288.170, which requires the Board to consider the primary
16 criterion for inclusion of parties in the same bargaining unit as “community of interest among
17 the employees concerned.” There is absolutely no community of interest between law
18 enforcement supervisors, maintenance supervisors, clerical supervisors, engineering and
19 accounting supervisors, physical therapy supervisors, or arguably firefighter supervisors.
20 Applying that standard alone, the inclusion of ALL supervisors from ALL employee
21 classifications violates NRS 288.170.

24 In addition, NRS 288.140 requires that law enforcement employee organizations must
25 be composed exclusively of law enforcement officers. The use of the term “employee
26 organization” in that statute clearly refers to the bargaining unit. Employee organizations refer
27 to “organizations of any kind having as one of its purposes improvement of the terms and
28 conditions of employment of local government employees.” NRS 288.040. In this state,

1 virtually all law enforcement employee organizations offer benevolent benefits to non-law
2 enforcement members and contain retired members, non-dues paying honorary members who
3 are not law enforcement officers, appointed members for use as its business agents, etc. The
4 key is whether the *bargaining unit* is composed exclusively of law enforcement officers. A
5 bargaining unit is group of local government employees recognized by the local government
6 employer as having sufficient community of interest appropriate for representation by an
7 employee organization *for the purpose of collective bargaining*. NRS 288.028. And that
8 makes perfect sense. It is the *bargaining unit* that must be composed exclusively of law
9 enforcement officers and have the same community of interest, not the benevolent association
10 that contains the bargaining unit while also providing other charitable and non-bargaining
11 purposes.
12

13
14 Since a *bargaining unit* composed of law enforcement officers must be exclusively
15 composed of law enforcement officers, and since the State has combined law enforcement
16 supervisors and non-law enforcement supervisors in the same *bargaining unit* (Unit J), NRS
17 288.140 is violated by the State's recommended combined supervisory unit.

18
19 Finally, there is a bit of common sense that must be applied in this matter. If Senate
20 Bill 135 and the State's July 30, 2019 memo recognize the significant differences among labor,
21 maintenance, custodial, administrative, clerical, technical, professional, health care, peace
22 officers and firefighters -- such as to place them into their own separate bargaining units -- it
23 makes no sense to lump all of their supervisors into one big bargaining unit.

24
25 For the foregoing reasons, it is submitted that at the very least, Category 1, Category 2
26 and Category 3 peace officer *supervisors* under Title Code 13.101 through 13.321 be removed
27 from the Unit J designation and be afforded the right to bargain separately in units that achieve
28

1 communities of interest and contain exclusively law enforcement officers from their specific
2 law enforcement Category designations.

3 **II.**

4 **GAMING CONTROL AGENTS, AS CATEGORY 2 PEACE OFFICERS,**
5 **MUST BE COVERED BY SENATE BILL 135 (2019)**

6 Section 19 of Senate Bill 135 (2019) refers to employees covered under this bill and
7 states in relevant part as follows:

8 “Sec. 19. 1. “Employee” means a person who:

9 (a) Is employed in the *classified service* of the State pursuant to
10 chapter 284 of NRS; . . .”

11 (Emphasis added).

12 NRS 289.360 states as follows:

13
14 “1. For the purpose of the administration and enforcement of the
15 provisions of chapter 205 of NRS involving a crime against the
16 property of a gaming licensee, or chapter 462, 463, 463B, 464 or
17 465 of NRS, the members of the Nevada Gaming Control Board
18 and the Nevada Gaming Commission and those agents of the
19 Board whose duties include the enforcement, or the investigation
20 of suspected violations, of statutes or regulations, *have the
21 powers of a peace officer.*

22 2. An agent of the Nevada Gaming Control Board whose
23 duties include the enforcement, or the investigation of suspected
24 violations, of statutes or regulations, and who has been certified
25 by the Peace Officers’ Standards and Training Commission, also
26 *has the powers of a peace officer* when, during the performance
27 of those duties:

28 (a) A felony, gross misdemeanor or misdemeanor is
committed or attempted in the agent’s presence; or

(b) The agent is given reasonable cause to believe that a
person has committed a felony or gross misdemeanor outside of
the agent’s presence.

3. For the purpose of protecting members of the Nevada
Gaming Control Board and of the Nevada Gaming Commission
and their families and property, and providing security at

1 meetings of the Board and of the Commission, an agent of the
2 Board whose duties include the enforcement of statutes or
3 regulations *has the powers of a peace officer.*”

4 (Emphasis added).

5 Finally, NRS 289.470 states in relevant part as follows:

6 “‘Category II peace officer’ defined. *“Category II peace officer”*
7 *means:*

8 10. *Agents of the Nevada Gaming Control Board* who
9 exercise the powers of enforcement specified in NRS 289.360,
10 463.140 or 463.1405, except those agents whose duties relate
11 primarily to auditing, accounting, the collection of taxes or license
12 fees, or the investigation of applicants for licenses;”

13 (Emphasis added).

14 Gaming Control Agents are considered unclassified employees and the State has not
15 included them in its listing of Category 2 peace officers under Title Code 13.103 through
16 13.267 (Unit H). Yet, they are clearly Category 2 peace officers under NRS 289.360 and
17 289.470 and the intent of Senate Bill 135 (2019) is clear that they should be included in the
18 coverage of this bill..

19 While Senate Bill 135 (2019) makes a general jurisdictional statement that a covered
20 employee in the bill is defined as a classified employee, Gaming Control peace officers are
21 nevertheless specifically identified as Category 2 peace officers and they are specifically
22 included as being covered under Section 29 of Senate Bill 135 (Unit H).

23 Here, the term “*Generalia Specialibus Non Derogant*” applies -- the specific prevails
24 over the general. The English term “implied exception” also applies since, in effect, the
25 specific provision of the statute (i.e., Gaming officers as Category 2 officers) implicitly carves
26 out an exception to the general commentary in the statute (i.e., classified employees).

27 One of main purposes of Senate Bill 135 was to carve out specific bargaining units of
28 Executive Department employees to negotiate with the state over mandatory subjects of

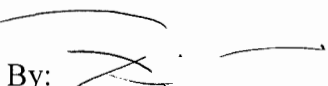
1 bargaining. The framers of Senate Bill 135 did so by identifying Category 1, Category 2 and
2 Category 3 peace officers and supervisors. Gaming Control officers are Category 2 peace
3 officers under NRS 289.470. As such, Gaming peace officers must be included under the
4 provisions of Category 2 peace officers (Unit H), irrespective of whether they are classified or
5 unclassified employees.

6
7 WHEREFORE, it is respectfully requested that this Board grant the requested remedy
8 by removing Category 1, Category 2 and Category 3 peace officer supervisors from being
9 lumped into Unit H designations and permit them to bargain separately in units that exclusively
10 contain law enforcement officers from their specific law enforcement Category designations.
11 In addition, it is requested that Gaming Control peace officers, as defined in Nevada law, be
12 covered under Senate Bill 135 (2019).

13
14 DATED this 19th ~~th~~ day of August 2019.

15 NEVADA ASSOCIATION OF
16 PUBLIC SAFETY OFFICERS
(CWA Local 9110 – AFL-CIO)

CLARK HILL, PLLC

17
18 By: 
19 RICHARD P. MCCANN, J.D.
20 Executive Director
21 145 Panama Street
22 Henderson, NV 89015
Office: (702) 431-2677
Fax: (702) 822-2677
E-mail: rpmccann@hotmail.com

By: /s/ Nicholas M. Wieczorek
NICHOLAS M. WIECZOREK, ESQ.
Nevada Bar No. 6170
3800 Howard Hughes Parkway, #500
Las Vegas, NV 89169
Office: (702) 862-8300
Fax: (702) 862-8400
E-mail: nwieczorek@clarkhill.com