STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CLARK COUNTY PUBLIC EMPLOYEES ASSOCIATION, SEIU LOCAL 1107, Complainant, -vs- UNIVERSITY MEDICAL CENTER, Respondent.	ITEM NO. 300 CASE NO. A1-045492 **DECISION**

For Complainant: Hope J. Singer, Esq.
TAYLOR, ROTH, BUSH & GEFFNER

For Respondent: Paul D. Johnson, Esq.
CLARK COUNTY DISTRICT ATTORNEY'S OFFICE

For the EMRB: Salvatore C. Gugino, Chairman
Tamara Barengo, Vice Chairman
Howard Ecker, Board Member

STATEMENT OF THE CASE

The subject Complaint was originally scheduled to be heard by this Board on September 5, 1991. At Complainant's request the hearing was continued and subsequently re-scheduled for December 10, 1991.

In a pre-hearing telephone conference held on December 4, 1991, the Complainant, Clark County Public Employees Association, SEIU Local 1107 ("Union"), and Respondent, University Medical Center ("UMC"), narrowed the issues to the following:

1. Whether or not in October 1990, Terril Johnson told employees that he vehemently resented employees who sought the help of the Union;

/ / /

2. Whether or not in October 1990, Mr. Johnson told employees approaching the Union would find out how vindictive he could be;

3. Whether or not in October 1990, Mr. Johnson told employees that he wanted to create manager positions to get rid of bargaining unit employees;

4. Whether or not in November 1990, Mr. Johnson disparaged the qualifications of a Union representative with the effect of undermining the Union;

5. Whether or not in January 1991, Mr. Johnson told employees that the Union agreed to mandatorily bargainable changes in the respiratory therapy department involving employees, knowing that the Union did not agree to those changes;

6. Whether or not in December, 1990, Mr. Johnson threatened employees with changes in their job titles and job classifications, limitations of their salaries, or changes in their mandatorily negotiable terms and conditions of employment;

7. Whether or not the employees referred to in paragraphs (a) through (f) were included in a bargaining unit of UMC employees;

8. Whether or not the Collective Bargaining Agreement (CBA) permits UMC, without negotiation, to promulgate, revise and modify rules, regulations and personnel policies, including policies concerning advance sign up for overtime and disqualification for repeated failure to appear when committed to do so;

9. Whether or not UMC, through Mr. Johnson, has reclassified bargaining unit employees in violation of the CBA;

10. Whether or not Shift Supervisors were ever recognized as members of the bargaining unit;

11. Whether or not the Union has waived its right to negotiate the policy and classification changes complained of by the Union;

12. Whether or not Mr. Johnson repeatedly apologized and retracted any statements he made which might be interpreted as disparaging the qualifications of a Union representative;

13. Whether or not the actions complained of were taken for legitimate business reasons for some anti-union purpose;

14. Whether of not the Complaint involves subject matter currently in the grievance process and as yet unresolved;

15. Whether or not comments made by UMC or its agents were protected speech under the First Amendment to the Constitution of the United States of America;

16. Whether or not Mr. Johnson's comments complained of, if found to have occurred, constituted a prohibited practice within the meaning of NRS 288.270(1)(a);

17. Whether or not UMC had a duty to negotiate the changes made;

18. Whether or not the changes complained of, if found to have occurred, constituted a prohibited practice within the meaning of NRS 288.270(1)(e); and

19. Whether or not the Board should defer to the CBA grievance process and refuse to hear those matters covered by the grievance process.

Additionally, the Union indicated that it was its position that in the event the Board finds that there was a violation of NRS 288.270(1)(e), it is inherent that there was a violation of NRS 288.270(1)(a). UMC objected to including same as an issue based on the allegations contained in Paragraphs 13 and 14 of the Complaint. (In said paragraphs the issues are treated separately.) Since the Union and UMC could not agree, the Union indicated it would raise the issue of the derivative nature of NRS 288.270(1)(a) at the hearing. The parties also agreed that in the event such violations are found, there would be no substantive difference in the remedy.

Due to witnesses being unavailable, UMC requested and

was granted a continuance of the hearing scheduled for December 10, 1991. The hearing was then re-scheduled . . April 23, 1992. On April 23, 1992, prior to commencement of the hearing, the Union's attorney indicated to the Board that the parties had reached a settlement with respect to the three individuals who had allegedly been disadvantaged and that the Union would therefore withdraw, with prejudice, the balance of Case A1-045492 (as well as Case A1-045501), contingent upon approval of the settlement agreement by UMC's Board. The parties agreed to waive the time frame in which the case(s) must be heard. The Board ("EMRB") stated that in the event UMC did not approve the settlement agreement, that the Board would have to consider whether to re-schedule these cases for hearing or have the parties submit them on the briefs. T Union's attorney asked the Board whether the parties could stipulate to provide additional briefs if, in fact, the Board decides to render a decision based on the submission of briefs. The Board agreed to allow additional briefs if these cases were to be submitted for decision on the briefs.

On August 12, 1992, the Union's attorney wrote the Board's Commissioner in pertinent part as follows:

> Re: SEIU Local 1107 v. UMC
> Case No. A1-045492
>
> Dear Mr. Garmon:
>
> The parties in the above-referenced case have been unable to reach a settlement agreement. You may recall that on April 23, 1992, Paul Johnson and I informed the Board that we had reached agreement. However, it appears that there was no meeting of the minds. When Mr. Johnson sent his drafted Settlement Agreement, it differed significantly

from the terms agreed to by the Union and its member-discriminatees.

Mr. Johnson and I have discussed this matter several times and it appears that there is no middle ground.

Accordingly, it is respectfully requested that the EMRB reschedule this matter for hearing.

Pursuant to it's deliberations in a telephone conference meeting held on August 31, 1992, the Board determined, in pertinent part, as follows:

> Case No. A1-045492 would be continued until submitted on the pleadings, with additional affidavits from the seven witnesses previously stipulated to by the parties, in accordance with the schedule set forth below.
>
> A. Any affidavits from witnesses which Complainant desires to submit, would be provided the Board and Respondent within two weeks from August 31, 1992, or by September 14, 1992.
>
> B. Any affidavits from witnesses which Respondent desires to submit, would be provided the Board and Complainant within two weeks from September 14, 1992, or by September 28, 1992.
>
> C. One week would be allowed for Complainant to respond to Respondent's affidavits by submitting additional affidavits from Complainant's witnesses; i.e., by October 5, 1992.
>
> D. Effective with submission of additional affidavits from Complainant's witnesses on October 5, 1992, the evidence would stand submitted.
>
> E. The parties would have an additional two (2) weeks following submission of additional affidavits to provide additional briefs, or by October 19, 1992. Thereupon, Case No. A1-045492 would stand submitted on the pleadings.

In view of the Board's determinations as set forth

above, the Union's request to re-schedule Case No. A1-045492 for hearing was denied.

DISCUSSION

From the evidence submitted by the parties, the Board has determined that the Complaint must be dismissed for the following reasons:

I.

THE ALLEGED PROHIBITED ACTS COMMITTED BY UMC'S AGENT (TERRIL JOHNSON) ARE MOOT.

A part of the instant Complaint involves the allegation that UMC's representative (Terril Johnson) made disparaging remarks about the qualifications of a Union representative (Bill Rivera) in order to undermine the Union. The record indicated a grievance was filed in connection with this allegation, which resulted in Mr. Johnson apologizing to Mr. Rivera. Said grievance was eventually withdrawn by the Union.

The Complaint contains numerous other allegations involving improprieties allegedly committed by Terril Johnson (against employees who were not members of the bargaining unit), over which grievances also were filed. Said grievances were also withdrawn by the Union.

Terril Johnson denied having made the statements attributed to him by the Union. Furthermore, his employment relationship with UMC was severed shortly after the instant Complaint was filed.

In view of the above, it appears to the Board that the catalyst for the Complaint has long since been removed, rendering moot the preponderance of issues formulated by the

parties.

II.

THE UNION HAS NO STANDING TO BRING A COMPLAINT BEFORE THE BOARD IN BEHALF OF EMPLOYEES WHO ARE NOT MEMBERS OF THE BARGAINING UNIT.

The only employees named in the Complaint who were allegedly affected by the subject alleged prohibited practices were "Shift Supervisors" at the time of the alleged violations. "Shift Supervisors" are not members of the bargaining unit for which the Union has been recognized as the exclusive bargaining agent, pursuant to NRS 288.160. Accordingly, under the principles of exclusive representation, the Union has no standing to bring the instant Complaint before this Board. 12 NPER CA-21025, San Francisco Community College District vs. SEIU, Local 790 (December 20, 1989); 13 NPER IL-22-67, Village of Oak Lawn vs. Oak Lawn Professional Fire Fighters Ass'n. (February 27, 1991); and 13 NPER NJ-21204, Eatontown Board of Education vs. Eatontown Teachers' Ass'n., Secretarial and Clerical Unit (August 15, 1990).

It may be true that all of the persons identified in the Complaint as having been impacted by the alleged violations are members of the Union. However, there is clear distinction between union membership and status as a member of the bargaining unit represented by the employee organization which has been recognized for collective bargaining purposes under NRS 288.160. Las Vegas Police Protective Ass'n. Metro. Inc. vs. Las Vegas Metropolitan Police Dept., Case No. A1-045310, EMRB Item No. 72 (October, 1977). Union representation under

NRS Chapter 288 clearly does not accrue by virtue of union membership, but rather by membership in the bargaining unit.

III.

THE COMPLAINT IS VAGUE, INDEFINITE AND LACKING IN SPECIFICITY.

If members of the bargaining unit were impacted or adversely affected (and none were named), the Complaint is simply too vague, indefinite and lacking in specificity to identify said bargaining unit members.

FINDINGS OF FACT

1. That the Complainant, Clark County Public Employees Association, SEIU Local 1107 is a local government employee organization.

2. That the Respondent, University Medical Center, is a local government employer.

3. That the Respondent, University Medical Center has recognized the Complainant, Clark County Public Employees Association, SEIU Local 1107, as the exclusive bargaining agent for certain of its employees.

4. That the employees named in the Complaint were not members of the bargaining unit represented by the Complainant, Clark County Public Employees Association, SEIU Local 1107, on the date(s) of the alleged violations.

5. That on the date(s) of the alleged violations Terril Johnson was a supervisory employee of University Medical Center within the meaning of NRS 288.075(1) and NRS 288.170.

6. That Terril Johnson apologized for any statements he made which might be interpreted as disparaging the

qualifications of a Union representative.

7. That Terril Johnson's employment with University Medical Center was terminated prior to July 29, 1991.

8. That no members of the bargaining unit which Complainant represents were named or otherwise identified with specificity as having been impacted by the alleged violations alluded to in the Complaint.

CONCLUSIONS OF LAW

1. That the Local Government Employee-Management Relations Board has jurisdiction over the parties and the subject matter of this Complaint, pursuant to the provisions of NRS Chapter 288.

2. That the Complainant, Clark County Public Employees Association, SEIU Local 1107, is a recognized employee organization as defined by NRS 288.040.

3. That the Respondent, University Medical Center, is a recognized local government employer as defined by NRS 288.060.

4. That, even though Terril Johnson was a supervisor of University Medical Center within the meaning of NRS 288.075(1) on the date(s) of the alleged violations of NRS 288.270, any such violations which may have impacted members of the bargaining unit were rendered substantially moot by Mr. Johnson's subsequent apology and termination as an employee of University Medical Center.

5. That the Complainant, Clark County Public Employees Association, SEIU Local 1107, has not been recognized under

NRS 288.160 as the exclusive bargaining agent for employees classified as "Shift Supervisors". Accordingly, the Complainant has no standing under NRS 288.160, NRS 288.170 or any other provision of the statute to bring the instant Complaint before this Board, alleging violations affecting employees outside of the bargaining unit; e.g., Shift Supervisors.

6. That, since no member of the bargaining unit was named or otherwise sufficiently identified as having been impacted by the alleged violations, the Complaint is too vague, indefinite and lacking in specificity to be considered a proper Complaint under NRS 288.110.

DECISION AND ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

The Union's Complaint is dismissed, without prejudice, with each side to bear its own costs and attorney's fees.

DATED this 19th day of January, 1993.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By _____
SALVATORE C. GUGINO, Chairman

By _____
TAMARA BARENGO, Vice Chairman

By _____
HOWARD ECKER, Member