STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CLARK COUNTY PUBLIC EMPLOYEES ASSOCIATION, SEIU LOCAL 1107, Complainant, -vs- CLARK COUNTY, Respondent.	ITEM NO. 301 CASE NO. A1-045521 **DECLARATORY ORDER**

For Complainant: Jeffrey E. Fisher, Esq.
HILBRECHT & ASSOCIATES

For Respondent: Mitchell M. Cohen, Esq.
CLARK COUNTY DISTRICT ATTORNEY'S OFFICE

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

The Clark County Public Employees Association, SEIU Local 1107 ("Association") has requested that the Local Government Employee-Management Relations Board ("Board") allow the Association's "Field Representatives" (non-attorneys) to appear before the Board as representatives of its members in contested cases and not be considered as improper persons.

On September 16, 1992, the Board heard oral argument for and against the request. (Respondent indicated it would have no objection to non-attorneys appearing as advocates in contested cases before the Board, however, Respondent expressed the opinion that the Board lacks the authority to promulgate a rule or regulation which allows non-attorneys to represent local government employers and employee

organizations in contested cases before the Board. In Respondent's opinion any change in the Board's policy regarding non-attorney representation must be pursuant to a statutory exception to the present law.)

In a memorandum dated May 1, 1990, the Board's Commissioner notified all Local Government Employers and Employee Organizations of Record, in pertinent part, as follows:

> At the request of the EMRB, the Nevada Attorney General's office researched the issue of non-attorney representation of local government employers and employee organizations in contested cases before the Board.
>
> The information from the Attorney General's office is summarized as follows:
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> 1. NRS 7.285 provides that no person shall practice law in the State of Nevada unless he is an active member of the State Bar of Nevada pursuant to the Rules of the Supreme Court.
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> 2. The Nevada Supreme Court has defined the practice of law as the professional giving of advice or judgement as to legal rights by someone not a party to the transaction. Pioneer Title Ins. & Trust v. State Bar, 74 Nev. 186, 191 (1958).
>
> 3. In determining whether a representative is practicing law, other standards have been applied to activities of representative:
>
> a. legal advice and instruction to clients;
>
> b. preparation for clients of documents requiring knowledge of legal principles;
>
> c. appearance for clients before public tribunals which has the power to determine rights of life, liberty and property;

/ / /

d. the application of legal knowledge and technique even though performed before and administrative tribunal;

e. examines and cross-examines witnesses and makes objections and resists objections to introduction of testimony; and

f. procedure is formal, adversarial and determinative of important legal rights.

See: AGO 83-14 (1983); AGO 87-9 (1987); Hampton v. Brewer, 103 Nev. 73 (1987).

4. The Legislature may carve out exceptions to Chapter 7 as evidenced by the provisions of NRS 616 which allows the insurer or employer to be represented in a contested case before the State Industrial Insurance System (SIIS) by private legal counsel or by any other agent.

Based on the above information, the Board concludes that representation in contested cases before the Board by non-attorneys is prohibited until the Legislature establishes an exception by statute.

Following the parties presentation of their respective oral arguments on September 16, 1992, the Board went into closed session to deliberate on the matter; i.e., review and consider the arguments to determine if its policy concerning representation by non-attorneys (as set forth in the Commissioner's above quoted memorandum of May 1, 1990) should be revised.

After due deliberation, including, but not limited to, a review of relevant legal authority [NRS 7.285; NRS 616; NRS 288.110; Pioneer Title Ins. & Trust v. State Bar, 74 Nev. 186, 191 (1958); Hampton v. Brewer, 103 Nev. 73 (1987); etc., as well as the relevant Attorney General Opinions] the Board

determined that it is prevented from granting the Association's request by statute and case law.

The Board is mindful that the present state of the law may preclude certain local government employee organizations from utilizing the services of the Board, due to the expense involved in hiring an attorney to represent them in any contested case which is to be decided by the Board. Because of this recognized hardship, the Board hereby states its support for a legislative change of the rule in order to allow employee organizations the right to be represented by a non-attorney. This exception to the rule should be strictly limited to non-attorneys who conform to the following conditions:

> (1) that the particular non-attorney advocate be selected by a unanimous vote of all members of the bargaining unit;
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> (2) that the advocate be an employee of the local government employer respondent and a bona fide, dues-paying member of the employee organization; and
>
> (3) that the advocate be a duly elected officer of the employee organization.

For the reasons previously set forth herein, the Board

HEREBY DECLARES AND ORDERS that the Association's request be and hereby is denied.

The Board further declares and orders that the Memorandum dated May 1, 1990, issued by the Board's Commissioner, advising all Local Government Employers and Employee Organizations of Record that representation in contested cases before the Board by non-attorneys is

prohibited, remains in effect until such time as the Legislature may establish an exception to NRS 7.285, specifically authorizing such non-attorney representation in contested cases before this Board.

Each party shall bear its own fees and costs in the above-captioned matter.

DATED this 15 day of December, 1992.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By _____
SALVATORE C. GUGINO, Chairman

By _____
TAMARA BARENGO, Vice Chairman

By _____
HOWARD ECKER, Member

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