

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

IRIS ORR,
Complainant,

vs.

COUNTY OF CLARK; UNIVERSITY
MEDICAL CENTER,
Employer-Respondents.

and

NEVADA SERVICE EMPLOYEES UNION,
LOCAL 1107, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO,
Union-Respondent.

ITEM NO. 492

CASE NO. A1-045696

DECISION AND ORDER

For Complainant: Thomas J. Moore, Esq.
T.J. Moore, Ltd.

For Employer-Respondents: Diane Carr, Esq.
Alverson, Taylor, Mortensen, Nelson & Sanders

For Union-Respondent: James G. Varga, Esq.
Van Bourg, Weinberg, Roger & Rosenfeld

STATEMENT OF THE CASE

On February 9, 2001, Iris Orr (hereinafter "Orr") filed a Complaint with the Local Government Employee-Management Relations Board (hereinafter "Board"). Orr was employed by local government employer University Medical Center (hereinafter "UMC"). Orr alleges that she was terminated without a pre-termination hearing on August 19, 2000, which was a prohibited practice.

UMC as a local government employer recognized Nevada Service Employees Union, Local 1107, Service Employees International Union, AFL-CIO (hereinafter "Union") as an employee organization. Orr was not a member of the Union.

UMC filed its Answer on March 1, 2001, and Union filed its answer on March 2, 2001. Both respondents submitted their pre-hearing statements on March 21, 2001, and complainant submitted her pre-hearing statement on April 2, 2001.

1 The Board held a hearing on June 15, 2001, noticed in accordance with Nevada's Open
2 Meeting Law.

3 Orr was represented by Thomas J. Moore, Esq., UMC was represented by Diane Carr, Esq.
4 of Alverson, Taylor, Mortensen, Nelson & Sanders, and Union was represented by James G. Varga,
5 Esq., of Van Bourg, Weinberg, Roger & Rosenfeld.

6 The Board heard oral argument from counsel, testimony from four (4) witnesses, received and
7 reviewed seven (7) hearing exhibits (alphabetical designation A through G). The Board's findings
8 are set forth as follows:

9 **FINDINGS OF FACT**

- 10 1. Orr was employed by local government employer UMC.
11 2. UMC as a local government employer recognizes Union as an employee organization.
12 3. Orr was not a member of the Union.
13 4. There is a valid Collective Bargaining Agreement ("CBA") between UMC and the

14 Union.

- 15 5. Orr is a member of a class covered under the CBA.

16 6. On or about July 31, 2000, Orr received a notice of suspension pending termination
17 from her employment with UMC.

18 7. Orr requested a pre-termination hearing through a letter from her attorney, Moore, to
19 John Espinoza, Human Resource Director at UMC, dated August 4, 2000 and sent by facsimile on
20 the same date.

21 8. On or about August 4, 2000, UMC informed Orr, through her attorney, that only the
22 Union could request a pre-termination hearing.

23 9. Orr's attorney sent the Executive Director of the Union, Thomas Beatty, a copy of the
24 letter requesting a pre-termination hearing on or about August 4, 2000 by facsimile.

25 10. Carlos Henderson, Chief Steward for the Union at UMC also received a copy of Orr's
26 August 4, 2000, letter requesting a pre-termination hearing sometime after August 4, 2000 from
27 Charles Odgers, the UMC Labor and Employee Relations Manager.

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1 11. The normal procedure for obtaining a pre-termination hearing is for the employee to
2 request a pre-termination hearing through the Chief Steward Henderson. After the Chief Steward is
3 contacted, he then fills out a form and files it with the Human Resources Division of UMC. The pre-
4 termination hearing is then scheduled.

5 12. Orr had contacted Henderson in the past to file a grievance on her behalf. The Union
6 represented Orr in a prior disciplinary matter. Orr did not like the representation she received from
7 the Union. Orr did not ask the Union to represent her in this matter.

8 13. Henderson did not sign the letter request that he received from Odgers because the
9 request came from an attorney and Henderson does not deal with attorneys. When shown the letter,
10 Executive Director Thomas Beatty told Henderson "not to worry about it" and did not ask Henderson
11 to sign the letter as required by the CBA to initiate a pre-termination hearing with the employer.

12 14. Beatty did not sign the letter since he thought that a letter addressed directly to John
13 Espinoza at UMC triggered a pre-termination hearing and a signature by the Union was not necessary.

14 15. Beatty negotiated the CBA and was familiar with the terms of the CBA.

15 16. Odgers never asked Carlos Henderson to sign the letter request, but he expected the
16 Union to sign off on the grievance. Odgers determined that the Union signature was necessary to
17 entitle Orr to a hearing.

18 17. Article 9(2) Step 2 (a), (b) and (c) of the CBA between UMC and the Union states in
19 pertinent part as follows:

20 a. . . . The employee(s) or the Union on behalf of the
21 employee(s) may file a formal written grievance . . . The grievance
22 must be filed with the Director, Human Resources within ten (10)
23 working days after receiving the Step 1 decision.

24 b. . . . The form must identify the Union representative
25 or employee bringing forth the complaint and must be signed by the
26 Chief Steward or the field representative assigned to that unit. Forms
27 without the signature will be accepted and forwarded to the Chief
28 Steward or the field representative for signature. All actions and time
limits will start upon Human Resources' receipt of the Chief Steward's
or field representative's signature.

c. Human Resources, in conjunction with the employee,
or the Union on behalf of the employee(s), will refer the matter to a
management representative (hearing officer), to hear the case and
render a decision at the Step 2 level. UMC and the employee or the
Union on behalf of the employee(s), shall meet at a mutually agreeable
time with the Hearing Officer to present the facts of the case within ten

1 (10) working days from the date the appeal, at Step 2, is received by
2 Human Resources. (Emphasis added.)

3 18. Article 9(2) Step 2 (a), (b) and (c) of the CBA between UMC and the Union states that
4 the employee(s) or the Union on behalf of the employee(s) may file a formal written grievance.

5 19. Article 9(2) Step 2 (a), (b) and (c) of the CBA between UMC and the Union authorizes
6 the employee to file a grievance on his/her own behalf with the Human Resource Director.

7 20. Article 9(2) Step 2 (b) provides that a grievance shall be submitted on a form mutually
8 agreed to by the parties and must be signed by the Chief Steward or the field representative assigned
9 to the unit. However, forms without the signature will be accepted by Human Resources and
10 forwarded to the Chief Steward or field representative for signature.

11 21. Employer UMC received and accepted Orr's written request of August 4, 2000 for a
12 pre-termination hearing and forwarded the request to the Union.

13 22. The Union made a conscious decision not to sign the August 4, 2000 request or any
14 other form to authorize a pre-termination hearing even though it was aware of the terms of the CBA.

15 23. Orr's request for a pre-termination hearing was timely made within the specified 10
16 day period specified in Article 9 of the CBA.

17 24. Other than forwarding Orr's letter requesting a pre-termination hearing to the Chief
18 Steward, UMC did nothing to obtain the Union's signature.

19 25. While Odgers believed that the Union's signature had to be received within 10 days
20 of being forwarded to the Union, there is no language in the CBA that establishes such a time
21 limitation and Odgers could not identify such language in the CBA.

22 26. Article 9(2) Step 2 (b) provides that all actions and time limits will start upon Human
23 Resources' receipt of the Chief Steward's or field representative's signature.

24 27. Because UMC never received the Union's signature on the form requesting a pre-
25 termination hearing within 10 days of receipt of the request, UMC considered the hearing waived and
26 did not provide Orr with a pre-termination hearing.

27 28. Orr was terminated from UMC on or about August 19, 2000.

28 29. NRS 288.110 provides in pertinent part as follows:

1 1. The board may hear and determine any complaint arising out
2 of the interpretation of, or performance under, the provisions of this
3 chapter by any local government employer, local government
4 employee or employee organization. The board shall conduct a hearing
5 within 90 days after it decides to hear a complaint. The board, after a
6 hearing, if it finds that the complaint is well taken, may order any
7 person to refrain from the action complained of or to restore to the
8 party aggrieved any benefit of which he has been deprived by that
9 action. The board shall issue its decision within 120 days after the
10 hearing on the complaint is completed.

11 2. The board may award reasonable costs, which may include
12 attorneys' fees, to the prevailing party. (Emphasis added.)

13 30. NRS 288.140 provides in pertinent part as follows:

14 1. It is the right of every local government employee, subject to
15 the limitation provided in subsection 3, to join any employee
16 organization of his choice or to refrain from joining any employee
17 organization. A local government employer shall not discriminate in
18 any way among its employees on account of membership or non-
19 membership in an employee organization.

20 2. The recognition of an employee organization for negotiation,
21 pursuant to this chapter, does not preclude any local government
22 employee who is not a member of that employee organization from
23 acting for himself with respect to any condition of his employment, but
24 any action taken on a request or in adjustment of a grievance shall be
25 consistent with the terms of an applicable negotiated agreement, if any.
(Emphasis added.)

26 31. NRS 288.270 provides in pertinent part as follows:

27 1. It is a prohibited practice for a local government employer or its
28 designated representative willfully to:

(a) Interfere, restrain or coerce any employee in the exercise of any
right guaranteed under this chapter.

2. It is a prohibited practice for a local government employer or
for an employee organization or its designated agent willfully to:

(a) Interfere with, restrain or coerce any employee in the exercise
of any right guaranteed under this chapter.

32. UMC was on notice that Orr wanted a pre-termination hearing.

33. Although it was the belief of Odgers that the Union "owned" the grievance, Orr was
entitled to act on her own behalf in requesting the pre-termination hearing pursuant to Article 9(2)
Step 2(a) and (b).

34. Orr was entitled to a pre-termination hearing.

35. Orr's request for a pre-termination hearing was consistent with the terms of the CBA.

1 36. The Union did not comply with the CBA when it failed to sign-off on the request for
2 a pre-termination hearing by a non-member employee.

3 37. The employer forwarded the request for ~~pre-termination~~ hearing to the Union for
4 signature but made no other effort to obtain the Union's signature, even though it knew the employee
5 wanted a hearing and was not required to be represented by the Union.

6 38. The employer failed to comply with the CBA when it deemed the right to a hearing
7 was waived by the Union failing to sign off on the request within 10 days of receiving the request
8 when no such time period exists by the terms of the CBA.

9 39. Orr was wrongfully denied a pre-termination hearing by UMC.

10 CONCLUSIONS OF LAW

11 1. The Local Government Employee-Management Relations Board has jurisdiction over
12 the parties and the subject matter of Orr's complaint pursuant to the provisions of NRS Chapter 288.

13 2. UMC is a local government employer as defined by NRS 288.060.

14 3. The Union is an employee organization as defined by NRS 288.040.

15 4. Since UMC never received the Chief Steward's signature, the time limit for scheduling
16 a ~~pre-termination~~ hearing never started to run and the failure to receive the signature from the Union
17 did not constitute a waiver of the right to a hearing.

18 5. Since the employer will accept an unsigned grievance form and forward the same to
19 the Union for signature, the employee does not have a duty to obtain the signature of the Union.

20 6. The Union's intentional failure to sign the request for hearing pursuant to the terms
21 of the CBA was a willful interference with and restraint of Orr's rights under the CBA to receive a
22 pre-termination hearing and precluded the employee from acting on her own behalf with respect to
23 a condition of employment.

24 7. The actions of the employer, UMC, in not obtaining a signature after it accepted the
25 request for hearing, and not providing Orr with a pre-termination hearing was a willful interference
26 and restraint of Orr's rights under the CBA to receive a pre-termination hearing.

27 8. The actions of the employer precluded the employee from acting for himself with
28 respect to a condition of employment.

1 9. UMC engaged in prohibited acts pursuant to NRS 288.270(1)(a) and NRS 288.140.

2 10. The Union engaged in prohibited acts pursuant to NRS 288.270(2)(a) and NRS
3 288.140.

4 **DECISION AND ORDER**

5 IT IS, THEREFORE, THE DECISION OF THIS BOARD that IRIS ORR be restored to all
6 benefits of which she has been deprived of subsequent to termination.

7 IT IS ORDERED that UMC is to reimburse Orr back pay from the date of termination to the
8 date of this order, less any wages earned by her from the date of termination to the date of this order.

9 IT IS ORDERED that UMC is to reimburse Orr for the difference in cost of the employee
10 medical insurance premium and the medical insurance premium that she incurred by reason of her
11 termination, commencing from the date of termination to the date of this order.

12 IT IS ORDERED that Orr may choose to waive the pre-termination hearing and proceed to
13 arbitration.

14 IT IS ORDERED that UMC and the Union are to comply with the arbitration provisions of
15 the CBA in an expedited manner as proffered by employer UMC at the hearing.

16 IT IS FURTHER ORDERED that the Complainant is awarded attorney's fees and costs
17 incurred in bringing this action, said fees and costs to be borne by UMC and Union equally, and that
18 proofs of fees and costs be filed with this Board within twenty (20) days, with Respondents to oppose
19 the same within ten (10) days of receipt of the proofs.

20 DATED this 2nd day of August, 2001.

21 LOCAL GOVERNMENT EMPLOYEE-
22 MANAGEMENT RELATIONS BOARD

23 By


KAREN L. MCKAY, Chairman

25 By


JOHN E. DICKS, ESQ., Vice-Chairman

27 By


JAMES E. WILKERSON, SR., Member