

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;

/ / /

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 Due to witnesses being unavailable, UMC requested and  
28

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

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

22 Re: SEIU Local 1107 v. UMC  
23 Case No. A1-045492

24 Dear Mr. Garmon:

25 The parties in the above-referenced case have been  
26 unable to reach a settlement agreement. You may  
27 recall that on April 23, 1992, Paul Johnson and I  
28 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



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

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

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

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

11 Case No. A1-045492 would be continued until  
12 submitted on the pleadings, with additional  
13 affidavits from the seven witnesses previously  
14 stipulated to by the parties, in accordance with  
15 the schedule set forth below.

16 A. Any affidavits from witnesses which  
17 Complainant desires to submit, would be  
18 provided the Board and Respondent within two  
19 weeks from August 31, 1992, or by September  
20 14, 1992.

21 B. Any affidavits from witnesses which  
22 Respondent desires to submit, would be  
23 provided the Board and Complainant within two  
24 weeks from September 14, 1992, or by September  
25 28, 1992.

26 C. One week would be allowed for  
27 Complainant to respond to Respondent's  
28 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

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

3 DISCUSSION

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

7 I.

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

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

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

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

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

1 parties.

2 II.

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

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

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

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

3 III.

4 THE COMPLAINT IS VAGUE, INDEFINITE  
5 AND LACKING IN SPECIFICITY.

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

10 FINDINGS OF FACT

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

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

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

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

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

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

1 qualifications of a Union representative.

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

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

8 CONCLUSIONS OF LAW

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

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

16 3. That the Respondent, University Medical Center, is a  
17 recognized local government employer as defined by NRS  
18 288.060.

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

26 5. That the Complainant, Clark County Public Employees  
27 Association, SEIU Local 1107, has not been recognized under  
28

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

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

13 **DECISION AND ORDER**

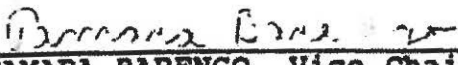
14 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

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

17 DATED this 19th day of January, 1993.

18 LOCAL GOVERNMENT EMPLOYEE-  
19 MANAGEMENT RELATIONS BOARD

20 By   
21 SALVATORE C. GUGINO, Chairman

22 By   
23 TAMARA BARENGO, Vice Chairman

24 By   
25 HOWARD ECKER, Member