

STATE OF NEVADA  
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

CLARK COUNTY PUBLIC EMPLOYEES	)	ITEM NO. 301
ASSOCIATION, SEIU LOCAL 1107,	)	
	)	CASE NO. A1-045521
Complainant,	)	
	)	
-vs-	)	<u>DECLARATORY ORDER</u>
	)	
CLARK COUNTY,	)	
	)	
Respondent.	)	

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

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

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

9 At the request of the EMRB, the Nevada  
10 Attorney General's office researched the issue of  
11 non-attorney representation of local government  
employers and employee organizations in contested  
cases before the Board.

12 The information from the Attorney General's  
office is summarized as follows:

13 1. NRS 7.285 provides that no person shall  
14 practice law in the State of Nevada unless he  
15 is an active member of the State Bar of Nevada  
pursuant to the Rules of the Supreme Court.

16 2. The Nevada Supreme Court has defined  
17 the practice of law as the professional giving  
18 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).

19 3. In determining whether a representative  
20 is practicing law, other standards have been  
21 applied to activities of representative:

22 a. legal advice and instruction to  
clients;

23 b. preparation for clients of documents  
24 requiring knowledge of legal  
principles;

25 c. appearance for clients before public  
26 tribunals which has the power to  
27 determine rights of life, liberty  
28 and property;

/ / /

- 1 d. the application of legal knowledge  
2 and technique even though performed  
3 before and administrative tribunal;  
4  
5 e. examines and cross-examines  
6 witnesses and makes objections and  
7 resists objections to introduction  
8 of testimony; and  
9  
10 f. procedure is formal, adversarial and  
11 determinative of important legal  
12 rights.

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

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

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

27 Following the parties presentation of their respective  
28 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

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

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

14 (1) that the particular non-attorney advocate be  
15 selected by a unanimous vote of all members of the  
bargaining unit;

16 (2) that the advocate be an employee of the local  
17 government employer respondent and a bona fide,  
18 dues-paying member of the employee organization;  
and

19 (3) that the advocate be a duly elected officer  
of the employee organization.

20 For the reasons previously set forth herein, the Board  
21 HEREBY DECLARES AND ORDERS that the Association's  
22 request be and hereby is denied.

23 The Board further declares and orders that the  
24 Memorandum dated May 1, 1990, issued by the Board's  
25 Commissioner, advising all Local Government Employers and  
26 Employee Organizations of Record that representation in  
27 contested cases before the Board by non-attorneys is  
28

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

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

7 DATED this 15<sup>th</sup> day of December, 1992.

8 LOCAL GOVERNMENT EMPLOYEE-  
9 MANAGEMENT RELATIONS BOARD

10 By Salvatore C. Gugin  
11 SALVATORE C. GUGINO, Chairman

12 By Tamara Barengo  
13 TAMARA BARENGO, Vice Chairman

14 By Howard Ecker  
15 HOWARD ECKER, Member