

1 STATE OF NEVADA  
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
3 RELATIONS BOARD  
4

5 UMC PHYSICIANS' BARGAINING UNIT  
6 of NEVADA SERVICE EMPLOYEES  
7 UNION, SEIU LOCAL 1107, AFL-CIO,  
8 CLC,

9 Complainant,

10 vs.

11 NEVADA SERVICE EMPLOYEES UNION,  
12 SEIU LOCAL 1107, AFL-CIO; VICKY  
13 HEDDERMAN, President of NEVADA  
14 SERVICE EMPLOYEES UNION, SEIU  
15 LOCAL 1107, AFL-CIO; JANE McALEVEY,  
16 Executive Director of NEVADA SERVICE  
EMPLOYEES UNION, SEIU LOCAL 1107,  
AFL-CIO; SERVICE EMPLOYEES  
INTERNATIONAL UNION, AFL-CIO, CLC;  
UNIVERSITY MEDICAL CENTER OF  
SOUTHERN NEVADA,

17 Respondents.

ITEM NO. 605

CASE NO. A1-045812

**ORDER**

17 For Complainant: Esther C. Rodriguez, Esq.  
18 Rodriguez Law Offices

19 For Respondents SEIU: Kristina L. Hillman, Esq.  
20 Law Offices of Kristina L. Hillman

21 For Respondent UMC: Jeffrey I. Pitegoff, Esq.  
22 Black, Lobello & Pitegoff

**STATEMENT OF THE CASE**

23 On August 11, 2004, Complainant UMC PHYSICIANS' BARGAINING UNIT of  
24 NEVADA SERVICE EMPLOYEES UNION, SEIU LOCAL 1107, AFL-CIO, CLC, ("PBU")  
25 filed a Complaint with the LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
26 RELATIONS BOARD ("Board"). Respondents NEVADA SERVICE EMPLOYEES UNION,  
27 SEIU LOCAL 1107, AFL-CIO ("NSEU"), VICKY HEDDERMAN, JANE McALEVEY,  
28 SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC ("SEIU"), AND

1 UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA ("UMC") filed Answers to the  
2 Complaint. On December 10, 2004, PBU filed a Motion for Preliminary Injunction and  
3 Expedited Setting, to which Respondents filed Oppositions and Countermotions to Dismiss.  
4 PBU opposed Respondents' Countermotions to Dismiss. On January 5, and February 23, 2005,  
5 the Board conducted deliberations on these motions and countermotions, noticed in accordance  
6 with Nevada's Open Meeting Laws, and directed staff to prepare an order in conformance with  
7 its deliberations.

8 Meanwhile, on February 17, 2005, UMC had filed a Motion for Summary Decision  
9 Dismissing the Complaint as to UMC. On March 14, 2005, PBU filed its Opposition to this  
10 motion, to which UMC replied. On April 20, 2005, the Board conducted deliberations, noticed  
11 in accordance with Nevada's Open Meeting Laws, on UMC's Motion for Summary Decision, and  
12 on the draft Order prepared by staff addressing the previously-considered motions and  
13 countermotions.

14 Having so deliberated, we hereby find and conclude that dismissal of the Complaint is  
15 warranted.

#### 16 DISCUSSION

17 The uncontested facts show in January 1999, NSEU was recognized by UMC and  
18 certified by the Board as the exclusive collective bargaining representative for the unit described  
19 as, "All staff physicians, including those in per diem status, employed by University Medical  
20 Center of Southern Nevada." University Medical Center of Southern Nevada and Nevada  
21 Service Employees Union, Local 1107, Item No. 438, EMRB Case No. A1-045656 (Certification  
22 of Representative, January 20, 1999). On December 19, 2000, NSEU entered into a Collective  
23 Bargaining Agreement ("CBA") with UMC, covering the above-described physicians' bargaining  
24 unit. This CBA expired on June 30, 2002, and thereafter NSEU and UMC failed to reach a new  
25 agreement for the physicians' bargaining unit. On or about July 16, 2004, NSEU disclaimed any  
26 further interest in and any recognition as the employee organization representing the above-  
27 described physicians' bargaining unit. PBU then brought the instant Complaint against  
28 Respondents.

1 PBU's Complaint seeks to vindicate the rights of the physicians within the bargaining unit  
2 for which NSEU had previously been recognized as the exclusive bargaining representative. The  
3 Complaint alleges the following claims: violations of rights to due process and fair  
4 representation; violations of NRS 288.150's requirement of good faith negotiations; prohibited  
5 labor practices under NRS 288.270; breach of the CBA; and violations of NRS Chapter 614.

6 As a preliminary matter, because this Board's jurisdiction is limited to claims arising  
7 under NRS Chapter 288, we cannot consider claims alleged as due process violations, breach of  
8 the CBA, or violations of statutory provisions outside of NRS Chapter 288. See International  
9 Ass'n of Firefighters, Local 1607 v. City of North Las Vegas, Nevada, Item No. 108, EMRB  
10 Case No. A1-045341, at 2 (1981); Clark County Classroom Teachers Ass'n v. Clark County Sch.  
11 Dist. and Bd. of Trustees of Clark County Sch. Dist., Item  
12 (1975).

13 As fundamental as the above jurisdictional rule is the rule that a complainant seeking to  
14 have claims heard by this Board must have standing to proceed before the Board. See generally  
15 McElrath v. Clark County Sch. Dist., Item No. 423, EMRB Case No. A1-045634 (1998). Where  
16 a Complainant lacks such standing, its Complaint is subject to dismissal. See, e.g., Association of  
17 North Las Vegas Police Officers Ass'n, Item No. 437, EMRB Case No. A1-045648 (1998).

18 PBU does not assert that it is an "employee organization" with the right to act as the  
19 exclusive bargaining representative for the physicians whose rights it seeks to vindicate, or that  
20 has pursued such recognition in accordance with NRS 288.160. See NRS 288.040 (defining  
21 "employee organization" to mean "an organization of any kind having as one of its purposes  
22 improvement of the terms and conditions of employment of local government employees"  
23 NAC 288.030 (defining "complainant," for purposes of claims before the Board, to include on  
24 "a local government employer," "a local government employee" or "[a]n employee organization  
25 as defined in NRS 288.040"). An entity seeking to bring claims before this Board on behalf of  
26 local government employees must demonstrate its right to recognition as the exclusive  
27 bargaining representative for such employees at the time the claims arose. See Clark County  
28 Public Employees Ass'n, SEIU Local 1107 v. UMC, Item No. 300, EMRB Case No. A1-045492,

1 at 7-8 (1993) (stating that union, which has not been recognized under NRS 288.160 as  
2 exclusive bargaining agent for employees, has no standing to bring complaint for prohibited  
3 practices against those employees); Stationary Engineers, Local 39 v Airport Authority  
4 Washoe County, Item No. 133, EMRB Case No. A1-045349, at 7 (1982) (recognizing standing  
5 for employee organization that was the exclusive bargaining representative for employees at  
6 time prohibited practice claims arose). PBU has failed to demonstrate its standing to bring  
7 claims of the physicians in question. Furthermore, the physicians at issue are not named  
8 individual Complainants. Accordingly, no named Complainant has standing to bring the claims  
9 raised in the Complaint, and dismissal is warranted.

#### 10 FINDINGS OF FACT

11 1. UMC is a "local government employer" as that term is defined by NRS 288.060.

12 2. The physician employees of UMC are "local government employee[s]" as that  
13 term is defined by NRS 288.050.

14 3. NSEU and SEIU are "employee organization[s]" as defined by NRS 288.040, and  
15 Vicky Hedderman and Jane McAlevey are or were representatives of these organizations.

16 4. On or about January 1999, NSEU was recognized by UMC, and certified by this  
17 Board, as the exclusive bargaining representative for the unit described as, "All staff physicians,  
18 including those in per diem status, employed by University Medical Center of Southern Nevada."

19 5. NSEU entered into a CBA with UMC on or about December 19, 2000, and that  
20 CBA covered the above-described bargaining unit of physicians employed by UMC.

21 6. The 2000 CBA between NSEU and UMC expired on June 30, 2002, and  
22 thereafter NSEU and UMC failed to enter into another agreement covering the above-described  
23 bargaining unit of physicians.

24 7. On or about July 16, 2004, NSEU disclaimed interest in and recognition as the  
25 employee organization representing the above-described bargaining unit of physicians employed  
26 by UMC.

27 8. PBU has not been recognized as the "employee organization" entitled to represent  
28 the physicians employed by UMC whose rights PBU seeks to vindicate; and, PBU has not

1 pursued recognition as the exclusive bargaining agent for such physicians in accordance with  
2 NRS 288.160.

3 9. PBU has not demonstrated authority to act on behalf of the individual physicians  
4 whose rights it seeks to vindicate.

5 10. PBU lacks standing to bring the claims alleged in the Complaint as arising under  
6 NRS Chapter 288; no individual physician employed by UMC is named as a Complainant in this  
7 action; and, thus, no named Complainant has standing to bring the claims alleged in the  
8 Complaint.

9 11. To the extent that any factual determination in the preceding discussion section of  
10 this Decision is not separately set forth in this section, it is hereby incorporated as a finding of  
11 fact.

12 12. To the extent that any of these findings of fact might be more properly stated as  
13 conclusions of law, they should be considered as such.

#### 14 CONCLUSIONS OF LAW

15 1. This Board has jurisdiction over claims alleged in the Complaint to the extent that  
16 they arise under NRS Chapter 288, but lacks jurisdiction over any claims alleged as violations of  
17 due process or other statutory rights or any breach of CBA claims.

18 2. For an entity to have standing to bring before this Board the claims of local  
19 government employees arising under NRS Chapter 288, the entity must demonstrate that it is an  
20 employee organization, as defined by NRS 288.040, with the right to be recognized pursuant to  
21 NRS 288.160 as the exclusive bargaining representative for such employees at the time of the  
22 claims arose.

23 3. Where no Complainant has standing, a Complaint is subject to dismissal.

24 4. PBU lacks standing to bring the claims alleged in its Complaint as arising under  
25 NRS Chapter 288, and PBU being the sole named Complainant, dismissal of its Complaint is  
26 warranted.

1           5.     To the extent that any legal conclusion in the preceding discussion section of this  
2 Decision is not separately set forth in this section, it is hereby incorporated as a conclusion of  
3 law.

4           6.     To the extent that any of these conclusions of law might be more properly stated  
5 as findings of fact, they should be considered as such.

6                               **ORDER**

7           IT IS HEREBY ORDERED, ADJUDGED AND DECREED that for the above-stated  
8 reasons, Complainant's Motion for Preliminary Injunction and Expedited Setting is DENIED  
9 Respondents' Countermotions to Dismiss are GRANTED, and the Complaint is hereby  
10 Dismissed with Prejudice.

11           IT IS FURTHER ORDERED that, for the benefit of employee-management relations,  
12 Respondent UMC shall post copies of this Decision at conspicuous locations, which are  
13 accessible to its employees for a period of thirty (30) days.

14           IT IS FURTHER ORDERED that each party shall bear its own attorney's fees and costs  
15 in this matter.<sup>1</sup>

16           DATED this 20<sup>th</sup> day of April, 2005.

17                               LOCAL GOVERNMENT EMPLOYEE-  
18                               MANAGEMENT RELATIONS BOARD

19                               BY:   
20                               JANET TROST, ESQ., Chairman

21                               BY:   
22                               TAMARA E. BARENGO, Vice-Chairman

23                               BY:   
24                               JOHN E. DICKS, ESQ., Board Member  
25  
26  
27

28           <sup>1</sup>Because our Order renders moot Respondent UMC's pending Motion for Summary Decision,  
we need not separately decide that Motion.