

STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

CELESTE ATKINSON, a former Local
Government Employee represented by the
UMC PHYSICIANS' BARGAINING UNIT
of NEVADA SERVICE EMPLOYEES
UNION, SEIU LOCAL 1107, AFL-CIO,
CLC,

Complainant,

vs.

NEVADA SERVICE EMPLOYEES UNION,
SEIU LOCAL 1107, AFL-CIO and SERVICE
EMPLOYEES INTERNATIONAL UNION,
AFL-CIO, CLC,

Respondents.

~~DEBORAH BOLAND, M.D.~~, a Local
Government Employee and member of the
UMC PHYSICIANS' BARGAINING UNIT
of NEVADA SERVICE EMPLOYEES
UNION, SEIU LOCAL 1107, AFL-CIO,
CLC,

Complainant,

vs.

NEVADA SERVICE EMPLOYEES UNION,
SEIU LOCAL 1107, AFL-CIO and SERVICE
EMPLOYEES INTERNATIONAL UNION,
AFL-CIO, CLC,

Respondents.

ITEM NO. 618

CASE NO. A1-045846

CASE NO. A1-045847

1 EDGAR L. COX, M.D., a Local Government
2 Employee and member of the UMC
3 PHYSICIANS' BARGAINING UNIT of
4 NEVADA SERVICE EMPLOYEES UNION,
5 SEIU LOCAL 1107, AFL-CIO, CLC,

6 Complainant,

CASE NO. A1-045848

7 vs.

8 NEVADA SERVICE EMPLOYEES UNION,
9 SEIU LOCAL 1107, AFL-CIO and SERVICE
10 EMPLOYEES INTERNATIONAL UNION,
11 AFL-CIO, CLC,

12 Respondents.

13 ANDREA FONG, D.O., a Local Government
14 Employee and member of the UMC
15 PHYSICIANS' BARGAINING UNIT of
16 NEVADA SERVICE EMPLOYEES UNION,
17 SEIU LOCAL 1107, AFL-CIO, CLC,

18 Complainant,

CASE NO. A1-045849

19 vs.

20 NEVADA SERVICE EMPLOYEES UNION,
21 SEIU LOCAL 1107, AFL-CIO and SERVICE
22 EMPLOYEES INTERNATIONAL UNION,
23 AFL-CIO, CLC,

24 Respondents.

25 JOHN GILBERTSON, M.D., a Local
26 Government Employee and member of the
27 UMC PHYSICIANS' BARGAINING UNIT
28 of NEVADA SERVICE EMPLOYEES
UNION, SEIU LOCAL 1107, AFL-CIO,
CLC,

Complainant,

CASE NO. A1-045850

vs.

NEVADA SERVICE EMPLOYEES UNION,
SEIU LOCAL 1107, AFL-CIO and SERVICE
EMPLOYEES INTERNATIONAL UNION,
AFL-CIO, CLC,

Respondents.

1 NEIL W. GOODSSELL, M.D., a Local
2 Government Employee and member of the
3 UMC PHYSICIANS' BARGAINING UNIT
of NEVADA SERVICE EMPLOYEES
UNION, SEIU LOCAL 1107, AFL-CIO,
CLC,

4 Complainant,

5 vs.

6 NEVADA SERVICE EMPLOYEES UNION,
7 SEIU LOCAL 1107, AFL-CIO and SERVICE
8 EMPLOYEES INTERNATIONAL UNION,
AFL-CIO, CLC,

9 Respondents.

CASE NO. A1-045851

10 ~~DEBORAH GOODWIN, M.D., a Local~~
11 ~~Government Employee and member of the~~
12 ~~UMC PHYSICIANS' BARGAINING UNIT~~
13 ~~of NEVADA SERVICE EMPLOYEES~~
UNION, SEIU LOCAL 1107, AFL-CIO,
CLC,

14 Complainant,

15 vs.

16 NEVADA SERVICE EMPLOYEES UNION,
17 SEIU LOCAL 1107, AFL-CIO and SERVICE
EMPLOYEES INTERNATIONAL UNION,
AFL-CIO, CLC,

18 Respondents.

CASE NO. A1-045852

19 ~~PAUL M. McHUGH, D.O., a Local~~
20 ~~Government Employee and member of the~~
21 ~~UMC PHYSICIANS' BARGAINING UNIT~~
22 ~~of NEVADA SERVICE EMPLOYEES~~
UNION, SEIU LOCAL 1107, AFL-CIO,
CLC,

23 Complainant,

24 vs.

25 NEVADA SERVICE EMPLOYEES UNION,
26 SEIU LOCAL 1107, AFL-CIO and SERVICE
EMPLOYEES INTERNATIONAL UNION,
AFL-CIO, CLC,

27 Respondents.

CASE NO. A1-045853

1 AJEET MAHENDERNATH, M.D., a former
2 Local Government Employee represented by
3 the UMC PHYSICIANS' BARGAINING
4 UNIT of NEVADA SERVICE EMPLOYEES
5 UNION, SEIU LOCAL 1107, AFL-CIO,
6 CLC,

7 Complainant,

8 vs.

9 NEVADA SERVICE EMPLOYEES UNION,
10 SEIU LOCAL 1107, AFL-CIO and SERVICE
11 EMPLOYEES INTERNATIONAL UNION,
12 AFL-CIO, CLC,

13 Respondents.

14 MARIA MARTINEZ, M.D., a Local
15 Government Employee and member of the
16 UMC PHYSICIANS' BARGAINING UNIT
17 of NEVADA SERVICE EMPLOYEES
18 UNION, SEIU LOCAL 1107, AFL-CIO,
19 CLC,

20 Complainant,

21 vs.

22 NEVADA SERVICE EMPLOYEES UNION,
23 SEIU LOCAL 1107, AFL-CIO and SERVICE
24 EMPLOYEES INTERNATIONAL UNION,
25 AFL-CIO, CLC,

26 Respondents.

27 JOHN NEPOMUCENO, M.D., a former Local
28 Government Employee represented by the
29 UMC PHYSICIANS' BARGAINING UNIT
30 of NEVADA SERVICE EMPLOYEES
31 UNION, SEIU LOCAL 1107, AFL-CIO,
32 CLC,

33 Complainant,

34 vs.

35 NEVADA SERVICE EMPLOYEES UNION,
36 SEIU LOCAL 1107, AFL-CIO and SERVICE
37 EMPLOYEES INTERNATIONAL UNION,
38 AFL-CIO, CLC,

39 Respondents.

CASE NO. A1-045854

CASE NO. A1-045855

CASE NO. A1-045856

1 GEORGE OEHLSEN, D.O., a Local
2 Government Employee and member of the
3 UMC PHYSICIANS' BARGAINING UNIT
4 of NEVADA SERVICE EMPLOYEES
5 UNION, SEIU LOCAL 1107, AFL-CIO,
6 CLC,

7 Complainant,

8 vs.

9 NEVADA SERVICE EMPLOYEES UNION,
10 SEIU LOCAL 1107, AFL-CIO and SERVICE
11 EMPLOYEES INTERNATIONAL UNION,
12 AFL-CIO, CLC,

13 Respondents.

14 ~~ARDESHIR ROHANI, M.D., a former Local~~
15 Government Employee represented by the
16 UMC PHYSICIANS' BARGAINING UNIT
17 of NEVADA SERVICE EMPLOYEES
18 UNION, SEIU LOCAL 1107, AFL-CIO,
19 CLC,

20 Complainant,

21 vs.

22 NEVADA SERVICE EMPLOYEES UNION,
23 SEIU LOCAL 1107, AFL-CIO and SERVICE
24 EMPLOYEES INTERNATIONAL UNION,
25 AFL-CIO, CLC,

26 Respondents.

27 ~~ERNESTO RUBIO, M.D., a Local~~
28 Government Employee and member of the
UMC PHYSICIANS' BARGAINING UNIT
of NEVADA SERVICE EMPLOYEES
UNION, SEIU LOCAL 1107, AFL-CIO,
CLC,

Complainant,

vs.

NEVADA SERVICE EMPLOYEES UNION,
SEIU LOCAL 1107, AFL-CIO and SERVICE
EMPLOYEES INTERNATIONAL UNION,
AFL-CIO, CLC,

Respondents.

CASE NO. A1-045857

CASE NO. A1-045858

CASE NO. A1-045859

1 TIMOTHY SCHRADER, M.D., a Local
2 Government Employee and member of the
3 UMC PHYSICIANS' BARGAINING UNIT
4 of NEVADA SERVICE EMPLOYEES
5 UNION, SEIU LOCAL 1107, AFL-CIO,
6 CLC,

7 Complainant,

8 vs.

9 NEVADA SERVICE EMPLOYEES UNION,
10 SEIU LOCAL 1107, AFL-CIO and SERVICE
11 EMPLOYEES INTERNATIONAL UNION,
12 AFL-CIO, CLC,

13 Respondents.

CASE NO. A1-045860

14 ~~STERLING TANNER, M.D., a Local~~
15 ~~Government Employee and member of the~~
16 ~~UMC PHYSICIANS' BARGAINING UNIT~~
17 ~~of NEVADA SERVICE EMPLOYEES~~
18 ~~UNION, SEIU LOCAL 1107, AFL-CIO,~~
19 ~~CLC,~~

20 Complainant,

21 vs.

22 NEVADA SERVICE EMPLOYEES UNION,
23 SEIU LOCAL 1107, AFL-CIO and SERVICE
24 EMPLOYEES INTERNATIONAL UNION,
25 AFL-CIO, CLC,

26 Respondents.

CASE NO. A1-045861

27 ~~RONALD TAYLOR, M.D., a Local~~
28 ~~Government Employee and member of the~~
UMC PHYSICIANS' BARGAINING UNIT
of NEVADA SERVICE EMPLOYEES
UNION, SEIU LOCAL 1107, AFL-CIO,
CLC,

Complainant,

vs.

NEVADA SERVICE EMPLOYEES UNION,
SEIU LOCAL 1107, AFL-CIO and SERVICE
EMPLOYEES INTERNATIONAL UNION,
AFL-CIO, CLC,

Respondents.

CASE NO. A1-045862

BRADLEY WALKER, M.D., a Local
Government Employee and member of the
UMC PHYSICIANS' BARGAINING UNIT
of NEVADA SERVICE EMPLOYEES
UNION, SEIU LOCAL 1107, AFL-CIO,
CLC,

Complainant,

vs.

NEVADA SERVICE EMPLOYEES UNION,
SEIU LOCAL 1107, AFL-CIO and SERVICE
EMPLOYEES INTERNATIONAL UNION,
AFL-CIO, CLC,

Respondents.

CASE NO. A1-045863

~~JOEL CANGA, M.D., a former Local~~
~~Government Employee represented by the~~
UMC PHYSICIANS' BARGAINING UNIT
of NEVADA SERVICE EMPLOYEES
UNION, SEIU LOCAL 1107, AFL-CIO,
CLC,

Complainant,

vs.

NEVADA SERVICE EMPLOYEES UNION,
SEIU LOCAL 1107, AFL-CIO and SERVICE
EMPLOYEES INTERNATIONAL UNION,
AFL-CIO, CLC,

Respondents.

CASE NO. A1-045864

ORDER

For Complainants: Esther C. Rodriguez, Esq.
Rodriguez Law Offices, P.C.

For Respondent: Kristina L. Hillman, Esq.
Brooke D. Pierman, Esq.
Law Offices of Kristina L. Hillman

BACKGROUND

Complainants in Case Nos. A1-045846 through A1-045864, inclusive, (hereinafter collectively referred to as "Complainants") are currently or were formerly employed by the University Medical Center of Southern Nevada ("UMC") as staff physicians and in said capacity were represented by Respondent Nevada Service Employees Union, SEIU Local 1107

1 (hereinafter referred to as "Local 1107"). See University Medical Center of Southern Nevada v.
2 Nevada Service Employees Union, Local 1107, A1-045656, Item No. 438 (January 20, 1999)
3 whereby Local 1107 was certified as representative of the physicians' bargaining unit ("PBU").

4 On August 11, 2004, an entity designating itself as "UMC PHYSICIANS
5 BARGAINING UNIT of NEVADA SERVICE EMPLOYEES UNION, SEIU LOCAL 1107
6 AFL-CIO, CLC," filed a Complaint with the Board, alleging in substance the same allegation
7 alleged herein against respondents. See Case No. A1-045812. By Order dated April 20, 2005,
8 the Board dismissed the Complaint on motion of respondents therein, on the grounds that the
9 UMC PHYSICIANS' BARGAINING UNIT of NEVADA SERVICE EMPLOYEES UNION
10 SEIU LOCAL 1107, AFL-CIO, CLC was not an employee organization, as defined by NRS
11 288.040, with the right to be recognized pursuant to NRS 288.160 as the exclusive bargaining
12 representative for the physician employees, and could not therefore invoke the Board's
13 jurisdiction.

14 Complainants, purporting to be current or former members of LOCAL 1107, thereafter
15 filed the subject individual complaints, Case Nos. A1-045846 through A1-045863 on July 22,
16 2005 and Case No. A1-045864 on July 27, 2005. Answers were filed and served in A1-045846
17 on August 16, 2005, and Answers to the Complaints in the balance of the matters on September
18 26, 2005 and September 27, 2005.

19 On September 29, 2005, Respondents filed a Motion to Consolidate the nineteen
20 complaints. Individual complainants filed Oppositions to the Motion to Consolidate and
21 Counter-motions to Strike Respondents' Answers or Affirmative Defenses on October 11, 2005,
22 and Respondents filed Replies and Oppositions to Counter-motion to Strike on October 25, 2005.

23 The Board held hearings on January 9, 2006 and February 1, 2006 on the Motion and
24 Countermotions, noticed in accordance with Nevada's Open Meeting Law. Based thereon, it
25 renders the following Findings of Fact and Conclusions of Law:

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FINDINGS OF FACT

1. The Complainants are as follows:

- a. Celeste Atkinson, M.D., (A1-045846) is a former employee of UMC and a former member of the PBU, for which LOCAL 1107 remains the exclusive bargaining representative.
- b. Deborah Boland, M.D., (A1-045847) is a current employee of UMC and a member of the PBU, for which LOCAL 1107 remains the exclusive bargaining representative.
- c. Edgar L. Cox, M.D., (A1-045848) is a current employee of UMC and a member of the PBU, for which LOCAL 1107 remains the exclusive bargaining representative. He has served as a steward for LOCAL 1107.
- d. Andrea Fong, D.O., (A1-045849) is a current employee of UMC and a member of the PBU, for which LOCAL 1107 remains the exclusive bargaining representative.
- e. John Gilbertson, M.D., (A1-045850) is a current employee of UMC and a member of the PBU, for which LOCAL 1107 remains the exclusive bargaining representative.
- f. Neil W. Goodsell, M.D., (A1-045851) is a current employee of UMC and a member of the PBU, for which LOCAL 1107 remains the exclusive bargaining representative.
- g. Deborah Goodwin, M.D., (A1-045852) is a current employee of UMC and a member of the PBU, for which LOCAL 1107 remains the exclusive bargaining representative.
- h. Paul M. McHugh, D.O., (A1-045853) is a current employee of UMC and a member of the PBU, for which LOCAL 1107 remains the exclusive bargaining representative.

1. Ajeet Mahendernath, M.D., (A1-045854) is a former employee of UMC and a former member of the PBU, for which LOCAL 1107 remains exclusive bargaining representative.
- j. Maria Martinez, M.D., (A1-045855) is a current employee of UMC and a member of the PBU, for which LOCAL 1107 remains the exclusive bargaining representative.
- k. John Nepomuceno, M.D. (A1-045856) is a former employee of UMC and a former member of the PBU, for which LOCAL 1107 remains exclusive bargaining representative.
- l. George Oehlsen, D.O., (A1-045857) is a current employee of UMC and a member of the PBU, for which LOCAL 1107 remains the exclusive bargaining representative. He has served as a steward for LOCAL 1107.
- m. Ardeshir Rohani, M.D., (A1-045858) is a former employee of UMC and a former member of the PBU, for which LOCAL 1107 remains exclusive bargaining representative.
- n. Ernesto Rubio, M.D., (A1-045859) is a current employee of UMC and a member of the PBU, for which LOCAL 1107 remains the exclusive bargaining representative.
- o. Timothy Schrader, M.D., (A1-045860) is a current employee of UMC and a member of the PBU, for which LOCAL 1107 remains the exclusive bargaining representative.
- p. Sterling Tanner, M.D., (A1-045861) is a current employee of UMC and a member of the PBU, for which LOCAL 1107 remains the exclusive bargaining representative. He has served as a steward for the PBU.
- q. Ronald Taylor, M.D. (A1-045862) is a current employee of UMC and a member of the PBU, for which LOCAL 1107 remains the exclusive bargaining representative.

1 r. Bradley Walker, M.D., (A1-045863) is a current employee of UMC a
2 member of the PBU, for which LOCAL 1107 remains the exclusi
3 bargaining representative. He has served as a steward for LOCAL 1107.

4 s. Joel Canga, M.D., (A1-045864) is a former employee of UMC and a
5 former member of the PBU, for which LOCAL 1107 remains the
6 exclusive bargaining representative.

7 2. The Complaints allege claims for (a) Failure of Duty of Fair Representation, (b)
8 Breach of Duty of Mandatory Bargaining, (c) Unilateral Disaffiliation, (d) Denial of Due
9 Process, and (e) Damages.

10 3. Complainants received notice on July 16, 2004 that Local 1107 ceased
11 representing them. The same notice was conveyed to UMC. Paragraph 23 of the Complaints.

12 4. The subject Complaints were filed in July of 2005.

13 5. The Answers to all but the Atkinson Complaint (A1-045846) were untimely.

14 6. Complainants have not consented to the assertion of affirmative defenses by
15 Respondents who have filed dilatory answers.

16 CONCLUSIONS OF LAW

17 1. NAC 288.275 provides this Board authority to consolidate as follows:

18 "1. The Board may consolidate two or more cases in any one hearing when it
19 appears that the issues are substantially the same and that the rights of the parties
will not be prejudiced by a consolidated hearing.

20 2. At a consolidated hearing, the Board will determine the order in which the
parties introduce their evidence and the general procedure to be followed during
the course of the consolidated proceeding.

21 3. The Board will apportion the costs of the hearing among the parties.

22 4. Unless the Board orders otherwise, the Commissioner shall place the same
date of issuance and the same effective date, if applicable, on all orders made by
the Board in relation to a consolidated hearing."

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24 2. Under NAC 288.275, consolidation of matters for hearing does not mean that the
25 affirmative defenses available to one Respondent are thereby available to all.

26 3. NAC 288.220(3) provides that "(i)f an answer is not made within the prescrib ed
27 time, the dilatory party is precluded, except with the consent of the opposing party or the Board
28 from asserting any affirmative defense in the proceeding."

1 4. Under NRS 288.110(4) a complaint may not be "filed more than six months after
2 the occurrence which is the subject of the complaint."

3 5. The statute of limitations in NRS 288.110(4) is an affirmative defense. Cf.
4 NRCP 8(c).

5 6. A complaint may be dismissed "(i)f the board determines that no probable cause
6 exists for the complaint... ." NAC 288.375(1).

7 **DECISION AND ORDER**

8 Cases Nos. A1-045847 through A1-045864 contain substantially the same issues and
9 consolidating them for hearing and Complainants therein have demonstrated no prejudice from
10 these matters being so consolidated.

11 Complainants in Cases Nos. A1-045847 through A1-045864 having refused to consent to
12 Respondents' assertion of affirmative defenses, the Board likewise declines to consent.

13 Respondents' Answer in Case No. A1-045846 was filed within the prescribed time,
14 therefore, affirmative defenses may be asserted. The Board notes that Respondents' first
15 Affirmative Defense, the bar of the statute of limitations, appears supported by the allegations of
16 the Complaint itself, to wit: Respondents communicated their refusal to represent Complainants
17 in July of 2004 and the Complaint herein was filed in July of 2005.

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1 IT IS HEREBY ADJUDGED, DECREED AND ORDERED:

- 2 1. Case Nos. A1-045847 through A1-045864 are hereby ordered consolidated for
3 hearing, and for matters leading thereto. The Board reserves the option of sett g
4 the order of proof and bifurcating or trifurcating the hearing to address issues that
5 are different for the various parties, including damages.
6 2. Respondents in Case Nos. A1-045847 through A1-045864 are precluded from
7 asserting affirmative defenses, including the defense of the statute of limitations.
8 3. The Complaint in Case No. A1-045846 is hereby dismissed based on the bar of
9 NRS 288.110(4), each party to bear its own costs and fees with respect thereto.

10 DATED this 1st day of February, 2006.

11 LOCAL GOVERNMENT EMPLOYEE-
12 MANAGEMENT RELATIONS BOARD

13 BY: Tamara E. Barengo
14 TAMARA E. BARENGO, Chairman

15 BY: John E. Dicks
16 JOHN E. DICKS, ESQ., Vice-Chairman

17 BY: Janet Trost
18 JANET TROST, ESQ., Board Member
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