

DEBORAH BOLAND, M.D., a Local )  
Government Employee and member of the ) Consolidated CASE NO. A1-045847;  
UMC PHYSICIANS' BARGAINING UNIT ) A1-045848; A1-045849; A1-045850;  
of NEVADA SERVICE EMPLOYEES ) A1-045851; A1-045852; A1-045853;  
UNION, SEIU LOCAL 1107, AFL-CIO, CLC,) A1-045854; A1-045855; A1-045856;  
et. al., ) A1-045857; A1-045858; A1-045859;  
 ) A1-045860; A1-045861; A1-045862;  
Complainants, ) A1-045863; and A1-045864  
 )  
vs. ) **ORDER**  
 )  
NEVADA SERVICE EMPLOYEES UNION, ) **ITEM NO. 802**  
SEIU LOCAL 1107, AFL-CIO and SERVICE )  
EMPLOYEES INTERNATIONAL UNION, )  
AFL-CIO, CLC, )  
 )  
Respondents. )

On January 20, 1999 this Board certified Local 1107 as the bargaining agent for staff physicians employed by University Medical Center. University Medical Center of Southern Nevada, Item No. 438, EMRB Case No. A1-045656 (Jan. 20, 1999). On behalf of these

1 physicians, Local 1107 negotiated a collective bargaining agreement with UMC. The term of the  
2 agreement was from December 19, 2000 to June 30, 2002, but the agreement also contained an  
3 evergreen clause that specified that it remained in effect following June 30, 2002, until changed,  
4 amended, modified or terminated.

5 After June of 2002 Local 1107 attempted for a time to negotiate a successor agreement  
6 with UMC. Testimony at the hearing indicated that Local 1107 had come close to finalizing a  
7 successor agreement, but ultimately never successfully entered into a successor agreement with  
8 UMC on behalf of the physicians' unit.

9 Testimony at the hearing established that one of the physicians' principal concerns during  
10 the negotiations for a successor agreement centered on the issue of closing UMC's Quick Care  
11 facilities and outsourcing some of the positions in the bargaining unit. Vicky Hedderman, who  
12 was at the time the President of Local 1107, testified that Local 1107 responded to these  
13 concerns by developing a public relations campaign that included soliciting signatures from the  
14 public on a petition to keep the Quick Care facilities open.

15 Ms. Hedderman testified that some of the physicians in the bargaining unit had instead  
16 bypassed Local 1107 and set up a meeting with some Clark County Commissioners to discuss  
17 the issue. Ms. Hedderman testified that Local 1107's board is responsible for deciding when and  
18 where to pursue a strategy of meeting with the County Commission. Ms. Hedderman testified  
19 that following this incident, Local 1107 explained to this group of physicians the need to stick to  
20 the strategy that Local 1107 had developed.

21 Shortly after this unapproved meeting with the County Commissioners, Dr. Brad Walker  
22 appeared on a political talk show without Local 1107's knowledge or approval. Dr. Walker  
23 purported to represent Local 1107 on that talk show. Dr. Walker was among the group that had  
24 previously met with the County Commissioners. Ms. Hedderman testified that unauthorized  
25 representation of Local 1107 in public is a violation of Local 1107's constitution. According to  
26 Ms. Hedderman, Local 1107's biggest concern, however, was that during his television  
27 appearance, Dr. Walker advocated for protecting the employees in the physicians' bargaining  
28 unit by eliminating other positions within the separate bargaining unit of nurses and ancillary

1 staff employed by UMC. Local 1107 was also the recognized bargaining agent to represent the  
2 nurses' unit, and Dr. Walker's television appearance greatly upset Local 1107's Chief Steward  
3 for the nurses' unit. According to Ms. Hedderman's testimony, Dr. Walker was "trying to throw  
4 the nurses and ancillary staff under the bus to save the physicians."

5 Due to these frustrations with the physicians' bargaining unit, Local 1107 began to  
6 consider its options for removing itself as the representative of the physicians' unit. During the  
7 summer of 2004, Local 1107's board, which consists of representatives from each of the various  
8 bargaining units represented by Local 1107, voted to withdraw as the bargaining agent for the  
9 physicians' bargaining unit.

10 Local 1107 advised the members of the bargaining unit by written correspondence that  
11 "effective immediately" Local 1107 disclaimed any interest and recognition as the bargaining  
12 agent for the physicians' unit. The date of that correspondence was July 16, 2004. That  
13 correspondence also stated that Local 1107 would continue to review and process grievances that  
14 were filed during the duration of the collective bargaining agreement. However, Local 1107 did  
15 not do so after Dr. Walker complained about Local 1107's choice of legal counsel.

16 From these facts the complainants asserted that Local 1107 breached its duty of fair  
17 representation by withdrawing as the bargaining agent, failing to secure a successor agreement  
18 and in abandoning the outstanding grievances.

#### 19 **Withdrawal As Bargaining Agent**

20 Complainants contend that Local 1107's withdrawal as the bargaining agent breached the  
21 duty of fair representation. The duty of fair representation requires that a recognized employee  
22 organization may not act in a manner that is arbitrary, discriminatory or in bad faith towards the  
23 employees that it represents. Weiner v. Beatty, 121 Nev. 243, 116 P.3d 829 (2005).

24 A voluntary withdrawal by a bargaining agent, by itself, is not contrary to the Act. NAC  
25 288.145(1)(a) contemplates that there may be circumstances where an employee organization  
26 might voluntarily withdraw its status as the recognized bargaining agent. A voluntary withdrawal  
27 represents the only circumstance in which an employer may withdraw recognition without first  
28 seeking the approval of this Board. NAC 288.145(2). As with all actions taken by a recognized

1 bargaining agent, the duty of fair representation does apply to an organization's voluntary  
2 withdrawal. That is to say that a voluntary withdrawal may not be done for reasons that are  
3 arbitrary, discriminatory or taken in bad faith. See Weiner at 249, 116 P.3d at 833.

4 A bargaining agent's actions are arbitrary only if its conduct is so far outside a "wide  
5 range of reasonableness that it is wholly 'irrational' or 'arbitrary.'" Marquez v. Screen Actors  
6 Guild, Inc., 525 U.S. 33, 45 (1998). The evidence at the hearing does not show that Local  
7 1107's voluntary withdrawal was arbitrary. As Vicky Hedderman expressed, Local 1107 was  
8 concerned with its ability to manage the leaders of the physicians' unit based upon the rogue  
9 meeting with the County Commissioners and Dr. Walker's unauthorized television appearance.  
10 Dr. Walker was one of the leaders in the bargaining unit. Local 1107 was also very concerned  
11 with Dr. Walker's statements that advocated eliminating positions in the nurses' unit in order to  
12 favor the physicians, which effectively pitted two of Local 1107's represented units against each  
13 other. Local 1107's decision that it could no longer act as the bargaining agent for the physicians  
14 under these circumstances was not so far outside a wide range of reasonableness to be irrational.  
15 Rather we find this to be a clear and cogent rationale for its actions in withdrawing as the  
16 bargaining agent.

17 Under the duty of fair representation, a complainant may show that a bargaining agent's  
18 actions are discriminatory if those actions are "intentional, severe, and unrelated to legitimate  
19 union objectives." Amalgamated Ass'n of St., Elec. Ry. and Motor Coach Emp. of America v.  
20 Lockridge, 403 U.S. 274, 301 (1971). In order to show "bad faith," a complainant must present  
21 "substantial evidence of fraud, deceitful action or dishonest conduct." Id at 299. The evidence  
22 does not establish that Local 1107's withdrawal was tainted by either discrimination or bad faith.  
23 Quite to the contrary, avoiding the conflict between preferring the physicians' unit or the nurses'  
24 unit is a legitimate union objective. There was no evidence that Local 1107 was deceitful or  
25 dishonest towards the complainants concerning its withdrawal as the bargaining agent.  
26 Consequently we conclude that Local 1107 did not breach the duty of fair representation when it  
27 withdrew its status as the bargaining agent in July of 2004.

28 At the time of Local 1107's withdrawal, a new collective bargaining agreement had not



1 been finalized although the evidence at the hearing indicated that most of the terms of  
2 employment had been agreed upon with only a couple of issues left to be finalized through the  
3 fact-finding process established in NRS 288.200. Complainants contend that Local 1107 should  
4 have pushed forward through fact-finding to secure a successor agreement. We do not see Local  
5 1107's refusal to finish negotiations with UMC to be a breach of the duty of fair representation.  
6 Upon Local 1107's voluntary withdrawal UMC was permitted to withdraw recognition of Local  
7 1107 as the bargaining agent. NAC 288.145(2). The evidence introduced at the hearing indicated  
8 that UMC had done so at least by July 27, 2004. UMC's bargaining obligations under the Act  
9 require it to bargain with the recognized bargaining agent, and only the recognized bargaining  
10 agent. NRS 288.150(1); NRS 288.270(1)(e). Upon Local 1107's withdrawal, there was no  
11 recognized bargaining agent with which UMC could have continued negotiations. As UMC  
12 could not lawfully continue bargaining with a now unrecognized organization, we see no merit to  
13 the complainants' contention that Local 1107 should have pursued further negotiations after  
14 withdrawing as the bargaining agent.

### 15 **Outstanding Grievances**

16 Evidence at the hearing established that the time of Local 1107's voluntary withdrawal  
17 there remained a number of outstanding grievances at various stages in the grievance process.  
18 The Board previously bifurcated this matter and the purpose of this hearing was to address only  
19 Local 1107's possible violation of the Act, leaving the remedies portion of the hearing to be  
20 worked out at a future hearing. Thus we heard only generalized testimony concerning these  
21 grievances. The Board did receive into evidence a list of 27 grievances that had been prepared by  
22 Dr. Walker on March 26, 2004 prior to Local 1107's withdrawal. Dr. Walker testified that of the  
23 grievances on this list most had been settled and at the time of Local 1107's withdrawal only a  
24 few were left outstanding. Dr. Walker testified that perhaps five or six of those grievances were  
25 still pending.

26 Initially, Local 1107 indicated that it would continue to process the grievances that were  
27 filed before June 30, 2002. Local 1107 offered to provide an attorney named Bill Sokol to take  
28 the outstanding grievances to arbitration, but Dr. Walker protested that option, supposing there to

1 be a conflict of interest. After Dr. Walker complained Local 1107 took no further action on the  
2 grievances. There was no indication that Local 1107 spoke to anyone other than Dr. Walker  
3 about pursuing the grievances, and there was no explanation offered as to why Local 1107  
4 bowed to Dr. Walker's protestations as opposed to fully addressing the matter with the individual  
5 employees involved in the grievances.

6 Notwithstanding its withdrawal, Local 1107 remained under the duty of fair  
7 representation to continue to process the grievances, or protect the rights of any grievant that  
8 may have been able to act individually to pursue a grievance under NRS 288.140(2).

9 In the context of an involuntary withdrawal and in the absence of a successor bargaining  
10 agent, a union retains the right to pursue grievances for relief that arose under the term of the  
11 contract. *International Union, United Auto., Aerospace & Agric. Implement Workers of Am. v.*  
12 *Telex Computer Prods., Inc.*, 816 F.2d 519 (10th Cir.1987); see also *American Fed'n of Gov't*  
13 *Emps. Local 888*, 323 N.L.R.B. 717, 721 (1997) ("[S]uch events as the expiration of a collective-  
14 bargaining agreement or the removal of a collective-bargaining representative should not result  
15 in the employees' automatic loss of rights—including rights to arbitration of grievances as  
16 provided for in a contractual arbitration clause—that [arose] under the agreement in question."').  
17 The same rationale applies to the context of a voluntary withdrawal. Thus, we hold that where an  
18 employee organization voluntarily withdraws as bargaining agent, and is not replaced by a new  
19 bargaining agent, the withdrawing organization breaches the duty of fair representation when it  
20 abandons the existing grievances or does not otherwise take steps to eliminate any material  
21 adverse effects on the affected employee.<sup>1</sup>

22 This obligates a withdrawing organization to either pursue the outstanding grievances in  
23 the normal course or, at the employee's option, to relinquish the grievances to the employees  
24 pursuant to their individual right to act for themselves under NRS 288.140(2).

25 In this case, Local 1107 wrote to the affected employees and informed them that they  
26 would continue to pursue existing grievances, but then reversed course based upon a complaint

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27 <sup>1</sup> The withdrawing organization still retains the right to make a good faith evaluation of the  
28 merits of an outstanding grievance.

1 from a single employee about Local 1107's choice of counsel. Local 1107 thereafter did nothing  
2 to pursue the existing grievances or to eliminate the materially adverse effects of its actions on  
3 the affected employees. By abandoning the existing grievances in this way, we find that Local  
4 1107 did breach the duty of fair representation owed to the employees who still had pending  
5 grievances.

6 Further, Local 1107's duty of fair representation to pursue the existing grievances did not  
7 only apply to grievances arising prior to June 30, 2002. The duty of fair representation applies to  
8 all grievances arising during the time in which the collective bargaining agreement was in effect.  
9 After June 30, 2002, the terms and conditions of employment for the employees in the  
10 physicians' unit were still governed by that same agreement during the negotiations for a  
11 successor agreement and up until Local 1107's withdrawal in July 2004. Respondent's Exhibit 1,  
12 p. 78; Stationary Engineers, Local 39 v. Airport Authority of Washoe County, Item No. 133,  
13 EMRB Case No. A1-045349, p. 3 (July 12, 1982). Local 1107's duty to pursue grievances  
14 includes grievances arising at all times that the agreement was in effect and not merely  
15 grievances arising prior to June 30, 2002.

#### 16 **Remedy**

17 Having found that Local 1107 breached the duty of fair representation by abandoning the  
18 grievances that were outstanding at the time of its withdrawal, we look next to the remedy for  
19 this violation of the Act.

20 We note the procedural accommodations that are unique to this hearing and the  
21 consolidation of 18 individual complaints into one proceeding. At the request of the parties this  
22 Board bifurcated the hearing to address first the question of whether or not Local 1107 had  
23 breached the duty of fair representation and to leave questions over the remedy for a future  
24 hearing. However, based upon our finding stated above, the appropriate remedy is now apparent  
25 to the Board.

26 The Board's authority is to restore to an aggrieved party the benefit of which he or she  
27 has been deprived by a prohibited labor practice. NRS 288.110(2). In this case, the Board finds  
28 that the evidence presented thus far is sufficient for the Board to identify the benefit of which

1 complainants' have been deprived due to Local 1107's breach of the duty of fair representation:  
2 the benefit of having the outstanding grievances pursued by Local 1107. The remedy for this  
3 breach is for Local 1107 to take steps to ensure there is no material adverse effect on the  
4 individual employees by pursuing the grievances that affect any of the complainants and which  
5 remain unresolved. As stated above, should any of the individual employees wish to act for  
6 themselves pursuant to NRS 288.140(2) to pursue an outstanding grievance, Local 1107 may  
7 instead relinquish the grievance to the employee upon the employee's request.

8 In recognition that the bifurcated procedure we followed in this case that envisioned a  
9 continuation of the hearing to address remedies, and to accommodate the parties to this  
10 proceeding, should any party wish to present additional evidence or wishes to obtain more  
11 information relevant to the implementation of this remedy, the party may notify the Board's  
12 Commissioner in writing within 20 days of the date of this order. If such a notification is  
13 received, the Commissioner shall immediately inform all parties and shall schedule a  
14 continuation of the hearing for this matter for a future meeting to take additional evidence  
15 concerning the remedy we have ordered. In the event that no timely notification is received by  
16 the Commissioner, then this order shall be deemed the Board's final order in this matter.

17 Based upon the foregoing the Board makes the following findings of fact and conclusions  
18 of law:

19 **FINDINGS OF FACT**

20 1. Complainants are a group of 18 physicians employed by University Medical  
21 Center in the physicians' bargaining unit.

22 2. Respondent Service Employees International Union, Local 1107 was the  
23 recognized bargaining agent for the physicians' bargaining unit.

24 3. On behalf of the physicians' bargaining unit, Local 1107 entered into a collective  
25 bargaining agreement with UMC. The term of that agreement ran from December 19, 2000 to  
26 June 30, 2002, and continued in effect from year to year thereafter until Local 1107 voluntarily  
27 withdrew as the bargaining agent in July of 2004.

28 4. After June of 2002, Local 1107 attempted to negotiate a successor agreement with

1 UMC. Despite reaching consensus on most issues in that round of negotiations, Local 1107 did  
2 not finalize a successor agreement.

3 5. During the negotiations for a successor agreement, Local 1107 developed a  
4 strategy to publicly address employee concerns about closing Quick Care facilities and  
5 outsourcing positions in the physicians' bargaining unit.

6 6. Without Local 1107's prior knowledge or consent, a group of employees from the  
7 physicians' bargaining unit, including Dr. Bradley Walker, met with some Clark County  
8 Commissioners to discuss the Quick Care issue.

9 7. Local 1107 admonished the employees that had met with the County  
10 Commissioners about following the strategy that Local 1107 had developed.

11 8. Without Local 1107's knowledge or consent, Dr. Walker appeared on a television  
12 political talk show purporting to represent Local 1107. During the course of that show, Dr.  
13 Walker asserted that UMC should eliminate positions in the nurses' bargaining unit in order to  
14 favor the employees in the physicians' bargaining unit.

15 9. Local 1107 was the recognized bargaining agent for the nurses' bargaining unit.

16 10. Dr. Walker's position stated on the television show created tension between the  
17 nurses' bargaining unit and the physicians' bargaining unit.

18 11. Local 1107 voluntarily withdrew as the bargaining agent for the physicians'  
19 bargaining unit in July of 2004. UMC had recognized the withdrawal no later than July 27, 2004.

20 12. At the time that Local 1107 withdrew as bargaining agent, there were grievances  
21 that were still pending.

22 13. As of the date of the hearing, some grievances remained outstanding.

23 14. Local 1107 notified employees in the bargaining unit that it would continue to  
24 pursue grievances that arose prior to June 30, 2002.

25 15. Dr. Walker complained about the choice of legal counsel provided by Local 1107  
26 to pursue the outstanding grievances. Local 1107 thereafter did nothing to pursue the outstanding  
27 grievances.

28 16. Upon withdrawal as the recognized bargaining agent, UMC and Local 1107 did

1 not further pursue negotiations to establish a successor agreement.

2 17. If any of the foregoing findings is more appropriately construed a conclusion of  
3 law, it may be so construed.

#### 4 CONCLUSIONS OF LAW

5 1. Pursuant to NRS 288.110(2) the Board has exclusive jurisdiction to hear and  
6 determine disputes arising out of the interpretation of or performance under the provisions of the  
7 Local Government Employee-Management Relations Act.

8 2. A breach of the duty of fair representation concerns a breach of performance  
9 under the Act as recognized in Rosequist v. Int'l Ass'n of Firefighters Local 1908, 118 Nev. 444,  
10 49 P.3d 651 (2002).

11 3. A bargaining agent may voluntarily withdraw as the recognized bargaining agent.

12 4. The duty of fair representation applies to a bargaining agent's voluntary  
13 withdrawal and the withdrawal may not be done for reasons that are arbitrary, discriminatory or  
14 take in bad faith.

15 5. Local 1107's withdrawal was based upon concerns over its ability to control the  
16 leaders of the physicians' bargaining unit and the tension between the physicians' unit and the  
17 nurses' unit.

18 6. Local 1107's withdrawal for these reasons was not arbitrary.

19 7. Local 1107's withdrawal was motivated by legitimate union objectives and was  
20 not discriminatory.

21 8. Local 1107's withdrawal as the bargaining agent was not taken in bad faith.

22 9. Upon UMC's acceptance of Local 1107's withdrawal, Local 1107 ceased to be  
23 the recognized bargaining agent. Thereafter UMC was not obligated or permitted under the Act  
24 to continue negotiations with Local 1107.

25 10. Even upon withdrawal with no successor bargaining agent in place, the duty of  
26 fair representation applied to Local 1107's handling of the outstanding grievances.

27 11. The duty of fair representation required Local 1107 to eliminate any materially  
28 adverse effects on the employees affected by the outstanding grievances.



12. Local 1107 was obligated to continue processing the outstanding grievances that arose during the time frame that the collective bargaining agreement governed the employees' employment up to Local 1107's withdrawal as bargaining agent.

13. Alternatively, Local 1107 may satisfy the duty of fair representation by relinquishing the grievance to the employee to act for themselves under NRS 288.140(2), if the employee so requests.

14. Local 1107 breached the duty of fair representation when it arbitrarily abandoned the outstanding grievances after Dr. Walker complained about Local 1107's choice of counsel.

15. The remedies identified in this decision and order are intended to effectuate the policies and purposes of the Act.

16. If any of the foregoing conclusions is more appropriately construed a finding of fact, it may be so construed.

## ORDER

Based upon the foregoing, and as stated above, it is hereby ordered that Service Employees International Union, Local 1107 shall continue to pursue the grievances against UMC that concern any of the complainants and that remain outstanding. Should any of the complainants request to pursue the grievance individually pursuant to NRS 288.140(2), Local 1107 may relinquish the grievance to the employee upon the employee's written request.

DATED the 23rd day of March, 2015.

**LOCAL GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD**

Philip E. Danner

BY:

**PHILIP E. LARSON, Chairman**

BY: Justin Schaefer

BY:

BRENT C. ECKERSLEY, ESQ.  
Vice-Chairman

BY: Donna Martens

BY:

**SANDRA MASTERS, Board Member**

STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

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, et. al.,	)	Consolidated CASE NO. A1-045847;
	)	A1-045848; A1-045849; A1-045850;
	)	A1-045851; A1-045852; A1-045853;
Complainants,	)	A1-045854; A1-045855; A1-045856;
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NEVADA SERVICE EMPLOYEES UNION, SEIU LOCAL 1107, AFL-CIO and SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC,	)	A1-045860; A1-045861; A1-045862;
	)	A1-045863; and A1-045864
Respondents.	)	<b>NOTICE OF ENTRY OF ORDER</b>

To Complainants: Deborah Boland, et. al., and their attorney Esther C. Rodriguez, Esq.

To Respondent: Nevada Service Employees Unions, SEIU Local 1107, and their attorney Michael A. Urban, Esq.

PLEASE TAKE NOTICE that the ORDER was entered in the above-entitled matter on March 23, 2015.

A copy of said order is attached hereto.

DATED this 23rd day of March, 2015.

LOCAL GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

By: \_\_\_\_\_

  
MARISU ROMUALDEZ ABELLAR  
Executive Assistant

**CERTIFICATE OF MAILING**

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 23rd day of March, 2015, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

Esther C. Rodriguez, Esq.  
Rodriguez Law Offices  
10161 Park Run Drive, Suite 150  
Las Vegas, NV 89145

Michael A. Urban, Esq.  
The Urban Law Firm  
4270 S. Decatur Blvd., Suite A-9  
Las Vegas, NV 89103



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MARISU ROMUALDEZ ABELLAR  
Executive Assistant