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William Miller
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***UMC Physicians v. Nev. Serv. Emp. Union*, 124 Nev. Adv. Op. No. 9
(Mar. 6, 2008)¹**

EMPLOYMENT LAW– FILING A COMPLAINT

Summary

This appeal clarifies the procedure and standard for filing a complaint with Nevada’s Local Government Employee-Management Relations Board (the “Board”), under NRS 288.110 and NRS 288.040. The Nevada Supreme Court held that a complainant need only be an employee organization as defined in NRS 288.040 and have a legally recognizable interest in a justiciable controversy in order to file a complaint.

Disposition/Outcome

The Court reversed the district court’s order denying judicial review and remanded the matter to the district court with instructions to remand the issue to the Board to determine if: (1) UMC Physicians’ Bargaining Unit (“PBU”) was an employee organization, as defined in NRS 288.040 and (2) whether PBU’s complaint presented a justiciable controversy.

Factual and Procedural History

In 1999, the University Medical Center of Southern Nevada (the “Medical Center”) recognized Nevada Service Employees Union (the “Union”) as the exclusive collective bargaining agent for PBU.² During negotiations between the Union and the Medical Center over a collective bargaining agreement, outsourcing of physicians’ jobs was a topic disclosed. When PBU asked the Union to address the outsourcing issue with the Medical Center, the Union refused (PBU alleges), and the Union also withdrew itself from representing PBU.

Appellant PBU filed a complaint with the Board on behalf of the physicians against the Union and the Medical Center on a number of issues, including the outsourcing notion. The Board dismissed the complaint, because it held that PBU lacked standing to bring the claim, as it was not an employee organization recognized as the exclusive bargaining agent for the group of physicians.³ The district court denied judicial review and PBU appealed the ruling.

Discussion

Here, the Court will conduct a de novo review in determining who may file a complaint for the Board’s review because it is purely a legal question of statutory and regulatory interpretation. Additionally, when statutes are ambiguous, as is the case here,

¹ By William Miller.

² PBU represents approximately seventy-five physicians who worked for the Medical Center.

³ Historically, the Board has allowed only those employee organizations that are recognized as the exclusive bargaining agents to complain on behalf of the employees whom the organization represents.

the Court will look beyond the statute's plain language and construe it according to the legislative intent of the statute.⁴

There are two statutes and two administrative codes that are used in this analysis: NRS 288.110, which governs complaints before the Board; NAC 288.030, which defines complainants; NRS 288.040, which defines employee organizations; and NAC 288.200, which requires that a justiciable controversy be presented by the complainant. All of these issues will be discussed in turn below.

I. NRS 288.110

NRS 288.110 governs complaints before the board. In pertinent part, NRS 288.110(2) states that “[t]he board may hear and determine any complaint arising out of the interpretation of, or performance under, the provisions of this chapter by any local government employer, local government employee or employee organization.”⁵ Because this statute is ambiguous, this Court will use further judicial interpretation in defining the statute's meaning. After analyzing the legislative intent of the statute, this Court holds that NRS 288.110 requires a party complaining to the Board to be a local government employer, local government employee, or employee organization.

II. NAC 288.030

NAC 288.030 defines complainants. Under NAC 288.030, a complainant may be “[a]n employee organization as defined in NRS 288.040.”⁶ Hence, under its own rules, the Board must allow “employee organizations” to file complaints.

III. NRS 288.040

NRS 288.040 defines an “employee organization” as “an organization of any kind having as one of its purposes improvement of the terms and conditions of employment of local government employees.”⁷ Because “an organization of any kind” is very broad language, this Court turns to federal law interpreting a “labor organization” for guidance. In general, the federal courts require only that a “labor organization” be “an organization or entity that is representing someone's interests.”⁸ Thus, an organization need not have a formal structure or bylaws, just have some structure to it.⁹ Hence, an “employee organization,” as defined in NRS 288.040, is any association that has some internal organization and is seeking to improve the employee's working conditions.

⁴ Valdez v. Employers Ins. Co. of Nev., 162 P.3d 148, 151 (Nev. 2007).

⁵ NEV. REV. STAT. § 288.110 (2007).

⁶ NEV. ADMIN. CODE § 288.030 (2007).

⁷ NEV. REV. STAT. § 288.040 (2007).

⁸ Correll v. Teamsters Union Local No. 828, 934 F. Supp. 1124, 1128 (N.D. Iowa 1996).

⁹ N.L.R.B. v. Sweetwater Hosp. Ass'n, 604 F.2d 454, 457 n.5 (6th Cir. 1979)

IV. NAC 288.200

The Board's standing requirement that an employee organization must be recognized as the exclusive bargaining agent before it may be considered a proper complainant is too limiting. But, there viewpoint is not entirely without merit.

NAC 288.200 requires that a justiciable controversy be presented by the complainant. Hence, the rule provides that a complaint must state "facts constituting the alleged practice sufficient to raise a justiciable controversy under chapter 288 of NRS."¹⁰ Also, "justiciable controversy" requires a ripe dispute between two interested and adverse parties.¹¹

Conclusion

The Board's requirement that a complainant be recognized as the exclusive bargaining agent does not comply with the statutes and codes governing the Board. A complainant need only be an employee organization (as defined in 288.040) and present a justiciable controversy. Here, the Board did not determine whether PBU was a proper complainant or whether the complaint presented a justiciable controversy. Instead, the Board held that PBU was not the exclusive bargaining agent and that PBU lacked standing.

Therefore, this Court reverses the district court's denying judicial review and remands the case to the district court with instructions to remand the matter to the Board to determine if: (1) PBU is an employee organization and (2) whether PBU's complaint presents a justiciable controversy.

¹⁰NEV. ADMIN. CODE § 288.200 (2008)

¹¹ Doe v. Bryan, 102 Nev. 523, 525 (Nev. 1986)