Do user fees violate nonmember rights?

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DO USER FEES VIOLATE NONMEMBER RIGHTS?

By
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A professional paper submitted in partial fulfillment
of the requirements for the degree of

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Abstract

User fees are moneys charged non-union members by their representative union for the purpose of processing grievances. The non-member has to request the union to represent them in order for the union to do so. They may also hire private representation at their own cost. User fees violate the intent of right-to-work laws in Nevada. The Nevada Local Government Employee-Management Board was wrong when they allowed Union/Local 1107 to charge such fees. The “Executive Board Policy” posted by Local 1107 on union bulletin boards announcing the fees for representation was coercive and discriminatory. According to survey, 40% of the respondents believe user fees would affect their decision to join an union. If the fees affect decisions to join they must be coercive in nature and thus not allowed in Nevada.
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CHAPTER 1

INTRODUCTION

What are right-to-work (RTW) laws? Right-to-work laws are statutes that give employees protection from union pressures by making it illegal for the union or management to force employees to join an union or not join as a condition of employment. Most of the RTW states have made it illegal for unions to charge any fees to people wishing not to join an union. In these states, the union is still required to represent nonmembers in grievances that arise based on the terms of the negotiated agreement that governs their place of work.

Currently, Union/Local 1107 is employing a new tactic to change or reinterpret RTW laws. They are doing so without utilizing the legislature. In a case heard before the Nevada Local Government Employee-Management Relations Board (NLGEMRB), the Board decided to allow Union/Local 1107 to charge user fees to non-union members that elect to have the union represent them during grievances. User fees are moneys charged to non dues paying members of an organization covered by a bargained agreement to offset the cost of representing nonmembers during grievances.

Of the 21 right-to-work states only two allow user fees. Nevada is now one and North Dakota is the other. The North Dakota RTW Laws were amended in 1987 to allow such fees. Thirteen states stipulate in their statutes that unions can not charge fees to anyone choosing not to be part of a union. The remaining states do not clearly stipulate whether fees can or cannot be charged. Nevada is one of these states. If Nevada allows user fees, are they violating the will of the people? Are user fees coercive in nature and thus violate NRS 288.033? Why is this issue important?

The following paper is a case study of the decision to allow the Nevada Services Employee Union, SEIU/Local 1107, to charge user fees for union representation of non-
union members during grievance proceedings. Local 1107 justifies such fees on the grounds of fairness. The fees would offset the costs associated with representing employees electing not to join the union but are considered to be under the union’s contract. Non-union employees believe user fees violate their right not be coerced into joining a union. They believe user fees are a violation of Nevada right-to-work laws, and the union has the obligation to represent everyone regardless of whether they choose to join or not to join the union.

Nevada decided to protect workers from union pressures with the signing of the right-to-work laws that govern labor in this state. User fees appear to be a violation of these rights. If the union gets away with the violation, what is next? Will the RTW laws be slowly eroded away until they no longer protect the workers? Is this only the first step in the process of doing away with right-to-work laws in Nevada? Are we moving toward a union shop system of labor where if you want to work you will have to join a labor organization?

In right-to-work states (which support the will of the people to choose if they want to be union members or not), why are unions still around? First of all, and probably the most influential reason, unionized organizations pay their employees more and offer better job security and benefits. Secondly, negotiations with management are best handled by professionals. Unions have become very good at negotiating with management. Another reason why unions are still around is because they are politically powerful. Unions contribute millions of dollars every year to candidates that support union goals. There are movements today that want workers to have the right to determine if any of their union dues should go out in the form of campaign contributions. Proposition 226 in California, called for the union to renew annually permission to use union dues for political reasons. It failed. There are however, two states with laws on the books similar to that of California Proposition 226; union contributions in those states have fallen by 75 percent. (http://www.frontpagemag.com/Frontlines/Mar98/unionfoe.htm)
Even with the advantages that unionization brings, people still decide not to join. Many workers in our technologically advanced society believe experience and education should be the primary determinations for promotion, not seniority. They believe the union through its immense contracts with management, often retains and fights on the behalf of employees that contribute nothing to the work place. These same employees are often promoted not on ability but seniority.

In right-to-work states, the only choice available to a person that does not agree with union spending policy is to opt out of the union. Usually a person can join a union at any time, and resign anytime, but they may have to pay union dues until the union allows them to stop paying (usually they let a union member stop their payroll deductions in only one month out of the year). Local 1107 let members stop paying in October.

When someone elects not to join Local 1107 and has a grievance, they must rely on their own know how to defend themselves, hire a private attorney, or find another outside source. Local 1107 will also represent these people (non-union members), but now the Nevada Local Government Employee-Management Relations Board has found: Union/Local 1107, can charge a fee to represent non-dues paying members during grievances. If someone does not pay union dues why should the union spend money defending them? Isn't it only fair for the union to recoup their expenditures? The opponents to user fees believe charging fees is a violation of the intent of right-to-work statutes. Opponents are also concerned, if the union can hold someone accountable for the cost of their defense then they are coercing people to join the union out of fear of losing their jobs should a grievance be established and they are unable to afford outside representation. Another important issue for nonmembers is the legality of the situation. If the union is the sole bargaining body of the institution where people are employed, can they impose fees for representation? Under Nevada Revised Statute (NRS) 288.033. "Collective bargaining" defined, item three states, the union is responsible for "the resolution of any question arising under a negotiated agreement...." This means as a
bargaining unit they have the obligation to represent all employees equally and can not
discriminate against union and non-union members. If they charge nonmembers for
representation are they discriminating against these employees and thus violating the letter
of NRS 288.033?

The legislature is the traditional source for changing and interpreting laws. Was
the Nevada Local Government Employee-Management Relations Board justified in
interpreting the RTW law the way they did? The State passed the right-to-work laws that
govern labor in Nevada in 1952, and despite several attempts to change the law like most
recently Senate Bill 206 (1993), they have all failed. If this is an indication of how Nevada
feels toward labor, then should the user fee authorization granted by the NLGEMRB be
withdrawn?

Chapter 2 discusses the history of right-to-work laws in Nevada leading up to the
case at hand. Nevada, fed up with all the labor problems early in the states history,
passed legislature limiting the power of organized labor. They passed what became
known as right-to-work laws. RTW laws are based on section 14b of the Taft-Hartly Act
(1947) which gives individual states the power to enact laws which can not be superseded
by Federal Regulations when deciding how they wish to regulate labor in their own state.
States could, for the first time, thus choose if they want a right-to-work state or one
allowing closed shop type contracts.

In Chapter 3, the methodology used in the paper is discussed. The reasoning
behind the decision to do a case study is evaluated. The participants, apparatus, and
procedure of the survey used and developed for this paper is also explained.

The entire case set before the Local Government Employee-Management Relations
Board is reviewed in Chapter 4. The issues presented by both sides as well as the Boards
finding are presented to give the reader an understanding of the issue at hand. Chairman
of the Board, Christopher Voisin’s, opinion is also discussed including his reasons for
dissenting. A Brief which was filed with the Nevada Supreme Court requesting the Court
to decide the issue of user fees is also presented. Finally, a brief summary of the chapter is provided.

Chapter 5 covers the results of a survey conducted at University Medical Center. One hundred and forty people employed by University Medical Center responded.

Chapter 6 explains the findings based on literature provided in the case. The laws and court cases are then evaluated based on their applicability to the case. Finally, the significant Survey findings are given.

Chapter 7 provides conclusions and recommendations for further research. A "non-union negotiator" is suggested should the Nevada Supreme Court fail to decide on the side of nonmembers. A new attempt to get the issue of user fees on to the ballet is also suggested.
CHAPTER 2

LITERATURE REVIEW / HISTORY

Workers of the 1800's tired of long work days, poor pay, nonexistent benefits, children in the work force, and the immense unemployment rates, began standing together against management and shop owners whom cared little about the conditions their employees faced. Often whole families worked in order to make ends meet. To fight for better job conditions, people employed in a particular trade grouped together, elected a spokesman, and agreed to stand solidly against management on all decisions affecting their well being. These stances were considered illegal in the United States until the twentieth century (Winks, Brinton, Christopher, & Wolff. 1988, p. 553). Some of these groups had thousands of members and others like the Cigarmakers Local 15 had only 46 members in 1873 (Gompers, 1984, p. 39).

After World War I, widespread worker revolts broke out in Nevada. The labor disturbances where do in part to cut backs in metal production, as well as the need of share holders to keep their profit margins. During the war, workers were promised their grievances over wages would be heard after the war. Instead they received lay offs. Governor, Emmett Boyle, had predicted the disturbances but was not able to divert the strikes that followed. In July of 1919, in McGill Nevada, workers struck for better wages and more benefits. Governor Boyle and a federal mediator (J. Lord) stepped in to negotiate. The dispute was settled by August 29th, but as it was being resolved another strike broke out in Tonopah. (Elliot & Rowly, 1987, p. 260-61)

Tonopah workers were ripe for the picking when Industrial Workers of the World (IWW) agitators arrived on the seen. Not much headway was made in negotiations until
Governor Boyle and J. Lord, along with R.F. Cole (Nevada Labor Commissioner) arrived. By early September, a plan for resolution was put forth to the miners. A majority of the miners were in favor of settling, but the IWW refused to resolve the conflict. Other workers honored IWW picket lines and refused to cross. Eventually, the settlement was voted in by the miners and the IWW still refused to honor it. Governor Boyle declared the strike over and placed an injunction against the strikers citing the Criminal Syndicalism Law. As a result of all the labor turmoil Nevada was experiencing during this period, widespread anti-labor feelings were becoming increasingly popular with Nevada citizens. (Elliot & Rowly, 1987, p. 262-63)

In 1932, the National Labor Relations Act (NLRA) passed into law, giving unions the right to exist. It also gave unions the right to be the only bargaining unit within an organization, providing they were fairly elected (Horowitz & Shilling, 1995, p. 140). By 1949, most unions in Nevada had closed shop conditions and were very powerful in the political arena. However, this was short lived due to right-to-work laws that Nevada soon initiated.

The Wagner Act, which was pro-labor began undergoing changes at the end of WWII and ended in the Labor Management Relations Act (LMRA), or more popularly known as the Taft-Hartly Act of 1947. The Act makes it illegal for public employees to strike (Horowitz & Shilling, 1995, p. 142). It also affirmed the rights of workers to organize and bargain collectively. The LMRA made the "closed shop" contract illegal and legalized the "union shop" contract which requires employees to become a union member after a certain length of time (Glass, 1981, p. 74). However, section 14b of the Taft-Hartly Act provided the following:

Nothing in this act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any state or territory in which such execution or application is prohibited by state or territorial law.
Eleven states used the aforementioned to enact laws limiting the power of labor organizations before Nevada enacted its own laws. Ten more states followed their example. The laws enacted under 14b were known as right-to-work (RTW) laws (Glass, 1981, p. 74). There was some confusion during this period as to why laws limiting organized labor would be called right-to-work laws. People were confused because traditionally labor organizations were fighting for worker rights and a RTW state should thus be for labor. What the laws actually mean is that workers have the right to choose.

During July of 1949, the Citizens Emergency Committee formed and later became known as the Nevada Citizens Committee (NCC). The NCC was the chief sponsor of the petition for right-to-work laws in Nevada. Other groups who were endorsing RTW laws included the National Association of Manufacturers, the National Chamber of Commerce, the American Farm Bureau Federation, the National Right To Work Committee, and thousands of small businesses. Those opposing the RTW laws were the AFL, the CIO (later to become the AFL-CIO) and some clergy from different faiths (Glass, 1981, p. 74).

During the 1950 elections in Nevada, not much attention was given to the right to work issues. Senator Patrick McCarren received praise for work against Communism and foreign policy issues but nothing was said about labor. However, McCarren was said to have ties with the RTW committee (Glass, 1981, p. 75). By 1951, enough signatures were on the RTW petition to turn it over to the legislature. The legislature then had to decide if they should ignore it, enact it, or defeat it. They chose to go with Governor Russell’s choice, they ignored it. The petition was then forced on to the 1952 ballot. The legislature of 1951 not wanting to deal with the RTW issue, instead enacted Senate Bill 79. SB 79:

contained prohibitions on organizational picketing and secondary boycotts, barred strikes without a 51 percent vote of the membership of a bargaining unit, required a thirty-day cooling-off period after a strike vote, and provided for unions to file financial statements with the state labor commissioner (Glass, 1981, p. 75).
Senate Bill 79 passed in the Senate with a 12-4 vote and in the Assembly with a 28-14 vote. Governor Russell put his signature on the bill on March 14th (Glass, 1981, p. 77).

In 1952, the Right-To-Work proposal passed in Nevada with a majority of about 1,000 votes. Labor organizers were outraged. They immediately passed out a petition, mainly sponsored by the Teamsters Union, and it received enough signatures to go in front of the 1953 law makers or the 1954 ballot. This initiative provided a constitutional issue for the secretary of state. In Nevada, an act which is passed into law by initiative has a three year waiting period in which no changes to the law can be made. The attorney general made an exception and allowed the petition to go forward. The 1953 legislature paid no heed to the petition and it was put on the ballot in 1954. (Glass, 1981, p. 78-9)

In 1954, the U.S. Congress was considering changing the Taft-Hartly Act and revoking section 14b. Labor chieftains and the Nevada Citizens Committee both sent countless correspondence to congress. The labor organizations supported the change and the NCC was opposed to the change. The changes were never put in place partially due to the lack of interest by President Eisenhower. The petition against RTW laws also failed. (Glass, 1981, p. 79-80)

Nevada unions tried again in 1955 to get the constitution amended and abolish the right-to-work laws. The 1955 legislature was working on many other issues and sent it to the 1956 ballot. By 1956, Nevadans were tired of hearing about the right to work issues and again it failed. Unions began immediately preparing another petition for the next legislative session. A twenty-five person panel in Reno proposed laws to limit the ability of unions to try the same case over and over again. This new law passed with 61 percent of the vote. Organized labor officials also failed to get enough signatures on the new petition to send it to the legislature. (Glass, 1981, p. 82-83)

Nevada law makers of the early to late fifties, seemed to have been squarely behind right-to-work laws. They voted for the laws and on three occasions ignored or shot down legislation to amend or repeal them. They also introduced legislation making it harder to
get the same case heard over and over again in front of our law making body. User fees are part of the RTW issue. If Nevada was not a RTW state, everyone that worked at a unionized facility would be required to pay union dues, but as Nevada history shows, RTW laws were designed to protect workers in Nevada from union pressures. Do user fees violate this protection, or is it only fair for unions to collect money for representing nonmembers that choose to have the union represent them? Anyone looking at the idea of user fees without considering the law or purpose behind the RTW issue might consider user fees fair. However, the NRS laws that govern labor organizations in Nevada seem to be against unions charging fees to nonmembers for grievance representation.
CHAPTER 3

METHODOLOGY

Case Study.

This paper is a case study of the decision to allow user fees in Nevada. The actual case that went before the Nevada Local Government Employee-Management Relations Board will be addressed and then evaluated using Nevadan history, applicable laws, the decisions of other cases, and opinions offered by professionals in the field. A Brief filed with the Nevada Supreme Court asking them for a ruling in reference to user fees will also be presented. All of the literature available in regard to the NLGEMRB’s decision will be presented. The reasoning behind the decision of the Complainants to file will be examined, and the dissenting position of the Boards Chairman will also be presented.

A case study approach to evaluate the issue of user fees was used because it offered the best method for compiling the data presented. Since Local 1107 is the only union in Nevada having permission granted by the NLGEMRB to charge user fees the scope of this paper could be narrowed to a manageable amount of data. Also, the case happened over a specific length of time. In October of 1994, the actions were initiated and the Supreme Court Brief was filed on December 16th, 1996. Therefore, the case happened over a specific length of time, this dictating the need for a case study approach.

Survey.

A survey was used to evaluate the attitudes of both union members and nonmembers. The survey was designed to determine if user fees would affect an employee’s decision to join or not join an union. It also asked employees for their opinion relating to whether they thought user fees should be sent to the legislature by way of referendum. The survey method of analysis offered the best solution to the problem of determining, in the most cost effective way, what the attitudes about user fees are at a
public unionized facility.

Permission to use a survey within the hospital was granted by both UMC and the union. The surveys were placed in break rooms throughout the hospital. Initially, the surveys were to be sent out with pay checks, but UMC management decided this plan could lead to future controversy (they were worried that the next group selling hotdogs would have grounds to do the same). Two locked collection boxes were strategically placed to collect the survey results. One box was put in front of the cafeteria and another one was placed by the west elevators. On March 2\textsuperscript{nd} the surveys were distributed and they were collected on March 9\textsuperscript{th}.

**Participants.**

Employees of University Medical Center were asked to fill out the surveys. The employees were ensured the study was completely voluntary and that none of the information collected would be used individually or collectively used against them. Questions relating to age, gender, disability, marital status etc. were not asked and thus not evaluated. None of the respondents were paid for filling out the survey.

**Apparatus.**

Excel 4.0 was initially used as the data collection apparatus for the raw data collected in the locked boxes. The data was then transferred to SPSS for cross-tabulation. The Internet was used extensively to collect data in a timely and convenient manner and both the public library system and the UNLV campus library were used as research tools.

**Procedure.**

The actual survey submitted to the employees began with an explanation of why the survey was being conducted and the date that it needed to be turned in. Following the introduction, the following statement was used to explain the topic of the survey.

*User fees are moneys charged to non-union members (non-dues paying). The Moneys are used to offset the cost of representing non-members during grievances all the way up to and including arbitration. The non-member has to*
request the union to represent him/her for the union to do so. The non-member also has the option of selecting an outside source.

The respondents were then left to answer the nine questions on the survey by circling the answers with which they most agreed.

"The Case" portion of this paper was obtained by mail (the Brief) and by requesting documentation from the Employee-Management Relations Board's office in Las Vegas. The literature cited was used to provide the reader with an understanding of user fees and the arguments presented by both sides. Many of the cases and statutes were looked up on the Internet for verification of their content and decisions.
CHAPTER 4

THE CASE

During March of 1995, three people launched a complaint against Nevada Services Employees Union/Local 1107 (the Union) and University Medical Center (UMC) of Southern Nevada. The case was heard in front of the Nevada Local Government Employee-Management Relations Board (Item No. 361-A, Case No. A1-045582, 1996). The Complainants are all employed by UMC and were members of the Union until October of 1994 in which they resigned from Union membership.

In that same month, the Union posted an "Executive Board Policy" (Policy) on Union bulletin Boards throughout the hospital (361-A, 1996, p. 2) (See Appendix 1). The Policy laid out guidelines for the Union to collect fees for representing nonmembers of the union. The fee schedule starts out with a minimal fee of $60.00 per hour for "Grievance Consultation" and goes on to include union lawyer "fees which can run up to two hundred dollars per hour".

Article 6, § 2 of the bargained agreement between the Union and UMC states that:

The Union recognizes its responsibility as bargaining agent and agrees fairly to represent all employees in the bargaining unit. UMC recognizes the right of the Union to charge nonmembers of the Union a reasonable service fee for representation in appeals, grievances and hearing(s).

The Agreement between UMC and the Union also contains provisions which state employees may file complaints on their own without going through the Union (Article 9-Discipline and Grievance Procedure). It is also mentioned that Union Stewards will receive release time to investigate actions conceived to be in violation of the Union
contract. Release time is paid time away from the Steward’s assigned place of duty to conduct Union business.

**The Complainants.**

On March 7, 1995, the complainants filed an instant complaint with the NLGEMRB under the premise that their rights have been violated by the Union and UMC both supporting user fees. They claimed, the use of user fees is a violation of “NRS 288.140(1)(a), 288.270(1)(a), 288.270(1)(c), 288.270(2)(a), and 288.270(2)(c)...” of Nevada Law (361A, 1996, p. 3). The Complainants are basing their case on the belief the collective bargaining agreement is invalid because it only allows for Union representatives to receive release time to process grievances and does not allow for nonmembers to receive like treatment and that, the Policy is coercive and discriminatory against nonmembers.

On August 14th of 1995, a Pre-Hearing Conference was held. The Complainants and the Respondents agreed to let the board decide the case based on the pleadings of both sides. A briefing schedule was requested and a statement was submitted (see Appendix 2) declaring the facts of the case. On the 26th of October, 1995, the "Complainants Reply Brief was filed with the Board (361A, 1996, p. 6)."

**The Union.**

The Union defended their position by declaring individuals have the right to file grievances on their own behalf. This was negotiated through Union bargaining with UMC. User fees will only be charged to "those areas where the union is ‘non-exclusive’ representative...." The Union also declared, Union representation is "allegedly... available to all employees in the bargaining unit at no cost....” The Union did however, stipulate this does not include going to arbitration because, "the union allegedly does not ‘own’ the arbitration process under the terms of the collective bargaining agreement...." The Union contends "all release time representation allegedly is provided at no cost, and the individual employees maintain the right to use the grievance machinery...." They also stipulated, to date, no employee has ever been charged a fee for Union services, thus there
is no basis for the Complainants to request remedies. (361A, 1996 p. 6-7)

**UMC.**

UMC defends their position by stating Article 6 § 2 is in the first bargained agreement adopted in 1988. They further state, the Complainants did not find UMC was in any way involved in the Union's display of their fees policy. UMC contended that no UMC employee has ever been made to pay for Union representation regardless if they are a member or non-member of the Union. UMC also claimed the Union:

as exclusive bargaining agent for all employees of the bargaining unit..., the union must exercise its discretion to determine which grievances to process fairly and in good faith, and it allegedly is a legitimate exercise of the organizations discretion to condition grievance representation for non-members upon payment of a proportionate share of the cost of such representation; that non-members have the right to select their own representative, at their cost, and the policy/fee schedule specifically advises non-members that they have this option; that allowing the union to charge non-members for representation allegedly simply places its services on a par with non-union representation...(361A, 1996 p. 8).

UMC also contends, "requiring non-members [sic] to select between two payment options... allegedly has a neutral effect on union membership; that it allegedly is not discriminatory or coercive to require non-members, who contribute no dues to the union to pay their fair share...." The Complainants are discouraging Union membership by suggesting members pay for nonmembers to be represented by the Union at no cost thus giving those who choose not to join a free ride. UMC mentions, the cases brought up by the Complainants have no relevance to the Boards decision because the Union can only charge nonmembers when they request representation. UMC contends the fees for service policy is valid and therefore, is a solution to the problem of free riders (361A, 1996, p. 9).

UMC continued to argue their case by next attacking right-to-work laws. They argued the RTW laws in Nevada do not prohibit charging fees for services.
It is not necessary for the Board to look beyond its own statute to decide the instant case; that, allegedly, there is nothing in the Nevada cases cited by Complainants which can be read to prohibit service fee arrangements; that service fees allegedly are not the equivalent of dues (they allegedly are payment for services rendered only upon request); that the failure of prior legislative attempts to pass "fair share" statutes allegedly has no bearing on whether service fee arrangements are statutorily prohibited...(361A, 1996, p. 10).

UMC contends their only involvement in the instant case consisted of negotiating a fair share provision in their contract with the Union. UMC stated; "that the complainants allegedly lack standing to bring this action (they have suffered no direct injury and have not been ‘aggrieved’)...." Their next concern was in reference to the allegation the Union fees policy had a "chilling effect on the employees". They believe this is "based on conjecture, inasmuch as there is no evidence that any of the approximately 100 employees who resigned from the union changed their mind after the posting of said policy...." UMC also said, there is no evidence member withdrawal from the Union changed after the posting of the “Executive Board Policy”. UMC further believes this instant case is not of importance because no one has of yet been charged any fees for representation. Article 6 § 2 has been in the contract since 1988 and the six month period in which the Complainants have to respond has expired thus waiving their rights. "That a ruling by the Board on the merits allegedly would have a prospective and general effect and therefore the Board should proceed by regulation rather than adjudication...." The final issue brought forth by UMC was, "the remedies requested by the Complainants allegedly are both inappropriate and outside the Boards authority (391A, 1996, p. 10)."

The Board.

After reviewing all of the applicable laws and presented evidence, the Nevada Local Government Employee-Management Relations Board rendered their decision. In a two to one vote, with the Chairman dissenting, they found the following:
I.

LOCAL 1107's "EXECUTIVE BOARD POLICY", PROVIDING A "UNIFORM FEE SCHEDULE FOR NON MEMBERS" IS NOT PROHIBITED BY NEVADA'S RIGHT TO WORK LAW AND IS NEITHER COERCIVE NOR DISCRIMINATORY (361A, 1996, p. 14).

The Board found "at least twenty states," adopted laws concerned with "union security clauses". They claim these clauses were "intended primarily for the private sector," however, "they have been interpreted to prohibit the negotiation of union shop, agency shop, or fair share arrangements in the public sector“. The Board claimed the grounds for the aforementioned prohibitions are compulsory; "they condition employment upon membership and/or payment of dues or fees". At UMC, the policies bargained for by the Union do not make the fees mandatory as a condition of employment. (361A, 1996, p 14)

It does not require all non-members to pay a fee for representation services provided by the union. It only requires that non-members who request to be represented by the Union in the filing and/or processing of a grievance, pay the unions cost of providing the requested representation services, as set forth in the Uniform Fee Schedule for Non Members. It also advises non-members that they may select outside counsel to represent their issues through the various grievance procedures (391A, 1996, p. 14-15).

They go on to claim neither the “Executive Board Policy” or the “Uniform Fee Schedule for Non-Members” "contains... the compulsory-membership elements and/or conditions of employment prohibited by Nevada's Right to Work Law" as contained in NRS 613.230-
The Board disallowed the Complainants claim the failure of legislation introduced to allow fair share fees have all failed suggesting that Nevadians are not for user fees. The Board found this claim was a "red herring" since the legislation was all "allowed to die in committee" and the fair share is not "comparable" to user fees (361A, 1996, p. 15).

Nevada Revised Statutes gives Nevadans the "right to join or refrain from joining an employee organization" (NRS 288.140). Also contained therein is the provision that "any local government employee who is not a member of that employee organization from acting for himself with respect to any condition of his employment" as long as it is consistent with the terms of the bargained agreement (NRS 288.140-2). The Board found, a nonmember may either act on behalf of himself or request the union to represent him. They found, if a nonmember requests union representation they are obligated to supply said representation. However, they also determined there is nothing in NRS 288 disallowing the union to charge a fee for representing nonmembers. The nonmember may also hire outside representation in which case they would also be required to pay for representation. The Board also decided the fees in the Policy seem to be fair market values for the services rendered. (391A, 1996, p. 16)

The Board decided, based on the evidence, the "Executive Board Policy" and "Uniform Fee Schedule" are not intended to "restrain or coerce" nonmembers into joining or not joining the Union. The Board further stated, user fees are used to offer representation to nonmembers without depleting Union treasuries and that, "arguably, the union has the right to require a non-member to pay the cost of representation services, even in the absence of a posted policy...." Further more, there is no proof that posting the policy had an effect on the amount of people who dropped from the Union or stayed in the Union after the posting of the policy. (391A, 1996, p. 17)

The Union has responsibilities to all employees, not just nonmembers. The board believes the Union would be derelict to union members if they allowed non-dues paying
employees to deplete Union treasuries for purposes related to grievances without some method of gaining back costs of representation. Nonmember contention that they can revoke Union representation without contributing Union dues is the same as saying they have a legitimate claim to the Union treasuries. This is like saying nonmembers hold a lien against Union treasuries "of an unspecified amount". (391A, 1996, p. 17-18)

The Board also found the policy of charging nonmembers for representation is not discriminatory, arbitrary, or in bad faith, even though precedence exists in other jurisdictions favoring the opinion of the Complainants. NRS 288 is different and distinguishable from other jurisdictions and the Board is not required to follow the precedence set in those cases if it feels the two cases are not the same (391A, 1996, p. 20-1).

Part Two of the Boards finding are contained in the following. It pertains to the issues of "release time" and the charging of fees to nonmembers, both of which the Board found not to be "discriminatory or coercive."

II.

THE PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT PROVIDING "RELEASE TIME" AND PAYMENT THEREFORE TO UNION REPRESENTATIVES, WHEN CONDUCTING UNION BUSINESS; AND RECOGNIZING "THE RIGHT OF THE UNION TO CHARGE NON-MEMBERS OF THE UNION A REASONABLE SERVICE FEE FOR REPRESENTATION IN APPEALS, GRIEVANCES AND HEARINGS" ARE NOT DISCRIMINATORY OR COERCIVE, AND THE COMPLAINANTS HAVE WAIVED ANY RIGHT THEY MAY HAVE HAD TO OBJECT TO SAID PROVISIONS (391A, 1996, p. 21).
Release time is used extensively in the public sector as well as in private organizations. The Board has in a previous case, County of Lyon vs. International Union of Operating Engineers Stationary Local No. 39, (1989), already ruled that release time is not discriminatory nor does it inhibit or prohibit union membership. Agreement terms allowing the union to collect fees for representation "are not in and/or of themselves discriminatory or coercive." The Board also found the employer (UMC), was well within established provisions when granting the Union, through negotiations, authority to charge user fees. The Board used the example of giving the Union "exclusive contract right" to post union business on bulletin boards." (391A, 1996, p. 21-2)

III


The Complainants argue that the grievance procedures only allows nonmembers to start the grievance proceedings and does not anticipate the individual taking the grievance all the way to arbitration. The Union contends individuals may take grievances all the way to arbitration if they so choose regardless of the language of certain articles in the bargained agreement. They also stated, "the union does not 'own' the arbitration process under the terms of the collective bargaining agreement...." The Board read Articles 9 and 10 of the agreement and did not find ownership of the arbitration process was not that of the Union. They found the articles do in fact support the contention of the Complainants. However, even though the articles support the complainants possesion, it "is not dispositive of the issue." (391A, 1996, p. 23-4)

The Board also contends that NRS 288.140(2) provides that an employee whom
wishes to do so may take a grievance all the way to arbitration (providing it is within the boundaries of the collective bargaining agreement). Further more, the Nevada law making body must have intended the whole of the grievance and arbitration process to be available to nonmembers and not just the initial filing of grievances and that; the rights of individuals guaranteed by state statutes, can not be “bargained away.” (391A, 1996, p. 25)

IV.


UMC asked for the Board to rule by “regulation” rather than “adjudication.” The Board decided to adjudicate rather than regulate. Based on the Boards knowledge of the case they determined that being this is (at present) an isolated case (no other union in Nevada charges user fees) and therefore their decision will not effect other public organizations immanently there is no need to proceed by regulation. (391A, 1996, p. 25)

V.

ALL OTHER ISSUES ARE EITHER MOOT OR NOT RELEVANT (391A, 1996, p. 26)

The Board found, due to their decisions in I., II., and III., there is no reason to go over any other issues presented by the Respondents or Complainants. Therefore they dismissed all other issues. Following is the Boards “Decision and Order.”

Decision And Order

The Board “Ordered Adjudicated and Decreed” the following: that, the “Executive Board Policy” “is neither coercive, discriminatory or prohibited, Article 6, § 2 and Article 7 of the current collective bargaining agreement...” is “neither coercive, discriminatory or prohibited;” and the Complaint is therefore denied. The document is dated the 10th day of January, 1996. (361A p. 31)

Dissenting Opinion

The Chair of the Local Government Employee-Management Relations Board,
Christopher W. Voisin, dissented from the other members findings. He believes the posting of the policy is/was a prohibited practice. He believes the implementation of said policy is also a prohibited practice and it did have a chilling effect on union withdrawals. Finally, Mr. Voisin believes all of the decisions of the majority are/were in violation of NRS 288.270 (2) (A). (D361A. 1996, p. 1)

I.


Anything which is “inherently destructive of an employee’s protected rights is prohibited... (D361A. 1996, p. 1)” Mr. Voisin, also stated, “the employer is held to intend the very consequences which foreseeably and inescapably flow from its actions....” He then lists two cases as supporting evidence for his conclusion. They are the Clark County Classroom Teachers’ Association vs. Clark County School District, Timothy Sands, Jan Bennington, Carolyn Reedom and Arlene Simonson, (1989), and the Teamsters Local No. 533 vs. Humboldt General Hospital, (1990). According to Mr. Voisin an employee has the right to join or not join a union at any time and the union or employer can not make a ‘captive’ of the employee. By charging fees for representation they are essentially capturing the employee making him/her remain in the union which is coercive in nature and contradictory to NRS 288.270 (2) (a) and is therefore, a prohibited practice. (D361A, 1996 p. 2)

The “Executive Board Policy” must of had a chilling and coercive effect on employees who were considering withdrawing from the union (D361A, 1996 p. 2). Employees accustomed to the union ordinarily providing grievance representation had their rights violated. In Furniture Workers Local 282 (Davis Co.), (1988), the NLRB held that in RTW states unions can not “require a fee for vital collective bargaining services,
including grievance processing, which is due nonmembers as a matter of right) [emphasis added]..." (291 NLRB at 183). Mr. Voisin also stated that the NLRB has held the above decision in other cases. (D361A, 1996 p. 3)

The next issue the Chairperson covered was the controversy over the union posting the policy. He said it was only after a large number of employees voiced their decision to withdraw from the union that the union decided to develop and post the policy. "The coercive nature of this action and its chilling effect is a consequence which foreseeably and inescapably flows there from." He then stated the policy must therefore be a violation since the NLRB has ruled against user fees and if we apply the same law locally we can only come to the same conclusion. (D361A, 1996 p. 3)

II.

THE "EXECUTIVE BOARD POLICY IS DISCRIMINATORY ON ITS FACE" (D361A, 1996 p. 3).

The Chairperson claimed "the 'Executive Board Policy' is discriminatory on its face". The Complainants are employed by UMC which is governed by an agreement between UMC and Local 1107, thus, Local 1107 is the bargaining agent for the public employees of UMC. As the bargaining agent, Local 1107 has the duty, according to NRS 288.027, to represent (exclusively) all employees of "the bargaining unit for the purpose of collective bargaining". Collective bargaining is defined in NRS 288.033. Part of the definition includes section 3 which says "the resolution of any question arising under a negotiated agreement" is part of the unions duties. NRS 288.140 (2) allows for any nonmember to act for himself with regard to "any condition of his employment" but it also states, "any action taken on a request or in adjustment of a grievance shall be consistent with the terms of [the] applicable negotiated agreement...." (D361A, 1996 p. 3-4)

Since Local 1107, is the exclusive bargaining agent for UMC they have the duty to represent all employees within the bargaining unit, not just union members, and can not pick and choose who they care to represent. This verdict was decided in Smith vs. Sheet
Metal Workers Local 25, (1974). This duty to represent all, applies to grievances from initial filing up to and including arbitration, however, the union may decide which grievances warrant filing and are within time restraints established under the negotiated agreement. The above was decided in Asch vs. Clark County School District. The Board of Trustees of the Clark County School District, and the Clark County Classroom Teachers Association, (1993). (D361A, 1996 p. 4)

Even when the union decides that a grievance filed by a nonmember is not within the time restraints or is of a non-issue in regard to the bargained agreement, the unions duty does not end there, according to Mr. Voisin, the focus only changes from one of support to that of protector of the bargained agreement. What he meant by this was, the union is still obligated to ensure that any decision made in the case of a nonmember taking a grievance up the chain is in accordance with the bargained agreement. The Chairman said the premise behind NRS 288 is for the union to protect all of the employees within the collective bargaining agreement “not just the interests of a particular grievant and not just the interests of dues paying members (D361A, 1996 p. 5)” These findings by Mr. Voisin were determined by the Supreme Court in Conley v. Gibson, (1957) and were upheld and expanded in ALPA v. O’Neill, (1991).

Local 1107 stated, union representation is available to nonmembers when union representatives are on employer paid release time without costing the employee. Mr. Voisin does not agree with this statement because the “Executive Board Policy” does not contain provisions to the effect. He said the posting of the policy “is in direct contravention of Local 1107’s position. Said statements therefore, must be rejected as self-supporting, unsubstantiated allegations which appear to be pretextual in nature.” (D361-A, 1996 p. 6)

The Union, has bargained for and “negotiated ‘non-exclusive’ grievance machinery. According to Mr. Voisin, this machinery is based on the premise that nonmembers may act for themselves with regard “to any condition of their employment.”
However, the Chairman stated there is no condition under NRS 288 allowing for "non-exclusive" representation. Therefore the whole premise is erroneous and has no "basis under law". There is however, the requirement for the union to represent all employees no matter if they are members or not, and he gives the case of *Vaca vs. Sipes*, (1962) as precedence. (D361A, 1996, p. 7)

The language of NRS 288.140 (2) says that any grievance must be in compliance with the terms of the bargained agreement. Mr. Voisin believes this statement makes it a statutory requirement for the union to be involved in the processing of all grievances, not just those of Union members, to ensure any settlements are in accordance with the agreement (D361-A-7). He points to the United States Code section 29 [§ 159 (a) ] which reads similar to that of NRS 288.140 (2):

> Provided, that any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect...(D361A, 1996, p. 7).

The above language was construed in *Emporium Capwell Co. v. Western Addition Community Organization*, (1975), by the Supreme Court. The Court explained the ‘proviso’ language allowing employees to represent themselves is “very limited; it was designed merely to permit, but not require, employees to present informal grievances to their employer... (D361-A, 1996, p. 8)”. The reason for the proviso language was to protect employers from being found liable for dealing with employees without involving the union.

The Supreme Court has also ruled, the Union is responsible for the grievance process and that they control said process even if a nonmember elects to file on their own behalf.
[The Union]...has a legitimate interest in presenting a united front on this as on other issues and in not seeing its strength dissipated and its stature denigrated by subgroups within the unit separately pursuing what they see as separate interests. Id., 420 U.S. at 69-70.

Also, the contention Local 1107 has non-exclusive machinery with regard to bargaining is countermanded by their own bargained agreement. Article 10 of the collective bargaining agreement does not mention any outside representation and contemplates the arbitration process being between UMC and the Union. (D361-A, 1996, p. 8)

III.


According to Mr. Voisin, exclusive representation is not an item which can be negotiated away. It is the statutory right of the union as well as their duty to represent all employees. "By its very term, an 'exclusive bargaining' unit or organization precludes nonmembers from being represented by any other entity or organization for bargaining or grievance purposes." An employee has two choices according to NRS 288.140 (1), they can either join an union or not join an union depending on what they individually choose. When an union becomes the exclusive bargaining unit they gain the right to represent all the employees during negotiations but they also then have the responsibility to represent all of the employees during grievances. By establishing a policy that suggests nonmembers should pay fees for union representation the Union has violated the provisions of NRS 288. The Policy "is also discriminatory on its face." The Policy discriminates against those who do not pay union dues so it must be prohibited. (D361-A, 1996, p. 9-10)
The resolution of grievances is mandated by NRS 288.150 (2) (o). Local 1107 as the recognized bargaining unit of UMC, has the duty to bargain machinery that is not discriminatory as to membership status. To believe a policy which charges fees to nonmembers "is not discriminatory... is beyond comprehension." Mr. Voisin believes an union which looks at membership to determine what representation will be offered is also discriminatory and he gives the case of the National Treasury Employees Union v. FLRA, 721 F.2d at 1406, to back up his statement. When duties granted to the union are not carried out, the union and the employer are both culpable. The Chairman gives the following as evidence to the above statement: Hunter, Nanette vs. Wayne-Westland Community School District and Wayne-Westland Education Ass'n (1989) and Pacific Coast Utilities Service, Inc., (1978). (D361-A, 1996, p. 10-11)

IV.


Nevada Revised Statutes 288.110 and 288.280 authorize the Local Government Employee-Management Relations Board to hear disputes that arise from the interpretation of NRS 288. The Board has continually held to be true; acts that chill or suppress employees from administering their protected rights are forbidden. Since the union's policy was coercive and had a suppressive effect on employees will to join or not join the union as is their right, the Complainants and/or any other employee under the agreement has the right to bring a complaint. No damages need be established in order for the complaint to go forward. Furniture Workers Local 282 (Davis Co.), (1988), and American Postal Workers (Postal Service), (1985). (D361-A, 1996, p. 12)

V.


The Nevada Local Government Employee-Management Relations Board has held, a waiver (waiver by inaction) must qualify under the following situation. Not only must
“inaction” be established but also it must be “clear and unmistakable.” Since the Complainants did not file during the six years in which Article 6 § 2 was (and still is) in the agreement, their inaction has been implied. However, it is not clear and unmistakable. It only became an issue after the posting of the “Executive Board Policy.” (D361-A-13)

**After the Boards Decision**

**The Brief.**

After the Board came to a split decision authorizing Local 1107 to charge user fees the Complainants immediately filed a complaint for Judicial Review with the District Court. After one day (July 18, 1996) of oral arguments the Court denied the Petition for Judicial Review in a final decision released on November 15th, 1996. On December 11th, 1996, the Complainants filed an appeal with the Nevada Supreme Court. The appeal follows.

Article 7 of the Agreement between UMC and Local 1107 provides for Union Stewards to receive release time to conduct union business including the pursuit of grievances and other union business. Nonmembers do not receive release time to pursue grievances even if they elect to act on their own. Release time is defined as hospital paid time released from their place of duty to conduct union business. (Brief, 1996, p. 3)

During October of 1994, the Complainants and 100 other union members voluntarily resigned from Local 1107. October is the only month in which union members may cancel their dues check off deposit to the union as established in Article 8 § 4 of the negotiated agreement. During this same month, the Union produced and posted their “Executive Board Policy” on UMC provided bulletin boards throughout the hospital (see Appendix 1 for the “Policy”). The Complainants then filed a complaint with the Nevada Local Government Employee-Management Relations Board. The Complaint was denied in a 2:1 decision and a petition was filed with the District Court. The District Court denied the Petition for Judicial Review and a Brief was filed with the Nevada Supreme
Court. The argument filed by the Complainants with the Supreme Court follows.

**Argument.**

None of the facts in this case are disputed. The decision by the Nevada Local Government Employee-Management Relations Board “is purely a matter of statutory interpretation.” It is up to the Supreme Court thus to provide “independent appellate review’ in matters of statutory construction.” This becomes even more apparent due to the divided decision by the Board. See *County of Clark v. Clark County Park Ranger Employees Association*, (1995) and *Maxwell v. SIIS*, (1993). (Brief, 1996, p. 7)

Local 1107 is obligated to not only negotiate a contract at the bargaining table but are under the obligation to bargain for grievance procedures, including those for arbitration, which are consistent with the terms of the Nevada Revised Statutes. These terms must be resolved by the union because they are responsible for the grievances arising under the contract they negotiated. Grievance procedures are designed to enforce the agreement between the two parties. Thus, the grievance steps are an essential part of the collective bargaining process. In the case of *Conley v. Gibson*, (1957), the Supreme Court held:

The bargaining representative’s duty not to draw irrelevant and invidious distinctions among those it represents does not come to an abrupt end, as the respondents seem to contend, with the making of an agreement between union and employer. Among other things, it involves day-to-day adjustments in the contract and other working rules, resolution of new problems not covered by existing agreements, and the protection of employee rights already secured by the contract. The bargaining representative can no more unfairly discriminate in caring out these functions than it can in negotiating a collective agreement.

The above was expanded and reaffirmed in *ALPA v. O’Neill*, (1991). (Brief, 1996, p. 8)
The United States Supreme Court has consistently held the union has exclusive control of core negotiating and grievance activities. Despite that control, the Nevada Local Government Employee-Management Relations Board's two-to-one decision allowed Local 1107 to choose what part of NRS 288.033 they want to follow and what part they can elect not to follow. This type of picking what to follow "is unprecedented in American labor law." Local 1107 must be either the "exclusive representative" of all employees under their contract "or they are not the 'exclusive representative' at all!" (Brief, 1996, p. 9)

The duties assigned under NRS 288.033 includes the "duty of fair representation" ("DFR"). Fair representation means the union has to represent everyone and can not discriminate based on union membership. See NRS 288.140(1), NRS 288.270(2)(a)(c), Vaca v. Sipes (1967), and ALPA v. O'Neill, (1991). These duties apply even if an employee chooses not to be a member of the union. (Brief, 1996, p. 9-10)

The Local Government Employee-Management Relations Board admitted their decision was not based on Nevada Revised Statute because, they claimed the Statutes did not contain any thing that allowed or disallowed the nonmember from being charged for representation. Even without "affirmative legislation" the Board decided to interpret the Statutes the way they did. This interpretation did not allow for the "right to refrain" as contained in NRS 288.140(1). (Brief, 1996, p. 11)

In 1952, Nevada voted in right-to-work laws. The RTW laws made it illegal for a union to coerce an employee into joining an union or not joining as a condition of employment. It has been "hornbook" law since then requiring unions to supply representation during grievances to nonmembers regardless if they pay dues or not. See the decisions in Hughes Tool Co, (1953), Machinists Local 697 (Canfield Rubber), (1976), American Postal Workers (Postal Service), 277 NLRB 541 (1985), and Furniture Workers Local 282 (Davis Co.), (1988). These cases point to a trend whereas unions operating in right-to-work states can not charge fees for representation because of their
coercive nature. (Brief, 1996, p. 11)

Unions in the private sector of Nevada have been obligated for decades to represent everyone under their contract without charging fees to nonmembers. Since there is not existing legislation to the contrary, these rules should apply to public sector agencies as well. There is nothing in the Local Government Employee-Management Relations Act (LGEMRB) that could be interpreted as reversing any part of the right-to-work law of Nevada. Therefore, public sector unions should be held to the same standard. (Brief, 1996, p. 12)

The Nevada Local Government Employee-Management Relations Board’s comparison of nonmembers being free from user fees to that of nonmembers having a claim to the unions treasuries is greatly flawed. This outcome is what the people of Nevada voted on when they passed the right-to-work laws in this state. When Nevada passed the LGEMRA in 1969 nothing was done to change this part of the RTW laws. (Brief, 1996, p. 13)

Over the past several years there has been several attempts to change Nevada’s right-to-work laws to allow user or fair share fees. None of those attempts have been successful. Assembly Bill 719 (1991), died in the Assembly. Senate Bill 194 (1991), died in the Senate. Senate Bill 206 (1991), also died in the Senate. Assembly Bill 439 (1993) died in the Assembly. Senate Bill 202 (1993) died in the Senate. The Nevada Legislature has shown that any attempt to charge fees to nonmembers of a union is not favored in Nevada and has consistently failed to make it out of either the Assembly or the Senate. (Brief, 1996, p. 14)

Perhaps the biggest flaw with the LGEMRB’s decision was its interpretation of NRS 288.140(2). The Board interpreted the Statute to mean the legislature intended “to invent a new hybrid called ‘partial non-exclusive representation.’” This hybrid suggests Nevada unions are the exclusive representative except when it comes to representing nonmembers during grievances. This “interpretation of NRS 288 is completely wrong,
and so unprecedented that it stands decades of accepted American labor law on its head.” NRS 288.140(2) does not permit for discriminatory practice. Even when a nonmember elects to file on his own, “any action taken on a request or in adjustment of a grievance shall be consistent with the terms of the applicable negotiated agreement.” In actuality, the ability of a nonmember to negotiate a settlement on his own does not exist. The union actually controls the grievance even if a nonmember initiates it. (Brief, 1996, p. 15)

If the union did not control the grievance procedures then an individual could negotiate his or her own agreement. If this individual negotiating was to continue then the whole concept of organized labor would be only conceptualized and not truly existent. If the legislature intended this “partial non-exclusive representation” they would have clearly said so considering it exists in no other state. Also, NRS 288 was modeled after the National Labor Relations Act, so the Board did not take into account that it was interpreting NRS 288 in opposition to the NLRA. In the case of the NLRA the Supreme Court ruled that the “proviso” allowing individuals to represent themselves was merely to permit individuals to present their informal grievances without the employer being held liable for dealing directly with an employee. The Supreme Court also held, that the union does indeed control the grievance process. (Brief, 1996, p. 16)

Fair share or user fees are not fair at all. In order to bear a resemblance of fair, the fees would have to be distributed over everyone within the agreement and not charged only to individual nonmembers that request union representation. Local 1107 is requesting a solution that only selects single individuals to pay fees. This fee schedule is oppressive because an individual could acquire thousands of dollars of debt for one grievance sent to arbitration or they could be coerced into joining the union. Another nonmember which never files a grievance will not pay anything. (Brief, 1996, p. 18)

The Board’s claim that the Complainants waived by inaction their right to confront the policy charging user fees because of Article 6§ 2 being in the negotiated agreement
since 1988 is unfounded. This decision is "absurd." Since the Complainants were union members up until October 1994, they did not have any previous standing to challenge Article 6 § 2. Why would they challenge wording directed at non-members? Only after the "Executive Board Policy" was posted did they have grounds to file a grievance. The waiver by inaction applied to this case is unjust because it limits all others from challenging the contents of Article 6§ 2.

Case Summary

After withdrawing from Union Local 1107, three employees of University Medical Center filed a complaint with the Nevada Local Government Employee-Management Relations Board. The Complaint named UMC and Local 1107 as the Respondents. The Complainants filed based on their belief that the "Executive Board Policy" posted on union bulletin boards violated their rights not to be coerced into joining an union. They also believe the Policy is/was discriminatory toward non-union members and was unfair based on the union ability to use release time to pursue union business including the pursuit of grievances. The "Executive Board Policy" laid out the cost structure for nonmembers if they chose the union to represent them during grievances. Basically it provided the guidelines for the union to charge user fees.

The union argued the policy was not coercive or discriminatory and only provided the fee schedule for nonmembers requesting the union to represent their grievances. Local 1107 claimed the Union negotiated non-exclusive bargaining machinery authorizing them to charge fees for representation. They also claimed the fees are a mute point since the Union has never charged anyone for representation regardless of an individuals union membership. The union also stated, individuals have the right to file a grievance on their own or can opt to higher private representation at their own cost.

University Medical Center claimed since Article 6 § 2 was in the first bargained agreement the complainants have no grounds in which to file since they waived their rights
by inaction. UMC also contends they were not involved in the posting of the policy and the Complainants never proved they were. UMC stated that since the nonmember has two options: one, to request union representation or: two, file on their own behalf, payment has a neutral effect and the fees are neither discriminatory or coercive. UMC claimed nonmembers requesting the union to represent them at no cost is having a discouraging effect on union membership. Also, UMC contended that the nonmember is looking for a free ride. They do not pay dues yet they want the union to represent them at no cost. University Medical Center also asked the board to regulate rather than adjudicate.

The Local Government Employee-Management Relations Board in a two to one decision found the “Executive Board Policy” not to be discriminatory, coercive, or against Nevada right-to-work law. They claimed RTW laws were primarily designed for the private sector but have been applied to the public sector as well. Since user fees do not make mandatory union membership as a condition of employment they do not violate the Nevada Revised Statutes. The Board also found the Complainants waived their right to be heard based on the filing of their complaint being outside the six month time limit. Article 6$ 2 has been in the agreement since 1988, well over the six month period.

The NLGEMRB also determined the release time issue has already been found not to be discriminatory or coercive. It is extensively used in both private and public sectors and is not in and of itself discriminatory. They found nonmembers may file their own grievances and take them all the way to arbitration if necessary. However, the grievance must be within the boundaries of the negotiated agreement.

The Board determined the case should be adjudicated rather than regulated because this is an isolated case since no other union in Nevada has stipulations in their bargained agreement authorizing user fees. The Board “Ordered Adjudicated and Decreed” that the Policy is neither coercive or discriminatory and that it does not violate Nevada Revised Statutes. The Complaint is therefore denied.

The Chairman of the Board dissented from the decision of the majority. He
believed the Policy did violate the rights of nonmembers by being discriminatory and coercive. In his opinion the Policy violated the NRS. He claimed the policy captures employees by making them stay in the union. He said, it was only after many employees voiced their decision to withdraw from the union that the union posted the policy. The Chairman also found the Complainants did not waive their right for the complaint. The terms of Article 6 § 2 only became an issue after the posting of the Policy.

After the Board’s opinions were disseminated the Complainants filed an appeal with District Court. The Court sided with the Board’s majority and denied the appeal. However, they did turn the complaint back over to the Board for a resolution. After the denial by the District Court, the Complainants filed a Brief with the Nevada Supreme Court.

The Brief argues the Board erred in their decision allowing Union/Local 1107 to charge user fees. The Brief stated, “hornbook” laws apply in this case. For decades unions have not been able to charge fees for representation in Nevada and the trend should be recognized and continued. The Brief contends past legislative efforts to amend the RTW laws should also be taken into account. At least five times legislature went before the State Assembly or Senate and each time it was allowed to die in committee. This shows a trend suggesting Nevada is not for fees being charged to nonmembers. The Brief also claims the Board’s interpretation of NRS 288.140(2) suggesting the Statute allows for a new “hybrid” called non-exclusive representation is the biggest flaw in the case. How can a union be the exclusive representative but bargain non-exclusive machinery?

Fair share fees or user fees, according to the Brief, are not fair at all. In order to be fair, they would have to share the cost of representation over all members, not singled out individuals that elect to have the union represent them. Charging individuals is oppressive because one person could acquire thousands of dollars of debt for one incident and other individuals would pay nothing. This case is in front of the Nevada Supreme Court at this time and no ruling as of yet has been handed down.
CHAPTER 5

SURVEY RESULTS

A total of 400 surveys were distributed throughout University Medical Center. A return rate of 35% was received with 34.25% being acceptable. The survey asked nine questions. Each question was designed to evaluate employee attitudes and behaviors in reference to user fees. Union employees provided the bulk of the returned surveys. Seventy-two percent of the surveys were filled out and returned by union members (99). Nonmembers filled out the remaining 28% of the surveys (38). No surveys were returned by exempt employees or supervisors or above (see Survey in Appendix 3). Three surveys returned were not completely filled out and were deemed unacceptable for reporting purposes. All of the employees which responded work over 32 hours a week.

When comparing educational levels of union and non-union members in the survey, it was found that 34% of union members hold a bachelor degree or above. Fifty-three percent of nonmembers have the same (at UMC there is not any means available to determine what the actual educational population of UMC is at any given time). The union had the only respondent with a doctorate degree and had the only respondents reporting having some college. The union represented both the high and low ends of the scale. Nonmembers had the highest percentage of respondents with a master degree. Nearly 24% of nonmembers have master degrees as compared to only 8% of union members. Table 1 shows a break down by education and union membership of those responding to the survey.

Sixty-three percent (86) of the respondents voted in the last Nevada general election. Of the eight education levels used on this survey, employees with bachelor degrees represented the largest number of voters having 22 people out of 36 voting. bachelor degree respondents also represent the highest number of returned surveys.
Percentage wise, all education levels had more than half of the respondents voting except the respondents in the first level (Some High School). They had only a 1:3 voting ratio. The highest voting rate received was from the respondents in the Trade Certificate category (11 out of 13 voted). See Table 2 for information relating to voting and education.

<table>
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<th>Education Level</th>
<th>Union</th>
<th>Non-union</th>
<th>Total</th>
<th>%</th>
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<td>Some High School</td>
<td>3</td>
<td>0</td>
<td>3</td>
<td>2.19</td>
</tr>
<tr>
<td>High School Grad</td>
<td>11</td>
<td>2</td>
<td>13</td>
<td>9.49</td>
</tr>
<tr>
<td>Trade Certificate</td>
<td>10</td>
<td>3</td>
<td>13</td>
<td>9.49</td>
</tr>
<tr>
<td>Some College</td>
<td>18</td>
<td>7</td>
<td>25</td>
<td>18.25</td>
</tr>
<tr>
<td>Associate Degree</td>
<td>23</td>
<td>6</td>
<td>29</td>
<td>21.17</td>
</tr>
<tr>
<td>Bachelor Degree</td>
<td>25</td>
<td>11</td>
<td>36</td>
<td>26.28</td>
</tr>
<tr>
<td>Master Degree</td>
<td>8</td>
<td>9</td>
<td>17</td>
<td>12.40</td>
</tr>
<tr>
<td>Doctorate</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0.73</td>
</tr>
<tr>
<td>Total</td>
<td>99</td>
<td>38</td>
<td>137</td>
<td>100</td>
</tr>
</tbody>
</table>

Union voters represented the highest percentage of voter turnout with 76% of the 86 respondents that voted. Sixty-five percent of union members in the survey voted compared to 55% of non-members. Overall, 63% of the survey population voted. See Table 3.

Forty-seven percent of the respondents, when asked if the question of user fees in Nevada should go to referendum answered, “yes.” Forty-three percent said, “no” and 10% were “undecided.” When comparing the total respondents that said yes to sending
the question to referendum and to those that actually voted, it was determined that 28% both voted and said "yes" to the question. This represented 44% of the respondents. The same percentage (44%) voted but said no to going to referendum. Twelve percent of the voters were undecided. See table 4.

<table>
<thead>
<tr>
<th>Education</th>
<th>Yes</th>
<th>%</th>
<th>No</th>
<th>%</th>
</tr>
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<tbody>
<tr>
<td>Some High School</td>
<td>1</td>
<td>0.72</td>
<td>2</td>
<td>1.45</td>
</tr>
<tr>
<td>High School Grad</td>
<td>9</td>
<td>6.57</td>
<td>4</td>
<td>2.92</td>
</tr>
<tr>
<td>Trade Certificate</td>
<td>11</td>
<td>8.02</td>
<td>2</td>
<td>1.45</td>
</tr>
<tr>
<td>Some College</td>
<td>18</td>
<td>13.14</td>
<td>7</td>
<td>5.11</td>
</tr>
<tr>
<td>Associate Degree</td>
<td>15</td>
<td>10.95</td>
<td>14</td>
<td>10.22</td>
</tr>
<tr>
<td>Bachelor Degree</td>
<td>22</td>
<td>16.00</td>
<td>14</td>
<td>10.22</td>
</tr>
<tr>
<td>Master Degree</td>
<td>10</td>
<td>7.30</td>
<td>7</td>
<td>5.11</td>
</tr>
<tr>
<td>Doctorate</td>
<td>0</td>
<td>0.00</td>
<td>1</td>
<td>0.72</td>
</tr>
<tr>
<td>Total</td>
<td>86</td>
<td>62.77</td>
<td>51</td>
<td>37.23</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Voters by Membership</th>
<th>Union</th>
<th>%</th>
<th>Non-Union</th>
<th>%</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voted</td>
<td>65</td>
<td>65.66</td>
<td>21</td>
<td>55.26</td>
<td>86</td>
<td>62.77</td>
</tr>
<tr>
<td>Did Not Vote</td>
<td>34</td>
<td>34.34</td>
<td>17</td>
<td>44.74</td>
<td>51</td>
<td>37.23</td>
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<tr>
<td>Total</td>
<td>99</td>
<td>100</td>
<td>38</td>
<td>100</td>
<td>137</td>
<td>100</td>
</tr>
</tbody>
</table>
When the respondents were asked if they believe user fees violate their rights, 76% said no. Only 18% said yes and the remaining were undecided. Of the no answers, 83% were union members. Fifty-six percent of the respondents who believe user fees do violate their rights were nonmembers. Nonmembers also represented 17% of those believing user fees do not violate their rights. See Table 5.

<table>
<thead>
<tr>
<th>Vote</th>
<th>Yes</th>
<th>%</th>
<th>No</th>
<th>%</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes to Referendum</td>
<td>38</td>
<td>27.74</td>
<td>27</td>
<td>19.71</td>
<td>65</td>
<td>47.45</td>
</tr>
<tr>
<td>No to Referendum</td>
<td>38</td>
<td>27.74</td>
<td>21</td>
<td>15.33</td>
<td>59</td>
<td>43.06</td>
</tr>
<tr>
<td>Undecided</td>
<td>10</td>
<td>7.30</td>
<td>3</td>
<td>2.19</td>
<td>13</td>
<td>9.49</td>
</tr>
<tr>
<td>Total</td>
<td>86</td>
<td>62.77</td>
<td>51</td>
<td>37.23</td>
<td>137</td>
<td>100</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Do user fees violate your rights?</th>
<th>Union</th>
<th>%</th>
<th>Non-Union</th>
<th>%</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes they Violate</td>
<td>11</td>
<td>11.11</td>
<td>14</td>
<td>36.84</td>
<td>25</td>
<td>18.25</td>
</tr>
<tr>
<td>No they do not violate</td>
<td>86</td>
<td>86.87</td>
<td>18</td>
<td>47.37</td>
<td>104</td>
<td>75.91</td>
</tr>
<tr>
<td>Undecided</td>
<td>2</td>
<td>1.46</td>
<td>6</td>
<td>15.79</td>
<td>8</td>
<td>5.84</td>
</tr>
<tr>
<td>Total</td>
<td>99</td>
<td>100</td>
<td>38</td>
<td>100</td>
<td>137</td>
<td>100</td>
</tr>
</tbody>
</table>

When asked if the union is obligated to represent all of the employees under their contract during grievance proceedings, 80% of those responding said "no." Sixty-three percent were union members. Only 12% of the respondents believe the union should be
required to represent everyone under their contract. Seven percent of union members believe the union is obligated to represent everyone regardless of membership status. See Table 6.

| Is the Union obligated to represent everyone? Compared to membership status |
|-----------------------------|-------------------|-----------------|-------------|---------|
|                             | Union  | %     | Non-Union  | %     | Total  | %     |
| Obligated                   | 7      | 7.07  | 10         | 26.32 | 17     | 12.41 |
| Not Obligated               | 87     | 87.88 | 23         | 60.53 | 110    | 80.29 |
| Undecided                   | 5      | 5.05  | 5          | 13.16 | 10     | 7.30  |
| Total                       | 99     | 100   | 38         | 100   | 137    | 100   |

Should user fees be allowed? The majority of the respondents to the survey seem to think so. Seventy-seven percent of the total respondents said yes. Eighty-three percent of those were union members. Nonmembers were split down the middle with 19 being against user fees and 19 for user fees. Only 10% of union members said the union should not be allowed to charge user fees. See Table 7.

<table>
<thead>
<tr>
<th>Should the union be allowed to charge user fees? Compared to union membership</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>Allowed</td>
</tr>
<tr>
<td>Not Allowed</td>
</tr>
<tr>
<td>Undecided</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>
When asked if user fees would affect the respondents decision to join a union, 41% said it would. Fifty-four percent said no and 5% were undecided. Of those saying that it would affect their decision to join or not join a union, 75% were union members. Thirty-seven percent of nonmembers said it would affect their decision to join, and 42% of union members agreed. See Table 8.

| Would user fees affect your decision to join? Compared to union membership |
|-----------------------------|-------------|-------------|-------------|-------------|-------------|
|                             | Union       | %           | Non-Union   | %           | Total       | %           |
| Affect                      | 42          | 42.42       | 14          | 36.84       | 56          | 40.88       |
| Not Affect                  | 52          | 52.52       | 22          | 57.89       | 74          | 54.01       |
| Undecided                   | 5           | 5.05        | 2           | 5.26        | 7           | 5.11        |
| Total                       | 99          | 100         | 38          | 100         | 137         | 100         |
CHAPTER 6

FINDINGS

The Nevada Local Government Employee-Management Relations Board erred in their decision to allow user fees. The Board looked at the fairness of user fees and did not look beyond that issue. They did not apply the precedence or preexisting case law which had already established user fees as coercive and discriminatory. The Complainants did not waive their right to be heard. The "Executive Board Policy" was clearly intended to be coercive. The "service fee" schedule is not only costly it is discriminatory in and of itself. The data collected by the survey suggests respondent union members and nonmembers both believe user fees would affect their decision to join a union.

University Medical Center contends in their brief to the Board that non-dues paying members are essentially free riders. These free riders want representation but do not want to supply any funds for that representation. Is this fair? Why should the Union deplete its resources defending people who do not contribute to the Union in the form of dues? What is "fair" anyway? How would you define fair in this instance? Webster's New Dictionary, (1990), defines fair as; "pleasing to the eye; clean, unblemished; blond; clear and sunny; easy to read (a fair hand); just and honest; according to the rules...". Which definition do we apply in this case? If we apply "according to the rules" then we should look at the established laws involved. If we apply "just and honest," did the union announce its intention to charge nonmembers fees when it was in the process of being voted in? Did they announce their plans to nonmembers when they included Article 6 § 2 in the bargaining process? If the Union is charged with representing all the employees, were they considering all the employees or only their best interests when they bargained the non-exclusive bargaining machinery? Is it fair for the Union to have "exclusive bargaining" power over employees, but yet "bargain non-exclusive machinery"?
Many businesses and public entities have costs they pay in order to do business. They may not like paying but yet it is part of the business culture. In example, businesses pay taxes. If they did not pay taxes they would not be allowed to stay in business, so taxes are a cost incurred to do business. Also, they often grease the wheel in order to get into a prestigious contract agreement. Olympic Officials in Utah paid the Olympic International Committee to gain favor in the selection process. Some would consider this payment for consideration as a cost of doing business. Local 1107, is the only Union in Nevada which has gained permission to charge user fees, if it was “fair” why don’t other unions in Nevada charge user fees? The Supreme Court Brief suggests in order to be fair, user fees would have to be spread out over the whole non-union population that is covered by Local 1107’s agreement with University Medical Center.

Nevada is a right-to-work state. In right-to-work states the decision to join or not join a union is supposed to be up to the individual. Many people choose not to join the union for various reasons. Now this choice is being influenced by the union. If you do not join and have a grievance the union can charge you fees for their representation. The rules governing the grievance process are the rules the union has established through negotiations with the employer. In other words, as a nonmember you are expected to follow the agreement but the union can charge you fees for representation when the union’s rules are violated.

NRS 288.110 (4), gives the Board power to not hear any case pertaining to a grievance that is more than 6 months passed the date of occurrence. In the case presented, the Complainants filed a grievance only after the union posted their policy stating the union’s intent to collect fees for representing nonmembers during grievances. Article 6 § 2, of the negotiated agreement was not an issue up until this point. By the unions own admission they had no intention of collecting fees for representation by union stewards etc. up until the grievance reached arbitration. Yet, their policy was stated in such a way to give employees the impression the union would start charging fees
immediately upon establishing that a grievance existed. The Policy made it sound that charges for representation would be imminent.

NRS 288.140 (1), says a government employer in the state of Nevada, can "not discriminate in any way among its employees on account of membership or non-membership in an employee organization." This law implies the employer can not be involved in an agreement or bargain for an agreement which discriminates against employees regardless if they are members of a union or not. When University Medical Center and Local 1107, bargained Article 6 § 2, the employer violated this provision by allowing the union to charge user fees. The Union, Local 1107, violated their duty to represent all of the employees when they bargained for the same Article. There were not any nonmember present to represent the rights of nonmembers nor should there have been. It was the Union's responsibility to ensure those who chose not to join the union had their rights protected.

NRS 288.140 (2), gives individuals who choose not to join a union the right to represent themselves if they so choose. However, NRS 288.140 (2) also states that any grievance must be consistent "with the terms of an applicable negotiated agreement...." This statement implies the union has to be actively involved in a grievance filed by a nonmember of the union to ensure the resolution of such grievance is within the boundaries established through negotiations. What this means is even if the nonmember chooses to hire non-union representation the union will still have to make expenditures to be actively involved in the case. So, regardless if a nonmember is represented by an outside source, the union will still have to use union fees to ensure the grievance follows union guidelines and that the remedy is based within the union contract.

NRS 288.270 (1)(c), provides that it is a prohibited practice for a government employer to willingly discriminate with regard to any right of an employee to join or not join a union. By charging user fees to nonmembers the union is coercing employees to join out of fear. The fear comes from the possible inability to hire outside/union representation should a grievance be
established. The easy answer for a person who questions their ability to pay for representation is to join the union. Once joining, they do not need to worry about representation. NRS 288.270 (2)(a), prohibits an employee organization from willingly coercing or interfering with an employees’ rights protected by Nevada Revised Statutes. Both, Local 1107 and UMC violated this chapter of the NRS by discriminating against and coercing non-union employees to join the union.

In the case of Independent Guard Ass’n v. Wackenhut Servs., Inc., (1974), it was established that payments to a union by nonmembers in lieu of dues was a violation of NRS 613.230. Nonmembers making payments was considered to be the same as agreeing to exclude nonmembers from employment and continued employment based on their protected rights to join or not join a union. UMC denied the aforementioned case has any relevance to the case at hand. If Local 1107 can charge fees for representing nonmembers, a potential employee may elect to work elsewhere because they do not wish to join a union and would still have grievance rights under a different agreement (Local 1107 is the only union in Nevada that has in the Agreement provisions to charge fees for representation). If user fees influence a person’s choice of where they choose to work then user fees are discriminatory and coercive.

NRS 613.250, states that, “no person shall be denied the opportunity to obtain or retain employment because of nonmembership in a labor organization....” This statute goes on to say that no employer may “enter into any agreement... which excludes any person from employment or continuation of employment because of nonmembership in a labor organization.” What happens when a nonmember is discharged/terminated and did not undergo the grievance process? The negotiated agreement at UMC states, a non-member must request the union to represent him or her for the union to do so. If the person can not afford to pay the union and is terminated do they have legal recourse? According to the above, they can not be terminated because they chose not to be a union member. The above suggests the union has an obligation to represent these employees.

Most of the data collected in reference to user fees suggests user fees are illegal and
should not be allowed in a right-to-work state. Even the Chairman of the Board who helped decided the issue did not agree with the majority. He steadfastly disagrees with the decision on several key issues. First the contention an “exclusive” bargaining unit can bargain for “non-exclusive” bargaining rights is without merit under law. He also found the Complainants do have grounds to seek a remedy. Finally, he found the Policy was discriminatory and coercive toward employees of University Medical Center.

The posting of the “Executive Board Policy” at the same time in which employees are allowed to withdraw union membership could only have been a calculated response to coerce employees to remain union members. The union had eleven other months in 1994 alone in which it could have posted the Policy if its intent was merely to be informational. The fees the policy announced are also inflated. Union stewards are released to conduct union business under the guise of “release time”. This release time is employer paid. The employer does not increase a Stewards salary to 60.00 dollars an hour when they are on release time so why should nonmembers pay Stewards 60.00 an hour to represent their grievance? Nonmembers do not even receive the union manual describing the process and time restraint for filing grievances. How are they supposed to file their own grievance without talking to the union?

The most significant finding in the survey was the 41% of all those surveyed which said user fees would affect their decision to join an union (see Table 7). If 4 out of 10 people would use user fees as an influential factor when considering joining the union then the fees appear to be coercive. If even one person considers user fees and basis their decision on that factor then they were influenced or coerced by that fact to join. When you consider almost half of those saying user fees would affect their decision to join a union were union members, how many people did the fees already convince to join or remain a union member? The survey did not ask this question, however, it seems clear that if those already in the union believe the fees would affect their decision to remain then the union’s posting of the policy was intended to keep as many members from dropping the union as possible. In other words, it was intended to coerce employees not to drop the union. If this was not the reason for posting the policy,
then why did the union wait for 6 year before they posted it?

Another significant finding in the survey was about sending the question of user fees to referendum. Forty-seven percent of those surveyed said it should go to referendum to be decided. Those opposing had only 43% of the vote. This data suggests it should be sent to referendum. However, as the Brief pointed out, it has been sent to the legislature several times and each time it was allowed to die. This suggests our Legislature does not want to tackle the question, so it must be decided in court. The Nevada Supreme Court has the issue in front of them now. We are awaiting a decision.
CHAPTER 7

CONCLUSIONS AND RECOMMENDATIONS

Conclusion.

Local 1107 has in their Agreement with University Medical Center a provision (Article 6 § 2) the Union and UMC claim authorizes the Union to collect fees from non-union members for the purpose of representation during grievances. This provision violates Nevada Law and should not be upheld. The provision discriminates against non-union members and is coercive in nature. The “Executive Board Policy” was intended to be coercive and even if it is ruled that Local 1107 can charge user fees by the Nevada Supreme Court, they should never have posted the policy with the “drop period.”

User fees are not fair. Fees for representation single out individuals who need representation because the individual believes a violation of the bargained agreement exists. These individuals could end up paying thousands of dollars in fees for the union to represent them. When Nevada’s legislative body included the provision that nonmembers could file on their own their intent was not to leave the union out of the grievance process. Their intent was merely to provide a means by where the employer could not be found guilty for listening to nonmember informal complaints.

The bargained agreement is the end product resulting from negotiations between the employer and the union and is therefore owned by the union. It is the union’s responsibility to ensure that all grievances follow the steps and provisions provided in the agreement and any outcome of a grievance is in accordance with the terms of the agreement. This duty is paramount to protect the union’s hold upon the employer through the agreement. If individuals filed grievance without any union guidance, the resulting judgments may set precedence for decisions in other cases. This means, if someone gets fired today for an offense and the union did not protect their rights guaranteed by the negotiated agreement, then does
the union have any grounds to defend someone else for the same offense and thus, arrive at a different conclusion?

**Recommendations**

Three recommendations seem apparent at this time. First, we set back and wait for the decision of the Nevada Supreme Court. Their decision in the case of user fees will be final unless the Complainants decide to appeal and take the issue to the Federal Supreme Court. Choice two involves providing a third party to act as a representative for nonmembers that file grievances. Choice three involves sending a petition to the State Senate. This has been tried before and has always failed.

If the Nevada Supreme Court rules against user fees the issue will probably die there. No longer will the one union in Nevada that currently has authorization to charge user fees continue to do so. If the Nevada Supreme Court sides with the union every union in Nevada will initiate fee schedules and nonmembers will become an increasingly smaller group. This was not the intention of Nevada’s Legislature when they enacted right-to-work laws in this state. However, if they do enact into law the right of unions to charge user fees, choice two could offset the hold unions would then have.

Choice two has never been tried to my knowledge and no literature could be located that suggests that it has. It would involve providing a third party to act as a type of ombudsman to provide grievance procedure guidance to nonmembers. He (or she) could receive the same release time union stewards receive. He would use this time to help defend and guide nonmembers through the grievance procedures. This area deserves further research.

The last choice involves letting Nevada voters decide the issue, but so far the Legislature has not shown any interest in getting the issue on the ballot. A large media campaign would have to be conducted in order to get enough backing to force the Legislature into acting. Who would fund such a campaign? Business and industry may but what would be their benefit?
APPENDIX 1
Executive Board Policy

"Whereas, it is incumbent upon the Union to uphold the integrity of the various collective bargaining agreements, and

Whereas, the Union is obligated by law to represent all eligible employees regardless of membership.

Therefore, the Union now establishes a fee schedule for non-members who request to be represented by the Union through its various collective bargaining agreements, and

Wherein, non members may select outside counsel to represent their issues through the various grievance procedures, let it be known that all costs incurred are the sole liability of the non-member instituting said action.

Uniform Fee Schedule

For

Non Members

Grievance Consultation  A minimum of sixty dollars for the first hour and each additional hour will be prorated accordingly

Informal Grievance Step  Same as Above
First Step (1st Step)  Same as Above
Second Step (2nd Step)  Same as Above
Third Step (3rd Step
If Applicable)  Same as Above

Pre-termination Hearings  Same as Above
Post Termination Hearings  Same as Above
FMCS/AAA Arbitrator’s Hearing Officer Fee  Fifty percent of the billed fee. Usually $350.00
<table>
<thead>
<tr>
<th>Arbitrator’s Fee</th>
<th>Fifty percent of the billed fee which includes lodging, travel, and brief preparation. Usually three to four thousand dollars.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Union attorney fees</td>
<td>One hundred percent of billed fee which can run up to two hundred dollars per hour.”</td>
</tr>
</tbody>
</table>
APPENDIX 2

Stipulation of Fact

The parties hereby stipulate to the following facts in this matter:

1) Local 1107 stipulates that the document attached to the Complainants' Complaint as Ex. 2 (hereinafter referred to as "Executive Board Policy") was created by Local 1107. Local 1107 further stipulates that beginning in October, 1994, it had the "Executive Board Policy" posted on bulletin boards within UMC and disseminated to bargaining unit employees in the UMC bargaining unit.

Local 1107 agrees that this stipulation supersedes the Amended Answer which it filed regarding Paragraph 9 of the Complaint in this matter.

2) The Complainants stipulate that the terms of this "Executive Board Policy" were not actually enforced against them, or any nonmembers or bargaining unit employees.

Complainants agree that this stipulation clarifies and supersedes the allegation made in Paragraph 13 of the Complain in this matter.

3) Local 1107 stipulates that in October, 1994, in addition to the three Complaints, approximately 100 other bargaining unit employees resigned from membership in Local 1107 and revoked their dues check off authorizations.

Local 1107 agrees that this stipulation supersedes the Amended Answer which is filed regarding Paragraph 8 of the Complaint in this matter.

The parties further stipulate to the authenticity and admissibility of the following documents, which are attached hereto and adopted herein as reference:

1) The UMC-Local 1107 collective bargaining agreement that runs from September 9, 1995 to June 20, 1996 (attached to the Complaint as Exhibition 1)

2) the "Executive Board Policy" (attached to the Complaint as Exhibit 2);

3) the SEIU Local 1107 Constitution and by-laws;
4) a certified copy of the agenda and minutes of the September 9, 1994 meeting of the 
trustees of UMC relative to the approval of the collective bargaining agreement; and 
5) these portions of the contracts between UMC and Local 1107 that were attached to 
UMC’s Prehearing Statement, specifically the contracts dated September 6, 1988 to 

The parties further stipulate that this Stipulation of Facts, the Complaint, the Answer of 
UMC and the Amended Answer of Local 1107 constitute the entire record of this case. 

The parties request the Board to establish a briefing schedule for the filing of final briefs 
in this matter.
Appendix 3

SURVEY

I am a Master Degree student at UNLV and need the results of this survey to complete my thesis. Please fill out and return this survey by 3/9/99 to one of the locked boxes which are located by both sets of elevators. This survey is completely anonymous. Thank You!!

User fees are moneys charged to non-union members (non-dues paying). The moneys are used to offset the cost of representing non-union members during grievances all the way up to and including arbitration. The non-member has to request the union to represent him/her for the union to do so. The non-member also has the option of selecting an outside source.

Please answer the following questions by circling the answer with which you most agree.

1. Should Nevada unions be allowed to charge user fees?
   
   Yes  No  Undecided

2. Would user fees affect your decision to join a union?
   
   Yes  No  Undecided

3. Should the issue of user fees be decided by referendum (the practice of submitting a law directly to the vote of the entire electorate)?
   
   Yes  No  Undecided

4. Do user fees violate your rights?
   
   Yes  No  Undecided

5. Do you believe the union is obligated to represent everyone under their contract without charging fees to non-members?
   
   Yes  No  Undecided

6. Are you a(n) ...
   
   Union Member  Non-Member  Exempt Employee (under FLSA)  Supervisor or Above

7. How many hours do you work in a week?
   
   Over 32 hours  Under 32 hours

8. What is your highest educational level?
   
   Some High School  High School Grad  Trade Certificate  Some College
   Associate Degree  Bachelor Degree  Master Degree  Doctorate

9. Did you vote during the last general election?
   
   Yes  No
References


American Postal Workers (Postal Service), 277 NLRB 541 (1985).


Cone, Mallary, and Schlepp v. Nevada Service Employee Union/SEIU Local 1107; University Medical Center of Southern Nevada; and State of Nevada Local Government Employee-Management Relations Board, Case No. 29718 (Nevada S.C. filed Dec. 11, 1996).


Furniture Workers Local 282 (Davis Co.) 291 NLRB 182 (1988).


Hughes Tool Co. 104 NLRB 318, 329 (1953).

Hunter, Nanette vs. Wayne-Westland Community School District and Wayne-Westland Education Ass'n 9 NPER M1-18084 (5-7-89).

Id., 420 U.S. at 69-70.

Machinists Local 697 (Canfield Rubber), 223 NLRB 832 835 (1976).


National Treasury Employees Union v. FLRA, 721 F.2d at 1406.

NRS 288.110 (4)

NRS 288.140(1)(a)

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