

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEY A. ABAS; MARY VRIEND; LISA
GLEASON; SHERRIE HOLBRON;
AMBER HAMILTON; MARY
KEOHOKAPU; ESTALITA MANABAT;
VICTORIA RAMOS; YANCY MAGRATA;
VICTOR REMO; VILMA SAMSON;
CARLOS MARAVILLA; LENA
FERNANDES; ANGELO D'SOUZA;
CIRILO BAUTISTA, JR.; NANCY
CABANBAN; BARBARA COOMBS;
BRIAN CALLAHAN; CAROL DILLON;
CARMEN LACONTO; LUZ ALTON;
LINDA TORTORA; CAROLINE
ROSARIO; ISABEL WALTERS; GLORIA
CASEY; EVELYN TRINIDAD; BRUCE
PULLEN; LOURDES PEREIRA; GARY
FRIEDRICH; EMELINDA MCMANUS;
ERIC GRIGORE; LAWRENCE HAWK;
LINDA BARTLETT; PHIL MCHALE;
LEESA ALLEN; CARMEN BUCHLER;
EMELIN LINCOLN; BETTY JOHNSON;
PAUL CHOWANEC; JUDITH
CHOWANEC; NICOLE HOSLEY; CHET
GARCIA; ELDA GARCIA; SHELBY
SHER; DEBORAH WHITFORD; BYRON
MEFFORD; ELIZABETH CHILIMIDOS;
NATHAN VOUGHT; SHARON
LARSEN; KIRSTEN BARGER; MARIE
JOANNE APOSTOL; SHAWN
WARREN; JEFFREY NICKS;
MICHELLE SALAZAR; CORAZON
GONZALES; JANICE DUNCAN; PIA-
ANGELA TILLIS; ROBERT BENDER;
ORLANDO DALIPE; TRUDY
WEGSCHEID; MARY KLEIER; VICKI
SELDNEY; ROSE ALMANZA; LILIA
CORDOBA; JOCELYNN JAOJOCO;
DINAH MIGUEL; GLORIA HEALY;

No. 50739

FILED

SEP 02 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

MELINDA POWE; ELEANOR
MALDEN; BERNARDO PENALOSA;
CHAD DITULLIO; SCOTT MATTHEWS;
JOYCE BLASZAK; JOHN SHELTR;
SUTEE LUCKMUNKONG; DAVID
PUSATERE; ROBERT CASEY; ROSE
FLORES; ROSEMARIE MIRANDA;
LEONA NG; LAURA ALTON; CHIAO
MARTIN; WILFREDO MALIXI; MARIA
TOLENTINO; EVELYN CSABA;
NENITA DANAQ; NORMA GAYOSO;
CECILIA HARDIE; ELIZA FECURKA;
GUILLERMO LIGSAY; JOYCE SALES;
JOHNNY PEREIRA; ERLINDA
BAYANI; CROSSO GUMALO; IFELITA
GUIUA; MA RACHEL MORALES;
FLORDELIZA NICOLAS; SARA
ENCISO; CHANDANA PALISKARA;
GUSTAVO OBREGON BANOS; KAREN
LEONGAS; PRAVIN PATEL; JUDITH
MOORE; ANTONIO ARNAIZ; ROMILIO
MIGUEL; MARIA ESPINOZA;
JEFFREY OPPENHEIM; ANN
GIALITIS; AIDA REDONDO;
JENNIFER ESGUERRA; GLORIA
SARNICOLA; CLEO SANCHEZ-DUDAS;
REGINALD ESGUERRA; RONALD
ESGUERRA; CAROL HORN; DIANE
ANGIS; FRED BIEL; CYNTHIA
CORINO; LAWRENCE LEMASTERS;
GREGORY IMBERGER; JOSEPH
FIGUEROA, JR.; SANDRA SPIOTTO;
KRISTIN MCCRAY; FRANK
COLOSIMO; CAROL LA GESSE;
JAMES SHUSTERIC; STEPHEN
RAYMOND; LINDA TOLBERT;
RACHEL WILLIAMS; JUNE SMITH;
SYDNEY PORTER; BETTY MENDOZA;
JESSICA SPANGLER; PAMELA
WALLACE; LA SHAUN THOMAS;
KRISTEL ESTES; LORETTA VILLAS;

TRACI KAHL; RICKY TORRES; ANITA
GOBOZY; ROBERT ABLANG;
MICHAEL SHORE; TANYA SHIMONO;
ELAINE FLORES; MARK WALLACE;
JANET CARR; EVELYN ANDERSON;
KAREN CHISUM; LORIS ACCOR;
LINDA DEROOY; CATHLEEN
KASSLER; LIWAYWAY CANILLO;
TERESA JAMES; TRICHIA
TERFLINGER; MARGARET SPENCE;
SANDEE HEDGES; PATRICIA
SAUNDERS; STEPHANIE CARR;
MARGARITA MIRON; CATHY
ROBERTS; GEORGINA PISORS;
DARLENE SHIMONO; TANYA
OSTERMAN; RANDY CARR; ALFRED
COVARRUBIAS; EDITH DE ALBA;
ROSE MARK; EDWARD GARCIA;
AUDREY CUASITO-MARQUIN; EDNA
TAKUSHI; TERESITA ANDRES;
MYRNA MARI; NATALIE HERRERA;
LYNN BUTAY; CRAIG LEE; MELANIA
MAMAUAG; REBECA DECASTRO;
MELODY VIVO; ROSARIO FARILLAS;
JAN CHRISTIAN MARQUINA; PAUL
PANALIGAN; BELINDA
BURKHALTER; MITCHELL LAURSEN;
MARILOU ESCOBAR; LEA
RAYMUNDO; ROMULO TOLENTINO;
GONZALO YABUT; LEI ANN
LACONSAY; VENETA MAYOR; BHANU
JOSHI; SUSAN HORTIZUELA; MAI TO;
MARIA MARTINEZ; ROSE
SCHIAVONE; MARY CHRIS CELOZA;
AIQIN NIU; PAULA HOLMES; MARCIA
MORGAN; RUBIA GUENETTE;
EDWARD MIX; KAREN MCNARY;
HELEN GLASS; JOETTA LESTER;
BRANDY MAUS; ELIZABETH HANN;
TERESA GILBERT; BENEDICION
QUINTO; RICARDO GASCA; KAREN

ANDREWS; CHRIS KREY; GLADYS
REVERING; SHANNON ECKMAN;
LEANNA TRINIDAD; BEVERLY
WEGLAR; SANDRA EVERETT; COREY
VERNON; LI JOHNSON; RHONDA
ADAMOVICH; PHYLLIS MURRAY;
JUANITA SHAMBLIN; EFREN
SACLOLO; SHEILA FITTON; WILLIAM
DAISH; JAMIE BENAVIDEZ; ROBIN
COLEMAN; JENNIFER RATAGICK;
MARIETTA DASALLA-DENNE;
WINIFRED BAKER; MARIA
VILLALBA; FESTUS IYOHA; ELMER
RICE; SONJA WAGNER; STEVEN
WORKMAN, II; JAMES PARKS;
LEONARD LOPEZ; BRIAN REINERT;
DANIEL MONASTERIAL; TERRAYNA
GRIEVES; CLARICE THOMAS;
SHARON DAVIS; ERIN MURRAY;
BUFFIE TAYLOR; AMANDA ARANDA;
VERONICA MINGO; IMELDA PASALO;
BELINDA CORROW; FRANK GARCIA,
JR.; PAULINE QUIJADA; BARBARA
GREY; DEBI STUPNIK; ANGELITA
RUMSEY; ISABEL SERNA; CATALINA
RAMIRO; KATHERINE BAILEY;
DOREEN SLOAN; MATTIE FOSTER;
LENORA GRANGER; TEKEHIA
SANDERS; MARY BURNHAM;
ROSENDO CHAVEZ; FELICIA
JOHNSON; DIANE HOITT; CHARLES
DESORMEAUX; SUSAN BINDHAMER;
SCOTT MORETTI; WILLIAM ROMAN;
MICHAEL MC GEOUGH; MAUREEN
RUBIN; ROY CARLO; MARY CARLO;
WANDA FERNANDEZ; STEVE
SPORCIC; JODI BREGE; DENISE
LEBRON; MARCIA STOKER; JULIE
ASSELIN; NAVINCHANDRA
CHAUHAN; TYRITA BUCKNER;
LAURA TIETJE; MARISSA

OSTERMAN; RONALD KUPFERSMID;
L. BRYANT; VERLENE SULLIVAN;
ROLAND MILLER; NANCY HALL;
LIZZIE COLEMAN; JUNE PITTS;
LILLIAN ROMO; ROSA GUTIERREZ;
DEBORAH ANDERSON; ROSALIE
MARQUEZ; RENAE SANDERS; KAREN
PAGLIUCA; JEROME MURRAY;
MONICA ESPINOZA; VERONICA
QUIJADA; STELLA DIZON; GARRY
RALEY; EVELYN NEAL; PENNY
WILSON; HECTOR MACIAS; RODRIGO
RODRIGUEZ; KAREN LOPEZ;
WARREN WOLF; MARIA HOGE;
SUSAN PARKS; JUDITH POOLE;
SANDRA SHOCKEY; LAKISHA
JEFFERSON; DOMINICA SUMAGIT;
BETSY ALCARAC; JAYWILMORE
CORPUZ; JOCELYN TOMITA;
PASCUAFILDA GANO; REYNA FELT;
CHRISTOPHER WILLIAMS; MARIA
CENICEROS; MAHATMA GUTIERREZ;
CATHERIN PASCOE; LACHANDA
SULLIVAN; LAQWANDA OAKLEY;
IRMA SERNA; MARGARET SMITH;
CHRISTINA RICHARDSON;
ROSEMARY CLARK; JESSICA
EDMUNDS; CHARLES SPENCE;
LINDA POPJOY; COURTNEY
CARROLL; ANTHONY RAMOS;
ROBERTO CARILLO; CHONG TRAN;
CHRISTINE MEYER; ROLAND
MORTON; PATRICIA HAMLIN;
PAULINE HARTEAU; FRANK
FLANAGAN; CHRISTINE BIAGGI;
BRETT EVANS; RICHARD KEIRN;
PAUL MASON; GENA HART; GABRIEL
BALLANTINE; SHIRLEEN PERKINS;
CYNTHIA PULASKI; ROBERTA
PETERS; AND TRACY CASTNER,
Appellants,

vs.
BOARD OF REVIEW, NEVADA
DEPARTMENT OF EMPLOYMENT
TRAINING & REHABILITATION-
EMPLOYMENT SECURITY DIVISION;
APPEAL TRIBUNAL, NEVADA
DEPARTMENT OF EMPLOYMENT
TRAINING & REHABILITATION-
EMPLOYMENT SECURITY DIVISION;
ADMINISTRATOR, NEVADA
DEPARTMENT OF EMPLOYMENT
TRAINING & REHABILITATION-
EMPLOYMENT SECURITY DIVISION;
AND MEDCO HEALTH SOLUTIONS
OF LAS VEGAS, INC.,
Respondents.

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review of an administrative decision in an unemployment matter. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

Appellants consist of 347 employees employed by respondent Medco Health Solutions of Las Vegas, Inc. Appellants appeal the district court's order denying their petition for judicial review of the Nevada Department of Training and Rehabilitation Employment Security Division's Board of Review's (Board) determination that they, as employees of Medco, were statutorily disqualified from receiving unemployment benefits under NRS 612.395. NRS 612.395(1) provides, "A person is disqualified for benefits for any week with respect to which the Administrator finds that his total or partial unemployment is due to a labor dispute in active progress at the factory, establishment or other premises at which he is or was last employed." In addition, the Board

determined that appellants were not exempted from disqualification under NRS 612.395(2)'s exceptions (i.e. when “[t]he person is not participating in or financing or directly interested in the labor dispute which caused his unemployment[,] . . . and . . . [t]he person does not belong to a grade or class of workers . . . whom are participating in or financing or directly interested in the labor dispute”).

On appeal, appellants argue that an employee who is unemployed due to an employer-based lockout is not precluded from collecting unemployment benefits under NRS 612.395(1). We determine that appellants' challenge is without merit. Therefore, we affirm the district court's order denying the petition for judicial review. The parties are familiar with the facts and we do not recount them here except as necessary to our disposition.

Standard of review

This court has established that when it reviews an administrative unemployment compensation decision, it is bound by the same standard of review as the district court, and examines the Board's administrative record for abuse of discretion. Clark County Sch. Dist. v. Bundley, 122 Nev. 1440, 1444, 148 P.3d 750, 754 (2006); see NRS 612.530(4). The Board's factual determinations will be afforded deference if they are supported by substantial evidence. Bundley, 122 Nev. at 1444, 148 P.3d at 754. Substantial evidence is that which “a reasonable mind could find adequately upholds a conclusion.” Id. at 1445, 148 P.3d at 754. If the Board's determination is based on substantial evidence, this court will defer to the Board's “fact-based legal conclusions with regard to whether a person is entitled to unemployment compensation.” Id. But, if the issue presented is a question of statutory interpretation, this court will

review the Board's decision de novo. See id.; Torrealba v. Kesmetis, 124 Nev. ____, ____, 178 P.3d 716, 721 (2008).

"Labor dispute" under NRS 612.395(1)

NRS 612.395(1) provides, "A person is disqualified for benefits for any week with respect to which the Administrator finds that his total or partial unemployment is due to a labor dispute in active progress at the factory, establishment or other premises at which he is or was last employed." (Emphasis added.) The basic contentions between appellants and respondents Medco and the Employment Security Division of the Nevada Department of Employment, Training and Rehabilitation (ESD) are grounded in the breadth and scope of the term "labor dispute," as used in NRS 612.395(1). Appellants claim that this issue is one of first impression, which requires this court to construe NRS 612.395(1). Medco and ESD disagree and argue that this court cannot construe the statute because the statute has a plain meaning, which this court has already decided in Airport Casino v. Jones, 103 Nev. 387, 741 P.2d 814 (1987). We agree with Medco and ESD and conclude that the phrase "labor dispute," for purposes of disqualification from unemployment compensation under NRS 612.395(1), has a plain meaning and includes employer-based lockouts, as already established by this court in Airport Casino v. Jones, 103 Nev. at 391, 741 P.2d at 817.

In Airport Casino, this court defined the term "labor dispute" to "include[] 'any controversy concerning wages, hours, working conditions,' or terms of employment." Id. (quoting Gorecki v. State, 335 A.2d 647, 648 (N.H. 1975)).

In applying this definition of "labor dispute" to the facts of this case, we examine the Board's administrative record for abuse of discretion,

affording deference to the Board's findings if they are supported by substantial evidence. See Clark County Sch. Dist. v. Bundley, 122 Nev. 1440, 1444-45, 148 P.3d 750, 754 (2006); see also NRS 612.530(4).

Here, the Board adopted the appeal tribunal's findings of fact and reasons for affirming ESD's decision in all respects. By adopting those findings and conclusions, the Board concluded that a labor dispute, as defined in Airport Casino, existed in this case—regardless of whether appellants were locked out or conducted a strike—because the dispute between appellants and Medco amounted to a controversy regarding wages, hours, and working conditions. After reviewing the record, we conclude that substantial evidence supports the Board's findings.

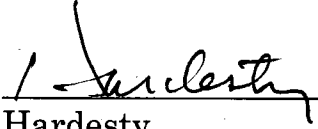
Our conclusion that substantial evidence supports the Board's findings in this case is based on the undisputed fact that Medco's lock-out was the result of failed negotiations concerning appellants' wages and medical benefits. Because a dispute over wages and medical benefits is "a[] controversy concerning wages' . . . [and] terms of employment," Airport Casino, 103 Nev. at 391, 741 P.2d at 817 (quoting Gorecki v. State, 335 A.2d 647, 648 (N.H. 1975)), we conclude that the Board did not abuse its discretion by determining that appellants were not entitled to unemployment benefits pursuant to NRS 612.395(1).

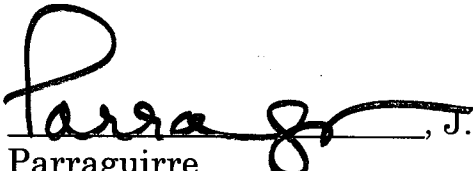
With respect to appellants' claim that this labor dispute does not necessarily lead to disqualified unemployment, as provided in NRS 612.395(2), we conclude that appellants' claim is unavailing. While appellants are correct in that an employee may not be disqualified if he or she establishes that he or she is subject to the exception provided in NRS 612.395(2), our review of the record and the Board's findings reveals that appellants failed to demonstrate that they were subject to that exception.

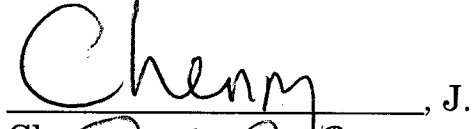
See Allredge v. Archie, 93 Nev. 537, 541, 569 P.2d 940, 943 (1977) (clarifying that the claimant of the unemployment benefits has the burden of proving—to the satisfaction of the administrator—that he meets the requirements under NRS 612.395(2)'s exception). Thus, the Board's finding that appellants were at least supporting and financing the dispute because they would gain or lose as a result of the settlement thereof is supported by substantial evidence, and we conclude that the Board did not abuse its discretion by denying appellants' claim for recovery.

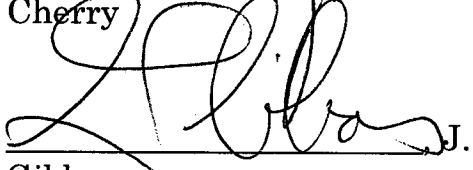
Having considered appellants' contentions and concluded that they are without merit, we

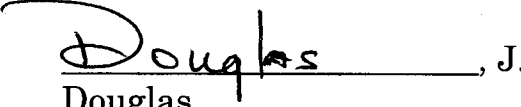
ORDER the judgment of the district court AFFIRMED.



Hardesty, C.J.

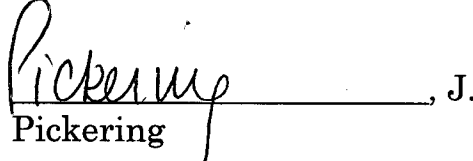

Parraguirre, J.


Cherry, J.


Gibbons, J.


Douglas, J.


Saitta, J.


Pickering, J.

cc: Eighth Judicial District Court Dept. 15, District Judge
Ara H. Shirinian, Settlement Judge
McCracken, Stemerman & Holsberry
Jackson Lewis LLP
J. Thomas Susich
Eighth District Court Clerk