

IN THE SUPREME COURT OF THE STATE OF NEVADA

SERVICE EMPLOYEES
INTERNATIONAL UNION LOCAL
1107,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
MICHAEL VILLANI, DISTRICT
JUDGE,
Respondents,
and
THE STATE OF NEVADA, LOCAL
GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD;
MATTHEW C. BURKE; AND CLARK
COUNTY,
Real Parties in Interest.

No. 52607

FILED

FEB 05 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order denying petitioner's motion to intervene in a judicial review proceeding regarding an administrative decision.

Real party in interest Matthew C. Burke, who was not a member of petitioner Service Employees International Union Local 1107, filed a grievance against his employer, the Clark County Public Works Department. Although Local 1107 and real party in interest Clark County had entered into a collective bargaining agreement (CBA), to which the parties agree Burke was subject for the purposes of his grievance, Burke did not seek the assistance of Local 1107 in filing the grievance. Burke's grievance was denied, based in part on the conclusion that because Burke

lacked union representation, he did not have a right to file the grievance in the first place. Burke then filed a complaint concerning the denial of his grievance with real party in interest the Nevada Local Government Employee-Management Relations Board (EMRB). Local 1107 did not participate as a party in the EMRB administrative proceedings, and the EMRB ultimately found that Burke had a statutory right to file his grievance without Local 1107's participation and, among other things, ordered Clark County to rescind the denial of Burke's grievance. Clark County then petitioned for judicial review of the EMRB's decision in district court.

Thereafter, Local 1107 filed a motion to intervene as a petitioner in the judicial review proceedings. The district court denied Local 1107's motion to intervene, and Local 1107 filed the instant petition for a writ of mandamus, seeking a writ directing the district court to allow it to intervene in the judicial review proceedings. Burke and the EMRB have filed answers, as directed. Clark County has filed a non-opposition to Local 1107's petition.

A writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse of discretion. See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). Whether to consider a petition for such extraordinary relief is addressed to our sole discretion, Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991), and the petitioner bears the burden of demonstrating that our intervention is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

In its petition, Local 1107 argues that it has met the requirements set forth in NRS 233B.130(1) that govern who is entitled to

petition for judicial review, and thus, because it was entitled to petition for judicial review, the district court erred in denying its motion to intervene as a petitioner. EMRB decisions are “subject to the provisions of law which govern the administrative decision and judicial review of such cases.” NRS 288.130. And, under NRS 233B.130(1), any party who is both (a) “[i]dentified as a party of record” in proceedings before the EMRB and (b) “[a]grieved by a final decision in a contested case” may petition for judicial review of the EMRB’s determination. NRS 233B.035 defines “party” as “each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any contested case.”

With respect to party status, Local 1107 contends that, under this court’s caselaw, including Edwards v. State, Department Human Resources, 96 Nev. 689, 615 P.2d 951 (1980) (determining that the employer of the employee whose grievance was at issue was entitled to be admitted as a party based on NRS 233B.035 because it was affected by the administrative decision, and therefore, the employer could petition for judicial review even though it had not formally participated as a respondent party in the administrative proceeding), and Checker Cab v. State, Taxicab Authority, 97 Nev. 5, 8-9, 621 P.2d 496, 498 (1981) (explaining that the appellant was entitled to petition for judicial review because it effectively appeared as a party in the administrative proceeding and was injured by the administrative decision which reduced the proportion of appellant’s cabs), the district court erred in concluding that it was not a “party” to the administrative proceeding entitled to petition for judicial review. Regarding aggrieved status, Local 1107 asserts that it was aggrieved by the EMRB’s decision because it allegedly (a) removes

Local 1107 from its contractual role as the sole representative of CBA-covered Public Works Department employees; (b) changes a critical CBA term regarding who may file a grievance; and (c) involves the work classification of a CBA-covered public employee, which may affect Local 1107 members.

The EMRB chiefly argues that the district court correctly denied Local 1107's motion to intervene because Local 1107 was not a party to the administrative proceedings before the EMRB. Burke, on the other hand, argues that NRS 288.140 grants him a statutory right to independently file his grievance and, thus, Local 1107 is not aggrieved by the EMRB's decision.

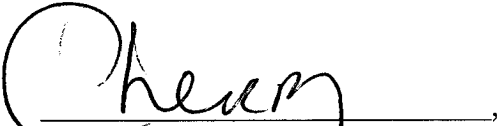
Having reviewed this petition, the answers thereto, and the supporting documentation, we conclude that Local 1107 has not met its burden to show that it properly sought and was entitled as of right under NRS 233B.130(1)—by establishing an interest in this matter sufficient to intervene as of right in the district court judicial review proceedings—so as to warrant this court's extraordinary intervention in this matter. Further, it appears that the district court has appropriately permitted Local 1107 to file an amicus brief. Cf. Dilks v. Aloha Airlines, 642 F.2d 1155, 1156-57 (9th Cir. 1981) (holding that a bargaining association's "interest" in the collective bargaining agreement being correctly interpreted is not direct, noncontingent, substantial, and legally protectable as required by FRCP 24); Edwards, 96 Nev. 689, 615 P.2d 951; Checker Cab, 97 Nev. at 8-9, 621 P.2d at 498.¹ We note that Local 1107

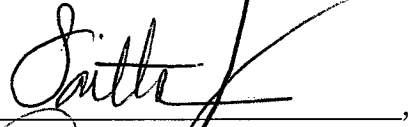
¹We reject Local 1107's argument that Capitol Indemnity v. State, Department of Business & Industry, 122 Nev. 815, 138 P.3d 516 (2006),
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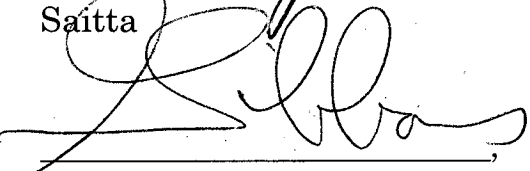
has not included with the instant petition for writ of mandamus a copy of its district court motion to intervene, and thus we are unable to review the arguments that it raised before the district court.

Therefore, we

ORDER the petition DENIED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Michael Villani, District Judge
Laquer, Urban, Clifford & Hodge LLP
Rothner Segall & Greenstone
Attorney General Catherine Cortez Masto/Las Vegas
Clark County District Attorney David J. Roger/Civil Division
Cremen Law Offices
National Right to Work Legal Defense Foundation
Eighth District Court Clerk

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provides support for the proposition that Local 1107 is an aggrieved party. Capitol Indemnity, which held that a surety may intervene as a matter of right in an administrative bond forfeiture hearing in which the principal does not appear, see id., is inapposite.