IN THE SUPREME COURT OF THE STATE OF NEVADA

UMC PHYSICIANS' BARGAINING UNIT OF NEVADA SERVICE EMPLOYEES UNION, SEIU LOCAL 1107, AFL-CIO, CLC, AN EMPLOYEE ORGANIZATION; DEBORAH BOLAND, M.D.; JOEL CANGA, M.D.; EDGAR L. COX, M.D.; ANDREA FONG, D.O.; NEIL W. GOODSELL, M.D.; DEBORAH GOODWIN, M.D.; MARIA MARTINEZ, M.D.; JOHN NEPOMUCENO, M.D.; GEORGE OEHLSEN, D.O.; ARDESHIR ROHANI, M.D.; ERNESTO RUBIO, M.D.; RONALD TAYLOR, M.D.; BRADLEY WALKER, M.D.; AND MICHAEL S. TANNER AS SPECIAL ADMINISTRATOR OF THE ESTATE OF STERLING TANNER, M.D., AS INDIVIDUAL LOCAL GOVERNMENT EMPLOYEES AND MEMBERS OF THE UMC PHYSICIANS' BARGAINING UNIT OF NEVADA SERVICE EMPLOYEES UNION, SEIU LOCAL 1107, AFL - CIO, CLC,
Appellants/Cross-Respondents,
vs.
NEVADA SERVICE EMPLOYEES UNION, SEIU LOCAL 1107, AFL-CIO, A NONPROFIT COOPERATIVE CORPORATION,
Respondent/Cross-Appellant.

No. 85928

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court order granting summary judgment and an appeal and cross-appeal from a judgment awarding costs

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in a labor matter. Eighth Judicial District Court, Clark County; Jennifer L.G. Schwartz and Ronald J. Israel, Judges.[1]

After remand from this court in *UMC Physicians' Bargaining Unit of Nevada Service Employees Union v. Nevada Service Employees Union*, 124 Nev. 84, 178 P.3d 709 (2008), appellant physicians filed individual complaints with the Local Government Employee-Management Relations Board (EMRB) against respondent Nevada Service Employees Union, SEIU Local 1107 (NSEU) and others. The EMRB consolidated those complaints and found that NSEU breached its duty of fair representation when it abandoned certain grievances the physicians had against their employer, non-party University Medical Center of Southern Nevada (UMC) and ordered NSEU to pursue those grievances "within the discretion typically allotted to bargaining agents to pursue grievances and in accordance with the duty of fair representation." The EMRB did not award the physicians damages or require NSEU to take the claims to arbitration. The EMRB also explained that NSEU "still retains the right to make a good faith evaluation of the merits of" each grievance.

Several years later, appellant UMC Physicians' Bargaining Unit and the physicians (collectively PBU) sued NSEU, its international union, and UMC based largely on the same allegations raised before the EMRB. The district court granted each of the defendants' motions to dismiss, concluding that it lacked subject matter jurisdiction because the claims fell within the EMRB's exclusive jurisdiction. On appeal, we largely affirmed those dismissals but reversed for the district court to make factual determinations as to whether NSEU had complied with the EMRB's order

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[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

to process the grievances. *UMC Physicians Bargaining Unit of Nevada Service Employees Union v. Nevada Service Employees Union*, No. 80817, 2021 WL 4238746 (Nev. Sept. 16, 2021). On remand, the parties engaged in limited discovery and the district court entered summary judgment for NSEU. The district court later denied PBU's motion for reconsideration and awarded NSEU a portion of its requested costs. PBU appeals and NSEU cross-appeals as to the cost award.

PBU argues that the district court erred when it granted summary judgment based on its determination that it lacked subject matter jurisdiction over PBU's remaining claim against NSEU. Having reviewed the record, we disagree. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (reviewing summary judgment de novo); *see also Am. First Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015) (explaining that this court applies de novo review to "a district court's decision regarding subject matter jurisdiction"). Because NRS 288.110(3)'s plain language limits the district court's jurisdiction to issuing an injunction to force NSEU to comply with the EMRB's orders, the district court correctly found that it lacked subject matter jurisdiction to award remedies or consider whether NSEU properly processed the grievances. *See* NRS 288.110(3) (providing that "[a]ny party aggrieved by the failure of any person to obey an order of the [EMRB] . . . may apply to a court of competent jurisdiction for a prohibitory or mandatory injunction to enforce the order"); *Smith v. Zilverberg*, 137 Nev. 65, 72, 481 P.3d 1222, 1230 (2021) ("If a statute's language is plain and unambiguous, we enforce the statute as written . . . .").

PBU also claims there was a disputed issue of material fact as to whether NSEU adequately pursued the grievances "in accordance with

the duty of fair representation." *See* NRCP 56(a) (providing that summary judgment is appropriate where "there is no genuine dispute as to any material fact"). We disagree, as the limited question before the district court was whether NSEU pursued the grievances, not whether it breached the duty of fair representation in doing so. Any challenge as to how NSEU pursued the grievances would constitute a new claim for breach of the duty of fair representation, which would necessarily need to be brought before the EMRB.[2] *See City of Mesquite v. Eighth Judicial Dist. Court*, 135 Nev. 240, 244, 445 P.3d 1244, 1248 (2019) ("[T]he EMRB has exclusive original jurisdiction over any unfair labor practice arising under the EMRA, including a claim that the union breached its duty of fair representation."). NSEU presented evidence that it investigated the ten grievances identified by the EMRB, requested additional information from PBU for some of those grievances, conducted a hearing to evaluate the merits of the grievances, reconsidered the grievances pursuant to PBU's appeal from NSEU's initial merit determinations, submitted demand letters to UMC in an attempt to informally resolve two of the grievances, and turned over several of the grievances to the individual physicians to pursue independently pursuant to their written request. In opposition, PBU did not produce any evidence to establish a factual dispute as to whether NSEU's efforts complied with the EMRB's orders. *See Wood*, 121 Nev. at 731-32, 121 P.3d at 1030-31 (explaining that the non-moving party must produce evidence that, "when taken in a light most favorable to [it] . . . demonstrates that no genuine

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[2]To the extent that PBU contends it already brought its fair representation claims before the EMRB, we note that the EMRB only considered PBU's claims regarding NSEU's previous abandonment of the grievances, not NSEU's efforts after the EMRB ordered it to pursue the grievances.

issues of material fact remain[ ]"). Nor did PBU demonstrate why it needed additional discovery to present such evidence.[3] *See* NRCP 56(d) (authorizing the court to defer consideration of a motion for summary judgment where the non-moving party "shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition"); *Sciarratta v. Foremost Ins. Co.*, 137 Nev. 327, 333-34, 491 P.3d 7, 13-14 (2021) (concluding that a district court properly declined to delay ruling on a motion for summary judgment where the non-moving party "did not clearly enunciate how discovery might alter the district court's determination" and "failed to meet his burden to affirmatively demonstrate why he could not respond to [the moving party's] evidence without further delay"). Because NSEU demonstrated that it complied with the EMRB's orders by processing the grievances, injunctive relief was no longer needed and NSEU was entitled to judgment as a matter of law.

PBU next argues that the district court abused its discretion in awarding NSEU a portion of its requested costs. NRS 18.020 clearly allows an award of costs to the prevailing party "[i]n an action for the recovery of money or damages, where the plaintiff seeks to recover more than $2,500," and PBU's complaint sought damages "in excess of $15,000 per [p]laintiff." *See Logan v. Abe*, 131 Nev. 260, 267, 350 P.3d 1139, 1144 (2015) (reviewing an award of costs for an abuse of discretion). We agree, however, with PBU

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[3]We decline to consider PBU's argument that the district court should have granted leave to amend the complaint, as PBU makes no cogent argument and cites no law regarding the relevant considerations for granting leave to amend. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that this court need not consider claims unsupported by cogent argument and relevant authority). For the same reason, we also decline to consider PBU's challenge to the district court's order denying reconsideration.

that the district court abused its discretion by awarding certain costs to NSEU which were unsupported by sufficient documentation and itemization. *See* NRS 18.110(1) (requiring a prevailing party to support its memorandum of costs with an oath verifying that "to the best of [the declarant's] knowledge and belief the items are correct, and that the costs have been necessarily incurred in the action"); *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352-53, 971 P.2d 383, 385-86 (1998) (concluding that a party's "fail[ure] to provide sufficient justifying documentation beyond the date of each photocopy and the total photocopying charge" was insufficient to determine the reasonableness of a cost award). While NSEU provided declarations from counsel that the costs were "reasonably incurred in connection with [NSEU's] defense" and documentation demonstrating that some of its claimed costs were "reasonable, necessary, and actually incurred," *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120-21, 345 P.3d 1049, 1054-55 (2015), it did not present evidence to determine whether its claimed costs for photocopies, scans, and postage were reasonable or necessary, *see PETA*, 114 Nev. at 1353, 971 P.2d at 386. Accordingly, we reverse that portion of the district court's cost award.[4]

Finally, NSEU argues on cross-appeal that the district court abused its discretion in declining to award it costs for computerized legal research fees. We agree. The district court denied NSEU's request for an award of its costs for computerized legal research fees because such costs "do not fall within the permitted costs designated under NRS 18.005." Contrary to the district court's conclusion, NRS 18.005 expressly provides that "reasonable and necessary expenses for computerized services for legal

[4]Given our conclusion, we need not reach PBU's argument that not all of NSEU's claimed costs were compensable pursuant to statute.

research" are included in the statutory definition of costs. NRS 18.005(17). However, only actual and reasonable costs may be awarded. *Waddell v. L.V.R.V., Inc.*, 122 Nev. 15, 25, 125 P.3d 1160, 1166-67 (2006) (explaining that "[o]nly reasonable costs," which must be "actual and reasonable, rather than a reasonable estimate or calculation of such costs," may be properly awarded). While "[t]he determination of allowable costs is within the sound discretion of the trial court[,] . . . statutes permitting the recovery of costs are to be strictly construed." *PETA*, 114 Nev. at 1352, 971 P.2d at 385. Because the district court denied NSEU's request for computer legal research costs without considering whether NSEU provided sufficient documentation justifying such an award, we reverse that portion of the district court's order. *Cadle Co.*, 131 Nev. at 120, 345 P.3d at 1054. Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

_____, C.J.
Stiglich

_____, J.
Lee

_____, J.
Parraguirre

cc: Hon. Jennifer L.G. Schwartz, District Judge
Hon. Ronald J. Israel, District Judge
Stephen E. Haberfeld, Settlement Judge
Rodriguez Law Offices, P.C.
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