

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CITY OF RENO,

Complainant,

vs.

RENO FIREFIGHTERS LOCAL 731,
INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS

THE INTERNATIONAL UNION OF
OPERATING ENGINEERS,
STATIONARY LOCAL #39, AFL-CIO

THE RENO ADMINISTRATIVE AND
PROFESSIONAL GROUP

THE RENO POLICE PROTECTIVE
ASSOCIATION;

THE RENO POLICE SUPERVISORY AND
ADMINISTRATIVE EMPLOYEES
ASSOCIATION

THE RENO FIRE DEPARTMENT
ADMINISTRATORS' ASSOCIATION,

Respondents,

LAS VEGAS METROPOLITAN POLICE
MANAGERS & SUPERVISORS ASSOC.

Intervenor,

ITEM: 777A

CASE NO. A1-046049

ORDER

Complainant: City of Reno and their attorney Donald L. Christensen, Esq.

Respondents: Reno Firefighters Local 731, IAFF. & their attorney Laurence Peter Digesti, Esq.

Respondents: International Union of Operating Engineers, Stationary Local #39, AFL-CIO
and Jerry Fredrick

Respondents: Reno Administrative and Professional Group & their attorney Michael E,
Langton, Esq.

Respondents: Reno Police Protective Association. & their attorney Michael E, Langton, Esq.

Respondents: Reno Police Supervisory and Administrative Employees Association. & their
attorney Michael E, Langton, Esq.

1 Respondents: Reno Fire Department Administrators' Association. & their attorney Thomas J.
2 Donaldson, Esq.

3 Intervenor: Las Vegas Metropolitan Police Managers and Supervisors Association & their
4 Attorney Casey J. Nelson, Esq.

5 On the 7th day of March, 2012, this matter came on before the State of Nevada, Local
6 Government Employee-Management Relations Board ("Board"), for consideration and decision
7 pursuant to the provisions of the NRS and NAC chapters 288, NRS chapter 233B, and was
8 properly noticed pursuant to Nevada's open meeting laws.

9 At issue before the Board are three requests: 1) a petition for leave to intervene in this
10 matter filed by Las Vegas Metropolitan Police Managers and Supervisors Association
11 ("LVMPMSA"); 2) a motion to dismiss filed by Reno Police Supervisory and Administrative
12 Employees Association, Reno Police Protective Association, Reno Fire Department
13 Administrators Association and Reno Administrative and Professionals Group (hereafter referred
14 to as "Police Associations' Motion" for ease of reference); and 3) a motion to dismiss the
15 petition for declaratory order filed by International Association of Firefighters Local 731
16 (hereafter referred to for ease of reference as "Firefighters' motion").

17 Petition to Intervene

18 Intervention in a declaratory order proceeding before the Board is governed by NAC
19 288.260. The Board has reviewed the petition to intervene filed by LVMPMSA and is satisfied
20 that LVMPMSA has a sufficient interest in this petition for declaratory order, and that
21 LVMPMSA's petition satisfies the requirements of NAC 288.260. Therefore, it is hereby
22 ordered that LVMPMSA's petition to intervene is granted.

23 Police Associations' Motion to Dismiss

24 The Police Associations' Motion argues two points: first, that this Board is not a "court of
25 record" as that term is used in NRS 30.030; and second, that NRS 30.030 authorizes "courts of
26 record" to issue declaratory orders. The conclusion that the Police Associations draw from these
27 two points is that the EMRB lacks jurisdiction to issue declaratory orders.

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1 The Board agrees that the EMRB is not a “court of record” and that NRS 30.030 does not apply
2 to the EMRB. However, it does not follow that the EMRB lacks jurisdiction to issue declaratory
3 orders.

4 The EMRB’s grant of authority to issue declaratory orders is not based on NRS Chapter
5 30, but instead derives from an altogether different statutory provision. NRS 233B.120 applies to
6 the EMRB and authorizes the EMRB to issue declaratory orders and advisory opinions “...as to
7 the applicability of any statutory provision ...”

8 Pursuant to the direction of NRS 233B.120, the EMRB has codified NAC 288.380-.420
9 to establish a procedure for the Board to issue declaratory orders.

10 In this case, the City of Reno is seeking a declaratory order as to the applicability of
11 changes to NRS Chapter 288 made by of S.B. 98 (2011) to the City’s employees. In particular,
12 the City’s petition addresses the changes to the definition of a “supervisory employee” in NRS
13 288.075, and the newly-created subsection 4 of NRS 288.140. The City’s petition states that it is
14 seeking an interpretation of these provisions from this Board rather than unilaterally imposing its
15 view of the requirements of S.B. 98 on its employees in order to potentially avoid complaints and
16 litigation if the City were to unilaterally act. See Pet. for Decl. Order ¶ 12. This is precisely the
17 purpose for which administrative declaratory orders are made available under the Administrative
18 Procedures Act. e.g. Chiles v. Department of State, Div. of Elections, 711 So.2d 151, 154 -
19 155 (Fla.App. 1998) (“[t]he purpose of a declaratory statement is to address the applicability of a
20 statutory provision or an order or rule of the agency in particular circumstances. A party who
21 obtains a statement of the agency’s position may avoid costly administrative litigation by
22 selecting the proper course of action in advance.”)

23 The City is within its rights under NRS 233B.120 and NAC 288.380-.420 to seek a
24 declaratory order from the Board. The Police Associations’ motion to dismiss is hereby denied.

25 Firefighters’ Motion to Dismiss

26 The Firefighters’ Motion is also based on NRS 30.030, and the elements for a ripe
27 declaratory judgment under the Declaratory Judgments Act that the Nevada Supreme Court
28 applied in Doe v. Bryan, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986). The Firefighters argue

1 that the City's requests for a declaratory order have not asserted a justiciable controversy and are
2 not ripe for judicial determination.

3 However, as noted above, administrative declaratory orders are not based upon the
4 provisions of NRS Chapter 30 and the Firefighters have not presented any authority that extends
5 the justiciability and ripeness requirements applied in Doe v. Bryan to the administrative
6 declaratory orders authorized by NRS 233B.120. As the purpose of administrative declaratory
7 orders are to obtain guidance from an administrative agency before taking action that might lead
8 to a justiciable controversy, the Firefighters have not established a sufficient basis for the Board
9 to dismiss the petition. The Firefighters' motion to dismiss is hereby denied.

10 Hearing

11 The Board also considered whether to set this petition for a hearing under NAC
12 288.410(2)(b) and concludes that a hearing is warranted. The Commissioner is directed to
13 schedule a hearing in this matter for a future board meeting.

14 DATED this 16th day of March, 2012.

15 LOCAL GOVERNMENT EMPLOYEE-

16 MANAGEMENT RELATIONS BOARD

17
18 BY: 

19 SEATON J. CURRAN, ESQ., Chairman
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STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
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LAS VEGAS METROPOLITAN POLICE
MANAGERS & SUPERVISORS ASSOC.

Intervenor

CASE NO. A1-046049

NOTICE OF ENTRY OF ORDER

To: City of Reno and their attorney Donald L. Christensen, Esq.

To: Reno Firefighters Local 731, IAFF. & their attorney Laurence Peter Digesti, Esq.

To: International Union of Operating Engineers, Stationary Local #39, AFL-CIO and Jerry Fredrick

To: Reno Administrative and Professional Group & their attorney Michael E, Langton, Esq.

To: Reno Police Protective Association. & their attorney Michael E, Langton, Esq.

1 To: Reno Police Supervisory and Administrative Employees Association. & their attorney
2 Michael E, Langton, Esq.

3 To: Reno Fire Department Administrators' Association. & their attorney Thomas J. Donaldson,
4 Esq.

5 To: Las Vegas Metropolitan Police Managers and Supervisors Association & their Attorney
6 Casey J. Nelson, Esq.

7 PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on
8 March 16, 2012.

9 A copy of said order is attached hereto.

10 DATED this 16th day of March, 2012.

11 LOCAL GOVERNMENT EMPLOYEE-
12 MANAGEMENT RELATIONS BOARD

13 BY 
14 JOYCE A. HOLTZ, Executive Assistant

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1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Local Government Employee-Management
3 Relations Board, and that on the 16th day of March, 2012, I served a copy of the foregoing
4 ORDER by mailing a copy thereof, postage prepaid to:

5 Donald L. Christensen, Esq.
6 Deputy City Attorney
7 PO Box 1900
8 Reno, NV 89505

9 Laurence Peter Digesti, Esq.
10 485 W. Fifth Street
11 Reno, NV 89503

12 Jerry Fredrick
13 Stationary Local #39
14 390 Kirman Ave.
15 Reno, NV 89502

16 Michael E, Langton, Esq.
17 801 Riverside Drive
18 Reno, NV 89503

19 Thomas J. Donaldson, Esq.
20 Dyer, Lawrence, Penrose, Flaherty, Donaldson & Prunty
21 2805 Mountain Street
22 Carson City, NV 89703

23 Casey J Nelson Esq.
24 Aldrich Law Firm LTD.
25 1601 S. Rainbow Blvd. #160
26 Las Vegas, NV 89146

27 Adam P. Segal, Esq.
28 Brownstein Hyatt Farber Schreck, LLP
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JOYCE HOLTZ, Executive Assistant