

FILED

MAR 18 2019

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 501, AFL-CIO,

Complainant,

v.

ESMERALDA COUNTY NV. BOARD OF
COMMISSIONERS MICHELLE BATES,
COMMISSIONER DISTRICT 1, DE WINSOR,
COMMISSIONER DISTRICT 2, RALPH
KEYES, COMMISSIONER DISTRICT 3,

Respondents.

Case No. 2018-014

ORDER

Panel A

Item No. 838

On March 12, 2019, this matter came before the State of Nevada, Local Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Local Government-Management Relations Act (the "Act"), NAC Chapter 288 and NRS Chapter 233B. The Board held an administrative hearing on this matter on November 13, 2018, in Las Vegas, Nevada, and the Board accepted post-hearing briefs from the parties thereafter.

In its Complaint, International Union of Operating Engineers Local 501, AFL-CIO ("Local 501") alleges that Respondents failed to negotiate in good faith regarding mandatory subjects of bargaining, in violation of NRS 288.270, as well as refused to bargain collectively in good faith with the exclusive representative as required in NRS 288.150.

On June 23, 2017, Kevin Million ("Million"), business representative for Local 501, notified the County it would be taking over from the previous union in representing the bargaining unit employees. Along with this notification, Million provided the County with its verified membership list showing that Local 501 represents a majority of the bargaining unit.

On December 19, 2017, the County accepted the defined bargaining unit and recognized Local 501 as the exclusive representative. Pursuant to the defined bargaining unit and the list provided by the County, the maximum number of positions the bargaining unit could hold was 16. However, on April

1 23, 2018, the County notified Local 501 that it believed it no longer enjoyed majority support, and the
2 County demanded Local 501 to either voluntarily withdraw or submit to a representative election.

3 A dispute thus arose over majority support. Patricia Huber-Beth (“Beth”), administrative
4 assistant for the County, alleged the bargaining unit included 14 employees, 9 of which signed Local
5 501 authorization cards, and 2 vacant positions. On the same day, May 3, 2018, the County asserted
6 the bargaining unit was comprised of 15 employees and 2 vacant positions. Kelly Eagan (“Eagan”)
7 presented a list of positions in the unit and informed that Local 15 had 9 signatures out of those 17
8 positions (which is majority support) (also noting that this included some positions that were vacant and
9 others that had left their employment). Million asserted that vacant positions did not count in the
10 makeup of the bargaining unit for the simple reason that there was nobody in those positions. Of note,
11 even if all the positions were included (vacant and filled), Local 501 showed it had majority support at
12 that time (9 authorizations cards out of 17 positions).

13 DISCUSSION

14 It is a prohibited practice for a local government employer willfully to refuse to bargain
15 collectively in good faith with the exclusive representative as required in NRS 288.150. NRS
16 288.270(1)(e). “A party’s conduct at the bargaining table must evidence a sincere desire to come to an
17 agreement. The determination of whether there has been such sincerity is made by drawing inferences
18 from conduct of the parties as a whole.” *City of Reno v. Int’l Ass’n of Firefighters, Local 731*, Item No.
19 253-A (1991), quoting *NLRB v. Ins. Agent’s Int’l Union*, 361 U.S. 488 (1970). The Act imposes a
20 reciprocal duty on employers and bargaining agents to negotiate in good faith concerning the mandatory
21 subjects of bargaining listed in NRS 288.150. “In order to show ‘bad faith’, a complainant must present
22 ‘substantial evidence of fraud, deceitful action or dishonest conduct.’” *Boland v. Nevada Serv.*
23 *Employees Union*, Item No. 802, at 5 (2015), quoting *Amalgamated Ass’n of St., Elec. Ry. And Motor*
24 *Coach Emp. of America v. Lockridge*, 403 U.S. 274, 301 (1971). NRS 288.270(1)(e) deems it a
25 prohibited labor practice for a local government employer to bargain in bad faith with a recognized
26 employee organization. *O’Leary v. Las Vegas Metropolitan Police Dep’t*, Item No. 803, EMRB Case
27 No. A1-046116 (May 15, 2015); see also *Serv. Employees Int’l Union, Local 1107 v. Clark County*,
28 Item No. 713A, EMRB Case No. A1-045965 (Oct. 5, 2010).

1 **INITIAL FAILURE TO BARGAIN IN GOOD FAITH**

2 Million made several attempts to meet with the County to negotiate a MOU. The County
3 Commissioners oddly asserted that negotiations must take place during their open meetings.¹ Million
4 requested negotiation dates from the commission and was asked to submit requests at each commission
5 meeting in which he wanted to discuss the potential MOU. Troubling, Million was initially placed on
6 the agenda by asking, as requested, at a previous meeting for the matter to be agendized; however, there
7 were times when he came to a commission meeting only to find that he was not on the agenda despite a
8 roughly three and a half hour drive.

9 Notwithstanding the County's efforts to undermine and delay the process, Million presented
10 Local 501's proposal at a regular meeting of the County commissioners in open session (Million thus
11 had to read the entire proposal while standing at the podium). Further, Million asked about a
12 representative to negotiate. However, the County commission stated that they had to be present for any
13 negotiations to take place and thus only at their monthly commission meetings (despite no authority or
14 industry standard for this practice). Million again requested the County appoint someone to negotiate
15 on its behalf so meaningful and timely negotiations could take place. The evidence was undisputed that
16 the County refused to ever appoint a negotiating representative or otherwise meaningfully negotiate
17 with Local 501.

18 The duty to bargain in good faith does not require that the parties actually reach an agreement,
19 but does require that the parties approach negotiations with a sincere effort to do so. *Ed. Support*
20 *Employees Ass'n v. Clark County Sch. Dist.*, Case No. A1-046113, Item No. 809, 4 (2015), *citing City*
21 *of Reno v. Int'l Ass'n of Firefighters, Local 731*, Item No. 253-A, Case No. A1-045472 (1991).
22 Moreover, the failure to designate an agent, or bargaining team with negotiation authority is a
23 significant indicator of bad faith bargaining, which points to a finding of bad faith in this case. *Clark*
24 *County Ed. Ass'n v. Clark Count Sch. Dist.*, Case No. 2017-008 (2017); *Ed. Support Employees Ass'n v.*

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26 _____
27 ¹ NRS 288.220 provides that "[a]ny negotiation or informal discussion between a local government employer and an
28 employee organization or employees as individuals, whether conducted by the governing body or through a representative or
representatives" are not subject to Nevada's Open Meeting Laws. Respondents failed to present any authority whatsoever to
support the Commissioners' proposition that negotiations must take place in an open meeting. The Board also finds that the
foregoing statute is plain and unambiguous that negotiations are not required to take place in an open meeting.

1 *Clark Count Sch. Dist.*, Case No. A1-046113, Item No. 809 (2015), quoting *Fitzgerald Mills Corp.*, 133
2 NLRB 877 (1961). Moreover, it was undisputed that the County failed to respond to Local 501’s
3 proposal. A further indicator of bad faith bargaining is the refusal to make proposals or
4 counterproposals during negotiations. *Id.*, citing *United Technologies Corp.*, 296 NLRB 571, 572
5 (1989).

6 As indicated, the determination of whether there had been such sincerity is made by drawing
7 inferences from the conduct of the parties as whole. In addition to the above, while there were roughly
8 six or seven meetings in which the County allegedly met to discuss the proposed MOU, these were done
9 in closed sessions without Local 501’s attendance, and the Board was not presented with any credible
10 evidence that sincere considerations took place. Once Eagen reported Local 501 allegedly lacked
11 majority support, the County unilaterally discontinued any efforts to respond to Local 501’s proposal.
12 At no point between February 20, 2018, and May 3, 2018, did the County make any counter proposals
13 or discuss any specific points with Local 501.

14 A dispute also arose over information that was requested by Local 501. On November 13, 2017,
15 Million made a written request for 9 categories of information. NRS 288.270(g) makes it a prohibited
16 practice to “[f]ail to provide the information required by NRS 288.180.” While it appears Local 501 did
17 not receive all information requested (in the County’s post-hearing brief, it simply states it “believes
18 that it did comply with all requests”), the hearing did not establish that Local 501 made sufficient
19 requests for what was missing, nor did the parties have sufficient substantive discussions related
20 thereto. However, this was due to Respondents’ unilateral withdrawal of recognition of Local 501 as
21 further detailed below. The Board notes that the failure of the County to provide the requested
22 information or reasonable grounds for an inability to do so upon specific requests may result in further
23 findings of violations by this Board, including the imposition of attorney’s fees and costs in connection
24 with bringing said claim. *See, e.g., Ed. Support Employees Ass’n v. Clark Count Sch. Dist.*, Case No.
25 A1-046113, Item No. 809 (2015).

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1 **UNILATERAL WITHDRAWAL OF RECOGNITION AS WELL AS FURTHER FAILURE TO BARGAIN IN**
2 **GOOD FAITH**

3 NRS 288.160 provides for the application and withdrawal of recognition for the exclusive
4 bargaining agent. Preliminarily, Local 501 showed that it met the requirements of NRS 288.160(1) and
5 (2). Along with the requirements of subsection (1), Local 501 presented a verified membership list
6 showing that it represented a majority of the employees in a bargaining unit and was recognized by the
7 County, in fulfilling of subsection (2).² The County accepted Local 501's definition of the bargaining
8 unit on December 19, 2017.

9 Next, NRS 288.160(3) specifically requires a local government employer to "first receive
10 written permission of the Board" to withdraw recognition if it "[c]eases to be supported by a majority of
11 the local government employees in the bargaining unit for which it is recognized." It is undisputed that
12 the County failed to do so. Furthermore, NAC 288.145 (**emphasis added**) provides that "a local
13 government employer must request a hearing before the Board and receive the written permission of the
14 Board **before** withdrawing recognition of an employee organization for any reason other than voluntary
15 withdrawal." As indicated above, the County specifically granted recognition and failed to properly
16 withdraw recognition by unilaterally doing so and immediately ceasing any negotiations in April 2018.³

17 Based on the conduct of the parties as whole, Local 501 has presented substantial evidence of
18 deceitful action or dishonest conduct by the County. As such, Local 501 has shown bad faith
19 bargaining by the County.

20 ² As detailed above, it is irrelevant whether vacant or part-time positions are included in the total number for the bargaining
21 unit as Local 501 had majority support "at or after the time of its application for recognition". Notwithstanding, the Board
22 finds that NRS 288.160(2) is plain and unambiguous that it is "a majority of the employees in a bargaining unit", not that
23 may theoretically be in the bargaining unit (in other words, the statute plainly provides this is determined by the number of
24 employees, not the number of positions). *See, e.g., Int'l Brotherhood of Elec. Workers, Local 1245 v. City of Fernley*, Case
25 No. A1-045779, Item No. 565A (2005). Moreover, NRS 288.028 (**emphasis added**) plainly defines a "[b]argaining unit" as
26 "a group of local government **employees**." *See also* Black's Law Dictionary ("An employee is a person who works in the
27 service of another under express or implied contract for hire, under which the employer has the right to control details of
28 work performance"); NRS 288.050 (**emphasis added**) ("Local government employee' means any **person employed** by a
local government employer."); *Clark Cty. v. State Indus. Ins. Sys.*, 102 Nev. 353, 354, 724 P.2d 201, 201 (1986) (defining
employee under NRS 616.055); *Clark County Deputy Marshals Ass'n v. Clark County*, 425 P.3d 381, Docket No. 68660,
filed September 7, 2018, unpublished deposition (Nev. 2018) (noting NRS 288.050). Even if the language was not clear,
Respondents have provided the Board with no legislative history support or analysis in counter. Indeed, the County even
agreed when it included part-time employees in its own definition of the bargaining unit.

³ As such, it is irrelevant whether Local 501 maintained majority support as the County failed to properly follow the plain
language of the statute for withdrawal of recognition as mandated by NRS 288.160 and NAC 288.145.

1 The County delayed the process by requiring negotiations to take place in an open meeting with
2 no clear basis for doing so, refused to appoint a negotiator, failed to respond to Local 501’s proposal,
3 and then unilaterally withdrew recognition after this entire process in clear violation of the statute and
4 regulation, as detailed above. While the County allegedly discussed Local 501’s proposal, it did so in
5 closed session, and no credible evidence was shown that it conducted negotiations with a “sincere desire
6 to come to an agreement.”

7 Indeed, past decisions of this Board have held that unilateral withdrawal of recognition can
8 amount to bad faith bargaining.⁴ *E.g.*, *Water Employees Ass’n v. Las Vegas Valley Water Dist.*, Case
9 No. A1-045418, Item No. 204 (1988) (also noting that the Board will not withdraw recognition under
10 NRS 288.160(3)(d) where a local government employer has engaged in an ongoing campaign to
11 decertify the bargaining unit); *Lander County Bd. of Comm’rs v. Lander County Law Enforcement*
12 *Employees Ass’n*, Case No. A1-045443, Item No. 223 (1989); *Operating Engineers, Local 3, of the Int’l*
13 *Union of Operating Engineers, AFL-CIO v. County of Lander*, Case No. A1-045553, Item No. 346
14 (1994) (awarding attorney fees); *Nevada Classified Sch. Employees Ass’n, AFT/PSRP, Local 6181,*
15 *AFL-CIO v. Truckee-Carson Irrigation Dist.*, Case No. A1-045895, Item No. 647B (2009) (also
16 awarding attorney fees, immediate resuming of recognition, and posting of violation).

17 As such, Respondents’ Counterclaim also lacks merit. *See also* NAC 288.145 (requiring local
18 government employers to request a hearing **and** received written permission **before** withdrawing
19 recognition).⁵

20 Finally, based on the facts in this case and the issues presented, the Board awards costs and fees
21 in this matter.

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26 ⁴ The requirement to first receive written permissions of this Board in NRS 288.160(3) was added by our Legislature in 1983. 1983 Statutes of Nevada, Page 1624 (Chapter 552, AB 416).

27 ⁵ Respondents stated they brought their Counterclaim pursuant to NRCP Rule 13. The Board notes that the Nevada Rules of
28 Civil Procedure are generally inapplicable to this Board except were specifically provided for pursuant to the Board’s
legislative grant of rulemaking authority contained in NRS 288.110. *See, e.g.*, NAC 288.080, NAC 288.090; *Kreidel v.*
Clark County Ed. Ass’n, Case No. 2018-022 (2018).

FINDINGS OF FACT

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2 1. On June 23, 2017, Million notified the County that Local 501 would be taking over from
3 the previous union in representing the bargaining unit employees.

4 2. Along with this notification, Million provided the County with its verified membership
5 list showing that Local 501 represents a majority of the bargaining unit.

6 3. On December 19, 2017, the County accepted the defined bargaining unit and recognized
7 Local 501 as the exclusive representative.

8 4. Pursuant to the defined bargaining unit and the list provided by the County, the
9 maximum number of positions the bargaining unit could hold was 16.

10 5. On April 23, 2018, the County notified Local 501 that it believed it no longer enjoyed
11 majority support, and the County demanded Local 501 to either voluntarily withdraw or submit to a
12 representative election.

13 6. Beth alleged the bargaining unit included 14 employees, 9 of which signed Local 501
14 authorization cards, and 2 vacant positions.

15 7. On the same day, May 3, 2018, the County asserted the bargaining unit was comprised of
16 15 employees and 2 vacant positions.

17 8. Eagan presented a list of positions in the unit and informed that Local 15 had 9
18 signatures out of those 17 positions (which is majority support).

19 9. Eagen also noted that this included some positions that were vacant and others that had
20 left their employment.

21 10. Even if all the positions were included, Local 501 showed it had majority support at that
22 time (9 authorizations cards out of 17 positions).

23 11. Million made several attempts to meet with the County to negotiate a MOU.

24 12. The County Commissioners asserted that negotiations must take place during their open
25 meetings.

26 13. Million requested negotiation dates from the commission and was asked to submit
27 requests at each commission meeting in which he wanted to discuss the potential MOU.

1 14. Million was initially placed on the agenda by asking, as requested, for the matter to be
2 agendized.

3 15. There were times when Million traveled to a commission meeting only to find that he
4 was not on the agenda dispute a roughly three and a half hour drive.

5 16. Million presented Local 501's proposal at a regular meeting of the County
6 commissioners in open session.

7 17. Million had to read the entire proposal while standing at the podium.

8 18. Million asked about a representative to negotiate.

9 19. The County commission stated that they had to be present for any negotiations to take
10 place and thus only at their monthly commission meetings (despite no authority or industry standard for
11 this practice).

12 20. Million again requested the County appoint someone to negotiate on its behalf so
13 meaningful and timely negotiations could take place.

14 21. The County refused to ever appoint a negotiating representative or otherwise
15 meaningfully negotiate with Local 501.

16 22. The County failed to respond to Local 501's proposal.

17 23. While there were roughly six or seven meetings in which the County allegedly met to
18 discuss the proposed MOU (which was done in closed sessions), once Eagen reported Local 501
19 allegedly lacked majority support, the County unilaterally discontinued any efforts to respond to Local
20 501's proposal.

21 24. At no point between February 20, 2018, and May 3, 2018, did the County make any
22 counter proposals or discuss any specific points with Local 501.

23 25. Local 501 presented a verified membership list showing that it represented a majority of
24 the employees in a bargaining unit and was recognized by the County.

25 26. The County accepted Local 501's definition of the bargaining unit on December 19,
26 2017.

1 6. The Act imposed a reciprocal duty on employers and bargaining agents to negotiate in
2 good faith concerning the mandatory subjects of bargaining listed in NRS 288.150.

3 7. The duty to bargain in good faith does not require that the parties actually reach an
4 agreement, but does require that the parties approach negotiations with a sincere effort to do so.

5 8. In order to show bad faith, a complainant must present substantial evidence of fraud,
6 deceitful action or dishonest conduct.

7 9. NRS 288.220 is plain and unambiguous that there is no requirement that negotiations
8 may take place without complying with Nevada's Opening Meeting Laws.

9 10. The failure to designate an agent, or bargaining team with negotiation authority is a
10 significant indicator of bad faith bargaining, which points to a finding of bad faith.

11 11. A further indicator of bad faith bargaining is the refusal to make proposals or
12 counterproposals during negotiations.

13 12. Local 501 showed that it met the requirements of NRS 288.160(1) and (2).

14 13. NRS 288.160(3) plainly and unambiguously requires a local government employer to
15 "first receive written permission of the Board" to withdraw recognition if it "[c]eases to be supported by
16 a majority of the local government employees in the bargaining unit for which it is recognized.

17 14. NAC 288.145 plainly and unambiguously requires "a local government employer must
18 request a hearing before the Board and receive the written permission of the Board before withdrawing
19 recognition of an employee organization for any reason other than voluntary withdrawal."

20 15. It is irrelevant whether Local 501 maintained majority support as the County failed to
21 properly follow the plain language of the statute for withdrawal of recognition as mandated by NRS
22 288.160.

23 16. It is irrelevant whether vacant or part-time positions are included in the total number for
24 the bargaining unit as Local 501 had majority support "at or after the time of its application for
25 recognition".

26 17. NRS 288.160(2) is plain and unambiguous that it is "a majority of the employees in a
27 bargaining unit" that constitute majority support, not that may theoretically be in the bargaining unit (in
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1 other words, the statute plainly provides this is determined by the number of employees, not the number
2 of positions).

3 18. The unilateral withdrawal of recognition can amount to bad faith bargaining.

4 19. Based on the conduct of the parties as whole, Local 501 has presented substantial
5 evidence of deceitful action or dishonest conduct by the County.

6 20. Local 501 has shown bad faith bargaining by the County.

7 21. Respondents' Counterclaim lacks merit.

8 22. If any of the foregoing conclusions is more appropriately construed as a finding of fact, it
9 may be so construed.

10 **ORDER**

11 Based on the foregoing, IT IS HEREBY ORDERED that the Board finds in favor of
12 Complainant as set forth above.

13 IT IS FURTHER ORDERED that the County is directed to immediately recognize Local 501 as
14 the exclusive bargaining agent and resume negotiations.

15 IT IS FURTHER ORDERED that within 30 days of the date of this order, Respondent, the
16 County, shall post the Notice of its prohibited labor practices, attached to this Order as Attachment A,
17 for a period of not less than 30 days in conspicuous places including all places where notices to
18 employees are customarily posted. Respondent the County shall take reasonable steps to ensure that the
19 notices are not altered, defaced, or covered by any other material. Respondent the County shall notify
20 the Commission of this Board when the notices have been posted.


21 IT IS FURTHER ORDERED that, pursuant to NRS 288.110(6), Complainant in this matter be
22 reimbursed all reasonable attorneys' fees and costs incurred in bringing this claim before the Board.
23 Complainant may file with the Board a memorandum for fees and costs detailing those expenses
24 incurred in this matter within 30 days of the date of this Order, consistent with the factors set forth in
25 *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969). Respondents shall thereafter
26 have 10 days from service thereof to oppose said memorandum, if deemed appropriate. Within 10 days
27 after service of the opposition to the memorandum, the moving party may respond to the points raised
28 in the opposition.

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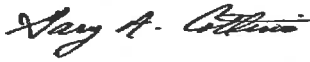
IT FURTHER ORDERED that the Counterclaim lacks merit as set forth above.

DATED this 18th day of March, 2019.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: 
BRENT ECKERSLEY, ESQ., Chair

By: 
PHILIP LARSON, Board Member


By: _____
GARY COTTINO, Board Member

**NOTICE FOR POSTING
APPEARS ON NEXT PAGE**

STATE OF NEVADA

STEVE SISOLAK
Governor

Members of the Board

BRENT C. ECKERSLEY, Chair
SANDRA MASTERS, Vice-Chair
PHILIP E. LARSON, Board Member
CAM WALKER, Board Member
GARY COTTINO, Board Member



MICHAEL BROWN
Director

BRUCE K. SNYDER
Commissioner

MARISU ROMUALDEZ ABELLAR
Executive Assistant

DEPARTMENT OF BUSINESS AND INDUSTRY
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

3300 West Sahara Avenue, Suite 260, Las Vegas, Nevada 89102
(702) 486-4504 • Fax (702) 486-4355
www.emrb.nv.gov

EMRB



1969-2019

**Notice to Members and Employees Represented by the
International Union of Operating Engineers, Local 501**

Posted By Order of the State of Nevada Local Government Employee-Management Relations Board

The Local Government Employee-Management Relations Board has found that Esmeralda County, Commissioner Michelle Bates, Commissioner De Winsor and Commissioner Ralph Keyes violated the Nevada Employee-Management Relations Act (NRS 288) by failing to bargain in good faith and for inappropriately withdrawing recognition of Local 501 and has thus ordered the County to post and obey this notice.

PURSUANT TO THE EMPLOYEE-MANAGEMENT RELATIONS ACT:

WE WILL NOT fail to bargain in good faith.

WE WILL NOT inappropriately withdraw recognition of Local 501.

WE WILL immediately recognize Local 501 as the exclusive bargaining agent and immediately resume negotiations.

ESMERALDA COUNTY AND ITS THREE COMMISSIONERS

By _____
(Representative)

(Title)

Dated: _____

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 30 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE COMMISSIONER OF THE EMRB: (702) 486-4504.

The Local Government Employee-Management Relations Board is a state agency created to administer the Local Government Employee-Management Relations Act. It conducts elections to determine union representation and it conducts hearings on prohibited labor practices by employers and unions. You may obtain information from the Board's website: www.emrb.nv.gov.