

STATE OF NEVADA

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DEPARTMENT OF BUSINESS AND INDUSTRY
EMPLOYEE-MANAGEMENT RELATIONS BOARD

2501 E. Sahara Avenue, Suite 203
Las Vegas, NV 89104
(702) 486-4504 Fax (702) 486-4355
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November 28, 2012

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Amendment of

Of Regulations of the

NEVADA LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS
BOARD

The Nevada Local Government Employee-Management Relations Board will hold a public hearing at **8:00 a.m. January 9, 2013** at:

**State of Nevada Bradley Building
2501 E. Sahara Avenue
Second Floor Conference Room
Las Vegas, Nevada 89104**

The Hearing will also be video conferenced to the:

**State of Nevada Division of Insurance
1818 East College Parkway, Suite 103
Carson City, Nevada 89706**

The purpose of the hearing isto receive comments from all interested persons regarding the adoption and amendment of temporary regulations that pertain to chapter 288 of the NevadaAdministrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation or amendment. The need for and the purpose of the proposed amendments are to clarify the duty of the Board to hold a runoff election, to make technical corrections to the procedural rules before the Board, to relax the requirements for filing a complaint before the Board and to make revisions that bring the Board’s regulations regarding rehearing into conformity with the Administrative Procedures Act. The need for and the purpose of the proposed adoption of a new regulation are to establish a settlement conference program to facilitate a pre-hearing resolution of some prohibited labor practice complaints.

2. A description of the subjects and issues involved: The subject of this regulation is the duty of the Board to hold a runoff election if the results of a representative election under NRS 288.160 are inconclusive, the technical requirements for pleadings filed before the board, the rule governing rehearings and the settlement conference program proposed in the regulations contained in LCB File T001-12. Any person may obtain a copy of the proposed amendments by submitting a request in

3. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include:

(a) **Both adverse and beneficial effects;** The proposed amendments are primarily directed at minor revisions in the rules of practice before the Board and will not significantly economically affect the entities regulated by the Local Government Employee-Management Relations Board either adversely or beneficially. A minor beneficial effect may be felt in the form a slight reduction in costs and litigation expenses by eliminating the requirement that pleadings be verified, and by establishing a settlement conference intended to facilitate an earlier resolution to a prohibited labor practice complaint.

(b) **Both immediate and long-term effects.** There are no immediate or long-term economic effects.

4. The estimated cost to the agency for enforcement of the proposed regulation. There is no estimated additional cost for the Local Government-Employee Management Relations Board to enforce the proposed amendments.

5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency. The proposed amendment does not overlap or duplicate any regulations of other state or local governmental agencies.

6. If the regulation is required pursuant to federal law, a citation and description of the federal law. The regulation is not required pursuant to federal law.

7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions. No existing federal regulation regulates the same activity.

8. Whether the proposed regulation establishes a new fee or increases an existing fee. The proposed amendments do not establish a new fee or increase an existing fee.

Persons wishing to comment upon the proposed action of the Local Government Employee-Management Relations Board may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to Nevada Local Government Employee-Management Relations Board, 2501 E. Sahara, Ste. 203, and Las Vegas, Nevada 89104. Written submissions must be received by the Local Government Employee-Management Relations Board on or before January 8, 2013. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Local Government Employee-Management Relations Board may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted will be available at the Local Government Employee-Management Relations Board, 2501 E. Sahara, Ste. 203, Las Vegas, Nevada, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request.

A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling

the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

Carson City Library
900 North Roop Street
Carson City, NV 89701

Clark County Las Vegas Library
833 Las Vegas Blvd North
Las Vegas, NV 89101

Elko County Library
720 Court Street
Elko, NV 89801

Battle Mountain Branch Library
625 Broad Street
PO Box 141
Battle Mountain NV 89820

Lyon County Library
20 Nevin Way
Yerington, NV 89447

Tonopah Public Library
167 South Central
PO Box 449
Tonopah, NV 89049

Storey County Library
95 South R Street
PO Box 14
Virginia City, NV 89440

White Pine County Library
950 Campton Street
Ely, NV 89301

Grant Sawyer State Building
555 E. Washington Ave.
Las Vegas, NV 89101
Attn: Capitol Police

Churchill County Library
553 South Maine Street
Fallon, NV 89406

Douglas County Library
1625 Library Lane, POB 337
Minden, NV 89423

Goldfield Public Library
PO Box 430
Goldfield, NV 89013

Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445

Lincoln County Library
63 Main Street
Pioche, NV 89043

Mineral County Library
110 First Street
Hawthorne, NV 89415

Pershing County Library
1125 Central Avenue
PO Box 781
Lovelock, NV 89419

Washoe County Library
301 South Center Street
PO Box 2151
Reno, NV 89505

Nevada State Library & Archives
100 North Stewart Street
Carson City, NV 89701-4285

**PROPOSED TEMPORARY REGULATION OF
THE NEVADA LOCAL GOVERNMENT
EMPLOYEE-MANAGEMENT RELATIONS BOARD**

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: NRS 288.110.

A REGULATION relating to the practice and procedure before the Local Government Employee-Management Relations Board, and providing other matters properly related thereto.

Section 1. Chapter 288 of NAC is hereby amended by adding thereto the provisions set forth as section 2, by amending the provisions set forth as sections 3 to 14, inclusive, of this regulation, and by repealing therefrom the provision set forth in section 15.

Sec. 2. Chapter 288 of NAC is hereby amended by adding thereto a new section to read as follows:

Settlement Conference

1. *Upon the motion of any party or on its own motion, the Board may order the parties to participate in a settlement conference.*
2. *The Commissioner shall conduct any settlement conference ordered by the Board.*
3. *The Board will not order a settlement conference for any matter that is:*
 - (a) *An appeal of a bargaining unit determination brought pursuant to NRS 288.170(5);*
 - (b) *A proceeding relating to the recognition of an employee organization brought pursuant to NRS 288.160; or*
 - (c) *A declaratory order proceeding brought pursuant to NAC 288.380-.410.*
4. *A settlement conference may be requested any time:*
 - (a) *after all parties have submitted prehearing statements; and*
 - (b) *not any later than 60 days before the date of a scheduled hearing.*
5. *The Commissioner may establish any reasonable guidelines to conduct a particular settlement conference, except that the Commissioner may not:*
 - (a) *require the parties to submit any additional statements or briefing in advance of a settlement conference; or*
 - (b) *establish any other guideline which will impose an undue expense on any party.*
6. *The Commissioner may not be called as a witness in any proceeding in which a settlement conference has taken place.*

Sec. 3. NAC 288.110 is hereby amended to read as follows:

Elections.

1. All elections conducted in accordance with subsection 4 of NRS 288.160 will be conducted under the supervision of the Board or its agent.
2. Any party may be represented at the election by observers selected in accordance with such limitations as the Board may prescribe.

3. Any observer or the Board's agent conducting the election may challenge for good cause the eligibility of any person to vote in the election. The ballots of challenged persons will be impounded.
4. Upon the conclusion of the election, the ballots will be counted in the presence of the parties or their observers and the Board's agent conducting the election. The agent will furnish parties with a tally of the ballots.
5. Except as otherwise provided in this subsection, the ballots must be kept for at least 6 months after an election, after which period the ballots may be destroyed. If a timely objection to the election is filed with the Board or a petition for judicial review concerning the election is filed in district court, the ballots must be kept until after the conclusion of any Board or court proceeding concerning the election.
6. Provisions may be made for a nonunion vote and for linguistic assistance.
7. If the results are inconclusive, the Board ~~will~~ *may* conduct a runoff election.
8. Within 5 days after the election, any party may file with the Board objections to the conduct of the election or conduct affecting the results of the election. The objections must be in writing and contain a brief statement of facts upon which the objections are based. A sworn original and four copies of the objections must be signed and filed with the Board. The party filing the objections shall serve a copy upon each of the other parties.
9. If challenges which affect the results of the election or objections raise a substantial question which cannot be resolved without a hearing, the Board may issue and serve notice of a hearing on these issues.
10. An employee organization will be considered the exclusive bargaining agent for employees within a bargaining unit, pursuant to an election, if:
 - (a) Challenged ballots are insufficient in number to affect the results;
 - (b) No runoff election is to be held;
 - (c) No timely objections are filed; and
 - (d) The election demonstrates that the employee organization is supported by a majority of the employees within the particular bargaining unit.

Sec. 4. NAC 288.200 is hereby to read as follows:

Complaint

1. In addition to any other applicable requirements set forth in NAC 288.231, a complaint must include:

- (a) The full name and address of the complainant;
- (b) The full name and address of the respondent;
- (c) A clear and concise statement of the facts constituting the alleged practice sufficient to raise a justiciable controversy under chapter 288 of NRS, including the time and place of the occurrence of the particular acts and the names of persons involved; and
- (d) The legal authority under which the complaint is made.

2. The complainant shall file ~~a verified~~ *an* original and four copies of the complaint with the Board in the form of a pleading and shall serve a copy by certified mail on all parties in interest at their last known addresses.

Sec. 5. NAC 288.220 is hereby amended to read as follows:

Answer.

1. The respondent may file an answer in the form of a pleading and not later than 20 days after the receipt of a complaint.
2. The answer must contain a clear and concise statement of the facts which constitute a defense. The respondent must specifically admit, deny or explain each of the allegations in the complaint unless he is without knowledge, in which case he shall so state and the statement shall be deemed a denial. Any allegation in the complaint not specifically denied in the answer, unless it is stated in the answer that the respondent is without knowledge, shall be deemed to be admitted to be true.
3. If an answer is not made within the prescribed time, the dilatory party is precluded, except with the consent of the opposing party or the Board, from asserting any affirmative defense in the proceeding.
4. ~~[A sworn]~~ *An* original and four copies of the answer must be signed and filed with the Board.

Sec 6. NAC 288.273 is hereby amended to read as follows:

Prehearing conference.

1. The Board or Commissioner may, upon written notice to all parties of record, hold a prehearing conference to:
 - (a) Formulate or simplify the issues;
 - (b) Obtain admissions of fact which will avoid unnecessary proof;
 - (c) Discuss proposed exhibits which ~~[should have been previously]~~ *shall be* exchanged between the parties *at least 5 days before the date of the prehearing conference*;
 - (d) Limit the number of witnesses; and
 - (e) Establish any other procedure which may expedite the orderly conduct and disposition of the proceedings.
2. Upon action of the Board, the action taken and the agreements made at a prehearing conference by the parties concerned must be made a part of the record. When so ordered, the action controls the course of subsequent proceedings unless modified by the Board at the hearing.
3. In any proceeding, the Board may call all parties together for a conference before the taking of testimony or may recess the hearing for a conference to carry out the intent of this section. The Board will state on the record the results of the conference.

Sec. 7. NAC 288.306 is hereby amended to read as follows:

Allowance of oral argument.

The Board may, following the filing of briefs or upon contested motions^[5]:

1. set the matter for oral argument upon 10 days written notice to each party of record, unless the Board considers a shorter time advisable; *and*
2. *limit the amount of time equally available to each party for oral argument.*

Sec 8. NAC 288.322 is hereby amended to read as follows:

Admissibility of evidence.

1. In conducting any investigation, inquiry or hearing, the Board is not bound by the technical rules of evidence, and no informality in any proceeding or in the manner of taking testimony will invalidate any order or decision of the Board. The rules of evidence of courts of the State will be generally followed but may be relaxed at the discretion of the presiding officer or Board when deviation from the technical rules of evidence will aid in ascertaining the facts.

2. An objection to the admissibility of evidence may be made by any party of record and the objection will be ruled on by the [Board] *presiding officer*. When an objection is made to the admission or exclusion of evidence, the grounds upon which the relief is sought must be stated briefly. The Board, either with or without objection, may exclude inadmissible, incompetent, repetitious or irrelevant evidence.

3. Any evidence offered at the hearing must be material and relevant to the issues of the hearing.

4. An offer of proof for the record must consist of a statement of the substance of the evidence to which an objection has been sustained.

Sec. 9. NAC 288.328 is hereby amended to read as follows:

Admission of evidence into record.

The [Board] *presiding officer* will rule on the admissibility of all evidence subject to the provisions of NAC 288.324 and 288.326. At the conclusion of the hearing, all evidence will be received into the record subject to the rulings of the Board on evidence to which timely objection was made.

Sec. 10. NAC 288.240 is hereby amended to read as follows:

Motions.

1. Any request for an order by the Board, except for an order to permit intervention, concerning any matter that has been assigned a case number and that has not been finally decided by the Board must be styled a "motion."

2. All motions made before or after a hearing must be filed in writing with the Board. Motions made at a hearing must be stated orally and must be included in the stenographic report of the hearing.

3. A motion directed at a complaint or petition must be written and filed before the answer or response is due.

4. Within 10 days after service of any motion, all parties wishing to respond to the points raised in the motion shall file their opposition to the motion. That opposition must be in writing, unless made during the hearing. Within 10 days after service of the opposition to the motion, the moving party may respond to the points raised in the opposition.

5. [~~An affidavit~~] *A certificate* of service must be attached to the original opposition or response, indicating that the opposition or response has been served on the opposing party, unless the opposition or response is made during a hearing.

6. If a party fails to file and serve his written opposition to a motion, that failure to respond may be construed as an admission that the motion is meritorious and as consent to granting the motion.

Sec 11. NAC 288.345 is hereby amended to read as follows:

Briefs: Order to file; procedure for filing.

In any proceeding the presiding officer may order briefs to be filed within a reasonable time. An original and four copies of each brief must be filed with the Board and must be accompanied by ~~[an acknowledgment of or an affidavit]~~ *a certification* showing service on each party of record as provided in NAC 288.200.

Sec. 12. NAC 288.360 is hereby amended to read as follows:

Rehearings: Petition; procedure; failure to file.

1. Either party may, within ~~[10 days after any decision by the Board]~~ *15 days after service of a final decision of the Board*, file a petition for a rehearing stating the reasons therefor.

2. The Board may order a rehearing by requiring the parties to submit any additional evidence or data in support of their respective positions. The Board will not require the repetition of evidence or data previously submitted. Further proceedings and deliberations will be conducted in accordance with the provisions of this chapter.

3. The failure of either party to submit a petition for rehearing within ~~[10]~~ *15* days constitutes an agreement that the Board's decision is a final decision for the purposes of NRS 233B.130.

Sec. 13. NAC 288.364 is hereby amended to read as follows:

Rehearings: Grant or denial; decision.

1. The Board will consider a *timely* petition for rehearing and may grant or deny it ~~[within 20 days after the date of its filing]~~ *within 5 days before the expiration of time-frame to file a petition for judicial review set forth in NRS 233B.130*. If no action is taken by the Board within the time specified, the petition shall be deemed denied.

2. If the Board grants the petition for rehearing, its order granting rehearing will state the issues upon which the petition has been granted. The Board may request the filing of briefs by the parties on issues raised by the petition. No evidence will be taken nor will any hearing be held under this section.

3. After reconsidering the issues, the Board, if it is of the opinion that the original order or decision is in any respect unjust, unwarranted, unlawful or in need of change, may abrogate, change or modify the decision, the order or both.

4. A decision will be rendered within 45 days after granting a petition for rehearing.

Sec 14. NAC 288.368 is hereby amended to read as follows:

Rehearings: Order for modification.

1. Any order modifying a decision or order of the Board issued pursuant to NAC 288.364 incorporates those portions of the prior order or decision which have not been changed or modified by the subsequent order.

2. For purposes of ~~[appeal]~~ *judicial review* a modifying order is to be considered the final order of the Board.

Sec 15. NAC 288.390 is hereby amended to read as follows:

Response to petition for declaratory order.

1. Any party served with a petition for a declaratory order may respond to the petition within 20 days by filing the original and four copies of his ~~[sworn]~~ response with the Board. The responding party shall also serve a copy of the response upon the petitioner.

2. The response must include:

(a) The full name and address of the petitioner;

(b) The full name and address of the respondent;

(c) A clear and concise statement of the facts, including the time and place of the occurrence of the particular acts described in the petition and the names of persons involved; and

(d) ~~[The legal authority under which the response is made]~~ *A memorandum of authorities, including legal authorities in opposition to, or in support of, any position or contention raised by the petitioner.*

3. *A party requesting a petition for a declaratory order may file a reply to any response filed pursuant to this section within 10 days of service of the response.*

Sec 16. NAC 288.400 is hereby amended to read as follows:

Request for hearing.

1. Any ~~[petitioner]~~ *party* who desires a hearing on a petition for a declaratory order shall set forth in detail in his request the reason why the matters alleged in the petition and the supporting affidavits or other written evidence in briefs or memorandum of legal authorities do not permit the fair and expeditious disposition of the petition ~~[and, if a request for hearing is dependent upon factual assertions, shall, by affidavit, establish those facts].~~

2. *A request for a hearing must be filed within 20 days of service of any response to the petition. Failure to file a request for a hearing may be construed as consent for the Board to issue a declaratory order without holding a hearing.*

3. *The parties shall not file the pre-hearing statements which are otherwise required by NAC 288.250 unless a request for hearing made pursuant to this section is granted by the Board.*

Sec . 17. NAC 288.410 is hereby amended to read as follows:

Consideration by Board.

1. The Board may, for good cause, refuse to issue a declaratory order if:

(a) The question is speculative or purely hypothetical and does not involve existing facts or facts that can reasonably be expected to exist in the near future;

(b) The petitioner's interest is not of the type which would give him standing to maintain an action if he were to seek judicial relief;

(c) The issuance of the declaratory order may adversely affect the interest of the Board or any of its officers or employees in a litigation which is pending or may reasonably be expected to arise; or

(d) The matter is not within the jurisdiction of the Board.

2. The Board will consider each petition submitted for a declaratory order and will, within a reasonable time after the submission:

(a) Deny the petition in a written statement containing the Board's reasons for the denial;

(b) Set the matter for hearing and proceed according to NAC 288.280 to 288.370, inclusive; or

(c) Issue a declaratory order on the matters contained in the petition.

~~[3. The Board may issue a declaratory order without holding a hearing on a petition which has been opposed if all of the legal issues raised by the petition have been previously decided by the Board and the Board adopts its previous decision or decisions as precedent.~~

4.] 3. The Board may order a hearing on an unopposed petition for a declaratory order if it is in the best interests of those who may be affected by the order.

Sec . 18. NAC 288.366 is hereby repealed:

~~[Rehearings: Effect of filing or granting.~~

~~Except as otherwise ordered by the Board, no filing of a petition for rehearing or granting of the petition excuses compliance with or otherwise suspends the effectiveness of the final decision or order upon which the petition for rehearing was filed.]~~