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MINUTES OF THE OPEN FORUM TO SOLICIT COMMENTS ON WAYS TO IMPROVE THE AGENCY

An Open Forum of the Local Government Employee-Management Relations Board, properly noticed and posted pursuant to the Nevada Open Meeting Law, was held on Thursday, January 21, 2016, at the hour of 2:00 p.m. at the Bradley Building, 2501 E. Sahara Avenue, Room 200, Las Vegas, Nevada 89104. The meeting was video-conferenced to the Department of Business and Industry Director's Office, 1830 College Parkway, Suite 100, Carson City, Nevada 89706.

The meeting was conducted by EMRB Commissioner Bruce K. Snyder.

Also present representing the EMRB were: Philip E. Larson, EMRB Chairman
Sandra Masters, EMRB Board Member
Marisu Romualdez Abellar, Board Secretary
Javier Pacheco, EMRB Intern from UNLV Law School

Present from the public in Las Vegas were: Brett Fields, IAFF, Local 1908
Adam Levine, Daniel Marks & Associates
Marcel Schaerer, Dept. of Business & Industry

Present from the public in Carson City was: Melanie Bruketta, Carson City
Virginia Doran, Washoe County School District
Ron Dreher, P.O.R.A.N.
Frank Flaherty, Dyer Lawrence
Robert Schreihans, Carson City Fire Dept.

The Agenda:

The meeting was called to order by Commissioner Snyder at 2:03 p.m.

Item 1 Public Comment.

No public comment was offered.

Item 2 E-Filing and E-Service.

Commissioner Snyder explained that the agency transitioned to the e-filing of documents in February 2015 and that the response from the user community since then has been overwhelmingly positive. He further stated that since implementation of e-filing the EMRB has had a number of requests about allowing the e-service of the same documents and that he welcomes any comments as to whether this would be a good extension of the program, and if so, how best to implement this.

Ron Dreher asked for an explanation of the e-filing process, which was given by Commissioner Snyder. He further explained how e-service would relate to e-filing. Upon inquiry, Commissioner Snyder stated that had been advised that the institution of e-service would require a regulatory change.

Ron Dreher also inquired as to how often pro se filings occur. Commissioner Snyder stated that there had been no pro se filings in the past year, except by Richard McCann, who serves as a business agent for a number of police organizations and who files documents as a member of a particular organization. Commissioner Snyder emphasized that Mr. McCann files his documents electronically.

Frank Flaherty commented that attorneys for parties could consent to e-service and that perhaps this could be done by adding an item to the registration sheet for e-filing. Adam Levine commented that serving documents electronically has no more risk that a document won't be received as compared to traditional mailing. He further commented that perhaps the rules could be written to require an opt-out instead of an opt-in, thus making e-service the default option.

Item 3 Possible Statutory Changes.

Commissioner Snyder presented an overview of two ideas that would require statutory changes. The first would increase the size of the Board from three members to five members. Cases would be heard in panels of three, the membership of which would be rotated from case to case. This would allow the agency to have 20 3-day meetings per year instead of 12 3-day meetings and would allow the agency to conduct hearings more quickly. This is basically the process used by the NLRB. The second proposal would allow the Board to invoice affected unions any costs associated with representation elections.

Chairman Larson then asked Commissioner Snyder to explain the 45-day and 180-day rules for hearing cases, which was then done, including explaining the change last year due to SB 241, which requires bad faith bargaining cases to be heard within 45 days after the Board agrees to hear such a case. Commissioner Snyder also explained the performance measure under which the agency operates, which currently requires that a case be heard within 8 months of when a case would otherwise be ready for a hearing. This will reduce to 7 months this coming July and then to 6 months in July 2017. He further explained that the primary reason for any backlog is getting enough days before the Board, which is a part-time Board and in which the Board members have other commitments in their lives.

Board Member Masters also mentioned that a significant obstacle relates to the availability of attorneys for given hearing dates.

Commissioner Snyder mentioned that the proposal to expand the size of the Board is modeled after the National Labor Relations Board, which has five members and hears cases in panels of three members. He further explained that expanding the Board to five members would result in a 67% increase in the number of days that Board would meet and thus 67% more cases could be heard per year, which would drive down significantly the time to hear a case. Furthermore, doing so would be a cost effective solution. At the current rate of Board pay, this would cost about $10,000 per year, assuming the two additional members would be from the Las Vegas valley.

Board Member Masters inquired as to whether this would require a change in the law. Commissioner Snyder responded that it would. Ms. Masters then stated she does not like the idea and that it could lead to a lack of consistency in decisions rendered.

Chairman Larson stated he was interested in hearing from the attorneys present, at which time Adam Levine stated he thought it was an excellent idea. He compared the proposal to one the Nevada Supreme Court used several years ago in which they split into two panels so that body could hear more cases. He suggested that the solution to a potential lack of consistency would be the right to request a discretionary *en banc* reconsideration of any panel's decision which was a 2-1 split and that no review would be necessary in which a panel ruled 3-0 because the two additional Board members could still not overturn the panel's decision.

Ron Dreher inquired as to the makeup of the Board and any requirements thereto. Commissioner Snyder and Chairman Larson both mentioned that the current law requires that no more than two members of the same political party could serve on the Board. Commissioner Snyder mentioned that increasing the Board to five members would require a limit of not more than three members of the same political party. Ron Dreher also mentioned that he would be concerned about consistency and thus likes the option of an *en banc* review. He also inquired about having two separate panels and offered that perhaps one could represent the northern part of the state while the other would be for the south. Chairman Larson inquired as to who would chair the various panels and whether there would need to be two Vice Chairmen.

Commissioner Snyder mentioned that having panels by geography would not solve the problem. 90% of the cases come from Clark County, so having two panels by geography would mean that the southern panel would have almost as many cases as currently for the whole Board while the northern panel would rarely meet.

Board Member Masters inquired as to how all this would be paid for, whereupon Commissioner Snyder mentioned that the current assessment rate of $6.75 would need to be raised about 10 to 15 cents, assuming no increase in travel, which would be the case if the two additional members came from the Las Vegas valley.

Ron Dreher mentioned that the Board members need to have their pay increased, whereupon Chairman

Larson and Board Member Masters also voiced their opinions on the matter.

Adam Levine mentioned that having two separate panels would be a bad idea in that there would be no way to ensure uniform rulings from the Board.

Commissioner Snyder mentioned that any increase in Board pay would be a separate statutory change, independent of the proposal to expand the size of the Board. He further mentioned that this would be a topic of discussion at the upcoming Board meeting. He then went on to describe how the panels would be formed, as well as the logistics of running a hearing, and that the details could be done through rulemaking after any statutory change is authorized.

Chairman Larson then discussed his own experience of running a hearing, especially when he was rather new to the Board. Frank Flaherty used the example of the State Bar of Nevada, which has a number of members who serve on disciplinary hearing panels.

Note: Michael Langton submitted a written comment, stating he thought it would be good to expand the size of the Board for the reasons stated in the agenda. He further stated he hoped the state could "find enough qualified persons to serve in this 'highly compensated' position."

The second proposal related to unions reimbursing the agency for the cost of representation elections. Commissioner Snyder mentioned that the Legislative Counsel Bureau stated the EMRB does not have the right to seek reimbursement, absent a statutory authorization to do so. Frank Flaherty mentioned that the challenger should be required to show enough authorization cards before requesting an election.

Note: Michael Langton submitted a written comment on the proposal to have the unions reimburse the costs of an election. He stated that all too often employers refuse to agree to a card check, which then forces the employee organization to file for a formal card check. So he suggested that if an employer refuses to agree to a card check and the union wins the election, then the employer should be invoiced the costs associated with the election. He called this a quid pro quo.

Adam Levine presented a proposal. As background he reiterated that SB 241 requires that bad faith bargaining cases be heard within 45 days after the Board agrees to hear a case and that this has created issues for the Board in scheduling cases. He proposed that an exemption be made for unilateral change cases.

Adam Levine also proposed that the Board be given the authority to issue a stay order pending a hearing in order to limit any potential harm. Commissioner Snyder mentioned that the Nevada Supreme Court has held that the agency cannot issue an injunction. Adam Levine stated if the authority were to be granted and the Board issues a stay order, which is not obeyed, then the opposing party would go to court to seek an injunction.

Frank Flaherty stated that the proposal for a stay would be problematic. The Board is already busy with cases and where would the time be found to quickly have hearings to determine whether a stay would

be warranted? He mentioned that NRS Chapter 38 authorizes stays for arbitrations and that this is granted by the courts. If any stay would need to be granted, then perhaps NRS 288 could be amended to authorize a party to apply to the courts similar to that in NRS Chapter 38. Adam Levine mentioned that judges might not know labor law that well as they are seldom presented with such issues.

Item 4 Possible Regulatory Changes.

Commissioner Snyder requested comments from those in attendance as to possible regulatory changes, other than that for e-service. Before opening it up to the floor, he mentioned that the agency is interested in formalizing in its rules that no exhibits should be attached to any complaints, answers or pre-hearings statements. He also mentioned that the Board is reviewing a requirement to view the underlying settlement agreement when it is presented with a stipulation to dismiss.

The first idea discussed pertained to the possible prohibition of attaching exhibits to complaints, answers and pre-hearing statements. Commissioner Snyder mentioned that this is a means used to potentially get those documents into the administrative record without the other parties to the case having an ability to object to them because they were not offered at a hearing. Board Member Masters commented that we have to have a hearing anyways, so the appropriate time is to submit the exhibits at the hearing and not beforehand.

Adam Levine inquired as to whether the prohibition would apply to motions, which sometimes need exhibits. Commissioner Snyder stated that this would not apply to any documents related to a motion. Adam Levine mentioned that any documents offered at a hearing, but not admitted, still become part of the administrative record and that the onus should be placed on the attorneys of record to point out to the courts that certain documents had not been admitted. Frank Flaherty stated that this is the process used at the National Labor Relations Board, where rejected documents are part of the record.

The second potential regulatory change was introduced by Adam Levine, who suggested that the regulations should be changed to not allow home addresses on complaints, as this could pose a safety issue, particularly for those in law enforcement. Commissioner Snyder stated this appears to be a good suggestion inasmuch as the EMRB already knows addresses of parties and their attorneys from the annual reports filed with the agency, as well as from other sources, and that it has not been a problem to locate someone.

Board Member Masters mentioned that items cold be redacted but that the home address serves no purpose. Chairman Larson agreed. Frank Flaherty mentioned that this requirement is similar to the venue requirement which is to be pled in court, but is really not needed.

Adam Levine stated he sees no purpose in the requirement, while Commissioner Snyder mentioned again that the EMRB has never had a problem locating someone. Furthermore, pro se complainants have often had a string of e-mails and other contacts with agency staff prior to the filing of a complaint, and thus the agency already has their contact information. Ron Dreher mentioned that the full name is necessary and that addresses are already protected under NRS 289.

The third potential regulatory change was also introduced by Adam Levine, who suggested that the EMRB amend its computation of time rules to clarify them as they currently lead to problems in correctly identifying the time limit as to when a given document may be due. For instance, when are certain days counted, such as weekends and holidays, and when are they not counted? Commissioner Snyder agreed that this rule could be streamlined in that it does lead to confusion, such as when to add three additional days due to mailing.

Adam Levine stated that if the agency goes to e-service then the EMRB should be like the courts and keep the three additional days. Commissioner Snyder wondered whether it wouldn't be better to eliminate the extra three days and just standardize on a set number of days. Virginia Doran stated that their collective bargaining agreements clearly spell out how to compute days and perhaps the EMRB could do the same with its rules. Adam Levine commented that there are any number of ways to fix the rules and make them more understandable. Finally, Frank Flaherty suggested that perhaps the EMRB could just simply adopt NRCR Rule 6 by reference, noting that attorneys are familiar with this rule, that doing so would make the EMRB similar to the courts, that whenever NRCP Rule 6 changes then our rule would automatically change to be the same, and that any case law on that rule could then be used to resolve issues.

The final potential regulatory change concerned the idea of requiring settlement agreements to be attached to proposed Stipulations to Dismiss. Board Member Masters helped explain the reason for this. Commissioner Snyder also explained that the purpose of the EMRB is to promote the public interest in labor relations and not simply to resolve private disputes, and that the EMRB has a legitimate interest in ensuring that settlements are not repugnant to that purpose.

Adam Levine stated that some local governments allow staff to settle employment disputes up to a certain dollar amount and that these settlements might not be in the public record. Ron Dreher stated that if the parties agree to a settlement then it should normally be accepted.

Commissioner Snyder stated he sensed some kick-back on the issue. Adam Levine stated there is a difference between settlements before a Board decision as compared to those after the Board has rendered a decision and that this should be taken into account, as the Board's interest is clearly higher after it has rendered a decision.

Virginia Doran offered a comment, which led to Commissioner Snyder responding that by the time the EMRB gets a Stipulation to Dismiss, the terms of the settlement agreement have already been performed by the parties, which then leads to the question of how this could ever be unwound. Chairman Larson mentioned that this should be discussed at the next Board meeting, because the discussion today is like peeling back the skin of an onion.

Finally, Frank Flaherty mentioned that the difference between the EMRB and other agencies, both within the state and the NLRB, is that the EMRB is not a party to a case while in the other agencies they are technically a party and the prosecution.

Note: Michael Langton submitted a written comment stating he has no problem with the idea, with the

caveat that sometimes confidential information would need to be sealed so the general public cannot review it as well.

Item 5 Possible Budget Ideas for the Upcoming Biennium.

Commissioner Snyder gave a brief overview of the agency's budget as well as the timetable for development of the budget for the next biennium, which begins on July 1, 2017. He then asked for any comments as to possible budget proposals.

Receiving no response, Commissioner Snyder mentioned that in last budget cycle, B&I proposed hiring an in-house attorney in lieu of using the Attorney General's Office and that the idea had been rejected by the agency. However, the agency will be taking a second look at the idea this coming budget cycle. He also stated that the issue of Board pay will be brought up by the Board at its upcoming meeting. Chairman Larson stated that the issue of pay might be packaged with other issues.

Adam Levine inquired as to how many hours the agency uses of attorney time, whereupon Commissioner Snyder mentioned that the last two years has been around 950 hours or so per year. Furthermore, last time he looked the Attorney General's Office had been billing these hours at $120 per hour, but that was some months ago. Adam Levine mentioned that the agency could hire a full-time attorney for this amount. Chairman Larson mentioned that the Deputy Attorney General assigned to the agency, Scott Davis, had received a promotion and has been transferred, and thus the agency might want to revisit this issue now that he is gone. Adam Levine mentioned that licensing boards usually have their own staff attorney.

Chairman Larson mentioned that there should be an increase in the stipend. He further described past efforts at getting an increase from $80 per day to $150 per day. Ron Dreher stated this should be looked at again, and that it should be done upfront and not after the budget has been developed. He further stated that a lobbying strategy should be developed, especially given the fact that the Sunset Subcommittee has placed the EMRB on its review list. He also mentioned that the lobbying efforts should relate to expanding the Board, a raise in Board pay, and stopping the Sunset Subcommittee from destroying the EMRB.

Commissioner Snyder mentioned that the budget process will start in March (note: actually in February) and that the above subjects will be discussed with the Board at its February meeting, so that a proposal can be put together for inclusion in the budget as the upcoming budget is developed.

Item 6 Website, E-Newsletter and Other Public Information Improvements.

Commissioner Snyder asked for any comments on ways to further improve the agency's website, e-newsletter or other forms of public information in order to better serve its users. He also mentioned a proposal in which the EMRB would place all the pleadings for open cases on the website and whether this would be good idea.

Adam Levine stated he was ambivalent. It would be good in that attorneys could learn from what others had written. However, he also would object to others plagiarizing his work product and the hours spent producing it. Virginia Doran inquired as to whether this would include all the documents, which was answered in the affirmative. Commissioner Snyder stated the agency is willing to do the work, but wondered whether there really would be a demand for it. Chairman Larson inquired as to whether it would be worth the effort. Adam Levine stated he could just call the office and get copies of documents and perhaps that would be easier. Frank Flaherty inquired as to whether this would save time or not, whereupon Commissioner Snyder mentioned it would not save time but would only be done as a service to the user community if they thought they would use it. Frank Flaherty stated that perhaps this could be done for those few high profile cases, such as the recent case involving SB 241.

Commissioner Snyder then presented the status of updating the comprehensive index of Board decisions and how this would not be on the computer instead of it being a paper-based product. Frank Flaherty asked whether the index could be placed on the Nevada Law Library on CD. Commissioner Snyder stated it probably could not be placed on that product but, rather, only the orders themselves, which are now half on that product.

Item 7 Additional Period of General Public Comment.

Adam Levine inquired about the agency being selected by the Sunset Subcommittee for review. Commissioner Snyder explained what Senator Settelmeyer stated at the meeting; namely, that a number of boards dealing with employees were selected.

Commissioner Snyder reiterated that a report of all the comments will be made to the Board at its next meeting on February 9-11, 2016, and that the Board at that time may direct the staff to take appropriate action on one or more of the ideas mentioned at this meeting.

The meeting was adjourned at 3:50 p.m.

Respectfully submitted,

Bruce K. Snyder
EMRB Commissioner