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DEPARTMENT OF BUSINESS AND INDUSTRY GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

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EMRB
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MINUTES OF THE SECOND WORKSHOP TO SOLICIT COMMENTS FOR NEW REGULATIONS OR CHANGES TO EXISTING REGULATIONS – PROPOSED REGULATION R056-19

A workshop of the Government Employee-Management Relations Board, properly noticed and posted pursuant to the Nevada Open Meeting Law, was held on Tuesday, October 29, 2019, at the hour of 2:00 p.m. at the Nevada State Business Center, 3300 W. Sahara Avenue, Fourth Floor, Nevada Room, Las Vegas, Nevada 89102. 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, who called the workshop to order at 2:00 p.m.

Also present representing the EMRB were: Gary Cottino, Board Member
Marisu Romualdez Abellar, Board Secretary
Chris Roske, Administrative Assistant II
Donald Bordelove, Esq., Deputy Attorney General

Present from the public in Las Vegas were: Kasey Beasley, City of North Las Vegas
Carter Bundy, AFSCME
Scott Davis, Clark County District Attorney's Office
Nick DiFranco, IUOE, Local 12
Ricky Gourrier, NHPA
Ashley Jenkins, AFSCME
Paul Klein, NHPA
Richard Lile, IUOE, Local 501
Rick McCann, NAPSO
Carl Sierra, IUOE, Local 12
Kathy Vonk, NSLEOA

Present in Carson City were:

Barry Baker, IUOE, Local 3
Deonne Contine, Department of Administration
Tom Donaldson, Esq., Dyer Lawrence
Jerry Frederick, Laborers Local 39
Scott Fullerton, IUOE, Local 3
Ralph Handel, IUOE, Local 3
Sandra Lawrence, Esq., Dyer Lawrence
Peter Long, Division of Human Resource
Management
Frank Richardson, Division of Human Resource
Management
Silvia Villanueva, Esq., Dyer Lawrence

Agenda:

1. Public Comment

No public comment was offered.

2. Additions to the Agency's Regulations.

Commissioner Snyder stated that the most important thing about the proposed additions and amendments to the agency's regulations cannot be found within the words of the proposed regulation and that the most important thing is that the regulations, with very few exceptions, have been drafted so that the same provisions apply at both the local government level and at the state level. He added that this is important in that a number of attorneys practicing before the agency will have cases at both levels. Moreover, having the same rules will aid greatly in administering NRS 288 in that every case will be handled under the same system and set of rules.

Section 1 – Introductory section.

No comments were offered on this section.

Section 2 – Defines the term "Government employer."

Commissioner Snyder stated that this definition is only used so that elsewhere in the regulations, where it a number of times had mentioned local government employer, the word "local" has been removed and thus the term "government employer" now refers to both local government employers as well as the Executive Department of the State.

No comments were offered on this section.

Section 3 – EMRB clerical employees to be confidential employees.

Commissioner Snyder stated that this new section would designate any classified clerical employees in the EMRB as confidential.

No comments were offered on this section.

Section 4 – Verification of number of employees for annual assessments.

Based on a request for clarification as to what this section is about, Commissioner Snyder stated all but a few of the local governments belong to PERS and thus the EMRB receives employee numbers from PERS for those local governments. This regulation addresses the information to use for those local governments that do not belong to PERS as well as the information to be received from the State. He further stated that the EMRB cannot use information from PERS for the State as the definition of employee at the State level is different from that of employee at the local government level. At the local government level everyone is an employee while the definition in Senate Bill 135 only includes as an employee those individuals who are within a bargaining unit. The regulation in subsection 4 also addresses situations in which a local government believes that the number received from PERS is no longer valid (i.e., is off by more than 2%) and thus is allowed to submit additional documentation asking for a variance on the invoice.

Carter Bundy asked about the number of managerial employees at the state level. In response, Peter Long stated that the number is probably less than 10% of all classified employees. Commissioner Snyder stated he would give him the numbers if he would send in a request.

Section 5 – Preliminary investigations of certain prohibited practice complaints.

Commissioner Snyder stated that Senate Bill 135 allows for the optional use of a preliminary investigation of a complaint that is related to the State or a state employee. He further stated that subsection 1 lists factors to consider in deciding whether to conduct an investigation while subsection 2 lists the powers of the Commissioner in conducting an investigation. Subsection 3 states that an investigation will not be conducted if a motion to dismiss has been filed while subsection 4 requires the Commissioner to submit a report and details what is to be included within the report. Normally the Board considers the prehearing statements in deciding whether to grant a hearing in a case. Subsection 5 also requires the Board to consider the report filed by the Commissioner.

Sandra Lawrence asked if the Board was going to hire employees to do the investigations. In response, Commissioner Snyder stated that because the feature is an optional one, and is limited to prohibited practice cases, that for the upcoming biennium existing staff would do the investigations.

Scott Davis stated he likes the changes gone through so far. He then asked if this could be extended at the local government level by regulation. In response, Commissioner Snyder stated that it would need to be introduced in a bill next session to extend it to the local government level in that because it is only mentioned to be used at the state level would preclude it being a power of the EMRB at the local level.

Section 6 – Optional use of hearing officers.

Commissioner Snyder stated that Senate Bill 135 allows for the optional use of a hearing officer in cases involving prohibited practices at the State level. He stated there were many discussions on this topic when the regulation was being drafted. He also mentioned that the agency's budget has no money to hire a hearing officer and thus the agency would use hearing officers employed by the Department of Administration. Originally the section was drafted wherein the hearing officer would make the decision which could then be appealed to the Board, much like a motion for rehearing or reconsideration. The final version has the hearing officer conducting the hearing and writing a report with proposed findings of fact and conclusions of law. The parties, through their attorneys, could then file objections to the report. The main point is that the final decision would strictly belong to the Board or a panel of the Board.

Deonne Contine asked about the role of the Board and the standard of review to be employed by the Board in reviewing the hearing officer's recommendation. In response, Commissioner Snyder stated the Board would likely use the same standard they would use if they heard the case himself. In the end, Commissioner Snyder stated he would work on tightening up subsection 2 of this section and talk with the LCB about the issues raised about the Board's role and any standards to use.

Commissioner Snyder also stated that the number "10" in this section should be changed to 14 days to keep with due dates being multiples of 7 days. He also stated that any final order would be subject to a petition for judicial review.

Section 7 – Description of the 11 State bargaining units.

Commissioner Snyder stated that he advised the LCB that those interested in Senate Bill 135 did not want to include all the job titles in the regulations as they change too often. So instead the LCB took the descriptions of the 11 bargaining units from the report submitted by the Division of Human Resource Management and inserted those descriptions into the regulation along with two definitions found within Senate Bill 135. He also stated that the LCB rejected his proposals to include language about how to handle the creation of new job classifications, as well as the merger, division and elimination of job classifications, stating they felt that such items were addressed within Senate Bill 135. Thus the final version of this section presented today reflects many conversations on this topic.

Tom Donaldson stated that subsection 7 should include NSHE as having category I peace officers as they also employ such officers. Commissioner Snyder stated he would add the language to this subsection.

3. Amendments to the Agency's Current Regulations.

Commissioner Snyder stated that the remaining sections of the proposed regulation amend current sections of the agency's regulations. He also stated that

many of the changes are due to either making the regulations reflect due dates in the revised Nevada Rules of Civil Procedure, making due dates in multiples of 7 days, or due to having the rules apply at both the state and local levels. In many cases this is accomplished by removing the word “local.”

Section 8 – Amends NAC 288.020, “Board” defined.

Commissioner Snyder stated that Senate Bill 135 changed the name of the agency by removing the word “Local” and thus this change makes an existing regulation conform to the statutory change.

No comments were offered on this section.

Section 9 – Amends NAC 288.030, “Complainant” and “petitioner” defined.

Commissioner Snyder stated this section defines who may be a Complainant or a Petitioner. The change adds three additional entities at the State level: the Executive Department, a labor organization and employee.

No comments were offered on this section.

Section 10 – Amends NAC 288.080, Issuance and service of process and other papers.

Commissioner Snyder stated this eliminates the word “local” and is also one of the sections of the agency’s existing regulations that are being changed to conform to the date counting rules in the recent amendments to the Nevada Rules of Civil Procedure (NRCP). He then went on to explain that dates are now in multiples of 7 days, that weekends and holidays are now counted as a day whenever the number of days is 10 or less, and that there are no longer added an additional 3 days for mailing when a document is electronically transmitted.

No comments were offered on this section.

Section 11 – Amends NAC 288.090, Time: Computation.

Commissioner Snyder stated this change is the one that actually makes the agency’s rules conform to the new date counting rules of the NRCP.

No comments were offered on this section.

Section 12 – Amends NAC 288.100, Determination of negotiability.

Commissioner Snyder stated this adds a subsection 2 that mirrors for the State what is negotiable at the local government level. He further added that the term “significantly related” comes from a case years ago involving the Truckee Meadows Fire Protection District.

No comments were offered on this section.

Section 13 – Amends NAC 288.110, Elections.

Commissioner Snyder stated the change in subsection 1 is to have this section apply to all elections and not just those at the local government level. Subsection 8 increases the number of days from 5 to 10 (should be changed to 7) since weekends and holidays are no longer counted. It also restates the number of copies needed to be filed of any objections due to the size of the Board being increased from 3 to 5 members and allows for the electronic filing of any objections. Subsection 10 makes clear this provision only applies for elections at the local government level.

No comments were offered on this section so far.

Commissioner Snyder then stated he recommends that subsection 11 be made subsection 12 and that a new subsection 11 be inserted. He then described that Senate Bill 135 section 32(1)(c) requires that the Board adopt a rule in cases in which more than one labor organization may meet the 30% threshold to be on the ballot and that the current proposed regulation contains no such rule. Therefore he contacted the LCB and they agreed there should be a rule and it should include both provisions for proper notice and a waiting period. So the two questions are (1) what type of notice is adequate and (2) what should the waiting period be?

Tom Donaldson stated he believed the waiting period should be 14 days like any other opposition to a motion.

Sandra Lawrence asked if the EMRB would create a database of interested persons. In response, Commissioner Snyder stated the EMRB last week created a new e-mail list for those persons and entities interested in any filings related to representation petitions and there are currently about 30 names on the list.

Peter Long suggested notice also be placed on the website.

Carter Bundy asked when the notice would be provided (i.e., when the petition is received or when they have been audited). In response, Commissioner Snyder described the audit process. Rick McCann suggested a three-step process of notification: (1) when the petition is filed; (2) when the audit is done; and (3) a waiting period of 14 days.

Sandra Lawrence asked if the audit process is in the regulations. In response, Commissioner Snyder stated he was told it is an internal process and therefore the steps taken in an audit do not need to be in the regulations. She also asked about situations in which a person may have signed authorization cards for multiple labor organizations. Commissioner Snyder stated this has not yet been encountered because there have been no competing petitions filed.

Others then chimed in that the waiting period should start when the audit report

has been issued.

Commissioner Snyder then stated that when the audit report is issued, he would then issue the report to the parties and then give the State 21 days to respond to the petition and the audit report. He also would issue the audit report to those on the e-mail list.

Rick McCann then stated that 30 days may be more appropriate to give the State a chance to first respond at the 21-day period. Tom Donaldson then suggested 28 days in order to make it a multiple of 7 days.

Deonne Contine asked about the timing of multiple petitions, at which time an example was given about the process of the petitions, audit reports, responses and Board action.

Peter Long asked about situations in which a labor organization files a petition claiming they were over 50% but, in reality, they were less than that threshold percentage. In response, Commissioner Snyder described how an audit report would be constructed and that an audit report would be done on every petition, not just the ones that meet a threshold.

Silvia Villanueva stated that perhaps the waiting period should also be total of 21 days. Ashley Jenkins agreed. Tom Donaldson stated he thought the 21 days and 28 days would both begin when the audit report was filed and that the extra 7 days would enable a competing labor organization to know the State's response.

Carter Bundy then asked if a labor organization files at 50% and then they end up at less than 50%. In response, Commissioner Snyder stated that the labor organization would not need to refile under a different section of the law but that the existing petition would be read to meet the threshold of the other section.

Deonne Contine then asked if it would be a Board decision as to whether a given labor organization has met either the 50% or 30% thresholds. In response, Commissioner Snyder stated the answer was that it is a Board decision. She then asked if this was two different processes and how this might affect the waiting period. In response, Commissioner Snyder offered that perhaps the waiting period should not start until the Board first orders an election under Section 32. Deonne Contine stated that there appear to be two types of petitions, one for each threshold. Commissioner Snyder then offered that perhaps the Board could order an election and then stay the election for the waiting period, to give other labor organizations time to also be on the ballot, if they can meet the requirements to do so.

Tom Donaldson stated that Senate Bill 135 does not appear to allow a petition for recognition to be converted into a petition for an election. In response,

Commissioner Snyder stated the labor organization could plead alternate claims under both sections. Tom Donaldson then stated a labor organization could also plead in the alternative.

Carter Bundy stated that it would be cleaner to have the waiting period start after an audit is done and then again after the Board makes its decision and that the waiting period after the Board decides whether to order an election should be 14 days.

Sandra Lawrence said the waiting period should be 14 days after the Board orders an election to give a last chance for another labor organization to also be on the ballot. Tom Donaldson seemed to concur. Carter Bundy and Rick McCann stated that there should not be multiple 14-day periods and not a new one 14-day period each time another labor organization files. Silvia Villanueva concurred.

Deonne Contine stated it would seem that there should be one Board action to determine what threshold was met and whether to order an election. In response, the Commissioner stated it seems cleaner to have the 14-day waiting period begin after the Board calls for an election, keeping in mind that the Board may need to make a further decision to add other labor organizations at a second Board meeting.

Carter Bundy brought up the subject of competing authorization cards. Commissioner Snyder stated the NLRB uses the rule of the last card signed. Sandra Lawrence brought up the subject of membership lists and how this might be different than authorization cards. Commissioner Snyder stated these are likely to be questions to be decided by the Board. Deputy Attorney General Dponald Bordelove concurred.

Summary: There seemed to be a consensus that notice would be issuing the audit report to the parties, sending a copy of all petition filings by e-mail to everyone on the special petition mailing list and posting the petition-related documents on the agency's website. There also seemed to be a consensus that a 14-day waiting period should be used and that the waiting period would begin to run once the Board issues an order to hold an election in order to give competing labor organizations a last chance to also file to be on the ballot.

Section 14 – Amends NAC 288.130, Appeal of determination of bargaining units.
Commissioner Snyder stated this section only adds the term “labor organization.”

No comments were offered on this section.

Section 15 – Amends NAC 288.140, Annual filing by local government employers.
Commissioner Snyder stated the word “local” was removed to make this section applicable to all government employers. It also makes a change to include labor

organizations in the list of unions that government employers must include on their annual filings.

No comments were offered on this section.

Section 16 – Amends NAC 288.147, Annual filing by organizations.

Commissioner Snyder stated that this section is changed to also make it applicable to labor organizations at the state level and not just employee organizations at the local level.

No comments were offered on this section.

Section 17 – Amends NAC 288.231, Form of pleadings and motions.

Commissioner Snyder stated this change eliminates certain pleading requirements if a document is electronically filed; namely requirements about the type of paper used and that the document is to be bound in the top left corner.

No comments were offered on this section.

Section 18 – Amends NAC 288.240, Motions.

Commissioner Snyder stated this change is one to conform the agency's date counting to that of the NRCP by making oppositions and replies due within 14 days.

No comments were offered on this section.

Section 19 – Amends NAC 288.245, Motion to file amicus brief; request by Board.

Commissioner Snyder stated that this section is changed to also make it applicable to labor organizations at the state level and not just employee organizations at the local level.

No comments were offered on this section.

Section 20 – Amends NAC 288.250, Prehearing statement.

Commissioner Snyder stated this change is one to conform the agency's date counting to that of the NRCP by making prehearing statements due within 21 days. He also stated that it adds a new section to the prehearing statements that will require the listing of any pending or anticipated proceedings in other jurisdictions that may affect whether the EMRB's case should be stayed under the limited deferral doctrine. In this regard, the Commissioner stated that there have been several instances in the past in which a hearing had been scheduled, only for the EMRB to learn at a prehearing conference, or even later, that there were underlying grievances, arbitrations or other proceedings that should have made the EMRB stay the case. Having this requirement will help alert the EMRB to those instances.

Sandra Lawrence inquired whether this would change the limited deferral doctrine. In response, Commissioner Snyder stated not necessarily. Rather, at the prehearing conference such information could be used to determine whether the case should be put on hold or else the hearing be postponed. If postponed, this might be done through a stipulation.

Section 21 – Amends NAC 288.255, Settlement conference.

Commissioner Snyder stated this change would not allow the Board to order that the parties attend a settlement conference held by the Commissioner whenever the Commissioner had conducted a preliminary investigation. He opined that this is due to the Commissioner no longer being an actual neutral with respect to that case.

No comments were offered on this section.

Section 22 – Amends NAC 288.260, Intervention.

Commissioner Snyder stated this change is one to conform the agency's date counting to that of the NRCP by making responses to petitions for intervention due within 7 days instead of within 5 days.

No comments were offered on this section.

Section 23 – Amends NAC 288.262, Petition to intervene: Filing, response.

Commissioner Snyder stated this change is the same as for the prior section.

No comments were offered on this section.

Section 24 – Amends NAC 288.271, Establishment of panels; assignment of members of Board to panel; presiding officer.

Commissioner Snyder stated there are changes to subsection 2(c) of this section, which concerns replacing a panel member who may be absent for a meeting or else when a panel may be short a member due to a vacancy on the Board. Currently the parties must consent to a substitution. This change eliminates that requirement and instead only requires the Commissioner to state this action on the agenda for that meeting.

No comments were offered on this section.

Section 25 – Amends NAC 288.2715, Scheduling of meetings of panel; assignment of cases and stipulations to dismiss.

Commissioner Snyder stated the change in this section allows the Commissioner to assign a case to the full Board in lieu of assigning it just to a panel. He then explained why this may be useful.

Sandra Lawrence asked if elections must be handled by the full Board. In response, Commissioner Snyder listed the items listed in the law that require full Board participation.

Section 26 – Amends NAC 288.277, Location.

Commissioner Snyder stated this section formalizes the use of video conferencing capabilities for hearings, noting that the EMRB has been using this technology already. This change would require certain elements in a notice of hearing.

No comments were offered on this section.

Section 27 – Amends NAC 288.278, Representation in contested case.

Commissioner Snyder stated this change would allow the parties by stipulation to waive any limitations on representation. Currently a motion must be filed, even if the other party does not object to the request. The change also includes language to make this section applicable at the state level and not just at the local level.

No comments were offered on this section.

Section 28 – Amends NAC 288.290, Continuances.

Commissioner Snyder stated that this change alters from 10 days to 14 days the time in which a party may request a continuance in order to make the number of days a multiple of 7 days. It also adds in a provision in which the parties may waive the 180-day period in which to hear a case in situations in which otherwise a joint request for a postponement could not otherwise have been granted.

No comments were offered on this section.

Section 29 – Amends NAC 288.306, Allowance of oral argument.

Commissioner Snyder stated that this change alters from 10 days to 14 days the time allowing oral argument in order to make the number of days a multiple of 7 days.

No comments were offered on this section.

Section 30 – Amends NAC 288.324, Documentary evidence and exhibits.

Commissioner Snyder stated this change clarifies the number of copies of exhibits that need to be furnished at a hearing, based upon whether the hearing is before the full Board or a panel. It also adds a subsection that allows the Board to require that exhibits be electronically furnished, and if so required, that notice to that effect must be included in the notice of hearing.

No comments were offered on this section.

Section 31 – Amends NAC 288.345, Briefs: Order to file; procedure for filing.

Commissioner Snyder stated these changes would formally allow for the submission of simultaneous briefs, which have been informally used over the years.

No comments were offered on this section.

Section 32 – Amends NAC 288.360, Rehearings: Petition; procedure; failure to file.

Commissioner Snyder stated that this change alters from 15 days to 14 days the time for filing a petition for rehearing in order to make the number of days a multiple of 7 days.

No comments were offered on this section.

Section 33 – Amends NAC 288.362, Rehearings: Response.

Commissioner Snyder stated that this change alters from 15 days to 14 days the time for filing a response to a petition for rehearing in order to make the number of days a multiple of 7 days.

No comments were offered on this section.

Section 34 – Amends NAC 288.380, Petition for declaratory order.

Commissioner Snyder stated that changes have been made to this section to make the section also applicable to labor organizations at the state level and not just to employee organizations at the local level.

No comments were offered on this section.

Section 35 – Amends NAC 288.390, Response to petition for declaratory order; reply to response.

Commissioner Snyder stated that this change alters from 20 days to 21 days the time for filing a response to a petition for declaratory order in order to make the number of days a multiple of 7 days. Likewise it changes from 14 days to 14 days the time within which to file a reply to the response.

No comments were offered on this section.

Section 36 – Amends NAC 288.400, Request for hearing.

Commissioner Snyder stated that this change alters from 20 days to 21 days the time for filing a request for a hearing related to a petition for declaratory order in order to make the number of days a multiple of 7 days.

No comments were offered on this section.

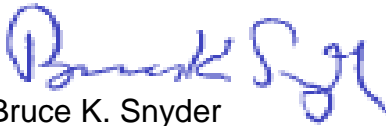
4. Additional Period of Public Comment.

Peter Long asked a question about receiving the audit report for Unit I and what the timeframes would be for a response to the audit report. In response, Commissioner Snyder stated that the response by the State would drive whether a hearing needs to be held or not.

Ashley Jenkins stated the audit report should come with a recommendation. In response Commissioner Snyder stated he would give a staff recommendation with a big disclaimer. He also stated it would then be up to the State to offer whatever response they deem best and that this would then drive whether the Board would want to hold a hearing on a given petition.

The meeting was adjourned at 3:31 p.m.

Respectfully submitted this November 4, 2019,



Bruce K. Snyder
EMRB Commissioner