



Local Government Employee- Management Relations Board

Nevada Department of Business and Industry
"Growing business in Nevada"



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November 2018

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Cam Walker, Board Member
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Bruce K. Snyder, Commissioner
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Board Secretary

Supreme Court Issues Election Decision

On November 8th the Nevada Supreme Court issued its decision in the so-called "election" case. Since 2002 Teamsters Local 14 had sought the right to represent more than 12,000 support staff employees of the Clark County School District who have been and continue to be represented by the Education Support Employees Association (ESEA). At that time the Board set the standard to determine a winner as a majority of the entire bargaining unit. Elections were held in both 2006 and in early 2015. In both cases Teamsters received a majority of the votes cast but not a majority of the entire bargaining unit as a substantial number of the eligible voters did not vote. In late 2015 the EMRB held a third election, announcing that the standard to determine a winner in the upcoming election would be a majority of the votes cast as the "experiment" in using the standard adopted in 2003 was unworkable. In the third election Teamsters received 82% of the votes cast but once again did not receive a majority of the votes that could have been cast. Based on the standard set for that election the Board determined that Teamsters Local 14 had won the election. ESEA appealed. The District Court agreed with ESEA.

The EMRB then appealed to the Nevada Supreme Court. The Court held that the statute and NRS 288.110(10)(d) both are plain and unambiguous that it takes a "majority of the employees within the particular bargaining unit" and that nowhere either in statute or in the regulations does it refer to a majority of the votes cast. The Court also stated that the Board did not properly exercise its authority in "filling the gaps" because the statute was plain and unambiguous and thus "there is no room for construction."

The bottom line is that the EMRB will now be required to use a "majority of the bargaining unit standard", with the result that any eligible voter who does not vote in an election is in effect a "no" vote or a vote to continue the status quo.

Regulations Now Codified

Recently the Legislative Counsel Bureau codified the EMRB's regulations into one document. As you may recall, last year the EMRB adopted new regulations that dealt with several subjects, including how to handle the processing of cases due to the expansion of the Board and the use of panels to hear cases. These same regulations also contained provisions for the processing of cases related to alleged violations of provisions for nursing mothers, the call for *amicus* briefs and many other provisions. So now all the agency's regulations can be found in one document. Please visit our website for a copy. We have also automatically sent everyone on our various newsletter lists a copy of the regulations.

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List of Panels

Panel A Eckersley, Masters, Larson
Panel B Masters, Larson, Walker
Panel C Larson, Walker, Cottino
Panel D Eckersley, Walker, Cottino
Panel E Eckersley, Masters, Cottino

Note: The first person listed is the Presiding Officer of that panel.

EMRB's 50th Anniversary: Guest Columnist Bruce Snyder

The EMRB officially came into existence on April 28, 1969. In the run-up to our 50th anniversary next April, each of our e-newsletters will have a guest columnist. This month's guest columnist is current Commissioner Bruce Snyder. Each month's guest columnist will have the freedom to write what pleases him or her. We only asked that they not comment on pending cases. The opinions of our guest columnists may not necessarily reflect those of the Board or staff of the EMRB. Here is this month's message from Bruce Snyder:

The EMRB is a small, but important, agency in the State of Nevada. We take pride in both being small and in being important. The Dodge Act, as enacted and as amended over the years, allows local governments, their employees and the unions that represent their employees to work out many of their differences based upon the rules they set up in the agreements they make between them called collective bargaining agreements. The EMRB only needs to step in to handle disputes better resolved by our Board than by a private arbitrator – representation issues, bargaining unit determination issues and prohibited practices complaints.

The law enacted in 1969 has worked well. It was intended to prevent public sector strikes that we read about happening in other states across our country. It has accomplished its goal as there have been no public sector strikes in Nevada since 1969! Instead disputes have been and continue to be resolved peacefully through the rule of law. And now for some important "great moments" in EMRB history:

- 1969 Employee-Management Relations Act enacted into law; agency begins. Agency staffed solely by a Board Secretary.
- 1975 Bargaining over wages, hours, and conditions of employment eliminated. Bargaining now restricted to a "laundry list" of certain subjects.
- 1979 Position of Commissioner created.
- 1993 Nevada Supreme Court decision affirming the "significantly related" test. Any subject significantly related to a subject in the "laundry list" is also a subject of mandatory bargaining.
- 2009 Agency becomes self-funded through the imposition of an annual fee billed to local governments.
- 2015 Documents may now be electronically filed instead of mailed or hand-delivered. The following year allows for the electronic service of documents.
- 2017 Size of board increased from three to five members. Panels of three Board Members may now adjudicate cases, allowing for more cases to be heard.

Annual Filings Due End of November

Every local government and employee organization must annually file a report with the EMRB each November. The forms were mailed to the official contact person at each local government and employee organization on October 19th. If you are the official contact person please complete the form and associated documents, if any, and return them to us by the November 30th deadline. If you are no longer the official contact person please forward the form to the person who should now be the official contact person. So far about 85% of the local governments, but only 31% of the employee organizations, have responded. So if you have not yet responded, please do so as soon as possible as we will be contacting non-filing entities as early as December 3rd.

Holiday Closings

The EMRB office will be closed on November 22nd for Thanksgiving; and November 23rd for Family Day. As always documents may be electronically filed on those dates and will be date-stamped on the date received in our e-mail inbox.

In the Queue...

Once initial pleadings, including prehearing statements, have been filed with the EMRB and after any motions to dismiss or defer have been decided, then a case typically goes into a queue, waiting for the Board to decide whether to grant a hearing in the case or dismiss the complaint. The Board has now scheduled cases through January 2019 with two cases that were postponed moved to February and March 2019:

January 8-10, 2019 in Las Vegas (Panel E)

2018-002; Education Support Employees Association v. Clark County School District

2018-012; Nye County Management Employees Association v. Nye County

January 29-31, 2019 in Las Vegas (Panel B)

2018-006, Charles Ebarb v. Clark County & Clark County Water Reclamation District

2018-034, Ryan Cook v. Las Vegas Metropolitan Police Department

February 20-22, 2019 in Carson City (Panel A)

2018-016; WEA, Aufdenkamp & Wojdynski v. I Can Do Anything Charter School

March 12-14, 2019 in Las Vegas (Panel D)

2018-008; Travis Crumrine v. Las Vegas Metropolitan Police Department

On the Horizon

There are four upcoming meetings of various panels of the Board, all of which will take place on Tuesday, December 11th:

Panel A will meet to deliberate on a motion to dismiss in the case of Regich v. Marshals Division of the Regional Justice Center. The motion claims that the EMRB has no jurisdiction to hear the case because the Eighth Judicial District Court is not a local government and thus Regich cannot be a local government employee. The panel will also deliberate on the consolidated case of Juvenile Justice Supervisors Association & Juvenile Justice Probation Officers Association v. Clark County. The case, which had a hearing a few months ago, involves the issue of union leave. The panel is also expected to approve a case for a future hearing.

Panel B is expected to approve a case for a future hearing.

Panel C will meet to deliberate on a request by the Truckee Meadows Water Authority to withdraw recognition of part of five accreted employees in the bargaining unit representing its employees. The employee organization does not object to the petition. Panel C is also expected to approve two cases for future hearings.

Finally, Panel D will meet to deliberate on the case of Jared Jackson v. Clark County, which recently had a hearing. Jackson claims the county committed a unilateral change when it terminated him. The county claims Jackson was on probation and therefore he was an at will employee not subject to the CBA. Jackson also claims discrimination for personal or political reasons. Finally, Panel D will randomly assign the various cases approved for hearings to the hearing panels.

"About the EMRB"

The Employee-Management Relations Board (EMRB), a Division of the Department of Business and Industry, fosters the collective bargaining process between local governments and their employee organizations (i.e., unions), provides support in the process, and resolves disputes between local governments, employee organizations, and individual employees as they arise.