

Local Government Employee-Management Relations Board E-Newsletter

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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.

Recent Decisions

Please note that summaries of recent decisions are provided for informational purposes only and are not intended to substitute for the opinions of the Board. These summaries should not be cited to or regarded as legal authority. The EMRB will provide copies of the decisions upon request. They also may be found on our website.

Item 827; Case 2017-010; Kerns & Las Vegas Police Managers and Supervisors Association v. Las Vegas Metropolitan Police Department.

Sgt. Kerns worked in the K-9 unit and was placed on administrative leave while the department investigated an incident in which he was involved. Complainants allege several unilateral changes. First, they claimed that informal settlement talks were prohibited because they are not mentioned in the CBA as being allowed. The Board disagreed, stating that prohibiting such talks are "not consistent with the basic notions of labor relations, and the fundamental purposes of the EMRA." The Board also found the LVPMSA had consented to these talks through its own actions and words.

The Complainants also alleged that it was a unilateral change to place an Adjudication of Complaint in a retired employee's file. Again, the Board disagreed, stating it was not a form of discipline, it was the past practice to do so, and the employee had the opportunity to place a rebuttal statement in his file.

Complainants also alleged that Kerns was coerced into retirement because he did not want to be demoted. The Board disagreed, opining that all but one interaction with Kerns was through his representatives and the one direct interaction resulted in a member of management encouraging Kerns not to retire. Furthermore, Kerns did have the option of not retiring, being demoted, and then filing a grievance to challenge that discipline.

Item 828; Case 2017-011; SEIU, Local 1107 v. Southern Nevada Health District.

SNHD sought to exclude three positions (Employee Health Nurse, Helpdesk and Application Support Supervisor and the Academic Affairs Coordinator) from the bargaining unit. The Board declined to do so. First, the Board addressed the issue of who bears the burden of proving the exclusion. Citing NLRB rulings, the Board ruled that "excluding an employee is a departure from the general requirement that provides for collective bargaining rights and therefore any party that claims the exception has the burden to establish it applies."

The Board then analyzed the various exceptions claimed, which varied for each position. The Board found that the exclusion of confidential status did not apply to any of the jobs as they were not involved in the decisions of management affecting collective bargaining. Also the Helpdesk Supervisor did not meet all the conditions as a supervisory employee while the Academic Affairs Coordinator did not meet the requirements as an administrative employee and that it did find that the position did have a community of interest with other employees in the bargaining unit.

New Regulations Now In Effect

The Legislative Commission approved the agency's proposed updates to its regulations on February 27th and thus they are now in effect. The new regulations are now on the EMRB website and were e-mailed to all the attorneys on our mailing lists. Regulation R074-17 allows for the establishment of panels of Board members to hear cases, in addition to setting up an expedited system to hear cases involving allegations under the Nursing Mothers Accommodation Act.

Questions and Answers on the Assignment of Cases to Panels

Last month we presented questions and answers on the formation of panels. This month we address how a given case is assigned to a panel or panels. SB 460 allows the agency to use panels to decide certain matters, via a panel of three of the five Board members. Much of the answers below are quotes from the now-approved regulation. These are presented for educational purposes.

How and when is a case initially assigned to a panel?

Whenever a case is commenced by the filing of a complaint, petition or other pleading, the Commissioner shall assign the case to the next available panel for which a meeting agenda has not yet been posted. This shall be known as the initial panel.

What jurisdiction does the initial panel have with respect to a case assigned to it?

The panel to which a case is initially assigned shall resolve any motions, extend any due dates for which the Commissioner does not have the authority to do so, decide whether to send the case to a mandatory settlement conference, and/or decide whether to grant a hearing for that case.

If the initial panel decides that a hearing should be held in a case, what happens next?

The initial panel will randomly assign the case to a panel to hear the case. In randomly assigning the case to a hearing panel, there is a 20% chance that the initial panel would also be the hearing panel.

What jurisdiction does the hearing panel have for a case?

The second panel, to be designated the hearing panel, would then conduct the hearing and decide the issues in the case, all of which would result in the issuance of an order.

What happens if a case settles and a stipulation to dismiss is filed?

If a stipulation to dismiss all or any part of a complaint or petition is filed, the Commissioner shall assign the stipulation to the next available panel, irrespective of whether the case had already been assigned to an initial panel or a hearing panel.

Can all five members of the Board initially hear a case?

Yes. If the Commissioner determines that a case involves an issue of statewide significance, the Commissioner may so designate the case and assign it to the full Board instead of a panel for all further proceedings. If such a designation is made, the Commissioner shall prepare and file written notice of the designation, stating the reasons for the designation, and serve a copy of the notice upon each party to the case.

Are there items that only the entire Board may deliberate and decide upon?

Yes. SB 460 provides that the following may only be decided by a majority vote of the entire membership of the Board:

- ✓ Election of a Chair and Vice Chair;
- ✓ Appointment or termination of employment of the Commissioner;
- ✓ Appointment or termination of employment of the Board Secretary;
- ✓ Annual setting of the fee charged to local government employers;
- ✓ Imposition of a civil penalty for failure to pay the annual fee;
- ✓ Making or adopting of any rule or regulation;
- ✓ Granting permission to a local government employer to withdraw recognition from an employee organization;
- ✓ Ordering an election to determine the representative, if any, of a bargaining unit.

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 July 2018.

April 10-12, 2018 in Las Vegas (Board en banc)

2017-017, Teamsters Local 14, Williams & Davis v. Las Vegas Metropolitan Police Department

May 8-10, 2018 in Las Vegas (Panel C)

2017-035, Chuck Danser v. City of North Las Vegas & North Las Vegas Police Officers Association

2017-036, Holloway and Las Vegas Police Protective Association v. Las Vegas Metropolitan Police Department

2017-023, Nicholas and Las Vegas Police Protective Association v. Las Vegas Metropolitan Police Department (backup case)

May 22-24, 2018 in Las Vegas (Panel A)

2017-020, Juvenile Justice Supervisors Association and Juvenile Justice Probation Officers Association v. Clark County

June 12-14, 2018 in Las Vegas (Panel D)

2017-027, O'Neil et al. and Las Vegas Police Protective Association v. Las Vegas Metropolitan Police Department

July 10-12, 2018 in Elko (Panel E)

2017-026, City of Elko v. Elko Police Officers Association

2017-038, SEIU, Local 1107 v. Las Vegas Convention & Visitors Authority (backup case)

July 24-26, 2018 in Las Vegas (Panel B)

2017-034, Cook, Burt & Las Vegas Police Protective Association v. Las Vegas Metropolitan Police Department

On the Horizon

The next meeting of the Board, which will be held in Las Vegas, will be Tuesday, April 10th through Thursday, April 12th. The agenda for that meeting will be issued on April 2nd. At that time the Board is scheduled to hear 2017-017, Teamsters Local 14, Williams & Davis v. Las Vegas Metropolitan Police Department. This case stems from efforts by Teamsters Local 14 to organize and represent the civilian employees currently represented by another employee organization, PPACE. The Complaint alleges that LVMPD informed civilian employees they could not talk about Teamsters while on duty, threatened employees who engaged in concerted activity, denied Weingarten rights to Williams because she dropped her PPACE membership, permitted PPACE to post anti-Teamsters literature on bulletin boards, and denied Davis the use of a handicap parking spot because of her Teamsters organizing activities. LVMPD denies all the allegations.

The Board will also deliberate on 2016-025, Yu & Las Vegas Police Managers and Supervisors Association v. Las Vegas Metropolitan Police Department. Complainants alleged that LVMPD made a unilateral change when it refused to allow Yu, a K-9 Sergeant, to grieve and arbitrate his transfer and that it failed to bargain in good faith prior to implementing mandatory subjects of bargaining. LVMPD denies the allegations.

"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.