



Government Employee-Management Relations Board

Nevada Department of Business and Industry

*****PLEASE NOTE THAT THE EMRB OFFICE IS CLOSED TO THE PUBLIC UNTIL FURTHER NOTICE. SERVICES WILL CONTINUE TO BE PROVIDED ONLINE, VIA TELEPHONE AND BY EMAIL.*****
EMRB PROVISIONAL GUIDANCE

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Gary Cottino, Board Member
Brett Harris, Esq., Board Member
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Board Secretary
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EMRB Hearings to Go Online

Over the past three months the EMRB has had to postpone hearings in five cases, listed on page 3 of this e-newsletter, due to the COVID-19 crisis. Since then the EMRB has kept up-to-date on matters not requiring a hearing, such as deciding cases in which a hearing had already been held, ruling on motions, and granting stipulations.

However, recognizing that the backlog of hearings might only get longer, the EMRB has worked in conjunction with other divisions within the Department of Business and Industry, who also have boards, for the purpose of finding an online solution. Based on recommendations, the EMRB will be using online software tools such as WebEx and Teams to conduct online hearings for the foreseeable future. This is due to limitations on the size of public gatherings during the reopening of the state.

Using online software, Board members, the Deputy Attorney General assigned to the agency, and EMRB staff will each be in a separate location. Additionally, the attorney for each party will also be remotely located with its witnesses. Each party will need at least two computers (one for the attorney and one for a witness). Amended notices of hearing will be issued in late May for the two cases already set for the summer and for the five cases to be reset for hearing by the Board at its May 27th meeting.

Board to Deliberate on Tension Between NRS 288 and NRS 289

On February 28, 2020 the Nevada Highway Patrol Association, which had been recognized by the Board as the exclusive representative of Category I Peace Officers at the State level, filed a petition for declaratory order. The petition requested that the NHPA, as the officially recognized entity, is the exclusive representative of the bargaining unit and, as such, its status is exclusive and that no rival labor organization may purport to represent its employees. This was filed due to labor organizations having claimed that under NRS 289.080, peace officers may designate two persons of their choosing to represent them in certain personnel matters.

On April 16, 2020, the Board issued an order, calling for interested government employers, labor organizations and employee organizations to voluntarily submit *amicus* briefs on the issue(s) raised in the petition. Three such briefs were received. The Board is scheduled to deliberate on the petition at its meeting on May 27th.

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List of Panels

Panel A Eckersley, Masters, Harris
Panel B Masters, Harris, Vacant
Panel C Cottino, Harris, Vacant
Panel D Eckersley, Cottino, Vacant
Panel E Eckersley, Masters, Cottino

Note: The first person listed for each panel is the Presiding Officer.

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 861; Case 2020-001; AFSCME, Local 4041 v. State of Nevada, Department of Health and Human Services, Aging and Disability Services Division, Desert Regional Center, et al. The Board granted respondents' motion to dismiss with leave to amend the complaint, agreeing that the complaint was premature inasmuch as Senate Bill 135, Section 53.5(1) prohibits the filing of a prohibited practices complaint before November 1, 2020, if at the time of the filing the labor organization was not yet recognized, unless certain conditions are met, which the Board did not find in this case.

Item 862; Case 2020-002; AFSCME, Local 4041 v. State of Nevada, Department of Corrections, High Desert State Prison, et al. The Board granted respondents' motion to dismiss with leave to amend the complaint, agreeing that the complaint was premature inasmuch as Senate Bill 135, Section 53.5(1) prohibits the filing of a prohibited practices complaint before November 1, 2020, if at the time of the filing the labor organization was not yet recognized, unless certain conditions are met, which the Board did not find in this case.

Proposed Rates for FY 2021

With the advent of collective bargaining at the State level, the EMRB must set two rates each year – one for local governments and one for the Executive Department of the State. Last year the EMRB kept the rate charges to local governments at \$6.00 per local government employee – and with the passage of Senate Bill 135, the EMRB for the first year also set the rate charged to the State at the same rate.

This year the staff will be recommending to the Board that the rate charged to the State remain at \$6.00 per employee, although to build up the reserve to a 3-month balance would otherwise require that the rate be set at \$7.15 per employee. Staff is recommending that the rate be kept, even though it would result in a small reserve balance, given the financial condition facing the State.

The staff will also be recommending to the Board that the rate charged local governments be reduced to \$3.00 per local government employee, both because the reserve balance for local governments would still be well above the 3-month reserve balance goal and also in recognition of the same fiscal conditions facing local governments.

The final decision as to the rates will be decided by the Board at its upcoming meeting on May 27th.

On the Horizon

The entire Board will be meeting May 27, 2020. This meeting will again be a teleconference meeting. At that time, the Board and its various panels will deliberate on several items. Foremost among them will be the petition for declaratory order on Case 2020-011, Nevada Highway Patrol v. State of Nevada, Nevada State Law Enforcement Officers Association, Nevada Association of Public Safety Officers et al. This is the case mentioned on page 1 of this e-newsletter. The Board's deliberation will include a review of the *amicus* briefs submitted pursuant to its April 16th call for such briefs.

Other business will include ruling on another petition to intervene in Case 2020-008, Clark County Education Association & Davita Carpenter v. Clark County School District. This petition was filed by the Clark County Association of School Administrators and Professional-Technical Employees. The Board had previously granted intervention by the Education Support Employees Association. The Board will also deliberate on three motions to dismiss as well as further deliberate on a hearing previously held in Case 2019-011, IAFF, Local 5046 v. Elko County Fire Protection District.

Finally, the Board is scheduled to set the rates for both the State and the various local governments for the upcoming fiscal year. Invoices pursuant to those rates will be issued near the end of June.

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 scheduled cases through July 2020. There are no cases in the queue waiting for a hearing date.

June 23-25, 2020, in Las Vegas (Panel D)

2019-016, City of Las Vegas v. Las Vegas Peace Officers Association

July 14-16 and July 28-30, 2020, in Las Vegas (Panel C)

2019-010, Leonard Cardinale v. City of North Las Vegas

The following cases, whose hearings were postponed, will have new hearing dates set by the Board at its May 27th meeting:

2018-026, Jason Woodard v. Sparks Police Protective Association (second part of bifurcated hearing)

2019-003, Francis Davis v. Las Vegas Metropolitan Police Department & Las Vegas Police Protective Association Civilian Employees, Inc. (PPACE)

2019-007, Nye County Management Employees Association & Boskovich v. Nye County

2019-020, Eric Gil v. City of Las Vegas (first part of bifurcated hearing)

2019-022, Veronica Howard v. Teamsters Local 14

A Note on EMRB Operations During the COVID-19 Pandemic

The EMRB continues to operate during the COVID-19 pandemic. One of its three employees is always in the office Monday through Friday from 8am to 5pm while the other two employees currently telework from home. This telework is aided through use of Virtual Private Networks (VPNs), which enables staff to work from home as though they are in the office.

The EMRB office, though open to staff, is still currently closed to the public. You may contact the EMRB through any of the means listed at the end of this newsletter. The EMRB receives almost all its documents via electronic transmission and these documents continue to be filed and processed. The Board recently met to take up many outstanding items and will meet again on May 27th by teleconference only, at which time it will develop a final strategy for holding online hearings (see page 1), to enable the agency to get caught up on its hearings.

Various Reminders

Don't forget to check out our website, which has updated collective bargaining agreements, as well as updated lists of mediators, arbitrators and factfinders. Also, the Nevada Law Library, published by the Legislative Counsel Bureau, now contains all EMRB decisions from 1969 to September 2019.

"About the EMRB"

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