



Local Government Employee- Management Relations Board

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



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Sandra Masters, Vice-Chair
Philip E. Larson, Board Member
Cam Walker, Board Member
Gary Cottino, Board Member

Staff

Bruce K. Snyder, Commissioner
Marisu Romualdez Abellar,
Board Secretary

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 831; Case 2017-026; City of Elko v. Elko Police Officers Protective Association.

The City of Elko filed a declaratory action, seeking a ruling from the EMRB that the Sergeants must be excluded from the rank and file bargaining unit for police officers. The Board agreed. NRS 288.170(3) provides that supervisors must not be in the same bargaining unit as the employees they supervise. Therefore the issue in the case was whether the Sergeants were supervisory employees. NRS 288.075(1)(a) provides the definition of a supervisor and lists 12 criteria for determining whether a given job classification is a supervisor. The Elko Police Protective Association argued that all 12 criteria must be present while the City of Elko argued that only 1 of the 12 criteria needs to be met. The Board agreed with the City, citing the plain language of the statute, which mentions "or" and not "and." Furthermore the definition in NRS 288 is very similar to that in the National Labor Relations Act and the federal case of NLRB v. Kentucky River Cmty., Care, Inc. likewise held that only one of the criteria needed to be met for someone to meet the definition of a supervisor. In the end the Board found that more than one factor applied to the Sergeants.

Item 832; Case 2017-028; Elizabeth Bantz v. Washoe County School District.

Bantz applied for an early retirement incentive program but the school district denied her application on November 25, 2015. A few weeks later she was informed there was no appeal process but did agree to review her case. On April 5, 2016 she was denied again. She did not file a case with the EMRB until September 26, 2017. The school district filed an affirmative defense that her complaint was beyond the six-month limitation period. Ms. Bantz, however, claimed that the doctrine of equitable tolling applied.

There are four factors in analyzing whether equitable tolling applies. The first is the claimant's diligence. Here, the Board found that Bantz was not diligent inasmuch as she was familiar with the EMRB through her union activities. The second factor is knowledge of the relevant facts. Bantz testified that all of the facts giving rise to her claim surfaced by the April 2016 denial. The third factor is reliance on misleading authoritative agency statements or conduct. The Board did not find that the school district made any misleading statements. The fourth factor is prejudice to the Respondents. Here the Board found that the time span was significant and that the witnesses may not have a sufficient memory of the events that occurred due to the length of time that had passed. Therefore the Board held that equitable tolling did not apply and that the complaint was to be dismissed as being untimely filed.

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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 Yvonne Martinez

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 former Board Secretary, Yvonne Martinez. 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 Yvonne Martinez:

I joined the EMRB as the Executive Assistant to Brian Scroggins in 2013. The board members at that time consisted of Philip E. Larson, Sandra Masters, and Brent C. Eckersley, Esq. The Deputy Attorney General was Scott Davis, Esq. I will never forget the day the Commissioner resigned. Having been there only a few months, I was left alone in my new position to ensure that the day-to-day operations of the EMRB continued. That was nerve-wrecking. I got a call from Scott Davis and he calmly walked me through what was about to happen to ensure the office continued to run as smoothly as possible. Without his guidance for the months that followed being all by myself I would have definitely not succeeded. Soon after, Bruce Snyder was selected to be the new Commissioner.

Unfortunately, due to my military spouse, I had to leave the EMRB in late 2014 and move back to Southern California, to the city of Riverside. I now work for the Bureau of Indian Affairs, Southern California Agency, in the branch of Real Estate Services and this has definitely become my dream job and career. Not sure if most of you knew but I am Native myself. I am a member of the Tlingit Tribe, Central Council of Tlingit and Haida Indian Tribes of Alaska, and belong to the clan Raven. I recently visited my Tribe for the first time in Juneau, Alaska this past June, 2018. It was amazing. Juneau is so beautiful and it was great to finally meet my Native family and learn of my Native roots. I just bought my second home in Riverside, CA and completed my Master's Degree in Business Administration this past August, 2018. I still love doing Crossfit and enjoy being a public servant to my fellow Natives. I do miss working for the EMRB; setting up the board rooms and conversing with the attorneys that had hearings that day, I understand the EMRB is now in a brand new building that they just love because they have already assembled board rooms now. Congratulations to the EMRB on 50 years, I wish you many more to come and am grateful to have been able to be a part of that Agency when I was.

Supreme Court Rules in Deputy Marshals Case

On September 7th the Nevada Supreme Court issued its decision in the case of Clark County Deputy Marshals Association v. Clark County. Four of the seven justices held that the association had filed its appeal late and thus the court had no jurisdiction.

Three of the justices dissented, claiming that the appeal had been timely filed. Moreover, the three justices stated that had the case been decided on the merits that they would have affirmed the decision of the District Court, which upheld the decision of the EMRB; namely that the Deputy Marshals are not local government employees inasmuch as their employer is not a local government because the employer is the Eighth Judicial District Court and not Clark County.

It's Time for Your Required Annual Filings

Every local government and employee organization must annually file a report with the EMRB each November. As was done for the past few years, this year we again will allow the annual reports to be filed via e-mail. Please look for our mail, which should arrive via USPS in late October. The forms will be mailed to the official contact person at each local government and employee organization on October 19th. If you are the official contact person please look for the form in the mail. If you are no longer the official contact person please forward the mail to the person who should now be the official contact person.

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:

October 9-11, 2018 in Las Vegas (Panel E)

2018-001; Ruben Murillo v. Clark County Education Association

November 6-8, 2018 in Las Vegas (Panel C)

2018-003; UMC v. SEIU, Local 1107

November 13-15, 2018 in Las Vegas (Panel A)

2018-014; Int'l Union of Operating Engineers, Local 501 v. Esmeralda County

December 11, 13-14, 2018 in Las Vegas (Panel D)

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

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

On the Horizon

Panel E will meet on October 9-11, 2018, in Las Vegas. At that time the panel is scheduled to hear Case 2018-001, Ruben Murillo v. Clark County Education Association. Mr. Murillo claims that the teachers union dropped him from his health insurance because the NSEA took positions variant from those of CCEA. CCEA denies it cancelled Mr. Murillo's health insurance and that it is not the proper respondent inasmuch as the Teachers' Health Trust administers health insurance for the teachers.

Panel A will meet October 10, 2018, in Las Vegas. At that time the panel is scheduled to decide what to do with two cases that were on hold pending the decision of the Nevada Supreme Court in a case involving the Deputy Marshals who work for the Eighth Judicial District. The panel is also scheduled to deliberate on a motion in case 2017-009, IAFF, Local 4068 & Van Leuven v. Town of Pahrump. The town is requesting the Board defer to the arbitrator's decision in lieu of the Board hearing the case. Finally, the panel will deliberate on a hearing previously held in Consolidated Case 2017-020, Juvenile Justice Probation Officers Association & Juvenile Justice Supervisors Association v. Clark County. This case involves the issue of union leave.

"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.