

Pre-Hearing Conference Checklist

Relevant Section of the Administrative Code

NAC 288.273 Prehearing conference.

1. The Board or Commissioner may, upon written notice to all parties of record, hold a prehearing conference to:

- (a) Formulate or simplify the issues;
- (b) Obtain admissions of fact which will avoid unnecessary proof;
- (c) Discuss proposed exhibits which should have been previously exchanged between the parties;
- (d) Limit the number of witnesses; and
- (e) Establish any other procedure which may expedite the orderly conduct and disposition of the proceedings.

2. Upon action of the Board, the action taken and the agreements made at a prehearing conference by the parties concerned must be made a part of the record. When so ordered, the action controls the course of subsequent proceedings unless modified by the Board at the hearing.

3. In any proceeding, the Board may call all parties together for a conference before the taking of testimony or may recess the hearing for a conference to carry out the intent of this section. The Board will state on the record the results of the conference.

Issues and Settlement

Agenda Topics

- 1. Review Statement of Issues.
- 2. Determine whether any of the issues have been resolved.
- 3. Determine whether any of the issues can be agreed issues.
- 4. Determine whether any of the issues can be combined.

Issue Guidelines

The issues here are not the statements of fact or conclusions of law. Rather, they are the ultimate issues in the case. Examples are:

- Did the City of _____ (or the union) fail to bargain in good faith through its?
- Did the employer discriminate against the Complainant on the basis of gender? If so, did this constitute a prohibited practice in accordance with NRS 288.270(1)?

- Did the union breach its duty of fair representation with respect to Complainant John Doe?

We encourage the parties to make every effort to mutually agree on the issues as doing so will enable the Board to better focus its efforts on determining the answers to the issues. However, the Board reserves the right to determine the form and content of the issue statements.

Admissions of Fact

Agenda Topics

1. Determine whether any of the facts can be agreed upon and admitted without proof at the hearing.
2. If so, determine who will draft the stipulation containing the admissions of fact.

Admissions of Fact Guidelines

Please include the admissions of fact in the form of a stipulation which shall be signed by the attorneys of record and presented by them to the Board at the start of the hearing. Alternatively the stipulation can be made orally on the record at the beginning of the hearing.

Exhibits

Agenda Topics

1. Determine whether the parties have exchanged the exhibits, and if not, when this will occur.
2. Determine which exhibits appear to be duplicates and can either be made joint exhibits or else be pulled from Respondent's list of exhibits.
3. Determine which exhibits can be joint exhibits.
4. Determine which exhibits can be admitted by stipulation of the parties and which will face objections.
5. Review each of the guidelines below to ensure they are fully understood.

Exhibit Guidelines

Evidentiary documents should be exchanged before the pre-hearing conference to avoid unfair surprise.

Unless special circumstances are necessary, exhibits should be on letter-size paper. If any of your exhibits cannot fit on letter size paper, then please discuss this at the Pre-Hearing Conference.

It is strongly encouraged that any exhibit in excess of four pages should display a page number on each page for easy reference during the examination of a witness. This may be done in any number of ways: by bates stamping documents, by writing in page numbers by hand, or by the document itself containing page number references.

Please see the audio-visual equipment guidelines for exhibits that are on special media.

Please ensure that all personal identifying information (e.g., social security numbers) is redacted on each exhibit. Pursuant to NRS 239B.030 the Board has the right to reject any document that contains personal information.

Exhibit Book Guidelines

Parties are strongly encouraged to file joint exhibits. If joint exhibits will not be done then please notify the Commissioner no later than one week before the beginning of the scheduled

Exhibits should be placed in one or more 3-ring binders on not more than a 2" spine. Each exhibit should be tabbed with sequential numbers. Please note that all tabs should be on the right-hand side of the book and not at the bottom. Please include a few extra tabs at the end of each book in case unplanned exhibits are entered during the hearing.

Please include a table of contents at the front of the book.

Objections to Exhibits

No later than 24 hours before the beginning of a hearing, attorneys are requested to file with the Commissioner a list of the exhibits to which they object and the grounds therefor. If there has not been an objection, then the Commissioner will recommend to the Board that the document be admitted into evidence.

Audio-Visual Equipment Guidelines

Any party that wishes to play a recording, tape, video, etc. is responsible for bringing its own audio-visual equipment as the EMRB does not have any such equipment. Moreover, each party is responsible for the operation of that equipment. If both parties need the same equipment then we encourage the parties to consider the sharing of the equipment.

Also, a copy of whatever media is played needs to be an exhibit so that the agency has a copy in the record. If a judicial review is filed, the agency is responsible for supplying that to the court.

Witnesses

Agenda Topics

1. Re: Complainant witnesses
 - a. Review the witnesses listed in the pre-hearing statements and supplements to the statements.
 - b. Determine which of the listed witnesses will not be called.
 - c. Determine which of the witnesses will require the issuance of a subpoena.
 - d. Determine whether an interpreter will be required for any witness.
 - e. Determine the approximate time required for direct examination of each witness.
2. Re: Respondent witnesses
 - a. Review the witnesses listed in the pre-hearing statements and supplements to the statements.
 - b. Determine which of the listed witnesses will not be called.
 - c. Determine which of the witnesses will require the issuance of a subpoena.
 - d. Determine whether an interpreter will be required for any witness.
 - e. Determine the approximate time required for direct examination of each witness.
3. Review of each of the guidelines below to ensure they are fully understood.

Witness Guidelines

Unless the parties agree otherwise, it is the practice of the EMRB to exclude witnesses from the hearing. There are chairs in the hallway outside the agency where witnesses may wait until such time as they are called to testify.

If a witness is to wait for some time then please encourage them to bring a book or other electronic device to occupy their time until they are called. Please note that the EMRB office in Las Vegas has Wi-Fi.

You might want to consider advising your witnesses not to bring documents with them because if the witness begins to reference a document while on the stand this could lead to inclusion of the document in the exhibits for the case and you may not want that document so included. If a document is being used to refresh recollection, then it does not go into evidence. However, in order to have as clean a record as possible, the attorney should be the one using the document to refresh recollection rather than the witness just pulling it out of their purse or pocket.

Subpoena Guidelines

The EMRB office staff prepares and signs all subpoenas. If you want any witness subpoenaed please forward in writing (e-mail is acceptable) the name and address of each person for which you would like the agency to prepare a subpoena. The agency will then contact you when the subpoenas are ready for pick-up.

You are responsible for the issuance of the subpoenas by a process server or through other lawful means. You are then responsible for delivering back to the EMRB prior to the start of the hearing the subpoenas with the attached affidavits attesting to proper service.

Interpreter Guidelines

Each party is responsible for providing and paying for a certified court interpreter for any person whose primary language is not English. If both parties will need an interpreter for the same language, it is highly suggested that the parties coordinate the use of an interpreter to minimize the cost involved. Upon agreement by the parties, the EMRB would consent to hearing the case out of order so that witnesses whose primary language is not English, and who could use the same interpreter, might be heard in sequence.

If a witness has a communications disability (e.g., deafness) then the agency is responsible for furnishing the interpreter. NRS 233B.1235.

Other Procedures

Agenda Topics

1. Review each of the topics below to ensure they are fully understood.

Court Reporter

The Notice of Hearing will specify which party is responsible for providing a court reporter. The cost of the court reporter shall be split between the parties.

Order of the Hearing

The following is the order of the hearing:

Stipulations and motions related to the conduct of the hearing

Opening statements

Complainant

Respondent

Complainant's case in chief, witness by witness

Respondent's case in chief, witness by witness

Complainant's rebuttal case

Closing arguments

Complainant

Respondent

Notes on Closing Arguments

Pursuant to NAC 288.310 the parties are entitled to oral closing arguments. The Board may grant a brief period of time between the close of Complainant's rebuttal case and the beginning of closing oral arguments to enable the attorneys to finish preparing their thoughts. The Chairman usually addresses the issue of closing oral arguments (and closing briefs) during opportune times during the hearing. This includes the length of oral closing arguments and whether one or both parties will have the opportunity for an oral rebuttal closing argument.

Note on Closing Briefs

Please note that the Board prefers oral closing arguments. However, upon agreement by the parties or upon motion of a party, the Board may consent to written closing arguments.

Rules of Evidence

The proceeding is semi-formal. The Board generally follows the rules of evidence but can depart from them. As with many administrative proceedings, hearsay evidence may be allowed.

Civility

The EMRB Board encourages attorneys to well represent the interests of their clients, including the making and defending of objections. However, please be advised that the Board expects all attorneys to be civil in their arguments, objections and general behavior.

Board Deliberation After the Hearing

Upon close of the hearing the Board may deliberate on the case and this deliberation may extend to more than one meeting. By law the Board must render a decision within 120 days of the close of the hearing. Please note that the Board may by law deliberate in closed session and almost always does so. The pronouncement of its decision is done in open meeting.