

FILED

DEC 24 2019

STATE OF NEVADA

STATE OF NEVADA
E.M.R.B.

GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

CHARLES EBARB,

Complainant,

vs.

CLARK COUNTY,

Respondent.

CASE NO. 2018-006

NOTICE OF ENTRY OF ORDER

ITEM NO. 843-A

TO: Charles Ebarb and his attorneys, Daniel Marks, Esq. and Adam Levine, Esq., of the Law Office Daniel Marks;

TO: Clark County and its attorney, Scott Davis, Esq., Deputy District Attorney, Civil Division;

PLEASE TAKE NOTICE that the **ORDER (Item No. 843-A)** was entered in the above-entitled matter on December 24, 2019.

A copy of said order is attached hereto.

DATED this 24th day of December 2019.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY


MARISU ROMUALDEZ ABELLAR
Executive Assistant

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STATE OF NEVADA
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STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CHARLES EBARB,

Complainant,

v.

CLARK COUNTY and CLARK COUNTY
WATER RECLAMATION DISTRICT,

Respondents.

Case No. 2018-006

**ORDER ON RESPONDENT'S MOTION
FOR REHEARING**

EN BANC

ITEM NO. 843-A

On December 17, 2019, this matter came before the State of Nevada, Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Government-Management Relations Act (the "Act"); NAC Chapter 288 and NRS Chapter 233B. At issue was Respondents' Motion for Rehearing.

NAC 288.360 provides that either party may "within 15 days after service of a final decision of the Board, file a petition for a rehearing...." On June 28, 2019, the Board issued an En Banc Order in this case finding that the deferral principles pursuant to *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 895, 59 P.3d 1212, 1217 (2002) had not been met. As such, the Board did not defer to the Arbitrator's decision. On July 16, 2019, Respondents filed a petition for judicial review of the Board's decisions in the Eighth Judicial District Court. Thereafter, the Board filed a Motion to Dismiss said Petition. In its Order Granting the Board's Motion to Dismiss, the District Court found that the Board's Order was not final. The District Court also did not find that review of the final decision of the Board would not provide an adequate remedy. As such, the District Court dismissed Respondents' Petition and ordered that all underlying proceedings need to be concluded before a court would have jurisdiction to rule on a petition for judicial review. A true and correct copy of the District Court's Order is attached hereto and incorporated by reference.

1 As indicated above, the regulation is plain and unambiguous and states that service of a final
2 decision of the Board is a prerequisite for the filing of a petition for rehearing. The District Court
3 specifically found that the Board's Order was not final and thus the Board denies the instant Petition as
4 premature. As the regulation further provides, a petition for rehearing must be filed within 15 days after
5 service of a final decision. Here, even if the Board's June 28th Order was final, Respondents waited
6 until November 21st to file the instant Motion, nearly 5 months after the issuance of the Board's most
7 recent Order in this case. Furthermore, NAC 288.364 provides that "[t]he Board will consider a timely
8 petition for rehearing and may grant or deny it not later than 5 days before the date of the expiration of
9 the time frame to file a petition for judicial review set forth in NRS 233B.130." In this case,
10 Respondents' Petition for Judicial Review was filed on July 16, 2019, and the District Court has already
11 dismissed it. NRS 233B.130 requires petitions for judicial review to be filed within 30 days.

12 While Respondents argue that NAC 288.364(3) does not specifically require a final order, this
13 ignores the preliminary regulation on petitions for rehearing requiring a final order as well as the other
14 provisions detailed above. The regulation is plain and unambiguous, the regulation must be read in the
15 context of the whole, and the Board must abide by its regulations which have the force of law. *State,*
16 *Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 293–94, 995 P.2d 482, 485 (2000)
17 ("Where the language of a statute is plain and unambiguous, and its meaning clear and unmistakable,
18 there is no room for construction, and the courts are not permitted to search for its meaning beyond the
19 statute itself."); *see also Silver State Elec. Supply Co. v. State, Dep't of Taxation*, 123 Nev. 80, 85, 157
20 P.3d 710, 713 (2007) ("Statutory construction rules also apply to administrative regulations."); *Allstate*
21 *Ins. Co. v. Fackett*, 125 Nev. 132, 138, 206 P.3d 572, 576 (2009) ("We read statutes within a statutory
22 scheme harmoniously with one another to avoid an unreasonable or absurd result."); *Williams v. Clark*
23 *Cty. Dist. Attorney*, 118 Nev. 473, 484-85, 50 P.3d 536, 543 (2002) ("We are obliged to construe
24 statutory provisions so that they are compatible"); *Berkson v. LePome*, 126 Nev. 492, 497, 245 P.3d
25 560, 563–64 (2010) ("a statute will be construed in order to give meaning to its entirety, and this court
26 'will read each sentence, phrase, and word to render it meaningful within the context of the purpose of
27 the legislation.'"); *Zahavi v. State*, 131 Nev. Adv. Op. 7, 343 P.3d 595, 600 (2015) ("When construing
28 various statutory provisions, which are part of a 'scheme,' this court must interpret them 'harmoniously'

1 and 'in accordance with [their] general purpose.'"); *S. Nev. Homebuilders Ass'n v. Clark Cty.*, 121 Nev.
2 446, 449, 117 P.3d 171, 173 (2005 ("When interpreting a statute, this court must give its terms their
3 plain meaning, considering its provision as a whole so as to read them in a way that would not render
4 words or phrases superfluous or make a provision nugatory."; *Webb v. Shull*, 128 Nev. 85, 89-90, 270
5 P.3d 1266, 1269 (2012) (prohibiting interpreting a statute in a manner that would negate another
6 provision); *State v. Eighth Jud. Dist. Ct. (Logan D.)*, 129 Nev. 492, 508, 306 P.3d 369, 380-81 (2013).

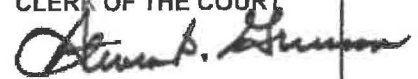
7 The Board notes that its decision herein does not prevent Respondents from filing a petition for
8 rehearing once the Board renders a final decision in this matter, and Respondents are indeed encouraged
9 to file a petition for rehearing at the appropriate time should they feel the Board should abrogate, change
10 or modify its decisions consistent with NAC 288.360 *et seq.*

11 IT IS, THEREFORE, ORDERED that the Motion for Rehearing IS DENIED as premature.

12 Dated this 23 day of December 2019.

13 GOVERNMENT EMPLOYEE-
14 MANAGEMENT RELATIONS BOARD

15 BY: 
16 BRENT C. ECKERSLEY, Chair



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18 DISTRICT COURT
19 CLARK COUNTY, NEVADA
20

21 CLARK COUNTY WATER
22 RECLAMATION DISTRICT; and CLARK
23 COUNTY,
24

25 Petitioners,
26

27 vs.
28

29 STATE OF NEVADA GOVERNMENT
30 EMPLOYEE-MANAGEMENT
31 RELATIONS BOARD; and CHARLES
32 EBARB,
33

34 Respondents.
35

Case No. A-19-798550-J
Dept. No. 19

36 ORDER GRANTING MOTION TO DISMISS
37

38 The above-entitled matter came on before this Court on October 29, 2019 for
39 Respondent State of Nevada Government Employee-Management Relations Board's
40 Motion to Dismiss the Petition for Judicial Review and Respondent Ebarb's Joinder
41 thereto. The Court, having fully reviewed and considered the pleadings and papers on file
42 and having heard argument of counsel at the hearing, rules as follows:
43

1 On June 28, 2019, the Board issued an en banc Order ("June 28th Order"). The
2 Board's June 28th Order found Ebarb had demonstrated that the deferral principles were
3 not met and thus did not defer to the Arbitrator's decision. The Board based its decision,
4 in part, on the leading Nevada Supreme Court case of *City of Reno v. Reno Police Protective*
5 *Ass'n*, 118 Nev. 889, 895, 59 P.3d 1212, 1217 (2002).

6 The Board further found that "that a unilateral change has been committed based
7 on the evidence presented, [however] since it initially ordered the matter bifurcated, it will
8 give the parties an additional opportunity for the presentation of evidence and/or argument
9 should the parties deem it necessary." June 28th Order, at 21. The Board also stated, in
10 regards to the remedy to be awarded: "At this stage, the Board is inclined to order as follows
11 (as requested in part by Complainant): . . . However, the Board instructs the parties to
12 include argument on the appropriate remedy in their briefing if they believe an alternative
13 remedy should be ordered." June 28th Order, at 21-22.

14 The Board left two issues to be resolved: (1) the remaining hearing on the unilateral
15 change; and (2) the remedy to be imposed. Thus, the Board ordered the parties to submit
16 written briefs in this regard to determine if a further hearing and/or argument was
17 necessary before rendering a final decision. June 28th Order, at 22. The Board did not
18 issue a final ruling on the substantive charges from the Complaint and did not resolve the
19 remedy to be imposed. The Board also ordered the filing of briefs. June 28th Order, at 31-
20 32. Instead of filing a brief pursuant to the Board's Order, Petitioners filed the Petition
21 before this Court.

22 The Nevada Supreme Court mandates that when a party seeks judicial review of an
23 administrative decision, strict compliance with the Administrative Procedures Act (APA),
24 NRS Chapter 233B, is a precondition to jurisdiction by the court of judicial review, and
25 noncompliance with the statutory requirements is grounds for dismissal. *Washoe Co. v.*
26 *Otto*, 128 Nev. 424, 426, 431, 282 P.3d 719, 721, 725 (2012); *Liberty Mut. v. Thomasson*, 130
27 Nev. 27, 32, 317 P.3d 831, 834 (2014); *Private Investigator's Licensing Bd. v. Atherley*, 98
28 Nev. 514, 515, 654 P.2d 1019, 1019 (1982); *Heat & Frost Insulators & Allied Workers Local*

1 16 v. Labor Comm'r, 408 P.3d 156, 158 (Nev. 2018); see also *Tate v. State, Bd. of Med.*
2 *Exam'rs*, 131 Nev. Adv. Op. 67, 356 P.3d 506, 508 (2015), citing *Crane v. Continental*
3 *Telephone Co. of California*, 105 Nev. 399, 401, 775 P.2d 705, 706 (1989); *K-Kel, Inc. v. State*
4 *Dep't of Taxation*, 412 P.3d 15, 17 (Nev. 2018).

5 NRS 233B.130(1) requires that only a party who is "[a]ggrieved by a final decision
6 in a contested case is entitled to judicial review of the decision." That same statutory
7 provision also provides: "Any preliminary, procedural or intermediate act or ruling by an
8 agency in a contested case is reviewable if review of the final decision of the agency would
9 not provide an adequate remedy." *Id.* The statute is plain, unambiguous, and controlling.

10 First, the Court finds that the Board's Order was not final. To promote judicial
11 economy and efficiency by avoiding piecemeal appellate review, appellate jurisdictional
12 rules have long required finality of decisions before this Court undertakes its review. *Lee*
13 *v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000); *Wells Fargo Bank, N.A. v. O'Brien*, 129
14 Nev. 679, 680, 310 P.3d 581, 582 (2013); *Reno Hilton Resort Corp. v. Verderber*, 121 Nev. 1,
15 5, 106 P.3d 134, 136–37 (2005); *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 444, 874
16 P.2d 729, 733 (1994). A final judgment is "one that disposes of the issues presented in the
17 case ... and leaves nothing for the future consideration of the court." *Ginsburg*, 110 Nev. at
18 445; *Lee*, 116 Nev. at 426, 996 at 417 ("we clarify that a final judgment is one that disposes
19 of all the issues presented in the case, and leaves nothing for the future consideration of
20 the court, except for post-judgment issues such as attorney's fees and costs.").

21 The Board's decisions did not dispose of all the issues presented and expressly left
22 issues for future consideration. The Board solely found that the deferral principals had not
23 been met. However, the Board did not issue an order: (1) on the substantive prohibited
24 labor practices alleged in the complaint; or (2) the remedy to be imposed. The Board
25 expressly noted that "since it initially ordered the matter bifurcated, it will give the parties
26 an additional opportunity for the presentation of evidence and/or argument should the
27 parties deem it necessary." June 28th Order, at 21. The Board also "instruct[ed] the
28 parties to include argument on the appropriate remedy in their briefing if they believe an

1 alternative remedy should be ordered.” June 28th Order, at 21-22. The Board simply noted
2 that “At this stage, the Board is inclined to order as follows” *Id.* The Board ordered the
3 parties to submit written briefs in this regard to determine if a further hearing and/or
4 argument was necessary before rendering a final decision. June 28th Order, at 22. Should
5 there be any doubt remaining, the “ORDER” section dispels it – the Board did not issue a
6 final ruling on the substantive charges from the Complaint and did not resolve the remedy
7 to be imposed.

8 Thus, the Board’s decision was not final. *See Pub. Serv. Comm’n of Nev. v. Cmty.*
9 *Cable TV*, 91 Nev. 32, 42-43, 530 P.2d 1392, 1398-99 (1975) (an administrative order that
10 leaves open issues for future resolution or retains the matter for further action is not final);
11 *see, e.g., State Taxicab Auth. v. Greenspun*, 109 Nev. 1022, 1025, 862 P.2d 423, 425 (1993)
12 (a final order does not exist when additional evidence should be considered); *Clark Cty.*
13 *Liquor & Gaming Licensing Bd. v. Clark*, 102 Nev. 654, 657, 730 P.2d 443, 446 (1986) (a
14 final order did not exist when district court remanded the case, ordering the Board to [only]
15 grant discovery.”); *Liberty Mutual Ins. Co. v. Wetzel*, 424 U.S. 737, 744 (1976) (A judgment
16 limited to the issue of liability, where the assessment of damages or other relief remains
17 open, is not final); *Mid-Century Ins. Co. v. Pavlikowski*, 94 Nev. 162, 163, 576 P.2d 748, 749
18 (1978) (holding that determination of liability was not a final judgment when the issue of
19 damages had yet to be tried); *Saguaro Power Co. v. Pub. Utilities Comm’n of Nevada*, 128
20 Nev. 931, 381 P.3d 658 (2012) (concluding no final order as “[t]he Commission requested
21 briefing ...”).

22 Second, the Court does not find that “review of the final decision of the agency would
23 not provide an adequate remedy.” The Nevada Supreme Court case of *Baldonado v. Wynn*
24 *Las Vegas, LLC*, 124 Nev. 951, 963, 194 P.3d 96, 103 (2008) is on point. The Court explained
25 that “[a]n adequate administrative remedy is available” as “resolving labor law complaints
26 is perhaps one of the Labor Commissioner’s most significant enforcement mechanisms. In
27 this manner, the Labor Commissioner’s expertise is optimized, and the parties then have
28 an opportunity to petition the district court for judicial review and, ultimately, appeal to

1 this court. Accordingly, the Labor Commissioner's duty to hear and resolve enforcement
2 complaints is not discretionary, and appellants had access to an adequate administrative
3 enforcement mechanism." *Id.* at 963-64, 194 at 104. Here, the EMRB has already heard a
4 portion of the case and has even stated its intention to hold the second part of the
5 proceedings, simply waiting for the parties' briefs on any preferences related thereto.

6 Indeed, the Nevada Supreme Court in *Baldonado*, based its holding off a prior
7 Nevada Supreme Court case involving the EMRB – "We addressed a similar argument in
8 *Rosequist v. International Ass'n of Firefighters*. In that case, we noted that a statute
9 providing that '[t]he [Employee-Management Relations Board] may hear and determine
10 any complaint' was ambiguous. In resolving the ambiguity, we explained that the
11 legislation's purposes to relieve burdens on the court and to develop and utilize the Board's
12 expertise meant that the term 'may' in that instance was not discretionary – the Board was
13 required to hear labor disputes arising out of NRS Chapter 288." *Id.* at 962-63, 194 at 103.
14 *Rosequist* in conjunction with *Balando* thus hold that the EMRB must hear the case and
15 Petitioners can petition for judicial review after the conclusion thereof. There is no reason
16 to believe that "review of the final decision of the agency would not provide an adequate
17 remedy."

18 Petitioners cite to the 1987 case of *Dep't of Human Res. v. UHS of the Colony, Inc.*,
19 103 Nev. 208, 210, 735 P.2d 319, 320 (1987). The Nevada Supreme Court held that "NRS
20 439A.105 (1983) provided for a hearing officer to hear and determine all appeals from
21 decisions rendered pursuant to Chapter 439A. There is no provision, however, for a
22 determination that a party is not subject to NRS 439A." *Id.* (emphasis added). However,
23 here, Petitioners do not argue that they are not subject to NRS Chapter 288 or are
24 otherwise exempt from it (it is undisputed that they are local government employers).
25 Instead, they argue that the Board did not have jurisdiction over the claims that Ebarb
26 brought, an allegation which can be argued once the Board issues its final order. *See also*
27 *Boulware v. State, Dep't of Human Res.*, 103 Nev. 218, 219, 737 P.2d 502, 502 (1987)
28 (emphasis added) ("We previously held that a party is not required to exhaust the

1 certificate of need application process before it can seek a judicial determination that [the
2 party] is exempt from CON review." *Citing Dep't Human Res. v. UHS of The Colony*, 103
3 Nev. 208, 735 P.2d 319 (1987). The Court also notes that Petitioners did not file a Petition
4 after the Board issued its May 2018 order on Petitioners' motion to dismiss in the
5 underlying administrative proceedings.

6 Once the Bard issues the final order, then Petitioners can bring a new Petition.
7 Petitioners are not prejudiced against bringing the violations they alleged in their
8 dismissed Petition in bringing a new petition for judicial review after the Board issues a
9 final order. As such, the motion to dismiss is granted in this case as all underlying
10 proceeding need to be concluded before the Court has the jurisdiction to rule on a Petition
11 for Judicial Review.


12 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion to Dismiss
13 Petition for Judicial Review is GRANTED.

14 Dated this 13th day of November, 2019.

15 
16 District Court Judge

17 Submitted by:

18 AARON D. FORD
19 Attorney General

20
21 By: 
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24 *Attorneys for State of Nevada Government*
25 *Employee-Management Relations Board*
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