

FILED

JUN 17 2020

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

NEVADA HIGHWAY PATROL ASSOCIATION,

Case No. 2020-011

Petitioner,

NOTICE OF ENTRY OF ORDER

v.

STATE OF NEVADA DEPARTMENT OF PUBLIC
SAFETY; STEVE SISOLAK, in his capacity as
Governor of the State of Nevada; NEVADA STATE
LAW ENFORCEMENT OFFICERS
ASSOCIATION, and NEVADA ASSOCIATION OF
PUBLIC SAFETY OFFICERS,

ITEM NO. 865

Respondents.

- TO: Petitioner and its attorneys, Devon T. Reese, Esq., Jason D. Guinasso, Esq., and Alex R. Velto, Esq., of Hutchison & Steffen;
- TO: Respondent State of Nevada, by and through Laura Freed, Director, Department of Administration; Peter Long, Administrator of the Division of Human Resource Management, and Frank Richardson, Deputy Administrator of Labor Relations, for the State of Nevada;
- TO: Respondents Nevada State Law Enforcement Officers Association and Nevada Association of Public Safety Officers and their attorneys and representatives, Nicholas M. Wiczorek, Esq., of Clark Hill PLLC and Richard P. McCann, J.D.;
- TO: The Fraternal Order of Police, by and through their attorneys and representatives, Timothy P. Mullaney, Sr., J.D. and Michael E. Coviello, J.D.;
- TO: AFSCME, by and through their representative, Fernando R. Colon;
- TO: Peace Officers Research Association of Nevada (PORAN), by and through their attorney, Michael Langton, Esq.

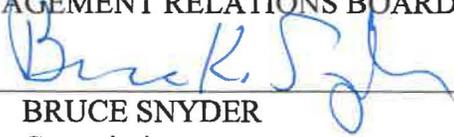
1 PLEASE TAKE NOTICE that the **DECLARATORY ORDER** was entered in the above-
2 entitled matter on June 17, 2020.

3 A copy of said order is attached hereto.

4 DATED this 17th day of June 2020.

5 GOVERNMENT EMPLOYEE-
6 MANAGEMENT RELATIONS BOARD

7 BY


8 BRUCE SNYDER
9 Commissioner

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1 CERTIFICATE OF MAILING

2 I hereby certify that I am an employee of the Government Employee-Management Relations
3 Board, and that on the 17th day of June 2020, I served a copy of the foregoing **NOTICE OF ENTRY**
4 **OF ORDER** by mailing a copy thereof, postage prepaid to:

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7 Alex R. Velto, Esq.
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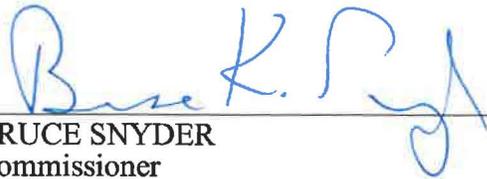
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BRUCE SNYDER
Commissioner

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3 **STATE OF NEVADA**
4 **GOVERNMENT EMPLOYEE-MANAGEMENT**
5 **RELATIONS BOARD**

6 NEVADA HIGHWAY PATROL ASSOCIATION,

7 Petitioner,

8 v.

9 STATE OF NEVADA DEPARTMENT OF PUBLIC
10 SAFETY; STEVE SISOLAK, in his capacity as
11 Governor of the State of Nevada; NEVADA STATE
12 LAW ENFORCEMENT OFFICERS
13 ASSOCIATION, and NEVADA ASSOCIATION
OF PUBLIC SAFETY OFFICERS,

Respondents.

Case No. 2020-011

DECLARATORY ORDER

EN BANC

ITEM NO. 865

14 On May 27, 2020, this matter came before the State of Nevada, Government Employee-
15 Management Relations Board (“Board”) for consideration and decision pursuant to the provisions of the
16 Employee-Management Relations Act and NAC Chapter 288. At issue was Petitioner’s, Nevada
17 Highway Patrol Association, Petition for Declaratory Order.

18 Petitioner requests this board to issue a declaratory order stating that Petitioner, as the officially
19 recognized entity, is the exclusive bargaining agent for Category 1, Unit G state employees and, as
20 such, no rival employee organization may purport to “represent” any employee in Category 1, Unit G,
21 including any issue covered under NRS Chapters 288 and 289. The Board requested *amicus* briefs to
22 be filed in this matter and reviewed them in full prior to coming to a decision.

23 In January 2020, the Board designated Petitioner as the exclusive representative of the
24 bargaining unit comprised of all non-supervisory, Unit G, Category 1 Peace Officers employed by the
25 State of Nevada pursuant to Senate Bill 135. Petitioner asserted that at least two other organizations
26 attempted to infringe on this Board’s recognition of Petitioner as the exclusive representative. These
27 organizations competed for the right to represent this unit; however, they failed to obtain sufficient
28 signatures to obtain an election.

1 The dispute essentially surrounds the ability of other organizations not recognized as the
2 exclusive representative to represent bargaining unit members in matters not involving collective
3 bargaining, such as grievances, OPR investigations, and critical incidents. As NPHA further explained:
4 “The heart of this dispute is the scope of ‘representation’ under NRS 288.136, and whether a union that
5 failed to gain recognition can represent the members this Board already determined to be recognized by
6 NHPA.”

7 The general factual premise does not appear to be in dispute in regards to the instant Petition.¹
8 Instead, the Petition generally presents a question of the Board’s statutory interpretation of the EMRA,
9 the statute the Board is charged with enforcing. *Clark County School Dist. v. Local Govt. Employee-*
10 *Mgmt. Rel. Bd.*, 90 Nev. 442, 446, 530 P.2d 114, 117 (1974); *Folio v. Briggs*, 99 Nev. 30, 33, 656 P.2d
11 842 (1983); *Truckee Meadows Fire Prot. Dist. v. Int’l Ass’n of Fire Fighters, Local 2487*, 109 Nev. 367,
12 369, 849 P.2d 343, 345 (1993); *City of Reno v. Reno Police Protective Ass’n*, 118 Nev. 889, 900, 59
13 P.3d 1212, 1219–20 (2002); *City of Henderson v. Kilgore*, 121 Nev. 331, 337 n. 11, 131 P.3d 11, 15
14 (2006); *City of N. Las Vegas v. State Local Gov’t Employee-Mgmt. Relations Bd.*, 127 Nev. Adv. Op.
15 57, 261 P.3d 1071, 1076 (2011); *Bisch v. Las Vegas Metropolitan Police Dep’t.*, 129 Nev. Adv. Op. 36,
16 302 P.3d 1108, 1112 (2013); *Clark Cty. Deputy Marshals Ass’n v. Clark Cty.*, 425 P.3d 381, Docket
17 No. 68660, filed September 7, 2018, unpublished deposition (Nev. 2018). However, answers to more
18 specific questions could relate to the Board’s view of the facts. *Fathers & Sons & A Daughter Too v.*
19 *Transp. Services Auth. of Nevada*, 124 Nev. 254, 259, 182 P.3d 100, 104 (2008).

20 Preliminarily, Peace Officers Research Association of Nevada asserted a jurisdictional challenge
21 in ruling on the instant Petition. They assert specifically that the Legislature has limited the Board’s
22 authority to interpret a peace officers’ rights under NRS Chapter 289. The Board agrees. NAC
23 288.380 provides that any recognized employee organization “may petition the Board for a declaratory
24 order regarding the applicability or interpretation of any statutory provision or of any regulation or

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26 ¹ On May 22, 2020, Petitioner filed a Request for Hearing. NAC 288.400 provides for the ability to
27 request a hearing if certain conditions are satisfied. The Request was not timely and did not comply
28 with the other requirements of NAC 288.400(1). As such, the Board denies the request. *See also* NAC
288.410(2) (giving the discretion to the Board on whether to hold a hearing – *i.e.*, “or”). Indeed, the
Request for Hearing appears in actuality to be a request for oral argument. The Board finds oral
argument unnecessary in this case given its ruling herein.

1 decision of the Board.” “The purpose of a declaratory statement is to address the applicability of a
2 statutory provision or order or rule of the agency in particular circumstances.” *City of Reno v. Reno*
3 *Firefighters Local 731, Int’l Ass’n of Firefighters*, Item 777A, Case No. A1-046049 (2012).

4 The Board’s authority is limited to matters arising out of the interpretation of, or performance
5 under, the provisions of the EMRA. NRS 288.110(2). The Board does not have the jurisdiction to find
6 a violation of NRS Chapter 289 or to rule that no rival employee organization may purport to represent
7 any employee surrounding issues covered under NRS Chapter 289. This is expressly beyond the
8 Board’s jurisdiction, which is well established. *See* NRS 288.110(2); *City of Reno v. Reno Police*
9 *Protective Ass’n*, 98 Nev. 472, 474–75, 653 P.2d 156, 158 (1982) (“the EMRB merely deferred to NRS
10 ch. 288, the statute under which it operates. While the EMRB did discuss the Reno City Charter in its
11 decision, our review of that decision reveals that the board only did so because the City placed its
12 Charter in issue by relying on it as justification for its refusal to bargain with the RPPA. The EMRB did
13 not interpret the Charter.”); *UMC Physicians Bargaining Unit v. Nevada Serv. Employees Union*, 124
14 Nev. 84, 89-90, 178 P.3d 709, 713 (2008); *City of Henderson v. Kilgore*, 122 Nev. 331, 333, 131 P.3d
15 11, 12 (2006); *Int’l Ass’n of Fire Fighters, Local 1908 v. County of Clark*, Case No. A1-046120, Item
16 No. 811 (2015) (“IAFF argues that the merit personnel system itself should have opened this
17 appointment... However, it is not within our purview to determine whether or not the appointment...
18 complied with the County’s merit personnel system. This Board authority is limited to matters arising
19 under interpretation of, or performance under, the Act”); *Simo v. City of Henderson*, Case No. A1-
20 04611, Item No. 796 (2014); *see e.g., Flores v. Clark Cty.*, Case No. A1-045990, Item No. 737 (2010);
21 *Bonner v. City of N. Las Vegas*, Case No. 2015-027 (2017); *Kerns v. LVMPD*, Case No. 2017-010
22 (2018); *Yu v. LVMPD*, Case No. 2017-025, Item No. 829 (2018). The Board simply notes that, as
23 further detailed below, NRS Chapter 289 does not appear in conflict with Chapter 288 and can be read
24 to render a harmonious result.

25 “Exclusive representative” is defined under the EMRA as follows:

26 ‘Exclusive representative’ means a labor organization that, as a result of its designation
27 by the Board, has **the exclusive right to represent all the employees within a bargaining unit** *and* to engage in collective bargaining with the Executive Department
28 pursuant to NRS 288.400 to 288.630, inclusive, concerning wages, hours and other terms and conditions of employment for those employees.

1 NRS 288.430 (*emphasis* added). *See also* NRS 288.133 (defining “Bargaining agent” as an employee
2 organization recognized “as the exclusive representative of all local government employees in the
3 bargaining unit for the purposes of collective bargaining.”); *see also* NRS 288.032 (defining “Collective
4 bargaining” as “a method of determining conditions of employment by negotiation between
5 representatives of ... an employee organization or labor organization, entailing a mutual obligation ...
6 [of] the representative of the state or local government employees to meet at reasonable times and
7 bargain in good faith with respect to: Wages, hours and other terms and conditions of employment;
8 [t]he negotiation of an agreement; [t]he resolution of any question arising under a negotiated agreement
9 [e.g., a grievance]; or [t]he execution of a written contract....”² Both NRS 288.133 and NRS 288.430
10 provide for the “exclusive representative”.³ The EMRA is plain in unambiguous in this regard. *See*
11 *also* NRS 288.160(2) (stating that an employee organization “shall be the exclusive bargaining agent of
12 the local government employees in that bargaining unit.”); NRS 288.136 (defining “Recognition”).⁴

13 In the First Judicial District Court decision of *Washoe Ed. Support Professionals v. State of*
14 *Nevada, Local Government Employee-Management Relations Board*, Case No. 09 OC 00086 1B (2010)
15 (District Court Decision), Judge James Russell addressed, in pertinent part, “the scope of a ‘non-
16

17 ² *See also infra* note 6.

18 ³ “Exclusive” is defined as “Shutting out; debarring from interference or participation; vested in one
19 person alone. An exclusive right is one which only the grantee thereof can exercise, and from which all
20 others are prohibited or shut out.” Black’s Law Dictionary (11th ed. 2019). “Excluding or having
21 power to exclude; limiting or limited to possession, control, or use by a single individual or group.”
Merriam-Webster On-Line Dictionary; *see also* SB 135, Minutes of the Senate Committee on
Government Affairs (April 4, 2019) (“The words ‘exclusive representative’ means the only one” ...
“We have exclusive representation to provide for labor peace and stability.”)

22 ⁴ *Allstate Ins. Co. v. Fackett*, 125 Nev. 132, 138, 206 P.3d 572, 576 (2009) (“We read statutes within a
23 statutory scheme harmoniously with one another to avoid an unreasonable or absurd result.”). *Williams*
24 *v. Clark Cty. Dist. Attorney*, 118 Nev. 473, 484-85, 50 P.3d 536, 543 (2002) (“In determining the
25 legislature’s intent, we should consider what reason and public policy indicate was intended, and we
26 should avoid reaching absurd results. We are obliged to construe statutory provisions so that they are
27 compatible, provided that in doing so, we do not violate the legislature’s intent.”); *Berkson v. LePome*,
126 Nev. 492, 497, 245 P.3d 560, 563–64 (2010) (“a statute will be construed in order to give meaning
28 to its entirety, and this court ‘will read each sentence, phrase, and word to render it meaningful within
the context of the purpose of the legislation.’”); *Zahavi v. State*, 131 Nev. Adv. Op. 7, 343 P.3d 595,
600 (2015) (“When construing various statutory provisions, which are part of a ‘scheme,’ this court
must interpret them ‘harmoniously’ and ‘in accordance with [their] general purpose.’”).

1 member' employee's right under NRS 288.140(2)⁵ to be represented by another person in a grievance
2 proceeding [the term grievance being broadly defined], and specifically whether such an employee may
3 be represented by an agent or employee of an employee organization *other than* the recognized
4 bargaining agent (a 'rival employee organization')." District Court Decision, at 2 (*emphasis in*
5 original).

6 The District Court Order concluded:

7 Where, as here, an employee organization has been recognized as the bargaining agent
8 for a bargaining unit, the bargaining agent's representative status is *exclusive* and no rival
9 employee organization may purport to 'represent' any employee in the unit in any
10 grievance proceeding or in any other aspect of collective bargaining. Any
11 'representation' of this nature is fundamentally inconsistent with the status and function
12 of the recognized bargaining agent. *See, e.g., UMC Physicians' Bargaining Unit v.*
13 *Nevada Serv. Employees Union*, 124 Nev. [84, 178 P.3d 709, 715 (2008)] ("the interests
14 of employees whose bargaining units are exclusively represented by one employee
organization cannot be simultaneously represented by another employee organization");
Operating Engineers Local Union No. 3 v. City of Reno, Item No. 7 (1972) (rejecting
contention that Chapter 288 'permits an employer to 'recognize' a minority employees
organization ..., not negotiation per se, but for purposes other than negotiation such as
grievance processing....).

15 A local government employer who knowingly allows 'representation' of this kind or
16 knowingly participates in a grievance proceeding with an agent or employee of a rival
17 employee organization, *acting as such*, thereby fails to bargain in good faith with the
18 recognized bargaining agent and commits a prohibited practice within the meaning of
19 NRS 288.270(1)(e). *Federal Tel. and Radio Co.*, 107 NLRB 649 (1953) (applying
20 corresponding provisions of the National Labor Relations Act); *Hughes Tool Co.*, 56
21 NLRB 981 (1944) (same).

22 In the challenged order and in at least one prior decision, the Board has ruled that if an
23 employee in a bargaining unit is a *member* of the employee organization serving as
24 recognized bargaining agent, the employee may *only* be represented in a grievance
25 proceeding by an agent or employee of that organization. *Washoe Ed. Support*
Professionals v. Washoe County Sch. Dist., Item No. 681A, Case No. A1-045930 (EMRB
2009), Finding of Fact No. 4; *United We Stand Classified Employees/AFT v. Washoe*
County Sch. Dist., Item No. 641B, Case No. A1-045888 (EMRB 2007). This ruling has
not been challenged. Nor does WESP dispute the right of such employee to retain the
services of an attorney of the employee's choice, so long as the expense of this
representation is borne by the employee.

26 ⁵ NRS 288.140 states, in pertinent part: "(1) It is the right of every local government employee ... to
27 refrain from joining any employee organization (2) The recognition of an employee organization ...
28 does not preclude any local government employee who is not a member of that employee organization
from acting for himself or herself with respect to any condition of his or her employment, but any
action taken on a request or in adjustment of a grievance shall be consistent with the terms of an
applicable negotiated agreement, if any."

1 *Id.* at 2-4 (*emphasis* in original). The District Court Order further opined:

2 Where, however, a unit employee is *not a member* of the employee organization serving
3 as recognized bargaining agent, NRS 288.140(2) provides that the employee may ‘act for
4 himself’ in any grievance proceeding – *i.e.*, on his own behalf and without a
5 representative. *Cone v. Nevada Serv. Employees Union*, 116 Nev. 473, 998 P.2d 1178
(2000) (noting that statute ‘authorized a nonunion member to act on his own behalf [and]
6 forgo union representation’).

7 In addition, the Board has ruled that such an employee may be represented by ‘counsel’,
8 a term that the Board apparently interprets to include a friend, relative or co-worker, or an
9 attorney retained by the employee. *Washoe Ed. Support Professionals v. Washoe County*
10 *Sch. Dist.*, Item No. 681A, Conclusion of Law No. 15. With the exception noted below,
11 WESP likewise has not challenged this aspect of the Board’s ruling.

12 In any matter involving a non-member employee, NRS 288.140(2) provides that ‘any
13 action taken on a request or in adjustment of a grievance shall be consistent with the
14 terms of an applicable negotiated agreement, if any.’ Accordingly, in any such case, the
15 Board has ruled that the recognized bargaining agent is also entitled to be present ‘[t]o
16 monitor ... compliance with the applicable [negotiated agreement] and the provisions of
17 NRS chapter 288’. *Washoe Ed. Support Professionals v. Washoe County Sch. Dist.*, Item
18 No. 681A, Conclusion of Law No. 15. Again, this aspect of the Board’s ruling has not
19 been challenged.

20 *Id.* at 4-5 (*emphasis* in original) (internal citations omitted).

21 Judge Russell further noted: “Where the representative of a non-member employee is also an
22 employee or agent of a rival employee organization, the parties have opposing views on the result that
23 should follow.” *Id.* at 5. Moreover, “[b]oth parties agree, in any case, that an *attorney* who is retained
24 by the employee to act as his representative in such proceeding should be allowed to represent the
25 employee, even if the attorney also represents a rival employee organization. To the extent that the
26 Board has so held, its order is affirmed.” *Id.* at 6, note 5 (*emphasis* in original). The District Court
27 further found:

28 If, as WESP agrees, a non-member employee may lawfully be represented by a friend,
relative or co-worked, the fact that the representative also happens to be an agent or
employee of a rival employee organization should not disqualify him from serving as
representative if in fact he is functionally independently of his role as an agent of the
union. On the other hand, if the representative in fact is overtly or covertly attempting to
function on behalf of both the employee and the rival employee organization (or solely on
behalf of the union), the representative’s participation effectively undercuts the status of
the recognized bargaining agent and cannot knowingly be permitted by the employer.

Accordingly, in any grievance proceeding involving an employee representative who is
also an agent or employee of a rival employee organization, the representative cannot
function as such – and hence cannot participate in the proceeding Where, however,

1 the employer knows or reasonably believes that the representative is serving *entirely*
2 *independently* of the rival organization as (for example) a friend, relative or co-worker of
the employee, the representative's participation is permissible.

3 *Id.* at 6 (*emphasis* in original). The District Court denied the petition for judicial review, as requested
4 by WESP, "to hold that an agent or employee of a rival employee organization is, solely by virtue of
5 that status, precluded from representing an employee in any grievance proceeding..." *Id.* at 7.

6 In *Lyon County Ed. Ass'n v. Lyon County Sch. Dist.*, Case No. 2016-011 (2016), the Board found
7 the decision in *Washoe Ed. Support Professionals* as persuasive precedent. The District Court's order
8 was based on ample authority.⁶ As such, the Board reaffirms *Lyon County Ed. Ass'n* in finding Judge
9 Russell's decision as persuasive precedent.

10 While NRS 288.140 recognizes the right of an employee not to become a member of the
11 recognized employee organization and to "act for himself or herself" in connection with a grievance,
12 nothing in that provision, or any other provision of the EMRA, permits such an employee to be
13 "represented" by an agent or employee of a rival employee organization serving in such capacity.
14 Allowing this kind of representation would impair the efficiency and utility of the grievance and
15 collective bargaining process, undermine the position of the recognized bargaining agent, and

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17 ⁶ Citing to then NRS 288.027 (replaced by NRS 288.133), 288.028 (replaced by NRS 288.134), 288.067
18 (replaced by NRS 288.136), NRS 288.033(3) (noting that the scope of the bargaining agent's
19 representation includes not only the negotiation of a CBA *but also* resolution of grievance and
20 participation in "investigatory interviews" involving employees in the unit), also *citing Ed. Support*
21 *Employees Ass'n v. Clark County Sch. Dist.*, Item No. 568B, Case No. A1-045782 (2005), 288.140,
22 288.150(1) and 288.160(2) as well as the Nevada Supreme Court and federal precedent cited above.
23 *See also N. Las Vegas Police Officers Ass'n v. The City of N. Las Vegas*, Item No. 717A, Case No. A1-
24 0459645 (2011); *Heitzinger v. Las Vegas-Clark County Library Dist.*, Item No. 728C, Case No. A1-
25 045977 (2012); *D'Ambrosio v. LVMPD*, Item No. 808 (2015). For example, the Nevada Supreme
26 Court in *Cone v. Nevada Serv. Employees Union/SEIU Local 1107*, 116 Nev. 473, 477, 998 P.2d 1178,
27 1181 (2000) disagreed that "the union, as the 'bargaining agent' of UMC employees, is obligated by the
28 plain language of NRS 288.027 to 'exclusively' represent all UMC employees, including nonunion
members, in all grievance matters without charging a fee", *only to the extent of not being able to*
charge a fee. The Nevada Supreme Court made clear that NRS 288.140(2) "provides an individual
with a right to forgo union representation" and thus a nonmember employee may either act of his or her
own behalf thereby electing to "forgo union representation" or use the services of the recognized agent
paying any "service fee" charged by the union for its services. *See id.* at 478. Nothing in *Cone*
suggests such an employee may be "represented" by an agent or employee of a rival employee
organization serving in such capacity with the exception noted above. *See* Judge Russell's Decision at
6, note 5. Indeed, for more than 60 years, the NLRB has held its similar provision (Section 9(a), 29
U.S.C. § 159(a)) does not allow a rival union to represent an employee in the adjustment of grievances.
See, e.g., Fed. Tel. & Radio Co., 107 NLRB 649, 652 (1953).

1 effectively destabilize employee-management relations in the public sector. This is consistent with the
2 exceptions noted above. The exclusivity of representation is a key element in ensuring labor stability in
3 the workplace (one of the important reasons for the adoption of NRS Chapter 288 in 1969) and in
4 allowing a properly recognized union to do its job. *See, e.g., In the Matter of American Federation of*
5 *Teachers, Local 1800 v. Clark County Sch. Dist.*, Item No. 2 (1970) (“the employer has an obligation to
6 treat with this representative exclusively and has a negative duty to treat with no other”), *citing NLRB*
7 *v. Jones & Laughlin Steel Corp.*, 201 US 1, 44 (1937) (where the United State Supreme Court
8 recognized that the obligation of the employer to treat with the recognized representative was exclusive
9 and hence imposed a negative duty to treat with no other); *see also supra* note 3 and *infra* note 7; *see,*
10 *e.g., Fed. Tel. & Radio Co.*, 107 NLRB 649, 652-53 (1953). Designating one union as the exclusive
11 representation of all employees allows them to speak with one voice, pooling economic strength, ensure
12 their rights are not watered down by divisiveness, respond with institutional knowledge when
13 employer’s disparately treat them, and allowing this carve out would tend to dilute that strength
14 contrary to the purposes and policies of the EMRA. *See also supra* notes 4 and 6.⁷

15 If the Legislature wishes to provide that an agent or employee of a rival labor organization
16 serving in that capacity, may purport to represent any employee in a bargaining unit with a recognized
17 representation, then that is their legislative prerogative. It is not for the Board to make the law, that is
18 for the Legislature, and the Board is required to follow the law regardless of the result. *See, e.g., Local*
19 *Gov’t Employee-Mgmt. Relations Bd. v. Educ. Support Employees Ass’n*, 134 Nev. 716, 429 P.3d 658
20 (2018).

21 As a further example, in 2018 the Board rendered its decision in *City of Elko v. Elko Police*
22 *Officers Protective Ass’n*, Case No. 2017-026, Item No. 831 (2019). In that case, the Board applied the
23 provisions of NRS 288.170 to conclude that sergeants employed by the City of Elko could not be part
24 of the same bargaining unit as the officers they supervise based on the plain language of the EMRA. In

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26 ⁷ The EMRA had its genesis in Senate Bill 87 in 1969 sponsored by Senator Carl Dodge. SB initially
27 provided specifically for the recognition of more than one employee organization for any given
28 “negotiating unit”. *See* Sections 10, 11, 13. After it was passed in the Senate, objections were made
that the bill’s provisions for multiple bargaining agents was unworkable and would result in chaos.
Accordingly, when the bill was heard in the Assembly, such language was removed from the bill. The
amended language has not been materially changed since that time.

1 response to that case, the Legislature enacted SB 158 to exempt only (1) police officers defined in NRS
2 288.215, (2) firefighters defined in NRS 288.215, and (3) certain addition persons having the powers of
3 a peace officer pursuant to NRS 289.150, 289.170, 289.180 or 289.190. The Legislature choose to
4 leave the prohibitions of joint bargaining unit for others in place and thus only made a specific carve.
5 As such, the Legislature approved of the Board’s order in certain respects and choose to amend the
6 EMRA for specific and defined purposes in other respects. This is a further showing of the legislative
7 prerogative in this case – perhaps the Legislature would create a carve out for rival union representation
8 in all manners or perhaps just in specific and defined areas for certain individuals. It is not for this
9 Board to guess what the Legislature might do on behalf of the citizens of this great state.

10 In *Clark County Teachers Assn’ v. Clark County Sch. Dist.*, 91 Nev. 143, 532 P.2d 1032 (1975),
11 the Nevada Supreme Court opined that the “exclusive use” provisions of CBAs were not
12 unconstitutional, insofar as they denied the respondent (American Association of Teachers) an equal
13 opportunity for membership solicitations and to dispenses information. *Id.* at 145. Citing to the
14 Board’s decision *In the Matter of American Federation of Teachers, Local 1800*, the Court “found
15 compelling Nevada’s interest in allowing ... the ‘exclusive uses’ here challenged ... [and] labor peace
16 and stability in an area as vital as public education are indisputably a necessity to the attainment of that
17 goal. Inter-union strife within the school must be minimized.” *Id.*; see also *Mentele v. Inslee*, 916 F.3d
18 783, 788 (2019); *Nevada Serv. Employees Union, Service Employees Int’l Union, Local 1107 v. Clark*
19 *County*, Case No. A1-045759, Item No. 540-B (2005) (“Moreover, through NRS 288.270(1), an
20 employee organization is protected from actions which would undercut its ability to fulfill its statutory
21 role as exclusive bargaining agent and defender of the collective bargaining agreements.”).

22 Both sides reference the Nevada Supreme Court decision in *Bisch v. Las Vegas Metropolitan*
23 *Police Dep’t.*, 129 Nev. 328, 302 P.3d 1108, 1112 (2013). In this matter, the employee filed a
24 complaint with this Board alleging its union had breached its duty of fair representation when it refused
25 to represent her at her internal affairs interview. The Nevada Supreme Court noted the right contained
26 289.080 to have two representatives of her choosing at the interview (her choice being private counsel
27 and a representative from the union). *Bisch*, 129 Nev. at 335, 302 P.3d at 1113. The Court held “that
28 the protection provided by NRS 289.080 is only in regard to Bisch's employer. Because nothing in NRS

1 289.080 or the rest of the Peace Officer Bill of Rights governs a PPA's responsibility toward its
2 members, the EMRB correctly concluded that NRS 289.080 did not impose an additional duty of fair
3 representation on the PPA.” *Id.* at 337. The Court simply held that *NRS 289* “necessarily prevent[s] the
4 employer from barring the employee from having two representatives.” *Id.* at 336. The Court did not
5 discuss whether having an agent or employee representative of a rival union serving as such capacity
6 would be permissible under the EMRA or permit a rival union to offer representation. The Court also
7 indicated *Weingarten* rights were not at issue as they make “no mention of the union's duties to the
8 employee/member in such a situation.” *Id.* at note 3.

9 NRS 289.080 provides that a peace officer “may upon request have two representatives of the
10 peace officer’s choosing present with the peace officer during any phase of an interrogation or hearing
11 relating to the investigation, including, without limitation, a lawyer, a representative of a labor union or
12 another peace officer.” It is asserted by Respondents as well as some *amicus* briefs that this provision
13 conflicts with the EMRA’s exclusive representation or provides for a carve out for certain proceedings.
14 Again, while the Board has no jurisdiction over NRS 289, these statutes can be read harmoniously.
15 *Szydel v. Markman*, 121 Nev. 453, 457, 117 P.3d 200, 202–03 (2005) (“When two statutes are clear and
16 unambiguous but conflict with each other when applied to a specific factual situation, an ambiguity is
17 created and we will attempt to reconcile the statutes. In doing so, we will attempt to read the statutory
18 provisions in harmony, provided that this interpretation does not violate legislative intent.”), *citing*
19 *Bowyer v. Taack*, 107 Nev. 625, 627, 817 P.2d 1176, 1177 (1991).

20 “It is presumed that in enacting a statute the legislature acts with full knowledge of existing
21 statutes relating to the same subject.” *City of Boulder City. v. Gen’l Sales Drivers and Helpers, Intern.*
22 *Broth. of Teamsters, Local 14*, 101 Nev. 117, 119, 694 P.2d 498, 500 (1985). In *State Dep’t of Health*
23 *& Human Servs., Div. of Pub. & Behavioral Health Med. Marijuana Establishment Program v.*
24 *Samantha Inc.*, 133 Nev. 809, 815, 407 P.3d 327, 331 (2017), the Nevada Supreme Court held: “The
25 Legislature created NRS Chapter 453A long after the APA. Because this court ‘assumes that, when
26 enacting a statute, the Legislature is aware of related statutes,’ and NRS Chapter 453A references
27 review under the APA, *see* NRS 453A.210, the Legislature's exclusion of judicial review for a
28 registration certificate in NRS Chapter 453A appears deliberate.”

1 In the same vein, NRS 288.133, 288.134, 288.136, and 288.033 were originally added in 1975
2 via AB 572 long before NRS 289.080. The language “or other representative of his choosing” was not
3 added until 1991 via AB 583⁸ and NRS Chapter 289 specifically references exhaustion of
4 administrative remedies under NRS Chapter 288 as a prerequisite to judicial relief. NRS 289.120. As
5 such, when the Legislature used this general language (“or other representative of his choosing”), a
6 harmonious and reasonable reading reconciling the statutes indicates the Legislature did not intend to
7 infringe upon the exclusive representation contained in NRS 288. Nothing in the Legislative history
8 indicates otherwise. Judge Russell even affirmed the Board’s Order holding that “an attorney who is
9 retained by the employee to act as his representative in such a proceeding should be allowed to
10 represent the employee, even if the attorney also represents a rival employee organization.” District
11 Court Decision, at 6, note 5. As NHPA explained: “It’s quite clear a peace officer is free to choose
12 whichever representative he or she would like under NRS Chapter 289. However, this right stops at an
13 officer’s personal representation. It does not permit an officer to choose the representative of the
14 Union.” Further, “[a] member can’t override this Board’s recognition merely because they would like
15 to have a different person represent the entity on his or her behalf.” Therefore, a harmonious and
16 reasonable reading can be achieved.

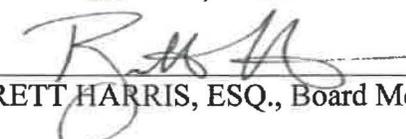
17 Dated this 17th day of June 2020.

18 GOVERNMENT EMPLOYEE-
19 MANAGEMENT RELATIONS BOARD

20 
21 By: _____
BRENT ECKERSLEY, ESQ., Chair

22 
23 By: _____
SANDRA MASTERS, Vice-Chair

24 
25 By: _____
GARY COTTINO, Board Member

26 
27 By: _____
BRETT HARRIS, ESQ., Board Member

28 ⁸ It was not until 2005, via AB 259, when NRS 289.080 was amended to state “two representatives of his choosing”.