

STATE OF NEVADA

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DEPARTMENT OF BUSINESS AND INDUSTRY
**GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD**

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December 26, 2019

**MINUTES OF THE MEETING OF THE GOVERNMENT
EMPLOYEE-MANAGEMENT RELATIONS BOARD**
(Meeting No. 19-25)

A meeting of the Board sitting *en banc* of the Government Employee-Management Relations Board, as well as that of Panels A, B, D and E, properly noticed and posted pursuant to the Nevada Open Meeting Law, was held on Tuesday, December 17, 2019, at the hour of 8:45 a.m., at the Nevada State Business Center, 3300 West Sahara Avenue, Fourth Floor, Tahoe Room, Las Vegas, Nevada 89102. The meeting was video-conferenced to the Department of Business & Industry's Director's Office Conference Room, 1830 College Parkway, Suite 100, Carson City, Nevada 89706.

The following Board members were present:

Brent C. Eckersley, Esq., Chair
Sandra Masters, Vice-Chair
Cam Walker, Board Member
Gary Cottino, Board Member
Brett Harris, Esq., Board Member

Also present:

Bruce K. Snyder, Commissioner
Marisu Romualdez Abellar, Board Secretary
Donald Bordelove, Esq., Attorney General's Office

Members of the Public Present:

In Las Vegas:
Jobe Westmoreland, AFSCME
Ashley Jenkins, AFSCME
Fernando Colon, AFSCME
Lalo Macias, AFSCME
Silvia Villanueva, NHPA
Debra Mason - DPS-HR
Paul Lunkwitz, FOP
Robert Ashcraft, FOP
Brandon Marcano
Nicholas Wieczorek, NAPSO

Rick McCann, NAPSO
Carla Scott, LVPPACE
Carter Bundy, AFSCME
Eddie Ableser, Tri-Strategies
Sammuel Palomares

In Carson City:

Ralph Handel, Operating Engineers 3
Nicholas Montgomery, NHPA
Dan Gordon, NHPA
Barry Baker, Operating Engineers 3
Geof Stark, Churchill County
Peter Long, State of Nevada DHRM
Frank Richardson, State of Nevada DHRM

The Agenda:

The Board Sitting *En Banc*

Presiding Officer Brent C. Eckersley, Esq.

The following items were for consideration by the full Board:

1. Call to Order & Roll Call

The meeting was called to order by Chair Brent C. Eckersley, Esq., on Tuesday, December 17, 2019, at 8:45 a.m. On roll call all members were marked present.

2. Public Comment

No public comment was offered.

3. Approval of the Minutes

The Board approved the minutes for the *en banc* meeting held October 3, 2019.

4. Report of the Deputy Attorney General

Deputy Attorney General Donald Bordelove gave an oral report on the outstanding cases on judicial review or at the Nevada Supreme Court.

5. Case 2019-019

In re: Petition to be Designated as the Exclusive Representative of a Bargaining Unit Pursuant to Senate Bill 135 of the 80th Session of the Nevada Legislature

Commissioner Snyder presented the petition filed by AFSCME, Local 4041 for Unit I, Category III Peace Officers, followed by the presentation of the audit report conducted by the EMRB staff. Board Member Cottino then asked the Commissioner as to his comfort level as to whether AFSCME was indeed over 50%, to which the Commissioner responded he personally has a high comfort level but that it is the Board which needs to have such a comfort level. Peter Long, Interim Director of the Department of Administration, then stated that the State has no response to this or to any of the other petitions as it is the State's position that this is solely the purview of the Board to make the decisions.

The Board then opened the floor, at which time Fernando Colon of AFSCME stated a hearing is not necessary as the affidavits are legal documents signed under the penalty of perjury. Ashley Jenkins of AFSCME then opined that an election should not be required as AFSCME is over 50%. She also stated that she was the person who drafted the language for the authorization cards and that this was not done until 2019 and that there is also information from the printer that such cards were not printed until 2019. On the issue of dual memberships, Fernando Colon stated that there is nothing in Senate Bill 135 which prohibits dual memberships when no labor organization has yet been named as the exclusive representative. Ashley Jenkins then stated that the Nevada Corrections Association (NCA) will be dissolving on December 31, 2019.

Silvia Villanueva, of Dyer Lawrence, then spoke, offering that the law firm currently represents NCA and that NCA is indeed dissolving as of the end of the year.

Chair Eckersley stated he did not believe a hearing was necessary on the subjects addressed in the affidavits as they are legal documents but that there should be evidence of the dissolution submitted.

Corrections Officer Paul Lunkwitz then spoke. He stated he was also the President of the Fraternal Order of Police (FOP), Lodge 21. He submitted 18 letters from various corrections officers claiming that AFSCME misrepresented to authorization card signers what such cards were for and that in one case forgery of the signature was alleged. His comments were followed by that of three other corrections officers, who reiterated his allegations.

Ashley Jenkins then stated that FOP is making their comments today to slow down the process as that organization has yet been unable to gather enough support to file its own petition in that they only began this process around October 18th. She also stated that the Board has already resolved the supervisory issue with respect to the Sergeants.

Board Member Cottino inquired as to the annual opt-out period for AFSCME. In response Ashley Jenkins stated a member can opt out on their anniversary date and that the request can be filed at any time. Fernando Colon inquired as to how Lunkwitz acquired copies of the exhibits to AFSCME's petition. Cam Walker brought up the issue as to whether cards signed prior to the law being enacted should be counted.

The Board thereupon deliberated on the issues in the case, and upon motion, came to the following decision: (1) that AFSCME shall have until January 13, 2020 to file evidence of NCA's dissolution and (2) that bargaining unit employees may submit additional letters to the Commissioner until January 13, 2020.

(cont'd on next page)

6. Case 2019-021

In re: Petition to be Designated as the Exclusive Representative of a Bargaining Unit Pursuant to Senate Bill 135 of the 80th Session of the Nevada Legislature

Commissioner Snyder presented the amended petition filed by AFSCME, Local 4041 for Unit F, Non-Professional Health Care and Personal Care Employees, followed by the presentation of the audit report conducted by the EMRB staff. The one issue addressed in the audit is whether to include 30 hourly child care workers. The Commissioner mentioned that the law is silent on whether hourly employees are part of any of the 11 bargaining units.

The Board then opened the floor, at which time Fernando Colon stated that a hearing is not necessary in that the issue may be moot. Ashley Jenkins stated that AFSCME was not aware that the hourly child care workers were part of the bargaining unit in that they work for NSHE and that AFSCME had been unable to get updated employee lists from NSHE for months. She further stated that it was not until the audit report was issued by EMRB staff that she learned about this issue. She stated she since inquired about the hourly child care workers and that they are a mixture of students and long-time employees. She also stated that 10 of the employees have since signed with AFSCME and she believes they should be part of the bargaining unit. Fernando Colon emphasized that whether the 30 hourly child care workers are included or excluded, either way AFSCME would be over 50% if the 10 employees are counted.

The Commissioner then mentioned that the issue seems to be whether to accept the filing of the 10 cards. Fernando Colon stated that due to a lack of an updated list from NSHE the cards should be accepted.

Chair Eckersley then opined that perhaps the Board should allow a supplemental filing as no other petition has been filed for this unit and thus no other entity would be harmed. The Commissioner stated he would prefer a supplemental filing over an amended petition in that an amended petition would require a whole new audit be conducted inasmuch as the master list of employees for the bargaining unit constantly changes as employees entire and leave state service.

Thereupon Ashley Jenkins stated that AFSCME would only want to be able to submit proof of signing up 10 of the hourly child care workers.

The Board thereupon deliberated on the issues in the case, and upon motion, came to the following decision: (1) that AFSCME be allowed until January 13, 2020, to file proof of signing up the 10 hourly child care workers they previously mentioned.

7. Case 2019-023

In re: Petition for Designation as the Exclusive Representative of a Bargaining Unit Pursuant to Senate Bill 135 (2019)

Commissioner Snyder presented the First Amended Petition filed by the Nevada Highway Patrol Association (NHPA) for Unit G, Category I Peace Officers, followed by the presentation of the audit report conducted by the EMRB staff. The Board then

reviewed the objections filed by the Nevada State Law Enforcement Officers Association (NSLEOA) as well as the reply by the petitioner.

8. Case 2019-024

In re: Petition of Nevada State Law Enforcement Officers Association (NSLEOA), Individually and on Behalf of Nevada Association of Public Safety Officers (NAPSO) and Communications Workers of America (CWA), AFL-CIO for Designation as the Exclusive Representative for Bargaining of Unit G – Category I Peace Officers Pursuant to Senate Bill 135 (2019)

Commissioner Snyder presented the petition filed by the Nevada State Law Enforcement Officers Association (NSLEOA) Unit G, Category I Peace Officers, followed by the presentation of the audit report conducted by the EMRB staff. The Board then reviewed the opposition filed by the Nevada Highway Patrol Association (NHPA) as well as the reply by the petitioner.

Note: At this point the Board opened up items 7 and 8 together and then opened the floor for discussion. Silvia Villanueva, representing NHPA, stated that Section 30 of Senate Bill 135 mandates that the Board designate NHPA as the exclusive representative of Unit G as their petition and the audit report both show that NHPA has support from more than 50% of the employees in the bargaining unit. She further stated that Section 30 uses the word “a” and not “the” with respect to representation, thus implying that dual membership is acceptable inasmuch as a labor organization only needs to show that it has support. She also stated that the NSLEOA petition is irrelevant because NHPA is over 50%, so it does not matter the level of support for NSLEOA, even though it is under 30%. Finally, she stated that only cards signed after the date the bill went into effect should be counted and that NHPA has since added 17 new members from the filing of its amended petition.

Rick McCann, representing NSLEOA, stated everyone needs to keep the “eye on the prize,” which is to get collective bargaining for all three categories of peace officers and that if the Board designates NHPA for Unit G, then so be it. He further stated he only wants to ensure that the numbers are correct. He also believes that dual memberships should not be included in the count, even though he recognizes that doing so would further push NSLEOA below the 30% threshold. Finally, he stated he is not impressed with the individuals who claim they did not mean what they signed in terms of authorization cards and that he will support whomever is designated as the exclusive representative for a bargaining unit.

Nicholas Montgomery and Dan Gordon, both with NHPA, then spoke from Carson City, stating that NHPA membership continues to grow and now is close to the 60% level.

Silvia Villanueva then stated that if the Board desires, she would submit a second amended petition with the additional evidence of support. Rick McCann thereupon said that might be a good idea. Fernando Colon stated he was concerned of having a moving target with the filing of additional evidence. The Commissioner then stated

what he saw as additional problems if a second amended petition were to be allowed, including a delay in getting the necessary information, which would prolong another audit, and push this item out to at least February 2020.

Chair Eckersley stated that if dual memberships were deemed by the Board to be acceptable, then NHPA would still be over the 40% threshold. Upon request, Deputy Attorney General Donald Bordelove then gave a short opinion on the language of “a” versus “the.” A discussion then ensued over whether the parties might stipulate to a supplemental filing by NHPA.

The Board thereupon deliberated upon the matter, and upon motion, agreed to consolidate the two petitions for Unit G into one case. No other action on the two petitions was taken.

9. Case 2019-025

In re: Petition of Nevada State Law Enforcement Officers Association (NSLEOA), Individually and on Behalf of Nevada Association of Public Safety Officers (NAPSO) and Communications Workers of America (CWA), AFL-CIO for Designation as the Exclusive Representative for Bargaining of Unit H – Category II Peace Officers Pursuant to Senate Bill 135 (2019)

Commissioner Snyder presented the First Amended Petition filed by the Nevada State Law Enforcement Officers Association (NSLEOA) for Unit H, Category II Peace Officers, followed by the presentation of the audit report conducted by the EMRB staff. The Board then opened the floor, at which time Rick McCann stated they were over 50% with no issued identified, and thus the petition should be submitted. Chair Eckersley stated no final action could be taken today as the regulations have not yet been approved by the Legislative Commission but that the petition will be placed on the agenda of the next meeting of the full Board, at which time final action could be expected.

10. Case 2018-006

Charles Ebarb v. Clark County & Clark County Water Reclamation District

The Board deliberated on Respondents’ Motion for Rehearing, and upon motion, denied the motion.

Panel A

Presiding Officer Brent C. Eckersley, Esq.

The following 3 items were for consideration by Panel A:

11. Approval of the Minutes

Panel A approved the minutes as presented for the panel meeting held December 5, 2019.

12. Case 2019-004
International Union of Operating Engineers, Local 501 v. University Medical Center of Southern Nevada

The Panel approved the Stipulation to Dismiss as presented.

13. Case 2019-022
Veronica Howard v. Teamsters Local 14

Upon motion, the Panel agreed to grant a hearing for the case. The case was then randomly assigned to Panel D.

Panel B

Presiding Officer Sandra Masters

The following 2 items were for consideration by Panel B:

14. Approval of the Minutes

Panel B approved the minutes as presented for the panel meeting held October 29, 2019.

15. Case 2017-034
Ryan Cook v. Las Vegas Metropolitan Police Department

The Panel approved the Stipulation and Order for Dismissal with Prejudice as presented.

Panel D

Presiding Officer Brent C. Eckersley, Esq.

The following 1 item was for consideration by Panel D:

16. Case 2018-030
Dawn Sanchez v. Clark County

Commissioner Snyder reported that the stipulation had not yet been received but that the parties promised that the stipulation would be filed in time for the January 14-16, 2020, Panel D meeting. Thereupon the item was held in abeyance.

Panel E

Presiding Officer Brent C. Eckersley, Esq.

The following 4 items were for consideration by Panel E:

17. Approval of the Minutes

Panel E approved the minutes as presented for the panel meeting held October 15, 2019.

18. Case 2018-026

Jason Woodard v. Sparks Police Protective Association

The panel deliberated on the first part of the bifurcated hearing previously held on the issue of equitable tolling, and upon motion, came to the decision that the doctrine of equitable tolling applies. The panel also deliberated on the Motion for Protective Order or in the Alternative Motion to Modify Subpoena Duces Tecum, and upon motion, came to the following decision: (1) SPPA has now provided documents requested in Item 1 but does not possess any items requested in Items 2, 3, or 4; (2) if said documents exist, they are in the possession, custody or control of SPD; and (3) thus, the instant motion appears moot. However, the Board grants in part on the limited basis of communications SPPA's attorney had with President Sullivan concerning Lt. McCreary.

19. Case 2019-003

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

Upon motion, the Panel agreed to grant a hearing for the case. The case was then randomly assigned to Panel C.

20. Case 2019-016

City of Las Vegas v. Las Vegas Peace Officers Association

Commissioner Snyder reported that the City of Las Vegas did not file an opposition and that he had also received a telephone call from the City of Las Vegas advising him that it was the city's intent not to file an opposition. Thereupon, upon motion the panel granted the Las Vegas Peace Officers Association's Motion to File an Amended Counterclaim.

The Board Sitting *En Banc*

Presiding Officer Brent C. Eckersley, Esq.

The following 3 items were for consideration by the full Board:

21. Assignment of Panels and Meetings for 2020

Pursuant to NAC 288.2715(1), the Commissioner consulted with the members of the Board for the purpose of determining what panels would meet at different points in time in calendar year 2020. Based on that input the cases listed below will be heard as follows:

Panel E; March 24-26, 2020; 2018-026; Jason Woodard v. Sparks Police Protective Association

Panel C; April 15-16, 2020; 2019-003, Francis Davis v. Las Vegas Metropolitan Police Department & Las Vegas Police Protective Association Civilian Employees, Inc. (PPACE)

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Panel D; April 28-30, 2020; 2018-018, Anthony Francone & Storey County Deputy Sheriffs Association v. Gerald Antinoro & Storey County

Panel A; May 12-14, 2020; 2019-007, Nye County Management Employees Association & Boskovich v. Nye County

Panel B; May 27, 2020; 2019-020, Eric Gil v. City of Las Vegas

Panel D; May 28, 2020; 2019-022, Veronica Howard v. Teamsters Local 14

The Board also agreed to have the entire board meet on January 14, 2020 to, among other things, deliberate further on the representation petitions (items 5 through 9 on this agenda).

22. Additional Period of Public Comment

No public comment was offered.

23. Adjournment

There being no additional business to conduct, Chair Eckersley adjourned the meeting.

Respectfully submitted,



Bruce K. Snyder,
EMRB Commissioner