

## **LIST OF REGULATIONS FOR REMOVAL**

(text in red is text to be removed from the agency's regulations)

### **Number 1**

[NAC 288.025 “Commissioner” defined. (NRS 288.110) “Commissioner” means the Commissioner appointed by the Board pursuant to NRS 288.090.]

**RATIONALE:** NRS 288, the agency’s enabling statute, has 16 definitions. This is the only definition repeated verbatim in NAC 288 and thus the definition is redundant. Note: There is also a definition of “Board” appearing in both NRS 288 and NAC 288. However, the definition in NAC 288 is different in that it encompasses the use of panels.

### **Number 2**

[NAC 288.010 Definitions. (NRS 288.090, 288.110) As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 288.020 to 288.038, inclusive, have the meanings ascribed to them in those sections.]

**RATIONALE:** Although the statement may be true the regulation is superfluous as the rules of statutory and regulatory construction state words and terms should have the meanings ascribed to them unless the context otherwise requires.

### **Number 3**

[NAC 288.211 Preliminary investigation of complaint. (NRS 233B.040, 288.110)]

1. In determining whether to conduct a preliminary investigation of a complaint pursuant to NRS 288.625, the Board will consider:
  - (a) Whether the complainant or petitioner is represented by counsel;
  - (b) Whether the complainant or petitioner has conducted an investigation of the complaint or similar complaints;
  - (c) The number of persons affected by the alleged violation; and
  - (d) The amount of time and resources necessary to conduct the investigation.
2. In conducting a preliminary investigation pursuant to NRS 288.625, the Board or Commissioner may:
  - (a) Interview the complainant or petitioner or any witnesses.
  - (b) Request the complainant or petitioner or any witness to provide records to the Board or Commissioner. A person shall provide any requested records to the Board or Commissioner, as applicable, not later than 30 days after the date on which the request was received by the person.
3. The Board or Commissioner will not conduct or continue a preliminary investigation if the complainant or petitioner has filed a motion to dismiss.

4. If the Commissioner conducts a preliminary investigation on behalf of the Board, upon completion of the investigation, the Commissioner shall prepare and submit to the Board, the complainant and the respondent a written report which must include a recommendation of whether the complaint has any basis in law or fact and the reason for that recommendation.

5. The Board will consider the prehearing statements filed pursuant to NAC 288.250 and the written report prepared pursuant to subsection 4, if any, and determine whether the complaint has any basis in law or fact. Upon making such a determination, the Board will take the action prescribed in paragraph (a) or (b) of subsection 2 of NRS 288.625.]

**RATIONALE:** Senate Bill 135 (2019), which authorized collective bargaining for State employees, has a provision allowing for the EMRB staff to conduct investigations of complaints filed at the State level. This provision never existed for cases at the local government level.

When the agency's regulations were before the Legislative Commission in December 2019 (which was due to extensive changes being made because of extending collective bargaining to State employees) one of the Assembly members objected to the language of NAC 288.211 as being too vague. Rejecting the regulation would have led to the Legislative Commission rejecting the entire package of regulatory changes as it could only vote up or down on the entire package. Because Senate Bill 135 dictated that the EMRB could not recognize labor organizations until the regulations were in place, this would have had the result of stopping the recognition process for a few months. The Commissioner thereupon stated he would not do any investigations until such time as changes would come back before the Legislative Commission. No changes have since been recommended and this provision has never been used.

Additionally, as previously mentioned, since the agency's inception in 1969 it has never undertaken any investigations, even at the local government level. NRS 288 is set up to make the Board akin to a court in which it is neutral, ruling on cases brought before it by both the governments and public sector unions. Undertaking investigations would have significantly altered the role of the agency by placing its thumb on the scales of justice.

#### **Number 4**

**[NAC 288.276 Duties of hearing officer; written objection to recommended decision or order; duties of Board. (NRS 233B.040, 288.110)**

1. A hearing officer appointed by the Board pursuant to NRS 288.630 to conduct a hearing that the Board is otherwise required to conduct pursuant to NRS 288.625 shall:

(a) Comply with any requirements for a hearing prescribed in NAC 288.273 to 288.350, inclusive;

(b) Ensure that the administrative record of the hearing is complete and forward the record to the Board as soon as practicable after the close of the hearing;

(c) As soon as practicable upon the close of the hearing, propose a recommended decision or order to the Board in writing, which must include, without limitation, any findings of fact or conclusions of law reached by the hearing officer; and

(d) Serve a copy of the recommended decision or order upon each party.

2. Either party may, within 14 days after service of the recommended decision or order pursuant to subsection 1, file a written objection to the recommendation with the Board.

3. Before deliberating, each member of the Board will state on the record that he or she has read:

(a) The administrative record of the hearing forwarded to the Board pursuant to paragraph (b) of subsection 1;

(b) The recommended decision or order of a hearing officer proposed pursuant to paragraph (c) of subsection 1; and

(c) Any objection filed pursuant to subsection 2.

4. The Board will consider the administrative record, the recommended decision or order of a hearing officer and any objection before rendering a final decision.

5. The Board will not substitute its judgment for that of the hearing officer as to the weight of evidence on a question of fact. The Board may substitute its judgment for that of the hearing officer as to any other matter.]

**RATIONALE:** Senate Bill 135 also has a permissive feature allowing a hearing officer to hear prohibited practice complaints at the State level in lieu of having the Board, or a panel of the Board, sit and hear the case. This feature has never been allowed at the local government level. This regulation was instituted in case this permissive feature is ever to be used. To-date it has not been used as the Board is current in hearing cases pending before the agency. Additionally, Board members have since expressed a strong interest in directly hearing the cases as they believe it is their duty to do so. Moreover, the cost for the Board, or a panel of the Board, to sit and hear a case is less than the cost of hiring a hearing officer, given the current salary paid to Board members.

## **Number 5**

**[NAC 288.050 Severability. (NRS 288.110)** If any of the provisions of this chapter or any application thereof to any person, thing or circumstance is held invalid, it is intended that such invalidity not affect the remaining provisions, or their application, that can be given effect without the invalid provision or application.]

**RATIONALE:** Although this regulation could be important it has to the best of our knowledge never been invoked. This regulation was last amended in 1973.

## **Number 6**

**[NAC 288.320 Contemptuous conduct. (NRS 288.110) Contemptuous conduct at a hearing is grounds for exclusion from the hearing.]**

**RATIONALE:** Although this regulation could be important it has to the best of our knowledge never been invoked and most certainly has not been invoked during the last 10 years, which is the length of service of the current Commissioner. This regulation was created in 1971 and has never been amended.

## **Number 7**

**[NAC 288.430 Procedure for consideration of petition for adoption, amendment or repeal of regulations. (NRS 288.110)**

1. A petition for the adoption, amendment or repeal of a regulation must contain:
  - (a) The name, address, zip code and telephone number of each petitioner;
  - (b) The signature of each petitioner;
  - (c) A statement of the nature of the petitioner's interest;
  - (d) A draft of the substance of the proposed regulation or amendment or a designation of the provisions sought to be repealed;
  - (e) A statement of the reasons for the proposed regulation, amendment or repeal;and
- (f) Any other information pertinent to the petition.
2. The petition must be filed with the Board.
3. The Board will either deny the petition in writing, stating its reasons for the denial, or act in accordance with the procedures provided in chapter 233B of NRS for the adoption, amendment or repeal of regulations.
4. Any petition which does not conform to the requirements specified in this section may be rejected.]

**RATIONALE:** This provision has never been used in the last 10 years, if not longer. Additionally, it has been the practice (except during the pandemic) to have what the agency calls an Open Forum. Those with an interest in the agency have at that time an opportunity to propose any number of changes to the agency, including changes in its regulations. A number of the improvements we have made – and a number of the changes in the regulations – have been a product of these Open Forums. Also, it has been the practice of the agency to hold two workshops when it proposes changes in its regulations. The first workshop proposes no language but, rather, is an open discussion of what changes are needed based on an open discussion. This open discussion is then used to help staff draft proposed language. We believe that these practices have been much more fruitful than that listed in NAC 288.430.

## **Number 8**

**[NAC 288.150 Fact finder: Personal assessment of merits prohibited; schedule for hearing; record of proceedings; report. (NRS 288.110, 288.200)**

1. A fact finder shall not make a personal assessment of the substantive merits of any issue submitted to him or her.

2. The fact finder shall inform any party requesting binding fact-finding of the schedule of the dates and times for the hearing established pursuant to subsection 4 of NRS 288.200.

3. If any fact finder fails to establish a schedule of dates and times for the hearing, the requesting party must report the failure to the Commissioner and inform the Commissioner of the diligent efforts made by the party in obtaining dates and times from the fact finder.

4. A fact finder shall keep a full record of the proceedings. The record must be preserved so that a transcript may be available at the request of the Board.

5. The report of the fact finder to the parties must contain:

- (a) A background statement;
- (b) A statement of the issues in dispute;
- (c) A statement of the position of the parties;
- (d) The findings of fact;
- (e) Conclusions based on the findings of fact;
- (f) The determinations of the fact finder; and
- (g) Any special explanatory comments.]

**RATIONALE:** To the best of our knowledge no inquiries have been made by either governments or public sector unions to EMRB staff relative to this regulation in the last 10 years. Though the EMRB keeps a list of individuals willing to serve as fact-finders, virtually all governments and public sector unions use the services of the Federal Mediation and Conciliation Service (FMCS) and its roster of fact-finders. The FMCS has its own set of rules as to the conduct of fact-finding and arbitrations and the conduct of individuals serving in those capacities.

### **Number 9**

**[NAC 288.155 Fact finder: Effect of failure to schedule hearing. (NRS 288.110, 288.200)** Any failure of a fact finder to establish a schedule of dates and times for a hearing pursuant to subsection 4 of NRS 288.200 does not prejudice the rights of any party requesting binding fact-finding.]

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## **Number 10**

**[NAC 288.060 Mailing lists for notice of complaints or controversies and copies of documents; charge for furnishing documents. (NRS 288.110)**

1. Any person may request in writing that he or she be placed on a mailing list kept by the Board so that he or she will be provided written notice of any complaint or controversy which is the subject of a hearing before the Board.

2. Any interested person may request that he or she be placed on a mailing list kept by the Board so that he or she will be provided copies of regulations, final orders, decisions and opinions adopted or rendered by the Board.

3. The Board may make a reasonable charge for the cost of furnishing any documents requested.]

**RATIONALE: To the best of our knowledge no one has requested to be on a mailing list through reference of this regulation.**

**Through the filing of annual reports by each government and public sector union, done pursuant to NRS 288 and NAC 288, the agency has a robust set of mailing lists. Additionally, the agency has a mailing list of attorneys who have appeared before the Board as well as other persons who have expressed an interest in the agency. These individuals automatically receive a monthly e-newsletter which includes information listed in the regulation. The agency also automatically sends these persons all changes in NRS 288 as well as copies of all updated regulations.**

**Moreover, the agency has a website which contains every order ever issued by the agency since 1969, including an index which can be used for legal research. Finally, all the agency's information is digitized. Thus, when it receives public records requests it sends this information to the requestor via attachments to one or more e-mails and does so at no cost to the requestor. Most of these requests are responded to in a matter of minutes or a few hours.**