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

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September 20, 2023

**MINUTES OF THE MEETING OF THE GOVERNMENT
EMPLOYEE-MANAGEMENT RELATIONS BOARD**
(Meeting No. 23-10)

A meeting of the Board sitting *en banc*, as well as of Panel C, of the Government Employee-Management Relations Board, properly noticed and posted pursuant to the Nevada Open Meeting Law, was held on Monday, September 18, 2023 and Wednesday, September 20, 2023. The meeting was held at the Department of Business & Industry's Division of Insurance Conference Room, located at 1818 E. College Parkway, Suite 103, Carson City, NV 89706. The meeting was also video-conferenced to the Carl Dodge Conference Room, which is located in Suite 490 of the Nevada State Business Center, 3300 W. Sahara Avenue, Las Vegas, NV 89102. The meeting was also held virtually using a remote technology system called WebEx.

The following Board members were present:

Brent C. Eckersley, Esq., Chair
Michael J. Smith, Vice-Chair
Sandra Masters, Board Member
Tammara M. Williams, Board Member
Michael A. Urban, Esq., Board Member

Also present:

Bruce K. Snyder, Commissioner
Marisu Romualdez Abellar, Executive Assistant
Isabel Franco, Administrative Assistant II
Samuel Taylor, Esq., Attorney General's Office

Members of the Public Present:

Adam Levine, Esq., Daniel Marks & Associates
Ronald J. Dreher, Esq., for APTA
Kevin Pick, Esq., WCSD
Kaaren Anderson, WCSD
Mandee Bowsmith, Administrator, DHRM
Matthew Lee, DHRM
Stacey Dunlap, DHRM

Nadia Tung, DHRM
Janice Willhite, DHRM
Nathan Holland, Esq., Attorney General's Office
Jennifer Davies, Attorney General's Office
Shaun Bowen, Attorney General's Office
Matt Ross, Attorney General's Office
Sean Gallagher, NPOA
Andrew Regenbaum, Esq., NAPSO
Alex Velto, Esq., Hutchison & Steffen, NPU
Terri Strickland, Reno City Attorney's Office
Brett Taylor, BBFFA
Tom Donaldson, Esq., Dyer Lawrence, BBFA

The agenda:

The Board Sitting *En Banc*
(Presiding Officer Eckersley)

The following 2 items were for consideration by the full Board:

1. Opening Items

The meeting was called to order by Chair Brent C. Eckersley, Esq. at 9:00 a.m. On roll call the three Panel members for item 3 on the agenda were present (Eckersley, Masters and Urban. Thus, a quorum was present.

2. Public Comment

No public comment was offered.

Panel C (Modified)
(Presiding Officer Eckersley)

The following 1 item was for consideration by Panel C:

3. Case 2022-002

Association of Professional-Technical Administrators v. Washoe County School District

This agenda item is for Eckersley, Masters and Urban as pursuant to NAC 288.271(2)(c), the Commissioner had randomly selected Vice-Chair Masters to fill the vacancy caused by the resignation of Board Member Cottino. Also pursuant to NAC 288.271(2)(c), the Commissioner had selected Chair Eckersley to fill the vacancy on the panel caused by the resignation of Board Member Harris. Also pursuant to NAC 288.271(2)(c), the Commissioner had selected Board Member Urban to fill the vacancy due to the recusal of Board Member Smith. Pursuant to NAC 288.271(4) the presiding officer was Chair Eckersley.

At the appointed time for the hearing Adam Levine, Esq., attorney for Complainant,

moved that the case be dismissed with prejudice. Hearing no opposition, the Panel granted the motion with each side to bear its own attorney's fees and costs.

The Board Sitting *En Banc*
(Presiding Officer Eckersley)

The following 16 items were for consideration by the full Board:

4. Opening Items

The Wednesday session of the meeting was called to order by Chair Brent C. Eckersley, Esq. at 9:00 a.m. On roll call all Board members were present. Thus, a quorum was present. A moment of silence was then observed, followed by the Pledge of Allegiance.

5. Additional Period of Public Comment

Adam Levine stated that he was in favor of positions being added to the bargaining units and referenced NRS 288.138 and NRS 288.425(2)(a) when explaining that law enforcement supervisors should be evaluated to the same criteria as their local government counterparts.

Matt Ross, a Deputy Chief Investigator with the Nevada Attorney General's Office, stated that he believes Attorney General Deputy Chiefs should be considered supervisory employees as their job duties exceed the standards set in NRS 288.138. Furthermore, Mr. Ross stated that failure to include Attorney General Deputy Chiefs as supervisory employees pursuant to Bill 166 will cause a recruitment and retention issue.

Sean Bowen, a Deputy Chief Investigator with the Nevada Attorney General's Office, stated that he was involved in the creation of the class specifications for the criminal investigators within the AG's office when they went from being appointive to classified and that those positions were intended to be handled as supervisors. Mr. Bowen respectfully requested that the investigators be considered supervisory employees.

6. Approval of the Minutes

Upon motion, the Board approved the minutes of the meeting held August 15, 2023, as corrected.

7. Case 2023-022

In Re: The Assignment of Executive Department Job Classifications to Bargaining Units Pursuant to Bill 166 of the 82nd Session of the Nevada Legislature

Commissioner Snyder provided background information on the four new supervisory bargaining units and noted that no objections were filed for Unit N, Category III Peace Officer Supervisors. Accordingly, he recommended that the Board approve the State's recommendations for this bargaining unit. Upon motion, the Board approved the job classifications for Unit N as recommended.

Chair Eckersley opened the floor for comments on the three units that had objections. The following statements were made regarding Unit L:

Commissioner Snyder stated that Unit L had objections regarding three different managerial jobs. He stated that the State is recommending the jobs remain managerial while the two police unions who filed the objections believe the jobs should be considered part of the bargaining unit.

Alex Velto, representing the Nevada Police Union, stated that their objection was filed based on two problems. First, he stated that lieutenants share the same community of interest as sergeants and because of that they should be considered part of the same bargaining unit. Mr. Velto stated that if the Board were to decide the jobs be split into different units, the effect would be that one group is left without a bargaining process and it would further dilute the bargaining power. Mr. Velto then referenced Local 731 in the City of Reno during 1972 when the Board enforced a policy to minimize practical difficulties of a local government employer and minimize union dilution. Mr. Velto explained that a smaller fragmented bargaining unit will further decrease the ability of the group to bargain for itself. Mr. Velto stated that further dilution will make issues in collective bargaining for public sector employees worse. Mr. Velto stated that the Board should consider the jobs to have the same community of interest both because their jobs and skills are the same and because of the effect it will have on the union. Second, he stated that the language in NRS 288.425(2)(a) defines a manager as an employee whose primary function is to control the business of the agency. Mr. Velto referenced the job description attached as an exhibit and stated that the primary function is not to administer the agency's business and because of the that, lieutenants cannot be considered managerial under the statute. Mr. Velto stated that the Board should consider that it has already included lieutenants in the corrections group and to compare and contrast the job descriptions of the lieutenants because the court supported the inclusion of lieutenants in the bargaining group for Unit L. Mr. Velto emphasized the importance of statewide collective bargaining and how it could be rendered meaningless if these groups are further diluted.

Andrew Regenbaum, the Executive Director of NAPS0, stated that he filed objections on behalf of the Nevada Police Officers Association. Mr. Regenbaum pointed out that his predecessor, Rick McCann, is NAPS0's lobbyist in Carson City and was instrumental in the writing and passage of SB 166. Mr. Regenbaum explained that the intent of that law was for supervisory employees to have collective bargaining rights. He stated that supervisory employees were defined in section A and intended to include lieutenants based on the fact that the positions have the same community of interest as the other employees included in the bargaining unit. Mr. Regenbaum stated that section 3 of SB 166 indicates that this Board must assign a new classification to a bargaining unit based upon the similarity of the new classification to other classifications within the bargaining unit. Furthermore, he stated that the lieutenants perform the same supervisory functions as the sergeants who are part of the bargaining unit. Mr. Regenbaum stated that DHRM did include corrections lieutenants in Unit N and that not including lieutenants in Unit L would make the State untenable.

Sean Gallagher, president of the Nevada Peace Officers Association, stated that lieutenants are working supervisors just like the lieutenants at the counties and the cities. Mr. Gallagher stated that he feels as though the NPOA has tried to help the State with its retention problems and that the State need not look further than looking at the cities and counties to see that lieutenants in the local law enforcement agencies are classified officers with collective bargaining rights. Lastly, he stated that this creates a major salary compaction issue and negotiations issue. Mr. Gallagher expressed that there will not be any incentive for officers to become a lieutenant and the State should want their officers to promote and stay in their jobs because the taxpayers have invested in their careers.

Mandee Bowsmith, Administrator for the Division of Human Resource Management for the State of Nevada, stated that when evaluating what positions should be in which bargaining units, the State did take into consideration both community of interest and job specification with the current classification program of the State. Ms. Bowsmith stated that under the classification program there are very clear delineations about managerial duties. Ms. Bowsmith stated that while there is an argument to be made that lieutenants are working managers rather than administrative managers, the State believes that the job classifications fall within the managerial range within the classification program. Ms. Bowsmith pointed out that the opposition had referenced similarities between law enforcement officers in local governments but that the State's job classifications are different. Ms. Bowsmith noted that if the job classifications need to be revisited and updates need to be made that the State is open to such conversations but given the current job classification information the State has, that is how the State has grouped lieutenants.

Alex Velto responded to Ms. Bowsmith by stating that the effect of the Board's ruling to separate lieutenants out of the bargaining group is going to cause serious problems for the State. Mr. Velto stated that it will cause compaction issues and make it so that employees will not want to promote. Mr. Velto also stated that it's part of the tactic by management to try to prevent unions from bargaining successfully. He explained that when a higher group is not unionized, the ability to raise wages can always be refuted in the negotiations to raise wages by telling employees that they will make more than their supervisors. Mr. Velto then pointed out that DHRM did not address the parallel to corrections officers and that there should be no difference in the Board deciding that lieutenants can be part of the supervisory group. Mr. Velto concluded by stating that he hopes the Board allows public sector bargaining to proceed and doesn't allow the groups to be diluted.

Andrew Regenbaum responded to Ms. Bowsmith by adding that DHRM's position falls on the single sentence within the job work standards for the lieutenants that say it is a first line managerial position, a standard that by their own admission is outdated and needs to be reclassified. Mr. Regenbaum stated that it is language that management could put in at any time that has no effect on the job duties that are handled by the lieutenants and therefore lieutenants would be excluded from the supervisory positions because management has chosen to include the sentence that they are managerial. Mr. Regenbaum concluded that the State is wrong for relying on the one sentence as

opposed to what actually happens on the job.

The following statements were made regarding Unit M:

Commissioner Snyder stated that Unit M had three objections raised by NAPSO. He stated that the first objection was regarding the Supervisory Criminal Investigator II position that is currently vacant but NAPSO believes should be included in the bargaining unit. Next, he stated that the second objection was regarding the Unit Manager position for the Youth Parole Bureau, which is considered managerial, that NAPSO also believes should be included in the bargaining unit. Commissioner Snyder then stated that the third objection was regarding a job not originally listed by the State, Attorney General Deputy Chief Investigator, which is currently considered managerial and NAPSO believes should be included in the bargaining unit. He concluded that the objections raised affect a total of eight employees.

Andrew Regenbaum, the Executive Director of NAPSO, began by stating that the objection regarding the youth parole manager position is no different than the objections made relative to the DPS lieutenant and university lieutenant positions. Mr. Regenbaum stated that the work standards set for youth parole managers show that they are supervisors and therefore NAPSO believes it was inappropriate that they were categorized as management. Mr. Regenbaum asked that youth parole managers be classified as supervisors. He then referred to the Supervisory Criminal Investigator II position and stated that DHRM did consider the position to be part of Unit M but the reason it was excluded is because the position is currently vacant. Mr. Regenbaum stated that NAPSO's understanding is that there are officers that can be placed in that position at a later time and therefore should be included in the bargaining unit. Lastly, Mr. Regenbaum stated that the Attorney General Deputy Chief Investigator position is akin to a lieutenant position. He explained that the job descriptions for those positions indicate that they are performing a supervisory role and that the managerial duties of those positions are secondary to their primary functions so they belong in the supervisory unit. Mr. Regenbaum stated that he believes it was an oversight by the State that the position was not originally listed as part of Unit M and asked the Board to correct the oversight and add it the bargaining unit.

Mandee Bowsmith, Administrator for the Division of Human Resource Management for the State of Nevada, responded to Mr. Regenbaum by stating that the State has no objection to the Supervisory Criminal Investigator II position being included in Unit M. Ms. Bowsmith then referred to the Unit Manager position for the Youth Parole Bureau and stated that although the position performs duties similar to their subordinates, the Unit Managers are managing the operations of that unit and are therefore classified as managers within the State classification system. Next, Ms. Bowsmith stated that the Attorney General Deputy Chief Investigators, although they also perform duties similar to their subordinates, are considered managers because they are still managing teams and programs within their jobs and for that reason the State has classified them as managers. Furthermore, Ms. Bowsmith addressed Mr. Velto's statement that the State is intentionally delaying decisions regarding job classifications and explained that that is

not true and that the State is doing its best to classify jobs appropriately. Ms. Bowsmith then addressed the statements regarding compaction issues and stated that there are compaction issues but making a determination as to what is a managerial employee versus a supervisory employee is not going to make the compaction issues any different. She stated that the State is performing a comprehensive compensation study that will reveal if and how much State employees are underpaid. Ms. Bowsmith stated that the study includes managerial employees, classified employees, and unclassified employees because the State needs to determine how to solve the compaction issues. Ms. Bowsmith then clarified her statement regarding management in the DPS lieutenant job classification by stating that she did not mean the classification is outdated in regards to being management but that the classification needs to be updated and that the State still believes those positions are managerial. Lastly, Ms. Bowsmith stated that the DHRM believes that collective bargaining is important and that the DHRM is committed to ensuring the bargaining process is seamless.

Andrew Regenbaum responded to Ms. Bowsmith by stating that the Board should look at the amended section in NRS 288.138 as set forth in SB 166. Mr. Regenbaum stated that the language in section A is dispositive as to Attorney General Deputy Chief Investigators and Unit Managers because the jobs they are doing are supervisory. Mr. Regenbaum stated that the intent of SB 166 was to take the positions mentioned and allow them to be part of the supervisory bargaining units. He concluded that applying the language of the law to the Attorney General Deputy Chief Investigator and Unit Manager job descriptions clearly shows that they should be part of Unit M.

The following statements were made regarding Unit O:

Commissioner Snyder stated that the State recommended six job titles be in Unit O. He stated that there were no objections regarding those positions but that the Battle Born Firefighters Association objected that the positions Fire Management Officer I and II should have been on the original list but were not. Commissioner Snyder stated that the positions are currently managerial and the association is recommending they be included in Unit O. He concluded that the objection effects a total of three employees.

Thomas Donaldson, representing the Battle Born Firefighters Association, stated that they agree with the six classifications recommended by the State to be in Unit O and would like Fire Management Officer I and II to be included as well. Mr. Donaldson stated that the two positions share the same community of interest as the jobs recommended by the State. He stated that Fire Management Officers are not managing policies and procedures of the agency and therefore should be classified as supervisory. He also stated that the pay grades of the FMO positions fit within the range of the pay grades of the six supervisory positions and because of that should be included in Unit O. Mr. Donaldson concluded by stating that he agrees with the other unions that there should be large bargaining units, not small fragmented units and that the three employees affected should not be excluded.

Mandee Bowsmith, Administrator of the Division of Human Resource Management for

the State of Nevada, responded to Mr. Donaldson by stating that the DHRM has not made arbitrary recommendations regarding the job classifications. Ms. Bowsmith urged the Board to carefully read the classifications to understand that Fire Management Officer II is the highest level of its job series and a management position. She then stated that the pay grades of the positions are not indicative of a management or supervisory classification.

Mr. Donaldson responded to Ms. Bowsmith by stating that the class specifications for FMO I and II end with language regarding training supervisors and evaluating performances of subordinates and that shows that the positions are supervisory and should be included in Unit O.

Additional comments on Item 7:

Brett Taylor, president of the Battle Born Firefighter Association, stated that he is a Helitack Supervisor for the State of Nevada, Division of Forestry and referred to his interactions with FMO I and II. Mr. Taylor stated that the positions are equal in pay and in job duties. He stated that they interact in day to day business, supervising employees and on fires. Mr. Taylor concluded by stating that the association's pursuit of SB 166 is to help the State with collective bargaining and provide a way to separate supervisory from non-supervisory positions.

Sean Gallagher, president of the Nevada Peace Officers Association, stated that based on the assessment that a Unit Manager is a manager, there is no supervisor. Mr. Gallagher explained that there is a Chief, Unit Manager, and officers. He stated that the Chief of the Youth Parole Bureau asked him to advocate on behalf of the Unit Managers that they are in fact supervisors. Mr. Gallagher then referred to the Attorney General Deputy Chief Investigator position and stated if the State's logic is that people within the same classification get the same treatment then the AG Deputy Chief Investigator should get the same classification as the other officers in Unit M. He concluded by stating that the unions have presented evidence and detailed information about working level supervisors and that the State is simply reading off the job specifications and if the specifications say the position is management then the position is classified as management. Mr. Gallagher stated that he believes all the evidence presented suggests that both positions are supervisory and should be included in Unit M.

Upon conclusion of the oral arguments, the Board deliberated on the matter and came to the following two decision. First, upon motion, the Board included the Supervisory Criminal Investigator II job classification for Unit M, which was uncontested during oral argument. Secondly, upon motion, the Board found that there were material facts in dispute with respect to the remaining objections and thus ordered an evidentiary hearing, to be held in January 2024.

(cont'd on next page)

8. **Case 2022-007**
Las Vegas Peace Officers Association & Candace Chambers v. City of Las Vegas
The Board deliberated on the Stipulation to Dismiss Prohibited Labor Practices Complaint, and upon motion, granted the stipulation as presented.
9. **Case 2020-019**
Susan Finucan v. City of Las Vegas
The Board deliberated on the Joint Status Report but took no action, thus keeping the stay in effect. The next report will be due November 29, 2023.
10. **Case 2020-020**
American Federation of State, County and Municipal Employees, Local 4041 & Shari Kassebaum v. State of Nevada ex rel, its Department of Corrections
The Board deliberated on the Joint Status Report but took no action, thus keeping the stay in effect. The next report will be due November 29, 2023.
11. **Case 2023-020**
Clark County School District v. Clark County Education Association
The Board deliberated on the Joint Status Report but took no action, thus keeping the stay in effect. The next report will be due within three days of any future court order. This item will again be on the October agenda.
12. **Case 2023-021**
Clark County Education Association v. Clark County School District
The Board deliberated on whether, pursuant to NAC 288.275, to consolidate the hearing for this case with the cases between the same parties that are currently set for hearing in November, and upon motion, did order the consolidation of this case. The prehearing statements will be due within seven days of the entry of the order.
13. **Case 2023-013**
Rosa Myers v. City of Reno & Reno Fire Department
The Board deliberated on the Motion to Dismiss Prohibited Practices Complaint, and upon motion, denied the motion.
14. **Case 2023-015**
Association of Professional-Technical Administrators v. Washoe County School District
The Board deliberated on the Motion to Dismiss and, In the Alternative, Motion to Stay, but came to no decision. This item will again be placed on the October agenda.
15. **Case 2023-025**
In Re: Petition to be Designated as the Exclusive Representative of a Bargaining Unit Pursuant to Senate Bill 166 of the 82nd Session of the Nevada Legislature
Commissioner Snyder briefly mentioned that a petition for recognition had been received from the Fraternal Order of Police Nevada C.O. Lodge 21, who sought to be recognized as the exclusive representative of Unit N-Category III Peace Officer Supervisors. He

stated he had conducted an audit of the materials submitted, including a membership list and cards and had concluded that the labor organization has more than the 50% plus one support to be recognized without an election.

Thereupon, upon motion, the Board granted the petition and declared the labor organization as the exclusive representative of the bargaining unit.

16. Setting of Board Meeting Dates

The Board deliberated on the dates for future meetings and set the following dates: January 9-11, 2024; February 20-22, 2024; March 19-21, 2024; and April 16-18, 2024.

17. Authorization for Show Cause Hearing

Commissioner Snyder reported that the remaining governments had paid their annual assessments and thus this item could be cancelled.

18. Additional Period of Public Comment

No public comment was offered.

19. Adjournment

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

Respectfully submitted,



Bruce K. Snyder,
EMRB Commissioner