



## Government Employee- Management Relations Board

Nevada Department of Business and Industry

3300 W. Sahara Avenue Suite 260 ▪ Las Vegas ▪ NV ▪ 89102  
emrb.nv.gov ▪ emrb@business.nv.gov ▪ (702) 486-4505

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### Members of the Board

Brent C. Eckersley, Esq., Chair

Sandra Masters, Vice-Chair

Gary Cottino, Board Member

Brett K. Harris, Esq., Board Member

Michael J. Smith, Board Member

### Staff

Bruce K. Snyder, Commissioner

Marisu Romualdez Abellar,

Board Secretary

## Recent Decisions

Please note that summaries of recent decisions are provided for informational purposes only and are not intended to substitute for the opinions of the Board. These summaries should not be cited to or regarded as legal authority. The EMRB will provide copies of the decisions upon request. They also may be found on our website.

### **Case 2021-014; Clark County District Attorney Investigators Association v. Clark County.**

This was a petition for declaratory order and not a prohibited practices case. On September 22, 2021, Petitioner received a draft of an employee vaccination policy, to be effective November 13, 2021. The draft stated that any unvaccinated employee would be subject to discipline or discharge after effective date. In its petition, the employee organization argued that Clark County was obligated to bargain any vaccine mandate as such a mandate was significantly related to two subjects of mandatory bargaining, namely (1) discharge and discipline of employees and (2) safety of the employee.

In response, Clark County argued that the vaccination policy is a management right and not a mandatory subject of bargaining. Clark County also stated that they since agreed to impact bargaining. Moreover, Respondent later decided not to implement the vaccination policy as drafted.

Thereupon, the Board agreed that the issue was moot and therefore declined to directly rule on the petition. However, the Board, in dicta, did set forth its thoughts on the issue in the petition, so that the parties in the instant case and others similarly situated may consider the Board's thoughts if faced with this issue going forward. Below are their thoughts:

This Board has previously recognized the severity of the COVID-19 pandemic and has deemed the pandemic to be an emergency under NRS 288.150(5). See *AFSCME Local 4041 v. Nevada System of Higher Education*, Item No. 874, EMRB Case No. 2020-030 (2021). Therefore, the COVID-19 pandemic is a natural disaster and a matter of public safety.

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### List of Panels

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Panel E Eckersley, Masters, Cottino

Note: The first person listed for each panel is the Presiding Officer.

## Almost All Annual Reports Now Submitted

Out of more than 350 governments and unions, we are now down to only four local governments who have yet to file their annual reports and we continue to follow-up with them to ensure they ultimately do file their reports. To all the rest of the governments and all the labor and employee organizations who have filed, we say thank you very much. We will soon be uploading all the new information and copies of the collective bargaining agreements to our website.

## On the Horizon

The next Board meeting will be Thursday, February 10, 2022. This meeting will be held virtually using WebEx. At that time the full Board will deliberate on four motions to dismiss:

2021-016, [International Union of Operating Engineers, Local 501 v. University Medical Center of Southern Nevada](#)

2021-018, [Service Employees International Union, Local 1107 v. Clark County](#)

2021-019, [Service Employees International Union, Local 1107 v. Clark County](#)

2021-021, [Reno Administrative/Professional Group – Professional Unit v. City of Reno](#)

The Board will also deliberate on whether to certify the results of a recently-held representation election involving the International Union of Operating Engineers, Local 501 and Esmeralda County.

Moreover, the Board will also listen to a presentation by the Office of the Attorney General on options as to the role of that office for cases on a Petition for Judicial Review at the District Court level and of appeals at the Nevada Supreme Court or Court of Appeals.

Finally, the Board will also review draft updates to the agency's strategic plan and approve the draft, either as is or with changes.

## Limited Deferral Doctrine Explained

Currently the EMRB has 12 cases on hold (i.e., stayed) under the limited deferral doctrine. What is this doctrine and how do such cases proceed at the EMRB? In 1991, the EMRB adopted the limited deferral doctrine in a case involving [IAFF, Local 731 v. the City of Reno](#). The EMRB's version of the limited deferral doctrine has been modeled after the same doctrine used by the National Labor Relations Board in cases that are filed with that Board between private sector employers and unions representing their employees.

At the EMRB, parties to a case are required by NAC 288.250 to provide, among other things,

A statement of whether there are any pending or anticipated administrative, judicial or other proceedings related to the subject of the hearing and, if so, a description of the manner in which those proceedings may affect the hearing and an opinion concerning whether the hearing should be stayed pending the outcome of any such proceedings.

In addition to providing this information in a prehearing statement, some parties file a motion to stay the pending case. Cases eventually come before the Board to decide whether to grant a hearing. At that time, it would be noted as to whether a given case has underlying pending proceedings. The Board then, under the limited deferral doctrine, would stay the case until those underlying proceedings have concluded. The Board usually requires the parties to submit joint status reports every three months or so, to enable the Board to effectively oversee the case while it is stayed.

Of the 12 cases currently stayed under the limited deferral doctrine, seven are stayed pending the resolution of an underlying grievance/arbitration, four are stayed pending conclusion of court proceedings, and one is stayed pending resolution of an internal union appeal process.

Upon conclusion of the underlying proceedings, the party who prevails at that level normally files a motion to defer, which requests that the Board not schedule its own hearing on the matter but instead defer to the decision rendered in the other proceeding. As to the dispute itself, the EMRB defers to a decision if: (1) the proceedings were fair and regular; (2) the parties agreed to be bound; (3) the decision was not clearly repugnant to the purposes and policies of the EMRA; (4) the contractual issue was factually similar to the unfair labor practice issue(s); and (5) the decision maker was presented generally with the facts relevant to resolving the unfair labor practice(s). If any of the five points are not met, then the EMRB would schedule a hearing on the matter.

## In the Queue...

Once initial pleadings, including prehearing statements, have been filed with the EMRB and after any motions to dismiss or defer have been decided, then a case typically goes into a queue, waiting for the Board to decide whether to grant a hearing in the case or dismiss the complaint. There is one case scheduled for a hearing:

**February 8-10, 2022, via WebEx**

None.

**March 8-10, 2022, via WebEx**

2021-009, AFSCME, Local 4041 v. State of Nevada et al.

**April 5-7, 2022, In-Person in Las Vegas with video-conferencing to Carson City**

None yet assigned.

**May 10-12, 2022, In-Person in Las Vegas with video-conferencing to Carson City**

None yet assigned.

**June 14-16, 2022, In-Person in Las Vegas with video-conferencing to Carson City**

None yet assigned.

No other cases are waiting in the queue for a hearing date.

## Board Members Continuing in Office

The Board consists of five members appointed by the Governor for four-year terms. Due to the increase in the size of the Board from three members to five members back in 2017, along with two resignations since then, it just happens that four of the five Board members had terms ending June 30<sup>th</sup> of last year. These include Chair Brent C. Eckersley, Vice-Chair Sandra Masters, Board Member Gary Cottino and Board Member Michael J. Smith. Board Member Brett K. Harris' terms ends next year.

State law, though, provides that members may continue to serve on a board until such time as a successor has been appointed to fill the expired term. We continue to hope hearing soon as to whether the existing Board members have been reappointed or whether there will be one or more successors appointed.

## Reminder About Useful Resources

The EMRB maintains on its website a list of individuals who are willing to serve as an arbitrator, mediator or fact-finder. Also, the EMRB keeps current copies of all collective bargaining agreements on our website. Check out all these resources next time you visit [emrb.nv.gov](http://emrb.nv.gov).

Additionally, the EMRB has all its decisions from its inception in 1969 through September 2019 on the Nevada Library on CD, published by the Legislative Counsel Bureau. This product, used by many law firms and governments, is searchable in many ways and is relatively inexpensive to purchase.

### "About the EMRB"

The Government Employee-Management Relations Board (EMRB), a Division of the Department of Business and Industry, fosters the collective bargaining process between governments and their labor and employee organizations (i.e., unions), provides support in the process, and resolves disputes between governments, labor and employee organizations, and individual employees as they arise.