



Government Employee-Management Relations Board

Nevada Department of Business and Industry

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EMRB PROVISIONAL GUIDANCE

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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

Petition for Unit K Filed with Board

The Battle Born Firefighters Association recently filed a recognition petition with the Board for State of Nevada bargaining unit K, which consists of full-time and seasonal firefighters who work for the State of Nevada. Unit K is the smallest of the State's 11 predefined bargaining units, consisting of 55 employees. Their petition claims that the labor organization represents 56.4% of the 55 employees. An audit performed by EMRB staff confirms that number. This item will be placed on the upcoming Board agenda (see below).

If granted recognition by the Board, seven of the 11 bargaining units will now have a labor organization recognized as an exclusive representative. These seven bargaining units, though, only account for about one-third of the State classified employees eligible to have collective bargaining as the remaining two-thirds of such employees are in the other four bargaining units that do not yet have a recognized labor organization.

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List of Panels

Panel A Eckersley, Masters, Harris
Panel B Masters, Harris, Vacant
Panel C Cottino, Harris, Vacant
Panel D Eckersley, Cottino, Vacant
Panel E Eckersley, Masters, Cottino

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

On the Horizon

The Board is scheduled to meet October 27-29, 2020 via WebEx. The only two major items are the afore-mentioned petition and a hearing in Case 2019-010, Leonard Cardinale v. City of North Las Vegas. Cardinale claims that after he had been promoted to Lieutenant the City of North Las Vegas has discriminated against him for personal or political reasons by, among other things, denying him specialized training, denying him special assignments, and denying him the shift for which he bid. The City of North Las Vegas denies all the claims. The hearing is expected to last all three days.

The next Board meeting is scheduled for November 17-19, 2020 via WebEx. No hearing is scheduled for that meeting. However, if the Cardinale case does not finish from the prior meeting, then the remainder of the hearing will be held at this meeting. Much of this meeting will be used to deliberate on a hearing previously held, along with several pending motions.

Michael J. Smith Appointed to the Board

Just before we went to press, we received notification that the Governor had appointed Michael J. Smith to the Board. Mr. Smith, who hails from Carson City, will complete the remainder of the term of Cam Walker, and thus his appointment will run through June 30, 2021. As we learn more about our newest Board member, we will issue a special e-mail to all those on our mailing lists.

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.

Item 843-C; Case 2018-006; Charles Ebarb v. Clark County and Clark County Water Reclamation District. Ebarb had been terminated by his local government. As part of the subsequent arbitration over the termination, Ebarb requested certain documents which his employer would not turn over absent a protective order. Ebarb refused to sign the protective order and filed a prohibited practice case, claiming a unilateral change to the disciplinary process. The employer filed a motion to dismiss, claiming that Ebarb was no longer a local government employee at the time of any alleged infraction as the arbitration was well after his termination. The Board granted the motion to dismiss, agreeing that Ebarb no longer met the definition of a local government employee at the time his employer may have committed a unilateral change, distinguishing this from other terminated employees in which the violation occurred while still employed or as part of the process of terminating the employee.

Item 861-A; Case 2020-001; AFSCME, Local 4041 v. State of Nevada, Department of Health and Human Services, et al. The Board denied Respondents' motion to dismiss the first amended complaint. Respondents first argued that the Complainant brought the action under the wrong section of NRS 288, a section meant for the local government level but which was identical to that for the state level. The Board opined that the pleadings should be liberally construed and that the defect did not affect the substantial rights of the Respondents and thus should be disregarded. Respondents also alleged that complaint was premature, claiming that sections 53 and 53.5 of Senate Bill 135 give the State control over all working conditions of its employees until the job classifications had been assigned to bargaining units and the regulations became effective. Here, the Board opined that SB 135 established certain rights for employees when it became effective in June 2019 and that the tasks were ancillary tasks to implement the new law.

Item 862-A; Case 2020-002; AFSCME, Local 4041 v. State of Nevada, Department of Corrections, et al. The Board denied Respondents' motion to dismiss the first amended complaint. Respondents first argued that the Complainant brought the action under the wrong section of NRS 288, a section meant for the local government level but which was identical to that for the state level. The Board opined that the pleadings should be liberally construed and that the defect did not affect the substantial rights of the Respondents and thus should be disregarded. Respondents also alleged that complaint was premature, claiming that sections 53 and 53.5 of Senate Bill 135 give the State control over all working conditions of its employees until the job classifications had been assigned to bargaining units and the regulations became effective. Here, the Board opined that SB 135 established certain rights for employees when it became effective in June 2019 and that the tasks were ancillary tasks to implement the new law.

Annual Filings Due End of November

Every government, labor organization and employee organization must annually file a report with the EMRB each November. The forms were e-mailed to the official contact person at each local government and employee organization on October 16th. If you are the official contact person please complete the form and associated documents, if any, and return them to us by the November 30th deadline. If you are no longer the official contact person please forward the form to the person who should now be the official contact person.

November 1st Deadline Approaches

Pursuant to NRS 288.565 labor organizations representing State bargaining units must notify the State by November 1st if they wish to negotiate their first collective bargaining agreement. Any negotiated agreement would become effective July 1, 2021. Please note that this deadline does not affect employee organizations wishing to negotiate a CBA with their local governments.

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. The Board has scheduled cases through February 2021. There are no cases waiting in the queue for a hearing date.

October 27-October 29, 2020, via WebEx (Panel C)

2019-010, Leonard Cardinale v. City of North Las Vegas

November 17-19, 2020, via WebEx

This meeting will be used as an overflow in case the above hearing needs additional time to complete.

December 1-3, 2020, via WebEx (Panel C)

2020-008, Clark County Education Association & Davita Carpenter v. Clark County School District plus Intervenors Education Support Employees Association and Clark County Association of School Administrators and Professional-Technical Employees

December 15-17, 2020, via WebEx (Panel D)

2020-001, AFSCME, Local 4041 v. State of Nevada et al.

January 11-12, 2021, via WebEx (Panel B)

2019-020, Eric Gil v. City of Las Vegas (second part of bifurcated hearing)

January 26-28, 2021, via WebEx (Panel E)

2020-002, AFSCME, Local 4041 v. State of Nevada et al.

February 16-17, 2021, via WebEx (Panel C)

2020-017, Las Vegas Police Managers and Supervisors Association v. Las Vegas Metropolitan Police Department

February 17-18, 2021, via WebEx (Panel D)

2020-021, Robert Ortiz v. SEIU, Local 1107

Upcoming Legislative Session

The upcoming legislative session begins on February 1, 2021. Last month we reported on two bill draft requests that might affect public sector collective bargaining. In the past month, no new bill draft requests affecting NRS 288 have been submitted. So, to-date the only BDR's are:

BDR 84 Requested by Sen. Kieckhefer

Revises provisions relating to collective bargaining. The content of this request is currently unknown.

BDR 370 Requested by the City of Las Vegas

Revises provisions governing collective bargaining by local government employers. This proposal seeks to raise the percentage of ending fund balance not subject to collective bargaining from 16.67% to 25%.

"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.