



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

EMRB Issues First COVID-19 Related Decision

On September 23, 2021, the Board issued its first decision related to the COVID-19 pandemic. A summary of this decision, Item No. 874, may be found on page 2 of this newsletter. A full copy of the decision is also available on our website. We would encourage each interested government, labor organization or employee organization to consult an attorney for an evaluation and interpretation of that decision.

Annual Reports Due November 30th

Every local government and employee organization, as well as the State and each labor organization, must annually file a report with the EMRB each November. The forms will be mailed to the official contact person at each local government and employee organization on October 22nd. 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.

As always, each labor organization and employee organization will need to file with the EMRB a copy of any new or updated collective bargaining agreement. Also, in the past the EMRB has required the sending of any updates to any constitution or by-laws for such entities. This year, to ensure we have full copies, we are requesting all labor organizations and employee organizations to send us a full and complete copy of their constitution and/or by-laws. More details are included in the cover letters going out on October 22nd.

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 30th of this 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 hope to hear soon as to whether the existing Board members have been reappointed or whether there will be one or more successors appointed.

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List of Panels

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

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

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 No. 864-C; Case 2020-012; Operating Engineers Local Union No. 3 v. Incline Village General Improvement District.

This case had been stayed pending exhaustion of contractual remedies. Respondent since requested the stay be lifted and the matter dismissed, arguing that Complainant continued to circumvent the bargained for processes. Complainant responded that it should not be required to proceed with arbitration. In its decision, the Board noted that interpretation of an article in the CBA was central to the issue in the complaint and thus, while the Board has exclusive jurisdiction over unfair labor practices, the parties must first exhaust their contractual remedies, including arbitration. Given the foregoing, the Board found that there had not been a clear showing of special circumstances or extreme prejudice, allowing for an exemption to the rule requiring exhaustion of contractual remedies. Also, noting that Complainant had unquestionably refused to so further proceed, the Board dismissed the case.

Item No. 874; Case 2020-030; AFSCME, Local 4041 v. State of Nevada, Nevada System of Higher Education, University of Nevada Las Vegas, University of Nevada Las Vegas Athletic Department, Thomas and Mack Center.

Complainant argued that Respondent refused to bargain in good faith over mandatory subjects of bargaining when it unilaterally reduced the number of hours worked per week from 40 to 22 for employees at the Thomas and Mack Center when that center had shut down sporting and other events due to the pandemic. Respondents contended that NRS 288.150(5)(b), the so-called "emergency provision", was a part of its management rights, which exempted it from bargaining in that the pandemic fell within the term "natural disaster" and thus Respondent could "take whatever actions may be necessary to carry out its responsibilities in situations of emergency such as a riot, military action, natural disaster or civil disorder. Those actions may include the suspension of any collective bargaining agreement for the duration of the emergency." Complainant countered that NRS 288.150(5)(b) did not apply in that it was a financial emergency and the Board had previously held that financial emergencies were not included within that section of law.

First, the Board held that the pandemic was a natural disaster and not a financial emergency, finding that the pandemic could in no reasonable sense be described solely as a financial emergency or resulting from a financial emergency, unlike the situation that was presented to the Board during the Great Recession. In declaring it a natural disaster, the Board in part relied on the declaration of emergency issued by the Governor on March 12, 2020. The Board also noted that the center reopened on July 1, 2021, and the hours were restored at that time, thus showing that Respondents temporarily tied their actions directly to the results of the pandemic. Finally, the Board held that the facts of the case established that Respondents' actions comported with the emergency provision, thus excusing them from bargaining in the context of that case.

Item No. 875; Case 2020-034; AFSCME, Local 4041 v. State of Nevada, Department of Corrections, Warm Springs Correctional Center.

Complainant claimed that the correctional center failed to bargain in good faith when it unilaterally reduced the length of shifts from 12 hours to 8 hours. Respondents claimed that Complainant waived its claims when it became aware of the planned change months before the shift bid but took no action at that time. Respondents also argued that Complainant waived this at the bargaining table when it entered into a collective bargaining agreement (CBA) that specifically allowed management the right to establish and adjust work schedules.

Respondents conceded that they never sent an official notice to AFSCME, Local 4041, the exclusive representative for the bargaining unit. The Board found that, standing in isolation, Respondents would have violated their duty to bargain in good faith by making a unilateral change. However, the Board found equally clear from the record that Complainant waived the issue based on the parties' subsequent negotiations and initial CBA in that the CBA was plain and unambiguous in granting Respondents the discretion to determine the length or number of hours on a shift. The Board then held that since Complainant had waived its right to further bargain over the change, there was no violation on the part of Respondents. In dicta, the Board noted that had it found a violation by Respondents, the Board would still not have ordered the requested relief as Complainant had subsequently waived its right to further bargain over the change.

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:

December 7-9, 2021, via WebEx (Panel A)

2021-005, Las Vegas Police Protective Association v. City of Las Vegas

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

On the Horizon

The next Board meeting will be November 4, 2021. This meeting will be held virtually using WebEx. At that time the full Board will deliberate on whether to order an election in Case 2020-022; International Union of Operating Engineers Local 501 v. Esmeralda County et al. The purpose of the election is to determine whether the employee organization still has a majority of the bargaining unit wishing to be represented by Local 501. The Board will also take up a petition for declaratory order filed by AFSCME, Local 4041, seeking to return the Corrections Sergeants from the supervisory bargaining unit to the corrections bargaining unit. AFSCME, Local 4041 has also requested that the Board order a hearing in the matter.

The last meeting of 2021 will be held December 7-9, 2021 via WebEx.

New Deputy Attorney General Assigned to EMRB

The Deputy Attorney General assigned to the EMRB for the past several years, Donald Bordelove, recently resigned from the Office of the Attorney General to take a position with another employer. Mr. Bordelove represented the agency well, with fewer decisions taken up on a petition for judicial review. Additionally, for those taken up on a petition for judicial review, Mr. Bordelove won about 90% of those cases. We wish him well in his new endeavor!

With his leaving, the EMRB now has a new Deputy Attorney General to handle our legal matters – Susan Valladolid. She just attended her first Board meeting and drafted her first order for review by our Chair. Ms. Valladolid comes to the agency with some experience in labor and employment matters. We accordingly welcome her and look forward to working with her.

Moreover, the Office of the Attorney General has advised us that they are seeking to split the work and are looking for a second Deputy Attorney General to advise the Board. This will allow the agency more flexibility in scheduling its meetings as most Deputy Attorney Generals represent more than one agency.

"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.