



# Government Employee-Management Relations Board

Nevada Department of Business and Industry

**\*\*\*PLEASE NOTE THAT THE EMRB OFFICE IS CLOSED TO THE PUBLIC UNTIL FURTHER NOTICE. SERVICES WILL CONTINUE TO BE PROVIDED ONLINE, VIA TELEPHONE AND BY EMAIL.\*\*\***  
**EMRB PROVISIONAL GUIDANCE**

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

April 2021

## 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.

In 2019, Senate Bill 135 authorized collective bargaining for certain State of Nevada Executive branch employees. The Board recently issued its first final orders related to prohibited practice complaints at the State level. Below are the summaries of those orders:

**Item 861-B; Case 2020-001; AFSCME, Local 4041 v. State of Nevada, Department of Health and Human Services, Aging and Disability Services Division, Desert Regional Center; Dr. Lisa Thompson-Dyson, Residential Director.** AFSCME filed a complaint alleging that Respondents committed a prohibited practice by not bargaining in good faith, when it unilaterally changed the employees' shifts during an organizing campaign and by making the unilateral change, Respondents failed to maintain the status quo. The Board first held that, with respect to State employees, the duty to bargain does not arise until the Board designates an exclusive representative. The Board explained the standards used by the National Labor Relations Board, is based its ruling on the plain and unambiguous language of SB 135, passed in 2019 and now codified in NRS 288. Based on this the Board did not find a violation of NRS 288.620(1)(b) and derivatively NRS 288.270(1)(a). However, the Board did find a violation of employees' NRS 288.500 rights and that such violation interfered, restrained, or coerced employees in the exercise of protected activity, along with Respondents failing to justify the action with a substantial and legitimate business reason that outweighed those rights. The Board thus found in favor of Complainant in part.

**Item 862-B; Case 2020-001; AFSCME, Local 4041 v. State of Nevada, Department of Corrections, High Desert State Prison; Brian E. Williams, Sr. Warden.** AFSCME filed a complaint alleging that Respondents committed a prohibited practice by not bargaining in good faith, when it unilaterally rescinded a pilot program of 12-hour shifts during an organizing campaign and by making the unilateral change, Respondents failed to maintain the status quo. In referring to Item 861-B, the Board first held that, with respect to State employees, the duty to bargain does not arise until the Board designates an exclusive representative. Based on the analysis provided for in Item 861-B (as well as precedent from the National Labor Relations Board) the Board did not find a violation of NRS 288.620(1)(b) and derivatively NRS 288.270(1)(a) However, unlike Item 861-B, the Board did not find a violation of employees' NRS 288.500 rights because the 12-hour shifts were a pilot program adopted prior to the relevant organizing efforts which had not met its stated objectives and requirements, all of which was repeatedly communicated to the employees. Thus, the Board thus found in favor of Respondents.

## Inside This Issue

- 1 **Recent Decisions**
- 2 **Legislative Update**
- 3 **In the Queue**
- 3 **On the Horizon**
- 3 **EMRB Budget Approved**

## 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.

## Legislative Update

April 20<sup>th</sup> was the deadline for non-exempt bills to pass the house of origin. Below are the bills affecting public sector collective bargaining. The EMRB is neutral on all bills. Please contact the EMRB if you would like a copy of a bill.

### **Bills Still Alive**

**Senate Bill 286** *Sponsor: Senator Harris. The bill is exempt. As amended, revises the NRS 288 definition of "supervisory employee" to include certain peace officers and persons who provide civilian support to a law enforcement agency; also revises the definition of "employee" to include unclassified category II peace officers (i.e., gaming control agents).*

**Senate Bill 294** *Sponsor: Senator Cannizzaro. With respect to non-uniformed employees not employed by a school district, the bill eliminates fact finding panels and further provides that the findings and award of a second fact finder are final and binding on the parties if the first fact finding was only advisory. With respect to peace officers and firefighters, the bill provides that unless the findings are to be final and binding, then the report of the fact finder must include recommendations for settlement of the dispute. (The bill was approved by the Senate by a vote of 12-9 and is now in the Assembly).*

**Senate Bill 327** *Sponsor: Senators Neal & Harris. The bill is an anti-discriminatory measure with two changes to NRS 288; namely removing testing procedures related to promotions from the list of mandatory subjects of bargaining and providing definitions for the terms "race" and "protective hairstyle." (This bill was approved by the Senate by a vote of 20-1 and is now in the Assembly).*

**Senate Bill 373** *Sponsor: Senate Committee on Government Affairs. The bill is exempt. Authorizes collective bargaining for certain professional employees in the Executive Department of State Government. The primary intent is to extend collective bargaining to faculty and professional employees who work for NSHE, among other professional employees.*

**Senate Bill 409** *Sponsor: Senate Committee on Finance. The bill is exempt. The EMRB is allowed to charge an annual fee to state agencies based on the number of employees in each agency to support its activities. This bill authorizes the Division of Human Resource Management to likewise charge an annual fee to state agencies to fund its labor relations activities. The language would be a part of NRS 288.*

### **The following bills are dead for not being voted out of committee by April 9<sup>th</sup>**

**Senate Bill 13** *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%. Last session the percentage was reduced from 25% to 16.67%.*

**Senate Bill 142** *Repeals provisions that exempt from collective bargaining a budgeted ending fund balance of a school district of not more than 16.6 percent of the total budgeted expenditures.*

**Senate Bill 199** *Amends many sections in state law, including the prohibited practices in NRS 288.270, by adding definitions for "protective hairstyle" and "race."*

**Senate Bill 224** *Revises NRS 388G.610 to prohibit certain transfers of authority from a large school district to a school precinct from being construed to affect or impair the authority to negotiate, or duty to comply with, provisions in a collective bargaining agreement.*

**Senate Bill 321** *Splits the community colleges from the four-year institutions. The bill only makes a conforming change to NRS 288.*

**Assembly Bill 183** *NRS 288 allows certain meetings to be closed to the public, including any negotiation or informal discussion between a government and a labor or employee organization or employees as individuals. This bill would require such meetings to be open to the public.*

**Assembly Bill 199** *This bill would allow certain State agencies to become charter agencies and run independently of provisions in law that would otherwise pertain to them. One of these provisions would make employees of a charter agency unclassified and thus would not be entitled to collective bargaining.*

**Assembly Bill 305** *Revises provisions that exempt from collective bargaining a budgeted ending fund balance of a school district of not more than 16.6 percent of the total budgeted expenditures for a county school district fund by increasing that percentage to 25.0 percent.*

## 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 into July 2021. There are no cases waiting in the queue for a hearing date.

### **May 25-27, 2021, via WebEx (Panel C)**

2019-002; Water Employees Association of Nevada v. Las Vegas Valley Water District

### **June 8-10, 2021, via WebEx (Panel A)**

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

### **June 22-24, 2021, via WebEx (Panel B)**

No case yet set for hearing for this meeting.

### **July 7-9, 2021, via WebEx (Panel D)**

2020-034; AFSCME, Local 4041 v. State of Nevada, Department of Corrections, Warm Springs Correctional Center or 2020-022; International Union of Operating Engineers, Local 501 v. Esmeralda County et al.

## On the Horizon

Panel C will hold a short meeting on April 29, 2021 via WebEx. At that time, the panel will deliberate on two pending motions related to the case that will have a hearing on May 25-27, 2021.

The next Board meeting after the above will be held on May 25-27, 2021. At that time Panel C will conduct a hearing in Case 2019-002; Water Employees Association of Nevada v. Las Vegas Valley Water District. Panel C will also deliberate on a hearing previously held in Case 2019-010; Leonard Cardinale v. City of North Las Vegas while Panel E will deliberate on a hearing previously held in Case 2020-025; Nye County Law Enforcement Ass'n v. Nye County. The full Board will also deliberate on two motions to dismiss. The first is in Case 2021-001; Nevada Police Union v. Sisolak & Ford while the second is in Case 2021-002; NAPSO v. Las Vegas Metropolitan Police Department & Las Vegas Police Protective Association, the latter of which filed the motion to dismiss.

## EMRB Budget Approved

A joint meeting of a subcommittee of the Senate Committee on Finance and the Assembly Committee on Ways and Means approved the closing of the EMRB's budget on April 15<sup>th</sup>. The budget had no major differences from the existing budget. It includes authority for a staff of three, one of which is currently vacant. The budget also is based on continuing the current annual assessment rates for the next two years, with the local government assessment rate staying at \$3.00 per local government employee and the State government assessment rate staying at \$6.00 per State government employee. The Board on May 27<sup>th</sup> will be adopting the actual rates for the fiscal year 2022 assessment to be invoiced in late June. However, staff will be recommending the above rates to the Board on that date.

### **"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.