



Government Employee- Management Relations Board

Nevada Department of Business and Industry

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EMRB PROVISIONAL GUIDANCE

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June 2020

Members of the Board

Brent C. Eckersley, Esq., Chair
Sandra Masters, Vice-Chair
Gary Cottino, Board Member
Brett Harris, Esq., Board Member
Vacant, Board Member

Staff

Bruce K. Snyder, Commissioner
Marisu Romualdez Abellar,
Board Secretary
Chris Roske, Administrative Assistant II

Board Issues Declaratory Order on Issue of Exclusivity of Representation

The petition was brought forth by the Nevada Highway Patrol Association, which had been designated as the exclusive representative of Category I Peace Officers who work for the State of Nevada. The issue centers around the ability of other organizations not recognized as the exclusive representative of peace officers to represent bargaining unit members in various personnel matters.

Upon review of the documents, including several *amicus* briefs submitted pursuant to a call from the Board, the Board reaffirmed its prior decision in Lyon County Ed. Ass'n v. Lyon County Sch. Dist., Case No. 2017-011 (2016), which relied heavily on a 2010 decision by Judge Russell in the First Judicial District Court, and which restricts a non-member from being represented by anyone other than a friend, relative, co-worker or an attorney retained by the employee. The Board also found no conflict with the provision in NRS 289.080, which allows a peace officer of two representative of his or her choosing. A copy of the order is on the agency's website or can be obtained by contacting our office.

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Annual Assessment Invoices Set for Mailing

The EMRB will be mailing the annual assessment invoices to the local governments on June 19th. The invoices are being mailed to the official contact person at each local government. In addition, the two invoices to the State and the Nevada System of Higher Education will also be mailed the same day. Your invoice is payable by July 31st. If you do not receive the invoice by the end of the month, please call our office immediately and we will e-mail you a replacement invoice. When you receive the invoice, please forward it to the appropriate person or section that approves invoices for payment. If, because of your government's bill approval and paying process, you need a little extra time to remit the payment, please call our office and we will work with you.

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.

We want to remind everyone that the Board recognized that most local governments are seeing reduced revenues due to the closure of businesses during the COVID-19 pandemic. Because of this, the Board took a close look at its local government reserve and took the step to significantly reduce the rate for the annual assessment for fiscal year 2021. As reported on the face of your invoice, the Board is reducing the rate by 50% from \$6.00 per local government employee to \$3.00 per local government employee. This should save local governments approximately a quarter million dollars during fiscal year 2021. We trust you will find this welcome news!

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 850-A; Case 2019-012; Luquisha McCray v. Clark County. Respondent had filed a motion to dismiss the Third Amended Complaint. Respondent argued that the Complainant had failed to exhaust her contractual remedies because she did not bring a motion to compel arbitration. In response, Complainant argued that the Respondent refused to accept her grievance. Based on the above, the Board ordered the case stayed pending exhaustion of contractual remedies.

Item 863; Case 2010-014; Nevada Classified School Employees Association Chapter 5, Nevada AFT v. Churchill County School District. This dispute involves the school district's reduction of two hours per week for student contact classified employees' schedules. The employee organization claims the action was a unilateral change and thus bad faith bargaining. The school district claims there was a provision in the existing CBA allowing it to adjust actual work schedules and duty assignments and provided past evidence of similar changes made without objection. The Board also found that there was miscommunication between the parties in that the employee organization claimed it wanted to bargain a change to the actual language while the school district claimed that the demand sent to it by the employee organization was a demand to bargain the pending work schedule changes. In the end, the Board held there was no bad faith bargaining on the part of the school district both because the miscommunication did not arise to the level of bad faith bargaining and also because there was existing language in the CBA allowing for the school district to adjust schedules.

Item 864; Case 2020-012; Operating Engineers Local Union No. 3 v. Incline Village General Improvement District. Respondent had filed a motion to dismiss, argued that the Complainant failed to exhaust its contractual remedies because it did not file a grievance. In response, Complainant stated that the Board has exclusive jurisdiction over unfair labor practices and that Respondent's actions were not grievable. The Board held that Complainant had not shown it was unable to file a grievance and thus the Board stayed the matter pending exhaustion of contractual remedies. Respondent had also argued that there was no probable cause for the Complaint. In this regard, the Board held that there are factual issues in dispute that thus would require a hearing after the stay is lifted.

Item 865; Case 2020-011; Nevada Highway Patrol Association v. State of Nevada Department of Public Safety, et al. The petition was brought forth by the Nevada Highway Patrol Association, which had been designated as the exclusive representative of Category I Peace Officers who work for the State of Nevada. The issue centers around the ability of other organizations not recognized as the exclusive representative of peace officers to represent bargaining unit members in such things as disciplinary hearings, grievances, and investigations.

Upon review of the documents, including several *amicus* briefs submitted pursuant to a call from the Board, the Board reaffirmed its prior decision in Lyon County Ed. Ass'n v. Lyon County Sch. Dist., Case No. 2017-011 (2016), which relied heavily on a 2010 decision by Judge Russell in the First Judicial District Court, and which restricts a non-member from being represented by anyone other than a friend, relative, co-worker or an attorney retained by the employee. The Board also found no conflict with the provision in NRS 289.080, which allows a peace officer of two representative of his or her choosing.

On the Horizon

The Board will be conducting a meeting of the full Board, as well as Panel A and Panel B, on June 24, 2020. This will be the first Board meeting to use WebEx, a virtual meeting software platform. At that time Panel B will hold a hearing on Case 2019-020, Eric Gil v. City of Las Vegas. This is the first part of a bifurcated hearing, which will be considering whether the doctrine of equitable tolling applies in this case. After the hearing is concluded the full Board will deliberate on a motion for stay and for full or partial deferral in Case 2020-013, IAFF, Local #2955 & Casey Micone v. Reno-Tahoe Airport Authority and will also deliberate on a motion for preliminary determination and dismissal in Case 2020-015, Nevada Police Union v. State of Nevada Department of Public Safety et al.

The Board will next meet on July 14-16, 2020. At that time, the full Board will conduct the final hearing in Case 2018-006, Charles Ebarb v. Clark County & Clark County Water Reclamation District. This is a termination case.

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 July 2020. There are no cases in the queue waiting for a hearing date.

June 24, 2020, via WebEx (Panel B)

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

July 14-16, 2020, via WebEx (Full Board)

2018-006, Charles Ebarb v. Clark County & Clark County Water Reclamation District

July 28-30, 2020, via WebEx (Panel B)

2019-016, City of Las Vegas v. Las Vegas Peace Officers Association

August 25-26, 2020, via WebEx (Panel E)

2018-026, Jason Woodard v. Sparks Police Protective Association (second part of bifurcated hearing)

August 27, 2020, via WebEx (Panel D)

2019-022, Veronica Howard v. Teamsters Local 14

September 15-17, 2020, via WebEx (Panel C)

2019-003, Francis Davis v. Las Vegas Metropolitan Police Department & Las Vegas Police Protective Association Civilian Employees, Inc. (PPACE)

September 29-October 1, 2020, via WebEx (Panel A)

2019-007, Nye County Management Employees Association & Boskovich et al. v. Nye County

Update on Board Vacancy

Cam Walker submitted his resignation to be effective at the end of December 2019, but he agreed to stay on no later than the end of March of this year if a replacement was not appointed by that time. Well, Mr. Walker served until March 31, 2020. Since then there has been no further word on a replacement Board member. So, if you know someone who you believe might be a good person to serve on the Board, please encourage that person to submit an application, by going to the Governor's page on the State of Nevada website, which is www.nv.gov. Once on the Governor's page, you will see information about Board openings and how to complete the application process.

The qualifications for a Board member include not being closely allied with any employee organization, any labor organization, the Executive Department, or any local government employer. Additionally, not more than three of the members of the Board may be members of the same political party; and (3) that at least three of the members must reside in southern Nevada. However, given the makeup of the current Board, the latter two qualifications are not at issue with this vacancy.

The term of office of each member is 4 years. Although not required, it would help if you could notify the office if you know of someone who has applied. Thank you!

"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.