

CHAPTER 288 - GOVERNMENT: RELATIONS WITH EMPLOYEES
Administrative Rules as of December 30, 2019

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Regulation R056-19, approved by the Legislative Commission on December 30, 2019, added the following sections to the EMRB's regulations. These sections have yet to be assigned a NAC number. In the interim please refer to these sections by the following numbers.

288.R056-19.2 Government Employer.
288.R056-19.3 Confidential Status of EMRB Employees.
288.R056-19.4 Verification of Number of Employees.
288.R056-19.5 Preliminary Investigations.
288.R056-19.6 Use of Hearing Officers.
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288.R056-19.8 Procedures Related to Request for Elections Under Section 31 of SB 135.

GENERAL PROVISIONS

NAC 288.010 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 288.020 to 288.038, inclusive, have the meanings ascribed to them in those sections.

NAC 288.020 "Board" defined. "Board" means:

1. The full Government Employee-Management Relations Board, consisting of all the members serving on the Board; or
2. A panel of the Board, if one or more panels are established pursuant to NAC 288.271.

NAC 288.025 "Commissioner" defined. "Commissioner" means the Commissioner appointed by the Board pursuant to NRS 288.090.

NAC 288.030 "Complainant" and "petitioner" defined. "Complainant" or "petitioner" means:

1. A local government employer as defined in NRS 288.060;
2. An employee organization as defined in NRS 288.040;
3. A local government employee as defined in NRS 288.050;
4. The Executive Department, as defined in section 10 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3729 (NRS 288.042);
5. A labor organization, as defined in section 12 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3729 (NRS 288.048); or

6. An employee, as defined in section 19 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3729 (NRS 288.425).

NAC 288.036 “Panel” defined. “Panel” means any three members of the Board present at a meeting who are authorized to exercise the power and authority of the Board pursuant to NRS 288.090.

NAC 288.038 “Split decision” defined. “Split decision” means a decision or a part of a decision of a panel, from which one member of the panel dissents.

NAC 288.040 Construction. The provisions of this chapter must be liberally construed to effectuate the purposes and provisions of chapter 288 of NRS.

NAC 288.050 Severability. If any of the provisions of this chapter or any application thereof to any person, thing or circumstance is held invalid, it is intended that such invalidity not affect the remaining provisions, or their application, that can be given effect without the invalid provision or application.

NAC 288.060 Mailing lists for notice of complaints or controversies and copies of documents; charge for furnishing documents.

1. Any person may request in writing that he or she be placed on a mailing list kept by the Board so that he or she will be provided written notice of any complaint or controversy which is the subject of a hearing before the Board.

2. Any interested person may request that he or she be placed on a mailing list kept by the Board so that he or she will be provided copies of regulations, final orders, decisions and opinions adopted or rendered by the Board.

3. The Board may make a reasonable charge for the cost of furnishing any documents requested.

NAC 288.070 Filing requirements for written documents and other written matters; service; request to opt out of electronic service.

1. Except as otherwise provided in this chapter, if any written document or other written matter is filed with the Board:

(a) The original must be signed and filed in the form of a pleading;

(b) The written document or other written matter must satisfy the requirements set forth in NAC 288.231;

(c) The written document or other written matter must be filed in accordance with the requirements set forth in NAC 288.075 if the written document or other written matter is filed electronically; and

(d) Except as otherwise provided in subsection 2, the filing party shall serve a copy upon the opposing party, intervener and any party in interest by:

(1) Personal service;

(2) First-class mail at the last known address of the person; or

(3) Electronic service by transmitting the copy electronically as an attachment to electronic mail in portable document format.

2. A person may request to opt out of being served by electronic service by submitting a request to the Board. Such a request becomes effective once the Board notifies all parties in the case that the person has requested to opt out of electronic service.

NAC 288.075 Electronic filing of documents.

1. Any written document required to be filed with the Board may be filed electronically in accordance with this section.

2. If a filing party elects to file a document electronically, the filing party must first register with the Board all electronic mailing addresses authorized to send and receive electronic mail for the filing party on a form provided by the Board.

3. To be deemed filed, a document submitted electronically must be:

(a) Sent to the electronic mail address designated by the Board for receiving electronic documents;

(b) Sent from an electronic mail address registered with the Board pursuant to subsection 2; and

(c) Submitted as an attachment to the electronic mail address designated by the Board in portable document format.

4. When a document is filed electronically in accordance with this section, the document will be stamped as filed with the date the document is received at the electronic mail address of the Board. The Board will send to the filing party, by electronic mail, a confirmation receipt that contains the date-stamped copy of the document attached in portable document format.

5. The filing party must retain the original version of any document that was filed electronically until the filing party has exhausted all available appeals. The filing party may be required to produce the original of the document to the Commissioner upon request.

NAC 288.080 Issuance and service of process and other papers.

1. The issuance and service of process of papers required by this chapter must be in conformity with the Nevada Rules of Civil Procedure and the rules and regulations of the Board.

2. Any written document or other written matter required by this chapter to be filed with the Board or served upon another party shall be deemed to comply with any time deadline if it is mailed and postmarked upon the date specified or filed or transmitted electronically in accordance with subparagraph (3) of paragraph (d) of subsection 1 of NAC 288.070 or NAC 288.075, as applicable, upon the date specified.

3. If any paper is served by delivery of a copy, the delivery may be made by any person of suitable age and discretion, unless otherwise expressly provided by the Nevada Rules of Civil Procedure and the rules and regulations of the Board.

4. Proof of service of all papers required or permitted to be served, other than those for which a particular method of proof is prescribed in the Nevada Rules of Civil Procedure and the rules and regulations of the Board, must be promptly filed in the Board's office before action is to be taken thereon by the Board or the parties. The proof must show the day and manner of service and may be by written acknowledgment of service, by certificate of a member of the bar, by affidavit of the person who served the papers or by any other proof satisfactory to the Board. If an affidavit of mailing or of service is attached to the original pleading, it must be attached underneath the original pleading so that the character of the pleading is easily discernible. Failure to make the proof of service required by this subsection does not affect the validity of the service. The Board

may at any time allow the proof of service to be amended or supplied, unless it clearly appears that to do so would result in material prejudice to the substantial rights of any party.

5. A written complaint filed with the Board must be served upon the respondent, government employer or labor organization or employee organization, as applicable, by the complaining party within 7 days after the filing.

NAC 288.090 Time: Computation. The computation of any period prescribed by this chapter or by an order of the Board must be made in accordance with Rule 6(a) of the Nevada Rules of Civil Procedure.

RECOGNITION OF AND NEGOTIATION WITH EMPLOYEE ORGANIZATIONS

NAC 288.100 Determination of negotiability.

1. If a matter is significantly related to the subjects enumerated in subsection 2 of NRS 288.150, a local government employer, upon written request by an appropriate employee organization, shall negotiate the matter unless, in the determination of the employer, the proposed matter to be negotiated would be reserved to the local government employer pursuant to subsection 3 of NRS 288.150.

2. If a matter is significantly related to the subjects enumerated in subsection 2 of section 24 of Senate bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3731 (NRS 288.500), the Executive Department, upon written request by a labor organization, shall negotiate the matter unless, in the determination of the Executive Department, the proposed matter to be negotiated would be reserved to the Executive Department pursuant to subsection 3 of section 24 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3731 (NRS 288.500).

3. If a government employer determines that the proposed matter would be reserved to him or her pursuant to subsection 3 of NRS 288.150 or subsection 3 of section 24 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3731 (NRS 288.500), as applicable, the employee organization or labor organization, as applicable, may request the Board to review that determination. If the Board, after reviewing the determination of the government employer, agrees that the controversy is a contested matter within the meaning of chapters 233B and 288 of NRS, it may conduct a hearing.

NAC 288.110 Elections.

1. All elections conducted pursuant to chapter 288 of NRS will be conducted under the supervision of the Board or its agent.

2. Any party may be represented at the election by observers selected in accordance with such limitations as the Board may prescribe.

3. Any observer or the Board's agent conducting the election may challenge for good cause the eligibility of any person to vote in the election. The ballots of challenged persons will be impounded.

4. Upon the conclusion of the election, the ballots will be counted in the presence of the parties or their observers and the Board's agent conducting the election. The agent will furnish parties with a tally of the ballots.

5. Except as otherwise provided in this subsection, the ballots must be kept for at least 6 months after an election, after which period the ballots may be destroyed. If a timely objection to the election is filed with the Board or a petition for judicial review concerning the election is filed

in district court, the ballots must be kept until after the conclusion of any Board or court proceeding concerning the election.

6. Provisions may be made for a nonunion vote and for linguistic assistance.

7. If the results are inconclusive, the Board will conduct a runoff election.

8. Within 7 days after the election, any party may file with the Board objections to the conduct of the election or conduct affecting the results of the election. The objections must be in writing and contain a brief statement of facts upon which the objections are based. Except as otherwise provided in NAC 288.075, a sworn original and six copies of the objections must be signed and filed with the Board. The party filing the objections shall serve a copy upon each of the other parties.

9. If challenges which affect the results of the election or objections raise a substantial question which cannot be resolved without a hearing, the Board may issue and serve notice of a hearing on these issues.

10. An employee organization will be considered the exclusive bargaining agent for local government employees within a bargaining unit, pursuant to an election, if:

(a) Challenged ballots are insufficient in number to affect the results;

(b) No runoff election is to be held;

(c) No timely objections are filed; and

(d) The election demonstrates that the employee organization is supported by a majority of the local government employees within the particular bargaining unit.

11. A labor organization will be considered the exclusive representative of a bargaining unit for employees of the Executive Department within the bargaining unit, pursuant to an election, if the criteria prescribed in subsection 4 of section 32 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3736 (NRS 288.530), are met.

NAC 288.120 Use of election results in determination of bargaining unit. The Board may use the results of an election conducted pursuant to NAC 288.110 as additional information for its determination of a bargaining unit.

NAC 288.130 Appeal of determination of bargaining unit. If any labor organization or employee organization is aggrieved by the determination of a bargaining unit, it may appeal to the Board in accordance with the provisions of NAC 288.075 and 288.200 to 288.375, inclusive.

NAC 288.140 Annual filing by local government employers of contact information for person designated to receive official communications from Board and lists of recognized organizations. Before December 1 of each year, each government employer shall file with the Board:

1. The name and contact information for the person designated by the government employer to receive all official communications from the Board, except for those communications related to a case before the Board for which an attorney has filed an appearance; and

2. A list of all labor organizations or employee organizations, as applicable, that the government employer is currently recognizing and a description of the bargaining unit for each such organization.

NAC 288.143 Application for recognition of organization; petition to challenge sufficiency of application. An employee organization that wishes to be recognized as the

bargaining agent for a group of local government employees who are not yet represented by an employee organization must apply to the local government employer for recognition pursuant to NRS 288.160. The local government employer may challenge the sufficiency of the application for recognition by filing a petition, in the form of a pleading, with the Board within 10 days after receipt of the application.

NAC 288.145 Withdrawal of recognition of organization by local government employer.

1. In addition to the reasons set forth in subsection 3 of NRS 288.160, a local government employer may withdraw recognition of an employee organization if the employee organization:

- (a) Voluntarily withdraws in writing as the bargaining representative; or
- (b) Fails to notify the employer pursuant to NRS 288.180 that it desires to negotiate.

2. Except as otherwise provided in NAC 288.146, a local government employer must request a hearing before the Board and receive the written permission of the Board before withdrawing recognition of an employee organization for any reason other than voluntary withdrawal.

NAC 288.146 Withdrawal of recognition of organization upon petition by another employee organization.

1. During the term of an existing labor agreement which covers a period of not more than 3 years and during negotiations for a successor agreement through fact-finding or binding arbitration, or both, recognition of an employee organization may be withdrawn at the request of another employee organization if the Board has determined, pursuant to a hearing requested during a period specified in subsection 2, that the recognized employee organization has ceased to be supported by a majority of the local government employees in the bargaining unit for which it is recognized.

2. An employee organization may challenge recognition of another employee organization by filing with the Board a petition for a hearing to determine whether a recognized employee organization has ceased to be supported by a majority of the local government employees in a bargaining unit. The petition must be filed in the form of a pleading and may only be filed during the period:

(a) Beginning upon the filing of notice by the recognized employee organization pursuant to NRS 288.180 of its desire to negotiate a successor agreement and ending upon the commencement of negotiations for such an agreement; or

(b) Beginning 242 days before the expiration date of the existing labor agreement and ending 212 days before the expiration of the labor agreement.

NAC 288.147 Annual filing by organizations of contact information for person designated to receive official communications from Board and lists of officers and representatives. Between November 1 and December 1 of each year, each employee organization and labor organization shall file with the Board:

1. The name and contact information of the person designated by the employee organization or labor organization, as applicable, to receive all official communications from the Board, except for those communications related to a case before the Board for which an attorney has filed an appearance; and

2. A list of its current officers and representatives, including, but not limited to, any and all elected officials and other professional representatives retained to administer the various activities

of the employee organization or labor organization, as applicable. The employee organization or labor organization may elect, appoint or retain additional or other officers and representatives subsequent thereto.

NAC 288.150 Fact finder: Personal assessment of merits prohibited; schedule for hearing; record of proceedings; report.

1. A fact finder shall not make a personal assessment of the substantive merits of any issue submitted to him or her.

2. The fact finder shall inform any party requesting binding fact-finding of the schedule of the dates and times for the hearing established pursuant to subsection 4 of NRS 288.200.

3. If any fact finder fails to establish a schedule of dates and times for the hearing, the requesting party must report the failure to the Commissioner and inform the Commissioner of the diligent efforts made by the party in obtaining dates and times from the fact finder.

4. A fact finder shall keep a full record of the proceedings. The record must be preserved so that a transcript may be available at the request of the Board.

5. The report of the fact finder to the parties must contain:

- (a) A background statement;
- (b) A statement of the issues in dispute;
- (c) A statement of the position of the parties;
- (d) The findings of fact;
- (e) Conclusions based on the findings of fact;
- (f) The determinations of the fact finder; and
- (g) Any special explanatory comments.

NAC 288.155 Fact finder: Effect of failure to schedule hearing. Any failure of a fact finder to establish a schedule of dates and times for a hearing pursuant to subsection 4 of NRS 288.200 does not prejudice the rights of any party requesting binding fact-finding.

**PRACTICE BEFORE THE LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD**

Motions, Complaints and Other Papers

NAC 288.200 Complaint.

1. In addition to any other applicable requirements set forth in NAC 288.231, a complaint must include:

- (a) The full name of the complainant;
- (b) The full name of the respondent;
- (c) A clear and concise statement of the facts constituting the alleged practice sufficient to raise a justiciable controversy under chapter 288 of NRS, including the time and place of the occurrence of the particular acts and the names of persons involved; and
- (d) The legal authority under which the complaint is made.

2. A complainant shall file a complaint with the Board in the form of a pleading and shall serve a copy by certified mail on all parties in interest at their last known addresses.

3. Except as otherwise specifically provided by this chapter or chapter 288 of NRS, a complainant shall not attach any document, including, without limitation, an exhibit, to a complaint.

NAC 288.205 Complaint for expedited review concerning right of employee to express breast milk: Procedure for filing, hearing and deciding such complaint.

1. In lieu of complying with the provisions of NAC 288.200 to 288.370, inclusive, an employee who:

(a) Is a nursing mother described in paragraph (d) of subsection 4 of NRS 281.755; and

(b) Complains solely of an alleged violation of paragraph (h) of subsection 1 of NRS 288.270, may elect to file a complaint in the form required by the Board and comply with the provisions of this section.

2. If an employee makes the election and files the complaint described in subsection 1, the respondent shall file an answer in accordance with the provisions of NAC 288.220, except that the answer must include a statement setting forth the position of the respondent and the reasons for the actions of the respondent.

3. Upon receipt of the answer, the Commissioner shall contact the parties to schedule a hearing on the matter. The hearing:

(a) Must be held before the Commissioner; and

(b) May be conducted in person, by video conference or telephonically, in the discretion of the Commissioner.

4. After the hearing is scheduled, the Commissioner shall promptly prepare and serve upon the parties a notice of hearing setting forth:

(a) The date, time and place of the hearing;

(b) The manner in which the hearing will be conducted, whether in person, by video conference or telephonically; and

(c) The deadline for the submission of copies of proposed exhibits pursuant to subsection 6 or the notice required by that subsection.

5. Upon the request of a party to a proceeding governed by this section, the Commissioner may issue subpoenas requiring the attendance of witnesses before the Commissioner, together with all books, memoranda, papers and other documents relative to the matter. The provisions of subsections 2, 3 and 4 of NRS 288.120 apply to any such subpoena.

6. Each party shall submit to the Commissioner a copy of any exhibit the party proposes to use at the hearing. Each party shall submit the copy so that it is received by the Commissioner not less than 3 business days before the hearing. If a party does not propose to use any exhibits at the hearing, the party shall so notify the Commissioner in writing within that time. Upon receipt of the copies of the proposed exhibits or the notice described in this subsection, the Commissioner shall forward copies of the proposed exhibits or notice, as applicable, to each other party.

7. The Commissioner shall conduct the hearing in accordance with the provisions of NAC 288.280 to 288.335, inclusive, but may depart or authorize a departure from those provisions as necessary to expedite and minimize the expense of the proceedings. Except as otherwise provided in this subsection, in lieu of using a court reporter, the Commissioner may cause the hearing to be recorded by tape recorder. In the case of a hearing conducted telephonically, each party must consent to the recording of the hearing. Upon the request of any party, the Commissioner shall cause the recording to be transcribed at the expense of the party making the request. If both parties

request that the recording be transcribed, the expense of transcription must be shared equally by the parties unless they otherwise agree.

8. After the hearing, the Commissioner shall render a decision in writing. The decision is not subject to review by the Board and is a final decision for the purposes of NRS 233B.130.

NAC 288.220 Answer.

1. A respondent may file an answer in the form of a pleading and not later than 20 days after the receipt of a complaint.

2. An answer must contain a clear and concise statement of the facts which constitute a defense. The respondent must specifically admit, deny or explain each of the allegations in the complaint unless he or she is without knowledge, in which case the respondent shall so state and the statement shall be deemed a denial. Any allegation in the complaint not specifically denied in the answer, unless it is stated in the answer that the respondent is without knowledge, shall be deemed to be admitted to be true.

3. If an answer is not made within the prescribed time, the dilatory party is precluded, except with the consent of the opposing party or the Board, from asserting any affirmative defense in the proceeding.

4. An answer must be signed and filed with the Board.

5. Except as otherwise specifically provided by this chapter or chapter 288 of NRS, a respondent shall not attach any document, including, without limitation, an exhibit, to an answer.

NAC 288.231 Form of pleadings and motions.

1. Pleadings and written motions filed with the Board, including, without limitation, a complaint, petition, application or request, must:

- (a) Be properly titled;
- (b) Be signed by an authorized person;
- (c) State the name and, unless the pleading is a complaint, address of each party;
- (d) Clearly identify the proceeding by title;
- (e) Include the case number if a case number has been assigned;
- (f) Include an appropriate caption, if applicable;
- (g) Set forth a clear and concise statement of the matters relied upon as a basis for the action or relief requested and an appropriate prayer;
- (h) Except as otherwise provided in NAC 288.075, be clear, legible and typewritten or printed by a computer on white, unglazed paper that is 8 1/2 by 11 inches in size and that is not lighter than 16 pounds;
- (i) Except as otherwise provided in NAC 288.075, be firmly bound together at the upper left-hand corner of the document; and
- (j) Not exceed 30 pages, except with the permission of the Board.

2. The type used in a pleading or written motion described in subsection 1 must be black in color and must not be smaller than 11 characters per inch. The lines on each page of the pleading or written motion must be numbered consecutively on the left margin. Each page of the pleading or written motion must:

- (a) Have a top margin that is 1 inch from the top edge of the paper and a bottom margin that is 1 inch or more from the bottom edge of the paper; and
- (b) Be numbered consecutively at the bottom of the page.

3. A pleading initiating a new proceeding must have space for the case number on the pleading.

NAC 288.235 Amendment of pleadings and motions; liberal construction.

1. If not otherwise prohibited by law and if substantial rights of the parties will not be prejudiced, the Board may allow any pleading or motion to be amended or corrected, or any omission in the pleading, motion or other papers to be cured.

2. Pleadings, motions and other papers will be liberally construed, and any defects which do not affect substantial rights of any party may be disregarded by the Board.

NAC 288.240 Motions.

1. Any request for an order by the Board, except for an order to permit intervention, concerning any matter that has been assigned a case number and that has not been finally decided by the Board must be styled a "motion."

2. All motions made before or after a hearing must be filed in writing with the Board. Motions made at a hearing must be stated orally and must be included in the stenographic report of the hearing.

3. A motion directed at a complaint or petition must be written and filed before the answer or response is due.

4. Within 14 days after service of any motion, all parties wishing to respond to the points raised in the motion shall file their opposition to the motion. That opposition must be in writing, unless made during the hearing. Within 14 days after service of the opposition to the motion, the moving party may respond to the points raised in the opposition.

5. A certificate of service must be attached to the original opposition or response, indicating that the opposition or response has been served on the opposing party, unless the opposition or response is made during a hearing.

6. If a party fails to file and serve a written opposition to a motion, that failure to respond may be construed as an admission that the motion is meritorious and as consent to granting the motion.

NAC 288.245 Motion to file amicus brief; request by Board for filing of amicus briefs in contested cases.

1. Any person or governmental entity claiming an interest in a dispute or controversy that is the subject of a hearing before the Board may, by motion, request leave of the Board to file an amicus brief. If the Board grants the motion, it may impose terms and conditions related to the brief.

2. The Board may request in writing that one or more government employers, labor organizations and employee organizations file amicus briefs in any contested case on such terms and conditions as are specified in the request.

NAC 288.250 Prehearing statement.

1. Not later than 21 days after the service of the answer, unless otherwise ordered by the Board or Commissioner, each party shall file with the Board the prehearing statement of the party which includes:

(a) A plain and concise statement of the issues of fact and law to be determined by the Board which have not been resolved by negotiation or otherwise;

(b) A memorandum of law or points and authorities in support of the party's position, including a list of significant differences or close similarities of the issue or issues to any prior determinations of the Board;

(c) 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;

(d) A list of witnesses and their qualifications, including a brief summary of their expected testimony; and

(e) An estimate, to the nearest hour, of the time needed for the presentation of the party's position.

2. Except as otherwise specifically provided by this chapter or chapter 288 of NRS, a party shall not attach any document, including, without limitation, an exhibit, to a prehearing statement.

NAC 288.253 Extension to file certain documents.

1. Upon written stipulation of the parties, the Commissioner may approve a request to extend the time to file any document described in NAC 288.220 to 288.250, inclusive, if the Commissioner determines that the proposed extension of time will not delay any hearing for the case that may be authorized by the Board. Any stipulated request for an extension that is not approved by the Commissioner must be approved by the Board.

2. This section does not prohibit a party from filing a motion to extend time for filing a document.

NAC 288.255 Settlement conference.

1. Except as otherwise provided in subsection 3, the Board may order the parties to participate in a settlement conference upon the motion of any party or its own motion.

2. The Commissioner shall conduct any settlement conference ordered by the Board pursuant to subsection 1.

3. The Board will not order a settlement conference for any matter for which a preliminary investigation of a complaint has been completed pursuant to subsection 2 of section 27 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3733 (NRS 288.625), or any matter that is:

(a) An appeal of the determination of a bargaining unit brought pursuant to subsection 5 of NRS 288.170;

(b) A proceeding relating to an application for the recognition of an employee organization filed pursuant to NRS 288.160; or

(c) A proceeding commenced upon a petition for a declaratory order filed pursuant to NAC 288.380.

4. A party or the Board may file a motion for a settlement conference at any time:

(a) After all parties have submitted prehearing statements pursuant to NAC 288.250; and

(b) Not later than 60 days before the date of a scheduled hearing.

5. The Commissioner may establish reasonable guidelines to conduct a particular settlement conference, except that the Commissioner may not:

(a) Require the parties to submit additional statements or briefs in advance of a settlement conference; or

(b) Establish guidelines that will impose any undue expense on a party.

6. The Commissioner may not be called as a witness in any proceeding in which a settlement conference has taken place.

NAC 288.260 Intervention.

1. Any person claiming an interest in a dispute or controversy which is the subject of a hearing may be made a party upon timely petition and a showing satisfactory to the Board of the person's interest in the controversy.

2. A petition to intervene must include the following information:

- (a) The nature of the petitioner's statutory or other right;
- (b) The nature and extent of the petitioner's interest;
- (c) The effect of any decision in the proceedings on the petitioner's interest;
- (d) Other means available whereby the petitioner's interest may be protected;
- (e) The extent to which the petitioner's interest may be represented by existing parties;
- (f) The extent to which the petitioner's participation can assist in the development of a sound record;

(g) The extent to which the petitioner's participation will broaden the issues or delay the proceedings;

(h) The extent to which the petitioner's interest in the proceedings differs from that of the general public;

(i) How the petitioner's intervention would serve the public interest;

(j) If affirmative relief is sought, the type and basis of that relief;

(k) A statement as to whether the petitioner intends to present evidence in the proceeding; and

(l) The name and address of the petitioner.

3. A petition is not timely filed unless it is filed with the Board and served upon all parties by certified mail at least 30 days before the time set for the hearing. A response to the application or petition may be made by any party not later than 7 days after receipt of the application or petition.

4. Except as otherwise specifically provided by this chapter or chapter 288 of NRS, a person filing a petition pursuant to this section shall not attach any document, including, without limitation, an exhibit, to the petition.

NAC 288.262 Petition to intervene: Filing; response.

1. A petition for leave to intervene and proof of service of a copy of the petition on each party of record must be filed with the Board at least 30 days before the time set for the hearing. A response to the petition may be made by any party not later than 7 days after receipt of the petition.

2. If a petition for leave to intervene is filed after the applicable period, the petition must state to the satisfaction of the Board a substantial reason for the delay. If a reason is not stated, the petition may be summarily denied by the Board.

NAC 288.265 Limitation on number of interveners. When two or more interveners have substantially the same interests and positions, the Board may limit the number of interveners who will be permitted to cross-examine witnesses, make and argue motions, or make objections during the course of the hearing.

NAC 288.270 Form of appeals. The submission of an appeal made pursuant to NRS 288.160 or 288.170 must follow the same form outlined for complaints except that the terms "appeal" and "appellant" must be substituted for "complaint" and "complainant."

Panels

NAC 288.271 Establishment; assignment of members of Board to panel; presiding officer.

1. The Commissioner may establish one or more panels as the Commissioner deems necessary. Each panel must be designated "Panel A," "Panel B" and so forth according to the number of panels established.

2. To the extent consistent with the provisions of subsection 3 of NRS 288.090, if two or more panels are established:

(a) The Commissioner shall assign each member of the Board to a panel or panels.

(b) Each member of the Board must be assigned to the same number of panels as every other member of the Board.

(c) If the absence of one or more members of a panel would otherwise require the postponement of a hearing, the Commissioner may randomly assign another member or members of the Board to the panel for the purposes of the hearing and disposition of the matter. If the Commissioner randomly assigns another member or members of the Board to the panel pursuant to this paragraph:

(1) The agenda for the meeting of the panel must indicate that the Commissioner has taken such action; and

(2) The member or members randomly assigned to the panel shall continue to participate in the panel for purposes of the hearing and disposition of the matter, including, without limitation, when the matter is deliberated or disposed of at a future meeting of the panel.

3. Except as otherwise provided in subsection 4:

(a) If the Chair of the Board is a member of a panel, he or she shall serve as the presiding officer of the panel.

(b) If the Chair of the Board is not a member of a panel, the Vice Chair of the Board shall serve as the presiding officer of the panel.

(c) If the Chair or the Vice Chair of the Board is not a member of a panel, the most senior member of the Board assigned to the panel shall serve as the presiding officer of the panel. For the purposes of this paragraph:

(1) The seniority of a member must be determined on the basis of the date of the appointment of the member to the Board.

(2) If two or more members were appointed on the same date, they shall draw lots to determine which of them will serve as the presiding officer of the panel.

4. Notwithstanding the provisions of subsection 3, with the consent of the presiding officer of the panel and the member so designated, the Commissioner may designate any member of a panel as the acting presiding officer for a meeting of the panel.

NAC 288.2715 Scheduling of meetings of panel; assignment of cases and stipulations to dismiss; assignment of cases involving statewide significance to full Board.

1. The Commissioner shall schedule the meetings of each panel in consultation with the members of the panel.

2. Except as otherwise provided in this section and section 5 of this regulation, whenever a case is commenced before the Board by the filing of a complaint, petition or other pleading, the Commissioner shall

(a) Assign the case to the full board; or

(b) Appoint an initial panel, to consider whether a hearing should be held in the case.

3. If the Board or panel, as applicable, decides pursuant to subsection 2 that a hearing should be held in a case, the Board or initial panel will, during the same meeting, randomly assign the case to itself or another panel for hearing.

4. Except as otherwise provided in this subsection, after a case has been assigned to a panel pursuant to subsection 2 or 3, as applicable, any motion or other matter relating to the case will be decided by that panel. If a stipulation to dismiss all or any part of a complaint or petition is filed, the Commissioner shall assign the stipulation to the next available panel for consideration and disposition.

5. If the Commissioner determines that a case involves an issue of statewide significance, the Commissioner may so designate the case and assign it to the full Board instead of a panel for all further proceedings. If such a designation is made, the Commissioner shall prepare and file written notice of the designation, stating the reasons for the designation, and serve a copy of the notice upon each party to the case.

NAC 288.2718 Split decision: Filing and service of petition for reconsideration by full Board; failure to file timely petition constitutes final decision for purposes of judicial review.

1. Any party aggrieved by a split decision of a panel may file a petition for reconsideration of the split decision by the full Board. If the decision of a panel is a split decision only in part, only the split decision is properly the subject of a petition for reconsideration.

2. A petition for reconsideration must be filed and served within 15 days after service by the panel of a written notice of entry of the split decision of the panel.

3. The failure of any party to submit a timely petition for reconsideration pursuant to this section constitutes an agreement that the split decision of the panel is a final decision of the Board for the purposes of NRS 233B.130.

NAC 288.272 Split decision: Requirements for petition for reconsideration and supporting memorandum of points and authorities; raising of point for first time in petition for reconsideration.

1. A petition for reconsideration by the full Board must be supported by a memorandum of points and authorities and contain such arguments, consistent with the provisions of this section, as the petitioner desires to present. Except by written leave of the Chair of the Board or the Vice Chair of the Board in the absence of the Chair, the petition must not exceed 30 pages in length, inclusive of the supporting memorandum of points and authorities.

2. The petition for reconsideration and supporting memorandum of points and authorities must:

(a) State the reasons that reconsideration by the full Board is necessary to secure and maintain uniformity of the decisions of the Board; and

(b) Demonstrate that the split decision of the panel is contrary to prior decisions of the Board, with specific citations to those decisions.

3. If the petitioner contends that the case involves a substantial precedential, constitutional or public policy issue, the petition for reconsideration and supporting memorandum of points and authorities must identify each such issue and demonstrate the effect of the split decision of the panel beyond the parties to the proceeding.

4. A point may not be raised for the first time in a petition for reconsideration unless the point could not reasonably have been made at the time the case was heard by the panel.

NAC 288.2725 Split decision: Approval or denial of petition for reconsideration by full Board; oral argument if petition approved; petition for rehearing.

1. The full Board will consider a timely petition for reconsideration and may grant or deny it not later than 5 days before the expiration of the time for filing a petition for judicial review set forth in NRS 233B.130. The Board will grant a petition for reconsideration upon the votes of any two or more members of the Board. If no action is taken by the Board within the time specified, the petition for reconsideration shall be deemed denied.

2. If a petition for reconsideration by the full Board is:

(a) Granted, the members of the Board will review the administrative record, after which the Board will hear oral argument on such terms as the Chair of the Board deems appropriate.

(b) Denied, the split decision of the panel is the final decision of the Board for the purposes of NRS 233B.130.

3. An order granting a petition for reconsideration by the full Board does not preclude:

(a) A party from filing a timely petition for rehearing pursuant to NAC 288.360 with respect to the final decision of the full Board.

(b) The full Board from considering and acting upon a petition for rehearing as provided by NAC 288.364.

Hearings

NAC 288.273 Prehearing conference.

1. The Board or Commissioner may, upon written notice to all parties of record, hold a prehearing conference to:

(a) Formulate or simplify the issues;

(b) Obtain admissions of fact which will avoid unnecessary proof;

(c) Discuss any proposed exhibits which were exchanged between the parties at least 5 days before the date of the prehearing conference;

(d) Limit the number of witnesses; and

(e) Establish any other procedure which may expedite the orderly conduct and disposition of the proceedings.

2. Upon action of the Board, the action taken and the agreements made at a prehearing conference by the parties concerned must be made a part of the record. When so ordered, the action controls the course of subsequent proceedings unless modified by the Board at the hearing.

3. In any proceeding, the Board may call all parties together for a conference before the taking of testimony or may recess the hearing for a conference to carry out the intent of this section. The Board will state on the record the results of the conference.

NAC 288.275 Consolidation.

1. The Board may consolidate two or more cases in any one hearing when it appears that the issues are substantially the same and that the rights of the parties will not be prejudiced by a consolidated hearing.

2. At a consolidated hearing, the Board will determine the order in which the parties introduce their evidence and the general procedure to be followed during the course of the consolidated proceeding.

3. The Board will apportion the costs of the hearing among the parties.

4. Unless the Board orders otherwise, the Commissioner shall place the same date of issuance and the same effective date, if applicable, on all orders made by the Board in relation to a consolidated hearing.

NAC 288.277 Location.

1. Hearings may be held at any location in the State that the Board designates in the notice of the hearing. To the extent possible, hearings will be held in the geographical area which is affected by the proceeding.

2. Hearing may be conducted by video conference.

3. Notice of a hearing must set forth:

(a) The date, time and place of the hearing; and

(b) Whether the hearing will be conducted in person or by video conference.

NAC 288.278 Representation in contested case.

1. Except as otherwise provided in this subsection, representation before the Board in a contested case is limited to representation in proper person or by an attorney who is licensed to practice law in the State of Nevada. The Board may:

(a) Upon a motion or by stipulation of the parties, waive the limitation on representation; and

(b) Require an attorney who is not licensed to practice law in the State of Nevada and who is licensed to practice in any other jurisdiction of the United States to associate with an attorney who is licensed to practice law in the State of Nevada.

2. The representation shall be deemed to be in proper person if the representation is by:

(a) A currently elected or appointed official of the employee organization or union or local government, a local government employee or an employee of the employee organization or union. In the case of an employee organization or union, the official or employee must also be a member of the employee organization or union.

(b) A currently elected or appointed official of the labor organization, an employee of the labor organization or an employee of the Executive Department. In the case of a labor organization, the official or employee must also be a member of the labor organization.

NAC 288.279 Subpoenas.

1. The Chair, or the Vice Chair in the absence of the Chair, may issue a subpoena on behalf of the Board pursuant to NRS 288.120 upon the request of a party to the case or a person who has a pending motion to intervene.

2. If a request for a subpoena is made less than 7 days before the date of the hearing, the person requesting the subpoena must show good cause for the delay in the request.

3. Subpoenas will not be issued in blank form.

4. Subpoenas will not be issued unless a date for the hearing has been set.

5. In his or her discretion, the Chair, or the Vice Chair in the absence of the Chair, may deny a request for a subpoena on behalf of the Board if the request commands the production of frivolous, irrelevant, burdensome or privileged material, or other material made confidential by statute.

NAC 288.280 Examination of witnesses. Witnesses at a hearing must be examined orally under oath, except that for good cause, the Board may permit their testimony to be taken by deposition.

NAC 288.285 Failure of party to appear. If a petitioner, complainant, respondent or intervener fails, without good cause, to appear at the time and place set for hearing, the Board may impose any of the sanctions set forth in NAC 288.373 and may grant or, in the alternative, dismiss the petition or complaint, with or without prejudice, or may recess the hearing to a future date to be set by the Board to enable the petitioner, complainant, respondent or intervener to attend.

NAC 288.290 Continuances.

1. Any request for the postponement of a scheduled hearing must be in writing and signed by the parties or their counsel. The request must include a statement of the reasons for the requested postponement and must be filed with the Board at least 14 days before the time the hearing is scheduled unless good cause is shown to excuse the untimely filing of the request. Except as otherwise provided in subsection 2, the Board will not grant a request for postponement submitted within 30 days after the running of the 180-day period for hearing a complaint.

2. The parties may file with the Commissioner a request to waive the period for hearing a complaint. If the Commissioner grants such a request, the Commissioner may grant a request for postponement submitted after the running of the period for hearing a complaint.

NAC 288.295 Preliminary procedure. The Board will call the hearing to order, note the appearances of the parties present and act upon any pending motions or petitions. At the discretion of the Board the parties may make opening statements.

NAC 288.301 Conduct of hearing.

1. The petitioner or complainant shall present his or her case-in-chief to the Board first followed by the case-in-chief for respondents and others opposing the petition or complaint.

2. Opposing parties will have the opportunity to cross-examine, redirect and recross-examine witnesses.

3. The petitioner or complainant will have the opportunity to conduct closing arguments first followed by respondents or other opposing parties.

4. Members of the Board may:

(a) Conduct cross-examinations of witnesses.

(b) Question any party on any issue of law and fact presented at anytime during the presentation of the matter in controversy.

NAC 288.306 Allowance of oral argument.

1. The Board may, following the filing of briefs or upon contested motions:

(a) Set the matter for oral argument upon 14 days written notice to each party of record, unless the Board considers a shorter time advisable; and

(b) Limit the amount of time available to each party for oral argument.

2. If the Board limits the amount of time available for oral argument pursuant to subsection 1, the Board will allow each party an equal amount of time for oral argument.

NAC 288.310 Closing arguments. A party to the proceedings is entitled to a reasonable period, as determined by the Board, at the close of the hearing for oral argument.

NAC 288.320 Contemptuous conduct. Contemptuous conduct at a hearing is grounds for exclusion from the hearing.

NAC 288.322 Admissibility of evidence.

1. In conducting any investigation, inquiry or hearing, the Board and the presiding officer are not bound by the technical rules of evidence, and no informality in any proceeding or in the manner of taking testimony will invalidate any order or decision of the Board or the presiding officer. The rules of evidence of courts of the State will be generally followed but may be relaxed at the discretion of the Board or the presiding officer when deviation from the technical rules of evidence will aid in ascertaining the facts.

2. An objection to the admissibility of evidence may be made by any party of record and the objection will be ruled on by the presiding officer. When an objection is made to the admission or exclusion of evidence, the grounds upon which the relief is sought must be stated briefly. The presiding officer, either with or without objection, may exclude inadmissible, incompetent, repetitious or irrelevant evidence.

3. Any evidence offered at the hearing must be material and relevant to the issues of the hearing.

4. An offer of proof for the record must consist of a statement of the substance of the evidence to which an objection has been sustained.

NAC 288.324 Documentary evidence and exhibits.

1. Unless otherwise permitted, exhibits submitted to the Board must be limited in size to 8 1/2 by 11 inches. Except as otherwise provided in subsection 2, a copy of each documentary exhibit must be furnished to each party of record, and, if the case has been assigned to:

- (a) The full Board, eight copies must be furnished to the Board.
- (b) A panel, six copies must be furnished to the panel.

2. The Board may waive the requirements of subsection 1 and require the parties to furnish documentary exhibits in an electronic format. If the Board does so, the Board will notify each party of this requirement when it notifies the party of the hearing.

3. If relevant evidence is included in a written or printed statement, book or document of any kind, containing other matters not relevant and not intended to be put into evidence, the statement, book or document containing that other matter may not be received or admitted in whole. Counsel or other parties offering evidence or exhibits shall present, in convenient and proper form for filing, a copy of the relevant portions or, at the discretion of the Board, read these portions into the record. Any documentary evidence offered, whether in the form of an exhibit or introduced by reference is subject to appropriate and timely objection.

4. If documents are numerous or voluminous, and a party desires to offer into evidence more than a limited number of these documents as typical of the others, an orderly abstract of relevant data contained in these documents may be prepared and offered as an exhibit. Other parties of record will be given a reasonable opportunity to examine both the abstract and the documents.

5. In any proceeding involving detailed accounting exhibits, the Board may require each party to file with the Board, and to serve on each party of record, a copy of these exhibits within a specified time before the hearing to enable the parties of record to study the exhibits and to prepare cross-examination with reference to them.

6. Amendments to exhibits may be made after filing with the Board if the amendments do not prejudice the rights of any party or if the amendments contain a clerical or mathematical error.

NAC 288.326 Presentation of further evidence; late filing of exhibits.

1. At any hearing, the Board may order the presentation of further evidence on any issue. The party required to present further evidence will not be restricted from submitting all evidence which the party believes to be relevant to that evidence ordered to be presented.

2. Upon stipulation of the parties, the Board may authorize the filing of specific documentary evidence as a part of the record within a fixed time after submission of the evidence. The Board will reserve exhibit numbers for exhibits which are filed late.

3. The Board may exclude any exhibit which is filed or offered late.

NAC 288.328 Admission of evidence into record. The presiding officer will rule on the admissibility of all evidence subject to the provisions of NAC 288.324 and 288.326. At the conclusion of the hearing, all evidence will be received into the record subject to the rulings of the presiding officer on evidence to which timely objection was made.

NAC 288.332 Official notice. The Board may take official notice of the following matters:

1. Rules, regulations, official reports, decisions, orders and other findings issued by the Board or any regulatory agency of the State;

2. Contents of other findings issued by the Board;

3. Matters of common knowledge and technical or scientific facts of established character; and

4. Official documents, if pertinent, when properly introduced into the record of formal proceedings by reference. Proper and definite reference to the document must be made by the party offering the document and the document must be generally circulated so that the opportunity is provided to each party of record to examine the document and to present rebuttal evidence. The document must not have been in the sole and exclusive possession of one of the parties before the hearing.

NAC 288.335 Stipulations.

1. With the approval of the Board the parties may stipulate as to any fact in issue, either by written stipulation introduced into evidence as an exhibit or by an oral statement made upon the record. This stipulation is binding only upon the party so stipulating. It is not binding upon the Board.

2. The stipulation may be considered by the Board as evidence at the hearing. The Board may require proof of the facts stipulated to by independent evidence, notwithstanding the stipulation of the parties. A stipulation without additional proof is not binding on the Board in its determination of the matter.

NAC 288.340 Decisions and orders.

1. Any decision or order announced outside of a hearing will be in writing. The Board will serve a copy upon each of the parties.

2. Decisions and orders announced at a hearing may be stated orally and must be included in the stenographic report of the hearing.

NAC 288.345 Briefs: Order to file; procedure for filing. In any proceeding, the presiding officer may order briefs to be filed within a reasonable time. Each brief must be filed with the Board and, if the Board has not ordered the submission of simultaneous briefs, must be accompanied by a certificate showing service on each party of record as provided in NAC 288.200.

If the Board has ordered the submission of simultaneous briefs, the Board shall serve each party after the Board receives each brief.

NAC 288.350 Briefs: Filing after hearing. Any party who desires to file a brief after the hearing must have made a motion at the hearing to be permitted to file a brief after the hearing and had that motion approved by the Board. Any brief permitted by the Board to be filed after the hearing must be filed within the time fixed by the Board.

NAC 288.360 Rehearings: Petition; procedure; failure to file.

1. Either party may, within 14 days after service of a final decision of the Board, file a petition for a rehearing stating the reasons therefor.

2. The Board may order a rehearing by requiring the parties to submit any additional evidence or data in support of their respective positions. The Board will not require the repetition of evidence or data previously submitted. Further proceedings and deliberations will be conducted in accordance with the provisions of this chapter.

3. The failure of either party to submit a petition for rehearing within 14 days constitutes an agreement that the Board's decision is a final decision for the purposes of NRS 233B.130.

NAC 288.362 Rehearings: Response. Answers to a petition for rehearing will not be entertained by the Board. If a rehearing is granted by the Board, a response in the nature of an answer may be filed by any party of record within 14 days after the issuance of the order granting a rehearing. The response must be confined to the issues upon which rehearing has been granted and the responding party must serve a copy of the response on each party of record.

NAC 288.364 Rehearings: Grant or denial; decision.

1. The Board will consider a timely petition for rehearing and may grant or deny it not later than 5 days before the date of the expiration of the time frame to file a petition for judicial review set forth in NRS 233B.130. If no action is taken by the Board within the time specified, the petition shall be deemed denied.

2. If the Board grants the petition for rehearing, its order granting rehearing will state the issues upon which the petition has been granted. The Board may request the filing of briefs by the parties on issues raised by the petition. No evidence will be taken nor will any hearing be held under this section.

3. After reconsidering the issues, the Board, if it is of the opinion that the original order or decision is in any respect unjust, unwarranted, unlawful or in need of change, may abrogate, change or modify the decision, the order or both.

4. A decision will be rendered within 45 days after granting a petition for rehearing.

NAC 288.368 Rehearings: Order for modification; modifying order is final order for purposes of judicial review.

1. Any order modifying a decision or order of the Board issued pursuant to NAC 288.364 incorporates those portions of the prior order or decision which have not been changed or modified by the subsequent order.

2. Except as otherwise provided in this subsection, for purposes of judicial review, a modifying order is to be considered the final order of the Board. The modifying order of a panel is to be considered the final order of the Board for purposes of judicial review if the modifying order:

- (a) Is unanimous; or
- (b) Is a split decision and:
 - (1) No timely petition for reconsideration by the full Board is filed in accordance with NAC 288.2718, 288.272 and 288.2725; or
 - (2) A timely petition for reconsideration is filed but denied by the full Board.

NAC 288.370 Transcripts: Costs.

1. Except as otherwise ordered by the Board, the cost of recording or reporting testimony must be divided equally by all parties and a copy must be furnished to the Board. Either party may procure transcripts at his or her expense.
2. Other arrangements for the cost of the record may be made by the Board in special hardship cases.

Miscellaneous Provisions

NAC 288.373 Imposition of sanctions.

1. The Board may impose sanctions against a party who fails:
 - (a) To comply with an order of the Board;
 - (b) Without good cause, to appear at the time and place set for hearing by the Board; or
 - (c) To comply with any applicable provisions of this chapter or chapter 288 of NRS.
2. The sanctions that may be imposed pursuant to subsection 1 include, without limitation:
 - (a) Striking a pleading of a party; and
 - (b) Ordering the party to pay to the other party reasonable attorney's fees and costs.

NAC 288.375 Dismissal of matter. The Board may dismiss a matter for any of the following reasons:

1. If the Board determines that no probable cause exists for the complaint, or if the complaint has been settled and notice of the settlement has been received by the Board.
2. Unless there is a clear showing of special circumstances or extreme prejudice, if the parties have not exhausted their contractual remedies, including all rights to arbitration.
3. If the complainant, within a reasonable time, fails to prosecute its complaint.
4. If, without good cause shown, an applicant, petitioner or complainant fails to appear at the time and place set for hearing by the Board.
5. If an applicant, petitioner or complainant files a spurious or frivolous complaint or a complaint which presents only issues that have been previously decided by the Board.

Declaratory Orders

NAC 288.380 Petition for declaratory order.

1. Any recognized employee organization or labor organization or government employer may petition the Board for a declaratory order regarding the applicability or interpretation of any statutory provision or of any regulation or decision of the Board. A copy of the petition must be filed with the Board.
2. If the petitioner is a government employer, it shall file a copy of its petition with each of the employee organizations or labor organizations, as applicable, which it has recognized. If the petitioner is a recognized employee organization or labor organization, it shall file a copy of its petition with the government employer which afforded it recognition.
3. The petition must contain:

- (a) The name, address, zip code and telephone number of the petitioner;
 - (b) A statement of the nature of the petitioner's interest, including the reasons for the submission of the petition;
 - (c) The designation of the specific provision, regulation or decision in question;
 - (d) A clear and concise statement of the position of, or contention of, the petitioner;
 - (e) A memorandum of authorities, containing a full discussion of their reasons, including legal authorities in support of such a position or contention; and
 - (f) The signature of each petitioner.
4. Any petition which does not conform to these requirements may be rejected.

NAC 288.390 Response to petition for declaratory order; reply to response.

1. Any party served with a petition for a declaratory order may respond to the petition within 21 days by filing his or her response with the Board. The responding party shall also serve a copy of the response upon the petitioner.
2. The response must include:
 - (a) The full name and address of the petitioner;
 - (b) The full name and address of the respondent;
 - (c) A clear and concise statement of the facts, including the time and place of the occurrence of the particular acts described in the petition and the names of persons involved; and
 - (d) A memorandum of authorities, including legal authorities in support of or in opposition to any position or contention raised by the petitioner.
3. A party requesting a petition for a declaratory order may file a reply to any response filed pursuant to this section within 14 days after the date on which the response is served.

NAC 288.400 Request for hearing.

1. Any petitioner who desires a hearing on a petition for a declaratory order shall set forth in detail in his or her request the reason why the matters alleged in the petition and the supporting affidavits or other written evidence in briefs or memorandum of legal authorities do not permit the fair and expeditious disposition of the petition.
2. A request for a hearing filed pursuant to this section must be filed within 21 days after service of any response to the petition. Failure to file a request for a hearing may be construed as consent for the Board to issue a declaratory order without holding a hearing.
3. The parties shall not file the prehearing statements which are otherwise required by NAC 288.250 unless a request for a hearing filed pursuant to this section is granted by the Board.

NAC 288.410 Consideration by Board.

1. The Board may, for good cause, refuse to issue a declaratory order if:
 - (a) The question is speculative or purely hypothetical and does not involve existing facts or facts that can reasonably be expected to exist in the near future;
 - (b) The petitioner's interest is not of the type which would give him or her standing to maintain an action if the petitioner were to seek judicial relief;
 - (c) The issuance of the declaratory order may adversely affect the interest of the Board or any of its officers or employees in a litigation which is pending or may reasonably be expected to arise; or
 - (d) The matter is not within the jurisdiction of the Board.

2. The Board will consider each petition submitted for a declaratory order and will, within a reasonable time after the submission:

- (a) Deny the petition in a written statement containing the Board's reasons for the denial;
- (b) Set the matter for hearing and proceed according to NAC 288.280 to 288.370, inclusive; or
- (c) Issue a declaratory order on the matters contained in the petition.

3. The Board may order a hearing on an unopposed petition for a declaratory order if it is in the best interests of those who may be affected by the order.

NAC 288.420 Intervention. Any party may intervene subject to the applicable provisions of this chapter.

Petitions for Adoption, Amendment or Repeal of Regulations

NAC 288.430 Procedure for consideration of petition for adoption, amendment or repeal of regulations.

1. A petition for the adoption, amendment or repeal of a regulation must contain:
 - (a) The name, address, zip code and telephone number of each petitioner;
 - (b) The signature of each petitioner;
 - (c) A statement of the nature of the petitioner's interest;
 - (d) A draft of the substance of the proposed regulation or amendment or a designation of the provisions sought to be repealed;
 - (e) A statement of the reasons for the proposed regulation, amendment or repeal; and
 - (f) Any other information pertinent to the petition.
2. The petition must be filed with the Board.
3. The Board will either deny the petition in writing, stating its reasons for the denial, or act in accordance with the procedures provided in chapter 233B of NRS for the adoption, amendment or repeal of regulations.
4. Any petition which does not conform to the requirements specified in this section may be rejected.

NEW SECTIONS NOT YET ASSIGNED A NAC NUMBER

NAC 288.R056-19.2 "Government Employer" defined. "Government employer" means:

1. A local government employer, as defined in NRS 288.060; or
2. The Executive Department, as defined in section 10 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3729 (NRS 288.042).

NAC 288.R056-19.3 Confidential Status of EMRB Employees. The Board interprets the term "confidential employee," as used in section 18 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3729 (NRS 288.420), to include, without limitation, any clerical personnel who are employed by the Board pursuant to NRS 288.090.

NAC 288.R056-19.4 Verification of Number of Employees.

1. To verify the number of local government employees employed by a local government employer for the purposes of NRS 288.105, the Board will:

(a) If employees of a local government employer are members of the Public Employees' Retirement System, use the most recent information available from the Public Employees' Retirement System.

(b) If employees of a local government employer are not members of the Public Employees' Retirement System, use any other information submitted to the Board by the local government employer if the Board deems the information to be reliable and the local government employer certifies the accuracy of the information.

2. To verify the number of employees employed by the Executive Department for the purposes of section 23 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3730 (NRS 288.475), the Board will use any information submitted to the Board by the Division of Human Resource Management of the Department of Administration or the Nevada System of Higher Education, as applicable, if the Board deems the information to be reliable and the Division or the Nevada System of Higher Education, as applicable, certifies the accuracy of the information.

3. On or before May 31 of each year, each local government employer that does not employ persons who are members of the Public Employees' Retirement System, the Division of Human Resource Management of the Department of Administration and the Nevada System of Higher Education shall submit to the Board the information necessary to verify the number of employees employed by the local government employer or Executive Department, as applicable.

4. The Board will adjust the fee imposed on a local government employer whose employees are members of the Public Employees' Retirement System if:

(a) The local government employer submits to the Board proof that the local government employer employs 98 percent or less than the number of local government employees reflected in the information made available to the Board from the Public Employees' Retirement System;

(b) The Board deems the proof submitted pursuant to paragraph (a) to be reliable;

(c) The local government employer certifies the accuracy of the proof submitted pursuant to paragraph (a); and

(d) The local government employer pays any portion of the fee that is not in dispute.

NAC 288.056-19.5 Preliminary Investigations.

1. In determining whether to conduct a preliminary investigation of a complaint pursuant to section 27 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3733 (NRS 288.625), the Board will consider:

(a) Whether the complainant or petitioner is represented by counsel;

(b) Whether the complainant or petitioner has conducted an investigation of the complaint or similar complaints;

(c) The number of persons affected by the alleged violation; and

(d) The amount of time and resources necessary to conduct the investigation.

2. In conducting a preliminary investigation pursuant to section 27 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3733 (NRS 288.625), the Board or Commissioner may:

(a) Interview the complainant or petitioner or any witnesses.

(b) Request the complainant or petitioner or any witness to provide records to the Board or Commissioner. A person shall provide any requested records to the Board or Commissioner, as applicable, not later than 30 days after the date on which the request was received by the person.

3. The Board or Commissioner will not conduct or continue a preliminary investigation if the complainant or petitioner has filed a motion to dismiss.

4. If the Commissioner conducts a preliminary investigation on behalf of the Board, upon completion of the investigation, the Commissioner shall prepare and submit to the Board, the complainant and the respondent a written report which must include a recommendation of whether the complaint has any basis in law or fact and the reason for that recommendation.

5. The Board will consider the prehearing statements filed pursuant to NAC 288.250 and the written report prepared pursuant to subsection 4, if any, and determine whether the complaint has any basis in law or fact. Upon making such a determination, the Board will take the action prescribed in paragraph (a) or (b) of subsection 2 of section 27 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3734 (NRS 288.625).

NAC 288.R056-19.6 Use of Hearing Officers.

1. A hearing officer appointed by the Board pursuant to section 28 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3734 (NRS 288.630), to conduct a hearing that the Board is otherwise required to conduct pursuant to section 27 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3733 (NRS 288.625), shall:

(a) Comply with any requirements for a hearing prescribed in NAC 288.273 to 288.350, inclusive;

(b) Ensure that the administrative record of the hearing is complete and forward the record to the Board as soon as practicable after the close of the hearing;

(c) As soon as practicable upon the close of the hearing, propose a recommended decision or order to the Board in writing, which must include, without limitation, any findings of fact or conclusions of law reached by the hearing officer; and

(d) Serve a copy of the recommended decision or order upon each party.

2. Either party may, within 14 days after service of the recommended decision or order pursuant to subsection 1, file a written objection to the recommendation with the Board.

3. Before deliberating, each member of the Board will state on the record that he or she has read:

(a) The administrative record of the hearing forwarded to the Board pursuant to paragraph (b) of subsection 1;

(b) The recommended decision of a hearing officer proposed pursuant to paragraph (c) of subsection 1; and

(c) Any objection filed pursuant to subsection 2.

4. The Board will consider the administrative record, the recommended decision of a hearing officer and any objection before rendering a final decision.

5. The Board will not substitute its judgment for that of the hearing officer as to the weight of evidence on a question of fact. The Board may substitute its judgment for that of the hearing officer as to any other matter.

NAC 288.R056-19.7 Scope of State Bargaining Units.

1. For the purposes of paragraph (a) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the labor, maintenance, custodial and institutional employees bargaining unit is hereby established. The unit includes employees whose primary job responsibility involves the performance of work that is physical and repetitive in nature, including, without limitation, employees who are custodial workers, laundry workers and highway maintenance workers. The unit excludes supervisory employees.

2. For the purposes of paragraph (b) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the administrative and clerical employees bargaining unit is hereby established. The unit includes employees whose primary job responsibility involves the performance of work that is repetitive in nature but is not primarily physical, including, without limitation, administrative assistants, accounting assistants and legal secretaries. The unit excludes supervisory employees.

3. For the purposes of paragraph (c) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the technical aides to professional employees bargaining unit is hereby established. The unit includes employees whose primary job responsibility involves assisting employees who perform work that requires specialized skills or education. The unit includes, without limitation, accountant technicians, tax examiners and information technology technicians. The unit excludes supervisory employees.

4. For the purposes of paragraph (d) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the non-health care professional employees bargaining unit is hereby established. The unit includes professional employees whose primary job responsibility involves the performance of work that requires specialized skills or education but does not involve the performance of health care work, including, without limitation, environmental scientists, budget analysts and program officers. The unit excludes supervisory employees.

5. For the purposes of paragraph (e) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the health care professional employees bargaining unit is hereby established. The unit includes professional employees whose primary job responsibility involves the performance of health care work that requires specialized skills or education, including, without limitation, psychiatric nurses, mental health counselors and registered dietitians. The unit excludes supervisory employees.

6. For the purposes of paragraph (f) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the nonprofessional health and personal care employees bargaining unit is hereby established. The unit includes employees whose primary job responsibility involves providing health care and personal care that does not require specialized skills or education, including, without limitation, child care workers, mental health technicians and dental assistants. The unit excludes supervisory employees.

7. For the purposes of paragraph (g) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the category I peace officers bargaining unit is hereby established. The unit includes employees whose primary job responsibility requires certification as a category I peace officer, including, without limitation, officers employed by the Department of Public Safety or the Nevada System of Higher Education, game wardens and park rangers. The unit excludes supervisory employees.

8. For the purposes of paragraph (h) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the category II peace officers bargaining unit is hereby established. The unit includes employees whose primary job responsibility requires certification as a category II peace officer, including, without limitation, criminal investigators, compliance investigators, enforcement investigators and youth parole counselors. The unit excludes supervisory employees.

9. For the purposes of paragraph (i) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the category III peace officers bargaining unit is hereby established. The unit includes employees whose primary job

responsibility requires certification as a category III peace officer, including, without limitation, correctional officers and forensic specialists. The unit excludes supervisory employees.

10. For the purposes of paragraph (j) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the supervisory employees bargaining unit is hereby established. The unit includes employees from all occupational groups who are supervisory employees, including, without limitation, fish hatchery supervisors, park supervisors and tax program supervisors.

11. For the purposes of paragraph (k) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the firefighters bargaining unit is hereby established. The unit includes employees whose primary job responsibility is firefighting, including, without limitation, firefighters, seasonal firefighters and crew chiefs. The unit excludes supervisory employees.

12. As used in this section:

(a) "Professional employee" has the meaning ascribed to it in paragraph (d) of subsection 3 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515).

(b) "Supervisory employee" has the meaning ascribed to it in paragraph (e) of subsection 3 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515).

NAC 288.R056-19.8 Procedures Related to Request for Elections Under Section 31 of SB 135

1. If a labor organization files with the Board a written request for an election pursuant to paragraph (a) of subsection 1 of section 31 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3736 (NRS 288.525), the Board will post a copy of the written request and any information received by the Board relating to the written request on the Internet website maintained by the Board.

2. Any person may request that the Board notify the person if a labor organization files a written request for an election pursuant to paragraph (a) of subsection 1 of section 31 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3736 (NRS 288.525) or the Board receives any additional information related to such a request. The Board will provide such notice by electronic mail to any person who submits such a request.

3. If the Board orders an election within a bargaining unit pursuant to subsection 1 of section 31 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3736 (NRS 288.525), the election must not occur sooner than 14 days after the date on which such an order is made.

4. Any labor organization that wishes to be placed on the ballot for an election pursuant to paragraph (c) of section 32 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3736 (NRS 288.530) must file a written request to be placed on the ballot for the election within 14 days after the date on which the Board orders an election.