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Agency:

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS
BOARD

R039-23

Classification: PROPOSED **ADOPTED BY AGENCY** EMERGENCY

Brief description of action: The primary impetus for amending the agency's regulations were due to the issuance of Executive Order 2023-003 and Executive Order 2023-008. Executive Order 2023-003, Section 1 required Executive Branch agencies to review their regulations to determine which regulations could be streamlined, clarified, reduced or otherwise improved. Sections 1, 3, 4 and 5 of the proposed regulation were a result of this review. Section 1 eliminated the preregistration of e-mail addresses for electronic filing. Section 3 streamlines the tracking of the certified mail related to new complaints. Section 4 makes the filing of an answer due in 21 days instead of 20 days, which was an error from the 2019 regulation amendments. Section 5 improves the allocation of new Board members to panels for hearing cases, so that the Board members will more likely have a shared burden in hearing cases.

Executive Order 2023-003, Section 2 required Executive Branch agencies to review their regulations to determine which regulations could be removed. Section 6 of the proposed regulation lists four regulations which were recommended for removal as a result of this review; specifically NAC 288.025, NAC 288.050, NAC 288.060 and NAC 288.320.

Executive Order 2023-008, Section 2 authorizes Executive Branch agencies to amend their regulations due to recently passed legislation (i.e., legislation passed in 2023). Section 2 of the regulation is due to the passage of Senate Bill 166, which established four new supervisory bargaining units at the State level. Section 2 amends descriptions of the various State bargaining units by adding descriptions for these four new supervisory bargaining units.

Authority citation other than 233B: NRS 288.110

Notice date: May 29, 2024

Date of Adoption by Agency: July 10, 2024

Hearing date: July 10, 2024

**APPROVED REGULATION OF THE GOVERNMENT
EMPLOYEE-MANAGEMENT RELATIONS BOARD**

LCB File No. R039-23

Filed on September 16, 2024

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§ 1 and 3-6, NRS 233B.040 and 288.110; § 2, NRS 233B.040, 288.110 and 288.515, as amended by section 2 of Senate Bill No. 166, chapter 459, Statutes of Nevada 2023, at page 2798.

A REGULATION relating to government employees; removing provisions relating to the registration of electronic mail addresses for purposes of the electronic filing of written documents with the Government Employee-Management Relations Board; establishing bargaining units for supervisory employees who are category I peace officers, category II peace officers, category III peace officers or firefighters and specifying which employees are included within each unit; requiring a person who files a complaint with the Board and serves a copy of the complaint by certified mail on all parties in interest to forward to the Board the tracking number provided by the United States Postal Service; increasing the period within which a respondent is authorized to file an answer to a complaint; revising provisions relating to the duties of members of the Board who are randomly assigned to serve on panels established by the Commissioner of the Board in certain circumstances; repealing a duplicative definition and provisions concerning the severability of provisions of certain regulations held invalid, mailing lists maintained by the Board and contemptuous conduct at hearings; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Government Employee-Management Relations Board to make rules governing proceedings before the Board, procedures for fact-finding, the recognition of employee organizations, the designation of the exclusive representative of a bargaining unit and the determination of bargaining units. (NRS 288.110)

Existing regulations authorize the electronic filing of any written document required to be filed with the Board and provide that: (1) a person filing a written document electronically must first register with the Board all electronic mail addresses authorized to send and receive electronic mail for the person; and (2) a document submitted electronically must have been sent

from such a registered electronic mail address to be deemed filed. (NAC 288.075) **Section 1** of this regulation removes such requirements.

Existing law: (1) requires the Board to establish bargaining units for certain occupational groups of employees of the Executive Department, including supervisory employees who are category I peace officers, category II peace officers, category III peace officers or firefighters; (2) requires the Board to determine the classifications of employees within each bargaining unit; and (3) provides that a bargaining unit for peace officers must be composed exclusively of peace officers. (NRS 288.515, as amended by section 2 of Senate Bill No. 166, chapter 459, Statutes of Nevada 2023, at page 2798) **Section 2** of this regulation accordingly establishes bargaining units for supervisory employees who are category I peace officers, category II peace officers, category III peace officers or firefighters and specifies which employees are included within each bargaining unit.

Existing regulations require a person who files a complaint with the Board to serve a copy of the complaint by certified mail on all parties in interest. (NAC 288.200) **Section 3** of this regulation also requires a complainant to forward to the Board, not later than 24 hours after mailing a copy of the complaint by certified mail, the tracking number provided by the United States Postal Service. Existing regulations authorize a respondent to file an answer to a complaint not later than 20 days after receiving the complaint. (NAC 288.220) **Section 4** of this regulation increases the period within which a respondent is authorized to file an answer to not later than 21 days after receiving the complaint.

Existing regulations: (1) authorize the Commissioner of the Board to establish one or more panels to which each member of the Board must be assigned; and (2) provide that if two or more panels are established and the absence of one or more members of a panel would otherwise require a hearing to be postponed, the Commissioner is authorized to randomly assign another member or members of the Board to the panel for the purposes of the hearing and disposition of the matter. Existing regulations also require a member of the Board who is randomly assigned to a panel to continue to participate in the panel for the purposes of the hearing and disposition of the matter. (NAC 288.271) **Section 5** of this regulation establishes an exception to such a requirement by providing that if a new member is appointed to the Board and assigned to a panel and a hearing has not yet taken place, the new member will, upon agreement with the member randomly assigned to the panel, replace the member randomly assigned to the panel for the purposes of the hearing and disposition of the matter.

Existing regulations provide that if any provision of chapter 288 of the Nevada Administrative Code or any application of such a provision to any person, thing or circumstance is held invalid, it is intended that the invalidity not affect the remaining provisions of the chapter, or the application thereof, that can be given effect without the invalid provision or application. (NAC 288.050) Existing regulations also authorize: (1) a person to request to be placed on a mailing list kept by the Board for the purpose of being provided written notice of complaints or controversies which are the subject of a hearing before the Board or copies of regulations, final orders, decisions and opinions adopted or rendered by the Board; and (2) the Board to make a reasonable charge for the cost of furnishing any such requested documents. (NAC 288.060) Existing regulations additionally provide that contemptuous conduct at a hearing is grounds for

exclusion from the hearing. (NAC 288.320) **Section 6** of this regulation repeals each of these provisions.

Section 6 also repeals a duplicative definition of the term “Commissioner” that is already defined in chapter 288 of the Nevada Revised Statutes. (NRS 288.036)

Section 1. NAC 288.075 is hereby amended to read as follows:

288.075 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; *and*

(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.~~ 3. 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-]~~ 4. 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.

Sec. 2. NAC 288.108 is hereby amended to read as follows:

288.108 1. For the purposes of paragraph (a) of subsection 1 of 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 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 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 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 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 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 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 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 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 NRS 288.515, the *general* 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. *The unit excludes supervisory employees who are firefighters or category I, category II or category III peace officers.*

11. For the purposes of paragraph (k) of subsection 1 of 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. *For the purposes of paragraph (l) of subsection 1 of NRS 288.515, as amended by section 2 of Senate Bill No. 166, chapter 459, Statutes of Nevada 2023, at page 2798, the category I peace officers supervisory bargaining unit is hereby established. The unit includes supervisory employees who are category I peace officers and would otherwise be included in*

the category I peace officers bargaining unit pursuant to subsection 7 if they were not supervisory employees.

13. For the purposes of paragraph (m) of subsection 1 of NRS 288.515, as amended by section 2 of Senate Bill No. 166, chapter 459, Statutes of Nevada 2023, at page 2798, the category II peace officers supervisory bargaining unit is hereby established. The unit includes supervisory employees who are category II peace officers and would otherwise be included in the category II peace officers bargaining unit pursuant to subsection 8 if they were not supervisory employees.

14. For the purposes of paragraph (n) of subsection 1 of NRS 288.515, as amended by section 2 of Senate Bill No. 166, chapter 459, Statutes of Nevada 2023, at page 2798, the category III peace officers supervisory bargaining unit is hereby established. The unit includes supervisory employees who are category III peace officers and would otherwise be included in the category III peace officers bargaining unit pursuant to subsection 9 if they were not supervisory employees.

15. For the purposes of paragraph (o) of subsection 1 of NRS 288.515, as amended by section 2 of Senate Bill No. 166, chapter 459, Statutes of Nevada 2023, at page 2798, the firefighters supervisory bargaining unit is hereby established. The unit includes supervisory employees who are firefighters and would otherwise be included in the firefighters bargaining unit pursuant to subsection 11 if they were not supervisory employees.

16. As used in this section:

(a) "Professional employee" has the meaning ascribed to it in paragraph (d) of subsection [3] 4 of NRS 288.515.

(b) "Supervisory employee" has the meaning ascribed to it in paragraph (e) of subsection ~~3~~ 4 of NRS 288.515.

Sec. 3. NAC 288.200 is hereby amended to read as follows:

288.200 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) *Serve* a copy of the complaint by certified mail on all parties in interest at their last known addresses ~~H~~; and

(b) *Not later than 24 hours after mailing a copy of the complaint by certified mail pursuant to paragraph (a), forward to the Board the tracking number provided by the United States Postal Service for each copy mailed.*

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.

Sec. 4. NAC 288.220 is hereby amended to read as follows:

288.220 1. A respondent may file an answer in the form of a pleading and not later than ~~20~~ 21 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.

Sec. 5. NAC 288.271 is hereby amended to read as follows:

288.271 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; ~~panel~~

(2) ~~The~~ *Except as otherwise provided in subparagraph (3), 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 ~~+~~ ; *and*

(3) If a new member is appointed to the Board and assigned to a panel and the hearing has not yet taken place, the new member will, upon agreement between the new member and the member randomly assigned to the panel, replace the member randomly assigned to the panel for purposes of the hearing and disposition of the matter.

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.

Sec. 6. NAC 288.025, 288.050, 288.060 and 288.320 are hereby repealed.

TEXT OF REPEALED SECTIONS

288.025 “Commissioner” defined. (NRS 288.110) “Commissioner” means the Commissioner appointed by the Board pursuant to NRS 288.090.

288.050 Severability. (NRS 288.110) 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.

288.060 Mailing lists for notice of complaints or controversies and copies of documents; charge for furnishing documents. (NRS 288.110)

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.

288.320 Contemptuous conduct. (NRS 288.110) Contemptuous conduct at a hearing is grounds for exclusion from the hearing.