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PROPOSED TEMPORARY REGULATION OF THE LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

CHAPTER 288

LOCAL GOVERNMENT: RELATIONS WITH EMPLOYEES

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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](#) and [288.030](#) have the meanings ascribed to them in those sections.

NAC 288.020 “Board” defined. “Board” means the local government employee-management relations board.

NAC 288.030 “Complainant,” “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](#); or
3. A local government employee as defined in [NRS 288.050](#).

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.

1. Any person may request in writing that he be placed on a mailing list kept by the board so that he 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 be placed on a mailing list kept by the board so that he 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. Except as otherwise provided in this chapter, if any written document or other written matter is ~~required to be~~ filed with the board, the original and four copies must be signed and filed *in pleading form*. Additional copies must be served *by the filing party* upon the opposing party, intervener and any party in interest.

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.
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, local government employer or employee organization by the complaining party within 5 days of the filing.

NAC 288.090 Time: Computation. In computing any period of time prescribed by this chapter or by an order of the board, the day of the act from which the designated period begins is not included. The last day of the period so computed is included unless it is a Saturday, Sunday or nonjudicial day. If so, the period runs until the end of the next day which is not a Saturday, Sunday or nonjudicial day. If the period prescribed is less than 7 days, intermediate Saturdays, Sundays and nonjudicial days are excluded.

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 the employer determines that the proposed matter would be reserved to him pursuant to subsection 3 of [NRS 288.150](#), the employee organization may request the board to review that determination. If the board, after reviewing the determination of the 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 in accordance with subsection 4 of [NRS 288.160](#) 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. Provisions may be made for a nonunion vote and for linguistic assistance.

6. If the results are inconclusive, the board will conduct a runoff election.

7. Within 5 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. A sworn original and four 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.

8. 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.

9. An employee organization will be considered the exclusive bargaining agent for 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 employees within the particular bargaining unit.

10. Ballots are to be kept for six months and then destroyed if no timely objections are filed.

11. The parties shall share in the cost of the election.

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 employee organization is aggrieved by the determination of a bargaining unit, it may appeal to the board in accordance with the provisions of [NAC 288.200](#) to [288.370](#), inclusive.

NAC 288.140 Lists of organizations recognized by employers. Before December 1 of each year, each local government employer shall file with the board a list of all employee organizations that the employer is currently recognizing and a description of the bargaining unit for each employee organization.

NAC 288.143 Objection to application for recognition of organization. Upon the proper filing of an application for recognition *in pleading form*, any local government employer *without a recognized employee organization* objecting to the sufficiency of the application may, within ~~5~~ **10** days after receipt of the application, *in pleading form* request a hearing before the board to challenge the sufficiency 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 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 factfinding 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 ~~for request~~ *by filing a request with the Board 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 only 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 Lists of officers and representatives of organizations. Between November 1 and December 1 of each year, each local government employee organization shall file with the board 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. The employee organization may elect, appoint or retain additional or other officers and representatives subsequent thereto.

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

1. A factfinder shall not make a personal assessment of the substantive merits of any issue submitted to him.

2. The factfinder shall inform any party requesting binding factfinding of the schedule of the dates and times for the hearing established pursuant to subsection 4 of [NRS 288.201](#).

3. If any factfinder 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 factfinder.

4. A factfinder shall keep a full record of his proceedings. The record must be preserved so that a transcript may be available at the request of the board.

5. The report of the factfinder 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 factfinder; and
- (g) Any special explanatory comments.

NAC 288.155 Factfinder: Effect of failure to schedule hearing. Any failure of a factfinder 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 factfinding.

PRACTICE BEFORE THE LOCAL GOVERNMENT EMPLOYEE- MANAGEMENT RELATIONS BOARD

Motions, Complaints and Other Papers

NAC 288.200 Complaint, *Petition, Application and Request.*

1. A complaint, *petition, application, or request* must include:
 - (a) The full name and address of the complainant;
 - (b) The full name and address 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. The complainant shall file a verified original and four copies of the complaint, *petition, application or request* with the board *in pleading form* and shall serve a copy by certified mail on all parties in interest at their last known addresses.
3. *All subsequent pleadings and documents must include the case number and proper captioning.*

NAC 288.210 Grounds for dismissal ~~[of complaint]~~. The board may dismiss a ~~[complaint]~~ *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.
6. *Should a party fail to comply with an order of the board or fail to appear or comply with NRS Chapter 288 or NAC Chapter 288, appropriate sanctions may be assessed including the award of fees and costs or striking the party's answer.*

NAC 288.220 Answer.

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

2. The 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 is without knowledge, in which case he 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. A sworn original and four copies of the answer must be signed and filed with the board.

NAC 288.231 Form of pleadings and motions.

1. Pleadings and written motions must be:

(a) Properly titled;

(b) Signed by an authorized person;

(c) State the name and address of each party; and

(d) Clearly identify the proceeding by title and **[docket] case** number.

2. Pleadings and motions must 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.

3. Pleadings and written motions must be typewritten, photocopied or printed on good quality paper 8 1/2 by 11 inches in size.

4. A pleading initiating a new proceeding must have space for the **[docket] 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 **[docket] 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 and state briefly the grounds for the motion and the relief requested. 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 10 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 10 days after service of the opposition to the motion, the moving party may respond to the points raised in the opposition.

5. An affidavit 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. Failure of the opposing party to serve and file his written opposition may be construed as an admission that the motion is meritorious and a consent to granting the same.

NAC 288.250 Prehearing statement. Not later than 20 days after the service of the answer, unless otherwise ordered by the board, each party shall submit to the board *an original and four copies of it's* ~~to~~ prehearing statement which includes:

1. 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;
2. 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;
3. A list of witnesses and their qualifications, including a brief summary of their expected testimony; and
4. An estimate, to the nearest hour, of the time needed for the presentation of the party's position.

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. The 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. The petition is not timely filed unless it is filed with the board and served upon all parties by certified mail at least ~~to~~ 60 days before the time set for the hearing. A response to the application or petition may be made by any party not later than 5 days after receipt of the application or petition.

NAC 288.262 Filing petition to intervene.

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 ~~to~~ 60 days before the time set for the hearing. A response to the application or petition may be made by any party not later than 5 days after receipt of the application or 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.”

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) ~~[Arrange for the exchange of proposed exhibits or prepared testimony]~~ *Discussion of proposed exhibits which should have been previously exchanged;*
- (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 ~~[docket]~~ *case* numbers 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. 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.

NAC 288.278 Representation in contested case; limitation. (NRS 288.110)

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, within its discretion and ~~[without notice]~~ *upon a motion*, waive the limitation on representation *and may require association with local counsel*.

2. The representation shall be deemed to be in proper person if the representation is by a currently elected or appointed official *or employee* of the employee organization or union or local government *employer*. In the case of an employee organization or union, the official must also be a member of the employee organization or union.

NAC 288.279 Subpoenas.

1. The board may issue a subpoena 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 to the board 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 its discretion, the board may deny a request for a subpoena 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 to appear at the time and place set for hearing, the board 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. 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 ~~[72 hours]~~ *10 days* before the time the hearing is scheduled. In no case will a request for postponement be granted within 30 days after the running of the 90-day 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.

(Added to NAC by Local Gov't Employee-Mgt. Rel. Bd., eff. 9-30-88)

NAC 288.301 Conduct of hearing.

1. The petitioner or complainant shall present his 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. The board may, following the filing of briefs or upon contested motions, set the matter for oral argument upon 10 days written notice to each party of record, unless the board considers a shorter time advisable.

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 is 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. The rules of evidence of courts of the state will be generally followed but may be relaxed at the discretion of the presiding officer or board 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 board. 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 board, 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. A copy of each documentary exhibit must be furnished to each party of record, and ~~four~~ six copies must be furnished to the board. ~~[A copy must be submitted to the court reporter, transcriber or commissioner of the board.]~~ 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.

2. 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.

3. 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.

4. 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 late filed or offered exhibit.

NAC 288.328 Admission of evidence into record. The board will rule on the admissibility of all evidence subject to the provisions of [NAC 288.324](#). At the conclusion of the hearing all evidence will be received into the record subject to the rulings of the board 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 288.338 Proposed findings of fact and conclusions of law.

1. The board may require any party of record to file proposed findings of fact and conclusions of law at the close of the proceedings. The board will require the designated party to file these proposed findings and conclusions within 30 days after the hearing date. No decision, report or recommended order may be made until after the expiration of this fixed time.

2. Each proposed finding of fact and conclusion of law must be clearly and concisely stated and numbered.

3. An original and four copies of findings of fact and conclusions of law, accompanied by a certificate of service, must be filed by each party with the commissioner and one copy must be served upon each party of record.

4. Any party of record may petition the board for an extension of time in which to file proposed findings of fact and conclusions of law, but in no case may the extension exceed 60 days before the date required by subsection 2 of [NRS 288.110](#) for the issuance of a decision by the board.

5. Any party upon whom a proposed finding of fact and conclusion of law has been served has 10 days from receipt of a copy of the proposed findings of fact and conclusions of law to submit to the board objections and proposed modifications to those findings and conclusions.

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. An original and four copies of each brief must be filed with the board and must be accompanied by an acknowledgment of or an affidavit showing service on each party of record as provided in [NAC 288.200](#).

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 10 days after any decision by 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 10 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 15 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 petition for rehearing and may grant or deny it within 20 days after the date of its filing. 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 288.366 Rehearings: Effect of filing or granting. Except as otherwise ordered by the board, no filing of a petition for rehearing or granting of the petition excuses compliance with or otherwise suspends the effectiveness of the final decision or order upon which the petition for rehearing was filed.

NAC 288.368 Rehearings: Order for modification.

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. For purposes of appeal a modifying order is to be considered the final order of the 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 expense.

2. Other arrangements for the cost of the record may be made by the board in special hardship cases.

Declaratory Orders

NAC 288.380 Petitions.

1. Any recognized employee organization or local 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 local government employer, it shall file a copy of its petition with each of the employee organizations which it has recognized. If the petitioner is a recognized employee organization, it shall file a copy of its petition with the 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.

1. Any party served with a petition for a declaratory order may respond to the petition within 20 days by filing the original and four copies of his sworn 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) The legal authority under which the response is made.

NAC 288.400 Request for hearing. Any petitioner who desires a hearing on a petition for a declaratory order shall set forth in detail in his 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 and, if a request for hearing is dependent upon factual assertions, shall, by affidavit, establish those facts.

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 standing to maintain an action if he 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 issue a declaratory order without holding a hearing on a petition which has been opposed if all of the legal issues raised by the petition have been previously decided by the board and the board adopts its previous decision or decisions as precedent.

4. 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.