

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

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

AUTHORITY: NRS 288.110.

A REGULATION relating to collective bargaining by employees of local governments; clarifying the procedure through which the status of a recognized bargaining agent may be contested by another employee organization; and providing other matters properly relating thereto.

**Section 1. Chapter 288 of NAC** is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.

**Sec. 2. “Good faith doubt” defined.** *In the context of a petition filed pursuant to NAC 288.146, the Board may interpret “good faith doubt,” as that term is used in subsection 4 of NRS 288.160, as including:*

- 1. A rival organization has filed a timely petition pursuant to NAC 288.146 and has fully complied with the requirements of that section and sections 2 to 11, inclusive, of this regulation; and*
- 2. The review conducted pursuant to section 10 of this regulation shows that the number of employees properly included on the membership list or the number of valid interest cards submitted by the rival organization is more than 50 percent of the number of employees in the bargaining unit.*

**Sec. 3. “Incumbent” and “incumbent organization” defined.** *“Incumbent” or “incumbent organization” means an employee organization who is recognized as the bargaining agent for that specific employee unit.*

**Sec. 4. “Interest card” defined.** *Except as otherwise provided in this section, “interest card” means any document tendered by a rival organization as evidence of support in connection with a petition filed pursuant to NAC 288.146. The term does not include a verified membership list.*

**Sec. 5. “Rival” and “rival organization” defined.** *“Rival” or “rival organization” means an employee organization that files a petition pursuant to NAC 288.146.*

**Sec. 6. Requirements for interest cards.**

*1. Any interest card tendered by a rival organization on behalf of a local government employee in connection with a petition filed pursuant to NAC 288.146:*

- (a) Must expressly request that an election be conducted pursuant to subsection 4 of NRS 288.160;*
- (b) Must include the printed name of the employee and his job title or position; and*

- (c) Must be signed and dated in ink by the employee, with the date of his signature.*
- 2. An interest card is not valid or effective unless the employee signing it is an employee of the bargaining unit on the date the card is signed and as of the date of the list of employees filed by the local government employer pursuant to section 8 of this regulation.*
- 3. An interest card ceases to be valid or effective for any purpose 1 year after the date on which it is signed, or sooner if it is revoked by the employee in a written instrument signed and dated by the employee.*

**Sec. 7. Local government employer to provide list of employees in bargaining unit.**

- 1. Within 10 days after service of a timely petition filed pursuant to NRS 288.146, the local government employer shall file with the Board an excelsior list of all the local government employees in the bargaining unit, as of the end of the most recent payroll period. To facilitate the process of review set forth in section 10 of this regulation, the list must be arranged so that the surname of each employee is set forth in alphabetical order.*
- 2. The list must be accompanied by the affidavit of the custodian of records of the employer, stating the total number of employees identified on the list and attesting that to the best of his information and belief the list is accurate and complete.*
- 3. The employer shall serve copies of the list and affidavit upon the rival and incumbent organizations.*

**Sec. 8. Designation of person to review evidence of majority support.**

- 1. Whenever a timely petition is filed pursuant to NAC 288.146, the rival organization and the incumbent organization shall, by agreement, designate a third party to review the evidence of support if majority support is questioned.*
- 2. Any agreement entered into pursuant to this section:*
  - (a) Must be in writing;*
  - (b) Must be signed by authorized representatives of the rival and incumbent organizations;*
  - (c) Must be signed by the third party designated to conduct the review, signifying his acceptance of the designation and his agreement to comply with the requirements of section 10 of this regulation;*
  - (d) Must specify the time for completion of the review and the preparation of the report required by section 10 of this regulation;*
  - (e) Must specify any compensation to be paid to the third party designated to conduct the review, and the deadline for payment of the compensation; and*
  - (f) Must be filed with the Board within 20 days after the filing of the petition or before the date of the first regular meeting of the Board following the filing of the petition, whichever is later.*
- 3. The evidence of majority support must take the form of:*
  - (a) Interest cards meeting the requirements of section 6 of this regulation and signed by a majority of the local government employees in the bargaining unit; or*
  - (b) A membership list, verified by an authorized representative of the rival organization under penalty of perjury, showing that a majority of the local government employees in the bargaining unit are members of the rival organization.*

*(c ) To facilitate the process of review set forth in section 9 of this regulation, the interest cards or membership list must be arranged so that the surname of each employee is set forth in alphabetical order.*

*4. If a timely petition is filed pursuant to NAC 288.146 and an agreement pursuant to this section is not reached by the parties within the time required by subsection 1, the Board will, by order, designate a third party to review the evidence of majority support. The order will:*

*(a) Provide for the transmission to the designated third party of a copy of the list of employees filed by the local government employer and instruct the rival organization to provide such third party with the evidence of majority support;*

*(b) Specify the time for completion of the review and the preparation of the report required by section 9 of this regulation;*

*(c) Specify any compensation to be paid to the third party designated to conduct the review; and*

*(d) Specify the deadline for payment of the compensation.*

*5. Any compensation payable to a third party designated pursuant to this section to review the evidence of majority support must be paid by the rival organization that has filed the petition. Payment must be made within the time required by the parties' agreement or the order of the Board, as the case may be. Any failure to pay the compensation as required or ordered is a basis for dismissing the petition.*

#### **Sec. 9. Review of evidence of majority support; report on results of review.**

*1. The third party designated pursuant to section 8 of this regulation shall promptly review the evidence of majority support submitted by the rival organization, and compare the evidence to the list of employees filed by the local government employer.*

*2. The process of review must ensure:*

*(a) That any duplicate name or interest card is not counted more than once;*

*(b) That each person whose name appears on the membership list or as the signer of an interest card is a member of the bargaining unit, as reflected by the list of employees filed by the employer; and*

*(c) That each interest card, if cards are submitted, is not invalid on any ground including those specified in section 6 of this regulation.*

*3. Upon the completion of his review, the third party conducting the review shall prepare a written report of the results of the review, file the report with the Board, and serve copies on the incumbent and rival organizations. If the third party conducting the review determines that an interest card submitted on behalf of any person is invalid, or that any person identified on the membership list cannot properly be counted as a member consistently with the provisions of this section, the report must identify the name of each such person and set forth the specific basis for the exclusion of his card or name, as appropriate.*

*4. Upon the completion of his review, the third party conducting the review shall return all documents to the respective parties.*

#### **Sec. 10. Action of Board based upon results of review.**

*1. Except as otherwise provided in subsection 2, if the review conducted pursuant to section 9 of this regulation shows that the number of employees properly included on the membership list or the number of valid interest cards submitted by the rival organization:*

*(a) Is less than or equal to 50 percent of the number of employees in the bargaining unit, as reflected in the list of employees and affidavit prepared pursuant to section 6 of this regulation, the Board will dismiss the petition of the rival organization unless a timely request for an evidentiary hearing is filed as provided in subsections 2 and 3 of this section.*

*(b) Is more than 50 percent of the number of employees in the bargaining unit, the Board will order that an election be conducted pursuant to subsection 4 of NRS 288.160.*

*2. A rival organization may avoid or delay the dismissal of its petition pursuant to subsection 1 if the rival timely requests an evidentiary hearing and, at the hearing, establishes to the satisfaction of the Board:*

*(a) That any interest card or name offered as evidence of majority support has been improperly excluded in the process of review provided by section 9 of this regulation; and*

*(b) That, but for the exclusion, the number of employees properly included on the membership list or the number of valid interest cards is more than 50 percent of the number of employees in the bargaining unit.*

*If such a showing is made, the Board will order that an election be conducted pursuant to subsection 4 of NRS 288.160. If such a showing is not made, the Board will dismiss the petition.*

*3. Any request for a hearing made pursuant to this section:*

*(a) Must be filed with the Board and served upon the incumbent organization within 10 days after service of the report required by section 9 of this regulation; and*

*(b) Must be supported by affidavit and accompanied by a copy of any document the rival organization intends to introduce at the hearing.*

*4. In any evidentiary hearing held pursuant to this section, the Board will not consider any interest card or other evidence of majority support that has not previously been filed pursuant to NAC 288.146 and section 6 of this regulation.*

**Sec. 11. NAC 288.010** is hereby amended to read as follows:

As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 288.020, 288.025 and 288.030 *and sections 2 to 10, inclusive, of this regulation*, have the meanings ascribed to them in those sections.

**Sec. 12. NAC 288.146** is hereby amended to read as follows:

NAC 288.146 Withdrawal of recognition of organization upon petition by another employee organization. (NRS 288.110)

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~~ *a rival* organization may challenge recognition of ~~[another employee]~~ *an incumbent* organization by filing with the Board a petition for a hearing to determine whether ~~[a recognized employee organization]~~ *the incumbent* has ceased to be supported by a majority of the local government employees in a bargaining unit. ~~[The petition must]~~

*2. A petition filed pursuant to this section:*

(a) *Must* be filed in the form of a pleading ~~{and may}~~ ;  
(b) *Must be served on the affected local government employer and on the incumbent bargaining agent; and*

(c) *May* only be filed during the period:

~~{(a)}~~ (1) 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)}~~ (2) Beginning 242 days before the expiration date of the existing labor agreement and ending 212 days before the expiration of the labor agreement.

*3. A petition filed pursuant to this section that is not filed during one of the periods specified in subsection 2 is untimely for the purposes of this section and sections 2 to 11, inclusive, of this regulation, and will be dismissed by the Board.*

**Sec. 13. NAC 288.030** is hereby amended to read as follows:

NAC 288.030 *"Complainant," "Petitioner," and "Respondent"* defined. (NRS 288.110)  
"Complainant" or "petitioner" *or "respondent"* 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.

**Sec. 14. NAC 288.100** is hereby amended to read as follows:

NAC 288.100 Determination of negotiability. (NRS 288.110)

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}~~ *may file a petition with* 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 *and issue a decision on the matter.*

*3. If an employee organization or a local government employer requests information from the other pursuant to NRS 288.180(2), such information shall be provided at a reasonable cost to the requester.*

**Sec. 15. NAC 288.110** is hereby amended to read as follows:

NAC 288.110 Elections. (NRS 288.110)

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. 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]~~ *may* conduct a runoff election *if the Board determines, after either party requests and provide substantial evidence that another election may result in a more conclusive resolution. If the runoff election does not produce such a result, the employer may continue to recognize the incumbent employee organization prior to the initial election.*

8. 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.

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 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.

*11. The party requesting the recognition election shall be responsible for all costs incurred by the Board and associated with conducting the election, exclusive of any attorneys' fees incurred by a party.*

*12. Should the recognition election demonstrate that no ballot option obtained the support of the majority of the employees in the bargaining unit, the incumbent employee organization will remain the bargaining unit's representative.*

**Sec. 16. NAC 288.130** is hereby amended to read as follows:

NAC 288.130 Appeal of determination of bargaining unit. (NRS 288.110) If any employee organization is aggrieved by the determination of a bargaining unit, it may ~~[appeal to]~~ *file a petition with* the Board in accordance with the provisions of NAC 288.200 to 288.375, inclusive. *The Board may hold a hearing on the petition and issue a decision on the matter.*

**Sec. 17. NAC 288.145** is hereby amended to read as follows:

NAC 288.145 Withdrawal of recognition of organization by local government employer. (NRS 288.110)

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~~ *file a petition* with the Board and receive the written permission of the Board before withdrawing recognition of an employee organization for any reason other than voluntary withdrawal. *The Board may hold a hearing on the issue.*

**Sec. 18.** NAC 288.147 is hereby amended to read as follows:

NAC 288.147 Lists of officers and representatives of organizations. (NRS 288.110) 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. *Should a matter arise with the Board concerning or involving a non-filing employee organization, the Board may refuse to accept any complaint, answer, or other pleading or document from that employee organization until it has complied with the provisions of this section.*

**Sec. 19.** NAC 288.220 is hereby amended to read as follows:

NAC 288.220 Answer. (NRS 288.110)

1. The respondent *shall* ~~may~~ file an answer in the form of a pleading and 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.

**Sec. 20.** NAC 288.235 is hereby amended to read as follows:

NAC 288.235 Amendment of pleadings and motions; liberal construction. (NRS 288.110)

1. If not otherwise prohibited by law and if substantial rights of the parties will not be prejudiced, *upon written motion*, 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.

**Sec. 21. NAC 288.250** is hereby amended to read as follows:

NAC 288.250 Prehearing statement. (NRS 288.110) Not later than 20 days after the service of the answer, unless otherwise ordered by the Board, each party shall submit to the Board the original and four copies of the prehearing statement of the party which includes:

1. A *short*, plain, and concise statement of the issues of fact and law to be determined by the Board *in list form* 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.

**Sec. 22. NAC 288.279** is hereby amended to read as follows:

NAC 288.279 Subpoenas. (NRS 288.110)

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. *The person requesting a subpoena shall be responsible for service of the subpoena. Service of the subpoena must be in conformity with the Nevada Rules of Civil Procedures and the rules and regulations of this Board.*
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.

**Sec. 23. NAC 288.280** is hereby amended to read as follows:

NAC 288.280 Examination of witnesses. (NRS 288.110) 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. *The original deposition transcript shall be filed with the Board.*

**Sec. 24. NAC 288.324** is hereby amended to read as follows:

NAC 288.324 Documentary evidence and exhibits. (NRS 288.110)

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 six copies must be furnished to 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. *Exhibits containing personal information including home addresses, Social Security numbers, and dates of births, shall be redacted by the party offering the exhibit prior to the submission of the proposed exhibit to the Board, except as otherwise ordered by the Board.*

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]~~ *will* 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]~~ *not less than five (5) business days prior to* ~~[before]~~ the ~~[hearing]~~ *prehearing conference* to enable the parties of record to study the exhibits and to prepare *objections and* 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.

**Sec. 25. NAC 288.370** is hereby amended to read as follows:

NAC 288.370 Transcripts: Costs. (NRS 288.110)

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. *The complainant or petitioner shall secure the services of the court reporter.*

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

**Sec. 26. NAC 288.373** is hereby amended to read as follows:

NAC 288.373 Imposition of sanctions. (NRS 288.110)

1. The Board may impose sanctions against a party who fails:

(a) To comply with an order of the Board, *including satisfying any sanction imposed by 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;

(b) Ordering the party to pay to the other party reasonable attorney's fees and costs; ~~[ ]~~

(c) *Prohibiting the filing or process of any matter before the Board until any sanction has been satisfied.*