

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

LCB FILE NO. R074-17I

**The following document is the initial draft regulation proposed
by the agency submitted on 08/23/2017**

DRAFT REGULATIONS

Section 1. Chapter 288 of NAC is hereby amended by adding thereto two new sections to read as follows:

“Panel” defined. “Panel” means a group of three members of the Board present at any meeting who are authorized to exercise all the power and authority of the Board pursuant to NRS 288.090(1), except for those powers listed in NRS 288.090(2), which instead must be exercised by the entire membership of the Board.

“Quorum” defined. “Quorum” means three members for a meeting of the entire membership of the Board and means two members for a meeting of a Panel.

Sec. 2. Chapter 288 of NAC is hereby amended by adding thereto a new section to read as follows:

References to “Board”. All references to the term “Board” in Chapter 288 of NAC shall also mean a Panel when a meeting of the Board is only attended by a Panel instead of the entire membership of the Board.

Sec. 3. Chapter 288 of NAC is hereby amended by adding thereto a new section to read as follows:

Organization and Meetings of Panels.

1. *The Commissioner may establish Panels as may be needed, given the requirement of NRS 288.090(3) that not more than two of the members of a Panel may be members of the same political party. In establishing the panels, the Commissioner shall assign each Board member to the same number of Panels.*

2. *Each Panel shall be designated by the term “Panel”, followed by one of the letters “A” through “E”, or as many as may be established pursuant to subsection 1.*

3. *If the Chair is a member of a Panel then the Chair shall be designated as the Presiding Officer of that Panel. If the Chair is not a member of a Panel but the Vice Chair is a member of a Panel, then the Vice Chair shall be designated as the Presiding Officer of that Panel. If neither the Chair nor the Vice Chair is a member of a Panel, then the most senior Board member on the Panel shall be designated as the Presiding Officer. Notwithstanding the above, another member of a Panel may be designated as the Acting Presiding Officer for a given meeting of the Panel upon the consent of both the Presiding Officer of that Panel and the member to be designated as the Acting Presiding Officer.*

4. *The Commissioner shall establish meeting dates for each Panel after consulting with the members of each particular Panel.*

5. *A quorum of a Panel shall be empowered to conduct any business assigned to the Panel except that a Panel shall not hold a hearing unless all three members of the Panel are present. Whenever the absence of a Panel member would otherwise postpone the holding of a hearing, the Commissioner may randomly select a substitute Panel member to substitute for the absent member but shall only do so upon the written consent of all parties to the hearing.*

Sec. 4. Chapter 288 of NAC is hereby amended by adding thereto a new section to read as follows:

Assignment of Matters to Panels.

1. *Matters related to a contested case not yet assigned to a given Panel shall be assigned to the next available Panel for which an agenda has not yet been posted. If the matter is whether a hearing shall be held in accordance with NRS 288.110(2), then the Panel assigned to make that determination, if it so grants a hearing, shall also during that meeting randomly assign the contested case to one of the Panels using the weighted random assignment process designed by the Commissioner for this purpose. Once a contested case is assigned to a given Panel, all future matters shall be kept with the Panel that has been assigned to the contested case, except for any deliberation and decision on stipulations to dismiss, which shall be placed on the next available Panel for which an agenda has not yet been posted.*

2. *Notwithstanding subsection 1 above, the Commissioner may designate a contested case as a case of statewide significance. Such a contested case would be assigned to the entire membership of the Board instead of a Panel. Notice to this effect, and the accompanying reason for the designation, shall be filed by the Commissioner, made part of the administrative record and a copy of the notice served upon each party to the contested case.*

Sec. 5. Chapter 288 of NAC is hereby amended by adding thereto a new section to read as follows:

1. *Decision for En Banc Reconsideration. An en banc reconsideration of a decision of a Panel is only available to a party in a contested case when the decision of the Panel was a split decision (i.e., with one member dissenting). If only a portion of a decision is a split decision then only that part of the decision is eligible for possible en banc reconsideration.*

2. *Time for Filing; Effect of Filing on Finality of Decision. Provided the conditions of subsection 1 have been satisfied, any party may petition for an en banc reconsideration of a Panel's decision within 10 days after written entry of the panel's decision or within 10 days after a Panel's decision not to grant a petition for rehearing pursuant to NAC 288.364, whichever is later. The filing of any petition for en banc reconsideration shall suspend the final decision of the Panel.*

3. *Content of Petition.*

a) *A petition shall state the reasons that full Board reconsideration is necessary to secure and maintain uniformity of the decisions of the Board and shall demonstrate that the Panel's decision is contrary to prior decisions of the Board and shall include specific citations to those cases.*

b) *If the petition is based on grounds that the contested case involves a substantial precedential, constitutional or public policy issue, the petition shall concisely set forth the issue, shall specify the nature of the issue, and shall demonstrate the impact of the Panel's decision beyond the litigants involved. The petition shall be supported by points and authorities and shall contain such argument in support of the petition as the petitioner desires to present.*

c) *Matters presented in the briefs and oral arguments may not be reargued in the petition, and no point may be raised for the first time.*

4. *Form of Petition; Except by permission of the Chair, or Vice Chair in his absence, a petition for en banc reconsideration shall not exceed 10 pages.*

5. *Action by Board if Granted or Denied. Any two Board members may compel the Board to grant a petition for en banc reconsideration. If a petition for en banc reconsideration is granted, the reconsideration of the contested case by the full Board shall consist of a review of the administrative record by the Board members, followed by oral argument on such terms as the Chair shall deem appropriate under the circumstances of the particular case. A denial of a petition for en banc reconsideration shall reinstate the Panel's decision and make that decision the final decision.*

Sec. 6. NAC 288.070 is hereby amended to read as follows:
288.070 Filing requirements.

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

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

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

(c) The written document or other written matter must be filed in accordance with the requirements set forth in section 2 of LCB File No. 2010-15, which was adopted by the Local Government Employee-Management Relations Board and was filed with the Secretary of State on October 27, 2015, if the written document or other written matter is filed electronically; and

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

(1) Personal Service;

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

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

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

Sec. 7. NAC 288.250 is hereby amended to read as follows:
288.250 Prehearing statement.

1. Not later than 20 days after the service of the answer, unless otherwise ordered by the Board **or Commissioner**, each party shall file with the Board the prehearing statement of the party which includes:

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

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

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

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

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

Sec. 8. Chapter 288 of NAC is hereby amended by adding thereto a new section to read as follows:

Amicus Briefs.

Any person claiming an interest in a dispute or controversy which is the subject of a hearing may, by motion, request to file an amicus brief. If the Board grants the motion, it may impose terms and conditions related to the filing of the amicus brief. The Board may also on its own volition invite local government employers and employee organizations to file amicus briefs for a given contested case on such terms and conditions as the Board may include in the invitation.

Sec. 9. NAC 288.279 is hereby amended to read as follows:
288.279 Subpoenas.

1. The ~~Board~~ ***Chair, or the Vice Chair in his absence***, 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~~ ***Chair, or the Vice Chair in his absence***, 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. 10. Chapter 288 of NAC is hereby amended by adding thereto a new section to read as follows:

Time for Filing a Complaint for a Contested Case Under NRS 288.270(1)(h).

If a local government employer has claimed an undue hardship and has met with the employee but came to no agreement, and thus subsequently required the employee to accept a reasonable alternative, and the employee disagrees with that reasonable alternative, the employee shall have the right to immediately file an appeal of that decision by filing a complaint alleging a violation of NRS 288.270(1)(h).

Sec. 11. Chapter 288 of NAC is hereby amended by adding thereto a new section to read as follows:

Alternate Procedures for a Contested Case Alleging Solely a Violation of NRS 288.270(1)(h).

1. ***Any person filing a complaint solely for a violation of NRS 288.270(1)(h) may, in lieu of the provisions of NAC 288.200 through NAC 288.278 inclusive, elect to follow the provisions of this section by filing a complaint using a form provided by the Board.***
2. ***The respondent shall then file its answer in accordance with the provisions of NAC 288.220. Additionally, the answer may attach a position statement detailing the reasons for the local government employer's actions.***
3. ***Upon receipt of the answer, the Commissioner shall contact the parties for the purpose of arranging a date, time and location for the hearing, which shall be held as soon as is practicable and which said hearing may be held in-person, via video-conference or***

telephonically. The Commissioner shall then issue a Notice of Hearing in accordance with state law.

4. Not less than three business days prior to the hearing, the parties shall submit to the Commissioner proposed exhibits to be introduced at the hearing. Upon receipt of the proposed exhibits from both parties, the Commissioner shall forward the proposed exhibits of one party to the other party.

5 In lieu of recording the hearing using a court reporter, the Commissioner may tape record the hearing. Any party may request that the tape recording be transcribed, which shall be arranged by the Commissioner and which shall be paid for by the party requesting the transcription. If both parties request a transcription of the hearing then the cost of the transcription shall be shared equally by the parties.

6. The Commissioner shall conduct the hearing in accordance with the other hearing provisions of NAC 288, but in doing so shall attempt to keep the hearing informal.

7. Subsequent to the hearing the Commissioner shall render a decision, which shall be reduced to writing and which shall be considered the final decision of the agency and there shall be no appeal of that decision to the Board.