

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
NRS 233B.066
LCB FILE R074-17

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 288.

1. A clear and concise explanation of the need for the adopted regulation.

The regulation does two major things. First, pursuant to the adoption of SB 460 of the 2017 Legislative Session, the regulation creates a system for the creation of panels, the assignment of cases and other work to those panels, and allows a party aggrieved by a panel's split decision to petition the Board for reconsideration of that petition and the process for consideration of such petitions. Secondly, pursuant to the adoption of AB 113 of the 2017 Legislative Session, the regulation creates a simplified process for the filing and expedited review of complaints filed by nursing mothers who work for local governments.

In addition to these two main parts, the regulation also: (1) clarifies the procedure for the filing of amicus briefs; (2) provides that a copy of certain documents filed with the Board may be served by first-class mail in lieu of certified mail; (3) removes the requirement that a complaint filed with the Board include the address of each party; (4) authorizes the Commissioner to modify requirements for a prehearing statement; (5) codifies current practice regarding the issuance of subpoenas; and (6) modifies a prior regulation with respect to petitions for rehearing to make it better conform with the establishment of the panels.

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of this summary.

Copies of the proposed regulation, notice of workshop and notices of intent to act upon the regulations were sent by U.S. mail and/or email to all local governments and employee organizations who filed an annual report with the agency, to the agency's list of attorneys who have appeared before the Board, to persons who were known to have an interest in the subject of the Local Government Employee-Management Relations Board as well as to any persons who had specifically requested such notice. These documents were also made available at the website of the Employee-Management Relations Board (EMRB), www.emrb.nv.gov, mailed to all county libraries in Nevada and posted at the following locations:

Grant Sawyer State Building
555 E. Washington Ave.
Las Vegas, NV 89101
Attn: Capitol Police

Local Government Employee-Management Relations Board
3300 W. Sahara Ave., Suite 260
Las Vegas, NV 89102

Department of Business & Industry
3300 W. Sahara Ave., Fourth Floor
Las Vegas, NV 89102

Department of Business & Industry
1830 College Parkway, Suite 100
Carson City, NV 89706

Nevada State Library
201 S. Carson Street #100
Carson City, NV 89703

Department of Administration
Public Meeting Notice Web Site:
<http://notice.nv.gov>

Employee-Management Relations Board Web Site:
<http://emrb.state.nv.us>

Two workshops were held. The first workshop was held on July 26, 2017 and the minutes of that meeting, attached hereto as Exhibit A, contain a summary of the discussion held regarding the proposed regulation. One written responses was received subsequent to the workshop.

A second workshop was held on October 31, 2017 and the minutes of that meeting, attached hereto as Exhibit B, contain a summary of the discussion held regarding the proposed regulation.

On December 7, 2017, the Commissioner issued a Notice of Intent to Act Upon a Regulation.

A public hearing was then held on January 10, 2018, and the minutes of that public hearing, attached hereto as Exhibit C, contain a summary of the discussion held regarding the proposed regulation.

A copy of the summary of the public response to the proposed regulation may be obtained from the Local Government Employee-Management Relations Board, 3300 W. Sahara Avenue, Suite 260, Las Vegas, Nevada 89102 or via email to emrb@business.nv.gov.

3. The number of persons who:

(a) Attended each hearing:

July 26, 2017 Workshop #1: 3 in Las Vegas and 2 in Carson City via teleconference (not including EMRB Board members and staff)

October 31, 2017 Workshop #2: 12 in Las Vegas and 3 in Carson City (not including EMRB Board members and staff)

January 10, 2018 Public Hearing: 0 in Las Vegas and 1 in Carson City (not including EMRB Board members and staff)

(b) Testified at each hearing (not including EMRB Board members and staff):
July 26, 2017 Workshop #1: 4
October 31, 2017 Workshop #2: 4
January 10, 2018 Public Hearing: 0

(c) Submitted to the agency written comments: 1 subsequent to Workshop #1.

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency.

Please see Exhibit D, attached.

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public, namely via mailings to all local governments and employee organizations who have filed an annual report with the agency plus to others who were known to have an interest in the subject of the Local Government Employee-Management Relations Board as well as to any persons who had specifically requested such notice. Comments were received at the workshops. The minutes of both workshops and the public hearing, as well as the small business impact statement and the summary may be obtained as instructed in the response to question #2.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The agency did change the regulation based upon comments received. The purpose of the first workshop was to solicit ideas from the user community. At that time there was intentionally no draft yet prepared of the proposed regulation. The agency used the ideas generated at this first workshop to draft the language. The purpose of the second workshop was to hear from the user community as to what they believe needed to be changed with respect to the draft regulation. Two suggested changes were made at this second workshop. They related to the content of the petition for reconsideration and the requirements and availability of a petition for rehearing. The agency presented those suggestions to the LCB, who then prepared a revised proposed regulation addressing both of the suggestions made at the second public workshop. This revised proposed regulation was presented posted in accordance with law and presented to the Board at the public hearing, which elicited no further comments from the public or user community. Please see the minutes of the public hearing (Exhibit C attached hereto) for further comments.

7. The established economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Both adverse and beneficial effects; and

The agency has concluded that the proposed regulations will neither impose a direct and significant economic burden upon small businesses nor directly restrict the formation, operation or expansion of small businesses. Neither would they adversely affect those regulated or the public. On the contrary, the proposed regulations have several features that may minimize the impact of those interacting with the agency.

For example, Sections 4 and 5 create panels of three Board members for the purpose of conducting hearings and for other business. This will allow the agency to hold 67% more hearings per year, thus reducing the time to hear any given case. This will enable workplace disputes to be resolved more quickly.

Sections 6 through 8 create a mechanism for a panel's split decision to potentially be reviewed by the entire Board before a losing party would otherwise have to file a petition for judicial review. This may allow some law firms a less expensive and faster way to have a panel's decision reviewed.

Section 9 creates a mechanism for interested entities to file amicus briefs so that they could weigh in on cases that might affect them. Currently interested entities would need to intervene in a contested case and become a party to that case, which is a more expensive alternative than that of filing an amicus brief.

Section 10 creates both an expedited and a simplified process for resolving complaints filed by nursing mothers who work for local governments pursuant to the recent adoption of AB 113. It creates an expedited review process of claims filed by nursing mothers who work for local governments by having the Commissioner hear such cases in lieu of the Board. The process is simplified in a number of ways. For instance, a nursing mother filing a complaint need only complete a form as contrasted with other cases in which a court-style complaint must be filed. The hearing process would also be faster and would be less expensive by not requiring the use of a court reporter.

Finally, certain documents could be served by first-class mail in lieu of certified mail, thus saving postage costs.

Neither will there be any adverse effects on the public. This is for the same reasons as stated above.

- (b) Both immediate and long-term effects.

There will be no immediate or long-term adverse effects on the businesses that the EMRB regulates. For the reasons stated in #7a above, the proposed regulations will have both immediate and long-term beneficial effects on those businesses.

There will be no immediate or long-term adverse effects on the public. For the reasons stated in #7a above, the proposed regulations will have both immediate and long-term beneficial effects on the public in that any cases filed have the potential of being handled more both more quickly and with features that will simplify the process.

8. The estimated cost to the agency for enforcement of the adopted regulations.

There is no additional cost to the agency for enforcement of this regulation.

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed regulation duplicates.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no federal regulations that apply.

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not provide a new fee or increase an existing fee.

EXHIBIT A

STATE OF NEVADA

BRIAN SANOOVAL
Governor

Members of the Board

BRENT C. ECKERSLEY, ESQ., Chairman
SANDRA MASTERS, Vice-Chairman
PHILIP E. LARSON, Board Member



BRUCE BRESLOW
Director

BRUCE IC. SNYDER
Commissioner

MARISU ROMUALDEZ ABEILAR
Executive Assistant

DEPARTMENT OF BUSINESS AND INDUSTRY
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

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August 3, 2017

MINUTES OF THE WORKSHOP TO SOLICIT COMMENTS FOR NEW
REGULATIONS OR CHANGES TO EXISTING REGULATIONS OF THE EMRB

A workshop of the Local Government Employee-Management Relations Board, properly noticed and posted pursuant to the Nevada Open Meeting Law, was held on Wednesday, July 26, 2017, at the hour of 1:30 p.m. in the Nevada Room at the Nevada State Business Center, 3300 W. Sahara Avenue, Las Vegas, Nevada 89102. The workshop was also video conferenced to the Department of Business and Industry Director's Office, 1830 College Parkway, Suite 100, Carson City, Nevada 89706.

The workshop was conducted by EMRB Commissioner Bruce K. Snyder. Also present representing the EMRB were Philip E. Larson, Board Member; Marisu Romualdez Abellar, Executive Assistant and Board Secretary; and Donald Bordelove, Esq., Deputy Attorney General.

Present from the public were:

- Scott Davis, Esq., Clark County
- Sandra Lawrence, Esq., Dyer Lawrence Law Firm
- Richard Lile, International Union of Operating Engineers,
Local 501
- David L. Watts-Vial, Esq., Washoe County
- Holly Walker, Esq., Fisher Phillips

The meeting was called to order at 1:33 p.m. by Commissioner Snyder, who then stated that the purpose of the workshop was to solicit ideas on how best to implement two bills, AB 113 and SB 460, which were recently signed into law. He explained that it was the position of the Board that due to the numerous issues associated with the bills, and especially that of SB 460, that the agency should first listen to the user community before proposing any language. He further explained that after this initial public workshop the agency would draft language, which would then be formalized by the Legislative Counsel Bureau. Once the formal document is then returned to the EMRB, the EMRB would then conduct a second public workshop in which comments would be solicited on the draft language.

Item 1 Public Comment.
 No public comment was offered.

Item 2 Solicitation of Comments and Suggestions on Rules Pertaining to the
 Adoption of AB 113

Commissioner Snyder briefly explained AB 113 and then went through the series of questions listed on the second page of the Notice of Workshop. He mentioned that he did not intend to go through the questions sequentially but that anyone could offer comments on any of the questions as they feel led to do so.

Holly Walker stated she believed twenty days to respond to a complaint was both standard and fair, especially given the logistics and practicality of getting the complaint to the proper person and then drafting a response. She stated that it would be difficult to do anything less.

Holly Walker then stated that a letter-type response should suffice and made the analogy to a position statement that would be sent to the EEOC or NERC.

Sandra Lawrence remarked that the term "complaint" signifies a more formal response. She also stated that a form should be developed for the complainant to use and that a copy of the completed form could then be provided to the employer via certified mail. Commissioner Snyder stated that it is the intent of the EMRB to develop such a form and that it would be both short and simple to complete.

Holly Walker stated that all the regulations related to AB 113 should be located in one place of the regulations and not scattered about. She also remarked that pre-hearing statements could be dispensed with and that tape recording the hearings, in lieu of using a court reporter, would be acceptable, given the type of case.

Sandra Lawrence asked about when the Board would hear the complaint. In response Commissioner Snyder stated that AB 113 expects the Board to develop regulations to allow the Commissioner to directly hear such cases in order to expedite resolution of the issues. This would be in the form of a legal decision and order.

Sandra Lawrence stated that a public employer should designate who to serve and she did not see that in the bill itself.

Scott Davis stated that the EMRB does not need new service rules as they are already in NRS 288 and that everyone who deals with the agency knows them.

Sandra Lawrence stated that pro se complainants should not expect special treatment and that the courts and administrative agencies hold pro se litigants to the same standard as represented individuals. She further stated that there should

be a notice to an employee where a complaint can be filed like there are posters pertaining to other laws.

David Watts-Vial suggested that pro se packets could be developed, to which Sandra Lawrence agreed.

Commissioner Snyder then inquired as to whether other individuals might have any opinions on recording the hearings, to which Sandra Lawrence stated that would be acceptable but that there should be reserved the right to use a court reporter if and when warranted.

Board Member Phil Larson stated that the regulations might consider describing or designating the facilities to be used by nursing mothers.

Commissioner Snyder then asked for comments on appeal rights. Sandra Lawrence stated that AB 113 appears to be silent on the issue of appeal rights and suggested that the bill implies the Commissioner acting like an administrative law judge, whose decision could be appealed to the Board. She further commented that courts are more expensive and thus the Board could be an intermediate step.

David Watts-Vial stated that appeal rights and timelines could be based on the type of case and gave the example that retaliation cases may not need to be expedited and thus there might be differing timelines.

In response, Scott Davis suggested that the process should be simple and to keep one process and one set of timelines. He also stated that an appeal to the Board is an unnecessary step and that it would be better to go straight to the courts in that courts have injunctive powers.

Commissioner Snyder then brought up the issue of standing or ripeness to file a claim. Thereupon Sandra Lawrence stated that maybe a case would be ripe either 30 days before or after birth. David Watts-Vial stated that anything sooner could lead to uncertainty as circumstances or desires of the female employee might change. Holly Walker stated there needs to be an injury and that, therefore, the employee must be nursing. David Watts-Vial agreed there must be some level of injury prior to filing. Commissioner Snyder stated that he will consult with the Deputy Attorney General assigned to the EMRB on this particular issue.

Sandra Lawrence stated that a bigger issue might be the issue of compensation, in that a woman might believe she is being discriminated against if her breaks are without compensation but that breaks for others with medical issues are compensated.

Item 3 Solicitation of Comments and Suggestions on Rules Pertaining to the Adoption of SB460.

Commissioner Snyder briefly explained SB 460, including its genesis as an idea originally presented to the Sunset Subcommittee of the Legislative Commission, and then went through the series of questions listed on the second page of the Notice of Workshop.

Holly Walker started off the discussion by commenting that the selection of panel members should be done in such a way as to avoid forum shopping. She then asked what other states do in this regard, to which Commissioner Snyder stated that most states do not have Board members directly hear cases but rather rely on the use of administrative law judges.

Sandra Lawrence stated that years ago there was a proposal to use administrative law judges in conjunction with the Office of the Labor Commissioner. She then inquired as to whether there would be northern and southern panels, to which Commissioner Snyder stated that this would not be the case as there had in the past been expressed concern for separate geographical panels that might rule in contravention to each other. He then further explained the setup and that there would be a total of five panels, each consisting of three Board members.

Scott Davis stated he likes the idea of rotating panels not based upon geography. However, he stated that once in a while a case of strong significance is filed and which may be better heard by the full Board. With respect to when a panel should be assigned to a case, he suggested that the decision to hear a given case be made by the next panel to meet and that the panel would then randomly assign it to a panel to actually hear the case. Alternatively, the Commissioner could decide those issues.

David Watts-Vial stated he agreed that a three-member panel should decide to hear the case and at that time randomly assign it to a panel. He further stated that non-dispositive motions could be heard by the next panel to meet but that dispositive motions should be heard by the panel assigned to the case. He also stated that NRAP 27 can be used as a model.

Board Member Phil Larson stated that it would be a good idea to shuffle panels during the year.

Holly Walker concurred with David Watts-Vial on the issue of dispositive versus non-dispositive motions and the use of models in this regard and for *en bane* hearings.

With respect to *en bane* hearings, Sandra Lawrence stated that this should not be automatic but rather the party seeking such a hearing should be required to file a

motion or request stating the reasons for such a hearing. Commissioner Snyder pointed out his belief that such a review should at the most only be allowed in situations when the panel **has** a split vote of 2-1, which rarely happens.

David Watts-Vial commented that the *en baru*: hearing should be treated like a petition for re-hearing and used instead of that option.

Holly Walker stated that an *en bane* hearing should be expedited as there is a timeline to file a petition for judici review, to which Scott Davis commented that the rules could specify that the granting of an *en bane* review could suspend the final order issued by the panel. Commissioner Snyder stated that he would be in contact with the Deputy Attorney General assigned to the case to work on this issue.

With respect to the fonn of an *en bane* review, Scott Davis stated it should consist of a review of the administrative record **and** optionally also oral argument, if so requested. He stated that a second hearing should not be held.

Holly Walk:er stated that the purpose of administrative law is to increase efficiency, so she concurred with Scott Davis in this regard, excepting that perhaps oral argument should be automatic.

With respect to the issue of subpoenas, Sandra Lawrence stated that this should be left as is with the Chairman issuing them, and that the Vice-Chairman could do so in his/her absence. Board Member Phil Larsen agreed.

David Watts-Vial stated it seems to be a ministerial act and perhaps could be done by staff instead of a Board member, to which Scott Davis stated that the Chair has the inherent authority to sign documents on behalf of the Board and that is perhaps why it would be best to leave it as is.

Sandra Lawrence inquired as to what would happen if one of the three panel members is absent and whether the remaining two members could conduct a hearing anyways. Commissioner Snyder stated that he would consult with the Deputy Attorney General on this issue.

Holly Walker stated Mark Ricciardi, a principal at the law firm of Fisher & Phillips, at which she works, would be submitting written comments by August 4th.

Item 4 Solicitation of Comments and Suggestions Relating to Other Potential Rule Changes.

Commissioner Snyder stated that the agency is open to hearing any other ideas those in attendance might have concerning other potential rule changes.

Scott Davis stated he would like the agency to adopt a regulation dealing with the filing of *amicus* briefs for significant cases, This could include a procedural option for an entity to request that it be allowed to file an *amicus* brief without having to file a motion for intervention.

Sandra Lawrence stated that the filing of pre-hearing statements might be more productive if filed closer to the hearing date as opposed to the current requirement that they be filed twenty days after the filing of the answer. She recognized that with the formation of the above-mentioned panels there may not be the same backlog to hear a given case and that this might not be necessary in the future.

Item s Additional Period of Public Comment
No public comment was offered.

The workshop adjourned at 2:56 p.m. Commissioner Snyder then invited those in attendance in Las Vegas to visit the EMRB's new office on the second floor.

Respectfully submitted,


Bruce K. Snyder
EMRB Commissioner

EXHIBIT B

BRIAN SANDOVAL
Governor

Brent C. Eckersley, Esq.
Chair

Sandra Masters
Vice-Chair

Philip E. Larson
Board Member

C.J.MANTHE
Director

Bruce K. Snyder
Commissioner

Marisu Romualdez Abellar
Executive Assistant

STATE OF NEVADA



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November 8, 2017

MINUTES OF THE WORKSHOP TO SOLICIT COMMENTS FOR NEW REGULATIONS OR
CHANGES TO EXISTING REGULATIONS PERTAINING TO THE PRACTICE AND
PROCEDURE BEFORE THE EMRB
R074-17

A workshop of the Local Government Employee-Management Relations Board, properly noticed and posted pursuant to the Nevada Open Meeting Law, was held on Tuesday, October 31, 2017, at the hour of 9:30 a.m. at the Nevada State Business Center, 3300 W. Sahara Avenue, Fourth Floor, Tahoe Room, Las Vegas, Nevada 89102. The meeting was video-conferenced to the Department of Business and Industry Director's Office, 1830 College Parkway, 1st Floor, Carson City, Nevada 89706.

The meeting was conducted by EMRB Commissioner Bruce K. Snyder, who called the workshop to order at 9:30 a.m.

Also present representing the EMRB were: Philip E. Larson, EMRB Board Member
Marisu Romualdez Abellar, Board Secretary
Donald Bordelove, Esq., Deputy Attorney General

Present from the public in Las Vegas were: Scott Davis, Esq., Clark County
Michael Edmiston, PPACE
Yolanda Givens, Esq., Clark County
Ray Gort, Operating Engineers Local 12
Crystal Herrera, Unknown
Melissa Johanning, PPACE
Adam Levine, Esq., Law Office of Daniel Marks
Richard Lile, Operating Engineers Local 501
Kevin Miller, Operating Engineers Local 501
Roger Pruette, PPACE

Carla Soott, PPACE
Nicole Young, Esq., Kamer Zucker Abbott

Present from the public in Carson City was: Phillip Herrera, Operating Engineers Local 3
Sandra Lawrence, Esq., Dyer Lawrence Law Firm
David Watts-Vial, Esq., Washoe County

The Agenda:

Item 1 Public Comment.

No public comment was offered.

Item 2 Proposed regulations related to the expansion of the size of the Board from three to five members and the hearing of cases in panels of three members, all pursuant to the adoption of SB 460. This includes additions and changes to various definitions, the formation of the panels, substitution of members on a panel, the determination of the presiding officer for a panel, the assigning of cases to panels, and other matters related thereto.

Commissioner Snyder explained that SB 469 increased the size of the Board from three to five members and that the primary purpose of doing so was to also allow for the creation of panels of three Board members. He further explained that this would allow for 20 Board meetings per year instead of the current number of 12 Board meetings per year, thus driving down the backlog of cases waiting for a hearing date.

Board Member Larson suggested that the Commissioner explain who would be the Presiding Officer over each of the panels. Thereupon Commissioner Snyder went through the various provisions in the regulations related to the creation of the panels and the assignment of certain Board members to each panel. He also explained that the Presiding Officer for each panel would be the Chair, if the Chair was a member of the panel. If not, then the Vice-Chair would be the Presiding Officer of a panel, provided he/she was on that panel, and if neither the Chair nor the Vice-Chair was a member of a panel, then the most senior Board member would be the Presiding Officer.

Commissioner Snyder then opened up the meeting for comments and/or questions on the agenda item so far. No comments or questions were offered.

Commissioner Snyder then went through the proposed process for assigning a given case to a panel. He stated that a case would initially be assigned to the next panel to meet and that this panel would hear motions and whether to grant a hearing. If a hearing is granted then the case would randomly be assigned to another panel which would conduct the hearing and render a decision in the case. Commissioner Snyder commented that this system was developed to meet the concerns expressed in the first public workshop related to forum shopping. He also explained that should a case settle and a stipulation to dismiss is received, the stipulation to dismiss would be placed on the next available agenda,

irrespective of whether the case had already been assigned to a panel so that the stipulation to dismiss might be timely approved. Finally, Commissioner Snyder explained that the draft regulations allow for the Commissioner to designate certain cases as cases of statewide significance, which would automatically be heard by the full Board.

Yolanda Givens asked as to what would start the process of designating a case of statewide significance. Commissioner Snyder stated that it would be at his discretion but that he would welcome input on a given case. Adam Levine stated that perhaps parties, when drafting preheating statements, could provide input through their prehearing statements, which, when reviewed by the Commissioner, might then assist him in deciding whether a given case might be a case of statewide significance. Yolanda Givens stated that the responses seem to satisfy her.

Item 3

Proposed regulations related to petitions for *en bane* reconsideration of a panel's decision when the decision of the panel is a split decision and action by the Board on such a petition.

Commissioner Snyder explained the appeal process for a panel's split decision to be reconsidered by the full Board in that reconsideration by all five Board members might render a 3-2 decision in favor of the party that lost 2-1 at the panel level. He further explained the procedure for filing a petition and the timelines for doing so.

Adam Levine asked whether a unanimous decision by a panel would prevent the filing of a petition for rehearing as that is a different process than a petition for reconsideration. After discussion back-and-forth with the Commissioner, Commissioner Snyder stated that Mr. Levine appears to be correct with the issue of petitions for rehearing.

Scott Davis stated there may be a work around in that a petition for rehearing should be directed back to the same panel but that a petition for reconsideration would be directed to the full Board. Adam Levine agreed there could be a work-around. Commissioner Snyder promised to re-word the section on petitions for rehearing. He further promised that he would have a telephone meeting with James Penrose of the LCB and Deputy Attorney General Bordelove to seek a work-around.

Deputy Attorney General Bordelove agreed that a work-around would be reviewed. Scott Davis and Adam Levine suggested possible changes. Commissioner Snyder again promised to work with Bordelove and the LCB to fix the issue brought up by Mr. Levine.

Scott Davis asked whether a split decision requires a written dissent or just a "no" vote. Commissioner Snyder stated it is only the "no" vote and that a written dissent would not be required. Scott Davis further asked about situations where there might only be a split decision on only some of the issues in the case and whether that would trigger a petition for reconsideration. Commissioner Snyder quoted from the proposed regulation that a split decision only in part would allow for a petition for reconsideration on only that part. Adam Levine gave an example to help clarify the situation and Commissioner Snyder agreed with the example.

David Watts-Vial brought up the issue of what might be allowed in the petition for reconsideration and that it does not seem to be worded well. Commissioner Snyder agreed that the language could be improved upon. Deputy Attorney General Bordelove agreed. Adam Levine stated that sometimes a decision raises a topic not discussed during the hearing and that perhaps the language should allow for this. This led to a back-and-forth discussion which resulted in Commissioner Snyder to also improve the language of Section 7.4 and which would allow for more leeway in the content of the petitions.

Item 4 Proposed regulations related to the filing of *amicus* briefs.

Commissioner Snyder stated this topic was an idea raised by Scott Davis at the first public workshop. He further stated that the draft regulation allows for two ways for the filing of *amicus* briefs.

Adam Levine stated the draft includes "any person", which would seem to expand the use of *amicus* briefs beyond local governments and employee organizations. Commissioner Snyder stated certain types of cases, such as discrimination cases, might benefit from a brief from an individual that might be affected by a Board decision. Adam Levine stated that perhaps the regulation related to petitions for declaratory order be broadened.

Scott Davis agreed that the draft regulation does not need to be changed and that it gives the Board needed discretion.

Item 5 Proposed regulations pertaining to the expedited handling of cases related to nursing mothers, all pursuant to the adoption of AB 113.

Commissioner Snyder explained AB 113 and that the EMRB was designated to be the agency to process and hear complaints filed by local government employees. He explained that AB 113 creates a process for the Commissioner to hear such cases and also mandates that the EMRB create a simplified form and procedure to resolve such disputes.

Yolanda Givens asked whether the EMRB envisions most women would be pro se. In response, Commissioner Snyder stated that was correct, although there may be some employee organizations who may assist their female members.

There were no other comments on this section.

Item 6 Proposed amendment to NAC 288.070 to allow for service by first-class mail.

Commissioner Snyder stated that this item corrects a mistake from the last regulations. The last set of regulations created the electronic service of documents but inadvertently stated documents not electronically served needed to be served by certified mail. Prior to then documents needed to only be served by first-class mail.

Adam Levine gave an example in which a complaint was not served. Commissioner

Snyder stated that this does not affect the service of complaints but only documents filed after the complaint. Adam Levine stated that clarification satisfies his concern.

There were no other comments on this section.

Item 7 Proposed amendment to NAC 288.250 to allow for the Commissioner to order the filing of prehearing statements other than at twenty days following the filing of an answer.

Commissioner Snyder stated that at the first public workshop Sandra Lawrence suggested that prehearing statements sometimes are better filed later in a case's timeline instead of automatically 20 days after the filing of the answer. This provision incorporates that suggestion, which he believes is a good one in that sometimes cases are more fully fleshed out as the parties over time informally discuss the case with each other and also learn more about their case.

There were no comments on this section.

Item 8 Proposed amendment to NAC 288.279 to allow the Chair or Vice-Chair to handle subpoena requests on behalf of the Board.

Commissioner Snyder stated this change incorporates the past practice of how the Board handles subpoena requests.

There were no comments on this section.

Item 9 Additional Period of Public Comment.

Adam Levine asked whether the Board ever considered a provision requiring local government employers to have a process for acceptance of subpoenas for employees under their control.

Yolanda Givens stated that perhaps it is something to be considered with respect to management level employees but not for rank-and-file employees. She stated she does not see where the employer should have that kind of responsibility.

Adam Levine stated perhaps this could be looked at in the future and not for this set of regulations. Commissioner Snyder agreed and also brought up whether notice needs to be given of the issuance of a subpoena as is done in court.

(cont'd on next page)

Commissioner Snyder then explained the process going forward for the adoption of the draft regulations. He also explained that the concerns raised today would be addressed in a revised draft regulation.

The workshop adjourned at 10:23 a.m.

Respectfully submitted,

Q k

Bruce K. Snyder
EMRB Commissioner

EXHIBIT C

STATE OF NEVADA

BRIAN SANOVAL
Governor



C. I. MANFHE
Director

Member of the Board

BRENT C. ECKERSLEY, Chair
SANDRA MASTERS, Vice-Chair
PHILIP E. LARSON, Board Member
CAM WALKER, Board Member
GARY COTTINO, Board Member

BRUCE K. SNYDER
Commissioner

MARISU ROMUALDEZ ABEILAR
Executive Assutant

DEPARTMENT OF BUSINESS AND INDUSTRY
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

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January 10, 2018

MINUTES OF THE PUBLIC HEARING ON NEW REGULATIONS OR CHANGES TO
EXISTING REGULATIONS PERTAINING TO THE PRACTICE AND PROCEDURE
BEFORE THE EMRB

A public hearing of the Local Government Employee-Management Relations Board, properly noticed and posted pursuant to the Nevada Open Meeting Law, was held on Wednesday, January 10, 2018, at the hour of 8:10 a.m. at the Nevada State Business Center, 3300 West Sahara Avenue, Fourth Floor, Tahoe Room, Las Vegas, Nevada 89102. The meeting was video-conferenced to the Department of Business and Industry Director's Office Conference Room, 1830 E. College Parkway, 1st Floor, Carson City, Nevada 89706.

The following Board members were present: Brent C. Eckersley, Esq., Chair
Sandra Masters, Vice-Chair**
Philip E. Larson, Board Member**
Cam Walker, Board Member
Gary Cottino, Board Member

Also present: Bruce K. Snyder, Commissioner
Donald Bordelove, Deputy Attorney General
Marisu Romualdez Abellar, Board Secretary

Present from the Public: Phil Herring, Operating Engineers Local 3**

**=attending in Carson City

PRELIMINARY MATTERS

1. Call to Order
The public hearing was called to order by Brent C. Eckersley, Esq., Chair, on Wednesday, January 10, 2018 at 8:10 a.m.

2. Public Comment
No public comment was offered.

REGULATORY MATTERS

3. Public Hearing on Proposed Regulation R074-17
There were no comments from the public on the proposed regulation.
4. Consideration of Comments on Proposed Regulation R074-17
The Board offered had no discussion on the consideration of any comments on the proposed regulation.
5. Possible Final Adoption of Proposed Regulation R074-17
Upon motion, the Board unanimously adopted Regulation R074-17, as presented.

CLOSING MATTERS

6. Additional Period of Public Comment
No public comment was offered.
7. Adjournment
There being no further business, Chair Eckersley adjourned the meeting.

Respectfully submitted,

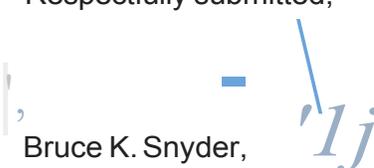

Bruce K. Snyder,
EMRB Commissioner

EXHIBIT D

Exhibit D-List of Attendees

(not including EMRB Board Members and Staff)

First Public Workshop Held July 26, 2017

Attended in Las Vegas

Scott Davis, Esq.
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Holly Walker, Esq.
Fisher Phillips
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Attended in Carson City

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David L. Watts-Vial, Esq.
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Submitted Written Comments Subsequent to the Public Workshop

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Second Public Workshop Held October 31, 2017

Attended in Las Vegas

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Attended in Carson City

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Public Hearing Held January 10, 2018

Attended in Las Vegas

None

Attended in Carson City

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