

PROPOSED REGULATION OF THE LOCAL GOVERNMENT

EMPLOYEE-MANAGEMENT RELATIONS BOARD

LCB File No. R074-17

October 2, 2017

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

AUTHORITY: §1, NRS 288.090, as amended by section 2 of Senate Bill No. 460, chapter 413, Statutes of Nevada 2017, at page 2746, NRS 288.110, as amended by section 3.7 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1429, and sections 2 and 3.3 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at pages 1427-28; §§2-8, 11, 12, 14 and 17, NRS 288.090, as amended by section 2 of Senate Bill No. 460, chapter 413, Statutes of Nevada 2017, at page 2746, and NRS 288.110, as amended by section 3.7 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1429; §§9, 13, 15 and 16, NRS 288.110, as amended by section 3.7 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1429; §10, NRS 288.110, as amended by section 3.7 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1429, and sections 2 and 3.3 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at pages 1427-28.

A REGULATION relating to public employees; providing for the creation of one or more panels of the Local Government Employee-Management Relations Board; adopting provisions relating to the organization and operation of such panels; providing for reconsideration by the full Board of certain decisions of a panel; providing for the filing of amicus briefs with the Board; establishing an expedited procedure for the processing of certain complaints filed with the Board; revising provisions governing documents filed with the Board and the issuance of subpoenas on behalf of the Board; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The Local Government Employee-Management Relations Board is charged with regulating labor relations between local government employers and local government employees in this State. (NRS 288.110, as amended by section 3.7 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1429) Senate Bill No. 460 of the 2017 Legislative Session increased the size of the Board from three to five members, provided that three members of the

Board constitute a quorum and generally authorized a majority of a quorum present at any meeting to exercise all the power and authority of the Board. (NRS 288.080, as amended by section 1 of Senate Bill No. 460, chapter 413, Statutes of Nevada 2017, at page 2746) This regulation provides, in part, for the creation of three-member panels of the Board, to perform many of the functions currently performed by the full Board. **Section 4** of this regulation authorizes the Commissioner of the Board to establish one or more panels, provides for the assignment of members to the panel or panels and governs the designation of the presiding officer of each panel. **Section 5** of this regulation governs the allocation of the work of the Board among the panels. If a member of a panel dissents from a decision of the panel, resulting in a “split decision,” **section 6** of this regulation authorizes any party aggrieved to file a petition for reconsideration of the split decision by the full Board. If no timely petition for reconsideration is filed, or if a petition is filed but denied by the full Board, **sections 6 and 8** of this regulation provide that the decision of the panel is the final decision of the Board for the purposes of judicial review. **Sections 7 and 8** of this regulation govern the required content of a petition for reconsideration and establish the procedure for ruling on the petition.

Section 9 of this regulation clarifies the procedure for the filing of amicus briefs with the Board, either by leave of the Board or at its request.

Assembly Bill No. 113 of the 2017 Legislative Session requires certain employers, including public employers subject to regulation by the Board, to provide nursing mothers in their employ with reasonable break times and a private place to express breast milk. If the employer and employee are unable to reach an agreement on compliance with such requirements, the bill authorizes the affected employee to file a complaint. In the case of a local government employee, the complaint is to be filed with the Board. The bill requires the Board to provide for an expedited review of the complaint. (Sections 2 and 3.3 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at pages 1427 and 1428) **Section 10** of this regulation establishes the procedure for filing, hearing and deciding such a complaint.

Sections 13 and 15-17 of this regulation make other procedural changes involving matters before the Board. **Section 13** provides that a copy of any document filed with the Board is to be served on other parties by first-class mail instead of certified mail as currently required. (NAC 288.070) **Section 15** authorizes the Commissioner, in addition to the Board, to modify requirements for a prehearing statement filed with the Board. **Section 16** codifies current practice by providing that the Chair or Vice Chair of the Board may issue subpoenas on behalf of the Board. Existing regulations provide for the filing of a petition for rehearing by the Board. (NAC 288.360) **Section 17** provides that only a decision of the full Board is subject to rehearing.

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. *“Panel” means any three members of the Board present at a meeting who are authorized to exercise the power and authority of the Board pursuant to NRS 288.090, as amended by section 2 of Senate Bill No. 460, chapter 413, Statutes of Nevada 2017, at page 2746.*

Sec. 3. *“Split decision” means a decision or a part of a decision of a panel from which one member of the panel dissents.*

Sec. 4. 1. *The Commissioner may establish one or more panels as the Commissioner deems necessary. Each panel must be designated “Panel A,” “Panel B” and so forth according to the number of panels established.*

2. *To the extent consistent with the provisions of subsection 3 of NRS 288.090, as amended by section 2 of Senate Bill No. 460, chapter 413, Statutes of Nevada 2017, at page 2746, if two or more panels are established:*

(a) The Commissioner shall assign each member of the Board to a panel or panels.

(b) Each member of the Board must be assigned to the same number of panels as every other member of the Board.

(c) If the absence of one or more members of a panel would otherwise require the postponement of a hearing, the Commissioner may, with the written consent of all the parties to the hearing, randomly assign another member or members of the Board to the panel for the purposes of the hearing and disposition of the matter.

3. *Except as otherwise provided in subsection 4:*

(a) If the Chair of the Board is a member of a panel, he or she shall serve as the presiding officer of the panel.

(b) If the Chair of the Board is not a member of a panel, the Vice Chair of the Board shall serve as the presiding officer of the panel.

(c) If the Chair or the Vice Chair of the Board is not a member of a panel, the most senior member of the Board assigned to the panel shall serve as the presiding officer of the panel.

For the purposes of this paragraph:

(1) The seniority of a member must be determined on the basis of the date of the appointment of the member to the Board.

(2) If two or more members were appointed on the same date, they shall draw lots to determine which of them will serve as the presiding officer of the panel.

4. Notwithstanding the provisions of subsection 3 and to the extent consistent with the provisions of subsection 3 of NRS 288.090, as amended by section 2 of Senate Bill No. 460, chapter 413, Statutes of Nevada 2017, at page 2746, with the consent of the presiding officer of the panel and the member so designated, the Commissioner may designate any member of a panel as the acting presiding officer for a meeting of the panel.

Sec. 5. 1. *The Commissioner shall schedule the meetings of each panel in consultation with the members of the panel.*

2. Except as otherwise provided in this section, whenever a case is commenced before the Board by the filing of a complaint, petition or other pleading, the Commissioner shall assign the case to the next available panel for which a meeting agenda has not yet been posted pursuant to NRS 241.020.

3. If a panel decides that a hearing should be held in a case, the panel will, during the same meeting, randomly assign the case to itself or another panel for hearing.

4. Except as otherwise provided in this subsection, after a case has been assigned to a panel pursuant to subsection 2 or 3, as applicable, any motion or other matter relating to the case will be decided by that panel. If a stipulation to dismiss all or any part of a complaint or petition is filed, the Commissioner shall assign the stipulation to the next available panel as provided in subsection 2 for consideration and disposition.

5. If the Commissioner determines that a case involves an issue of statewide significance, the Commissioner may so designate the case and assign it to the full Board instead of a panel for all further proceedings. If such a designation is made, the Commissioner shall prepare and file written notice of the designation, stating the reasons for the designation, and serve a copy of the notice upon each party to the case.

Sec. 6. 1. *Any party aggrieved by a split decision of a panel may file a petition for reconsideration of the split decision by the full Board. If the decision of a panel is a split decision only in part, only the split decision is properly the subject of a petition for reconsideration.*

2. A petition for reconsideration must be filed and served within 15 days after service by the panel of a written notice of entry of the split decision of the panel.

3. The failure of any party to submit a timely petition for reconsideration pursuant to this section constitutes an agreement that the decision of the panel is a final decision of the Board for the purposes of NRS 233B.130.

Sec. 7. 1. *A petition for reconsideration by the full Board must be supported by a memorandum of points and authorities and contain such arguments, consistent with the provisions of this section, as the petitioner desires to present. Except by written leave of the*

Chair of the Board or the Vice Chair of the Board in the absence of the Chair, the petition must not exceed 30 pages in length, inclusive of the supporting memorandum of points and authorities.

2. The petition for reconsideration and supporting memorandum of points and authorities must:

(a) State the reasons that reconsideration by the full Board is necessary to secure and maintain uniformity of the decisions of the Board; and

(b) Demonstrate that the split decision of the panel is contrary to prior decisions of the Board, with specific citations to those decisions.

3. If the petitioner contends that the case involves a substantial precedential, constitutional or public policy issue, the petition for reconsideration and supporting memorandum of points and authorities must identify each such issue and demonstrate the effect of the split decision of the panel beyond the parties to the proceeding.

4. Any matter previously presented to the panel in briefs or oral argument may not be reargued in a petition for reconsideration, and no point may be raised for the first time in the petition.

Sec. 8. 1. The full Board will consider a timely petition for reconsideration and may grant or deny it not later than 5 days before the expiration of the time for filing a petition for judicial review set forth in NRS 233B.130. The Board will grant a petition for reconsideration upon the votes of any two or more members of the Board. If no action is taken by the Board within the time specified, the petition for reconsideration shall be deemed denied.

2. If a petition for reconsideration by the full Board is:

(a) Granted, the members of the Board will review the administrative record, after which the Board will hear oral argument on such terms as the Chair of the Board deems appropriate.

(b) Denied, the decision of the panel is the final decision of the Board for the purposes of NRS 233B.130.

3. An order granting a petition for reconsideration by the full Board does not preclude:

(a) A party from filing a timely petition for rehearing pursuant to NAC 288.360 with respect to the final decision of the full Board.

(b) The full Board from considering and acting upon a petition for rehearing as provided by NAC 288.364.

Sec. 9. *1. Any person or governmental entity claiming an interest in a dispute or controversy that is the subject of a hearing before the Board may, by motion, request leave of the Board to file an amicus brief. If the Board grants the motion, it may impose terms and conditions related to the brief.*

2. The Board may request in writing that one or more local government employers and employee organizations file amicus briefs in any contested case on such terms and conditions as are specified in the request.

Sec. 10. *1. In lieu of complying with the provisions of NAC 288.200 to 288.370, inclusive, and sections 4 to 9, inclusive, of this regulation, an employee who:*

(a) Is a nursing mother described in paragraph (d) of subsection 4 of section 2 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1427; and

(b) Complains solely of an alleged violation of paragraph (h) of subsection 1 of NRS 288.270, as amended by section 4 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1429,

↪ may elect to file a complaint in the form required by the Board and comply with the provisions of this section.

2. If an employee makes the election and files the complaint described in subsection 1, the respondent shall file an answer in accordance with the provisions of NAC 288.220, except that the answer must include a statement setting forth the position of the respondent and the reasons for the actions of the respondent.

3. Upon receipt of the answer, the Commissioner shall contact the parties to schedule a hearing on the matter. The hearing:

(a) Must be held before the Commissioner; and

(b) May be conducted in person, by video conference or telephonically, in the discretion of the Commissioner.

4. After the hearing is scheduled, the Commissioner shall promptly prepare and serve upon the parties a notice of hearing setting forth:

(a) The date, time and place of the hearing;

(b) The manner in which the hearing will be conducted, whether in person, by video conference or telephonically; and

(c) The deadline for the submission of copies of proposed exhibits pursuant to subsection 6 or the notice required by that subsection.

5. Upon the request of a party to a proceeding governed by this section, the Commissioner may issue subpoenas requiring the attendance of witnesses before the Commissioner, together with all books, memoranda, papers and other documents relative to the matter. The provisions of subsections 2, 3 and 4 of NRS 288.120 apply to any such subpoena.

6. Each party shall submit to the Commissioner a copy of any exhibit the party proposes to use at the hearing. Each party shall submit the copy so that it is received by the Commissioner not less than 3 business days before the hearing. If a party does not propose to use any exhibits at the hearing, the party shall so notify the Commissioner in writing within that time. Upon receipt of the copies of the proposed exhibits or the notice described in this subsection, the Commissioner shall forward copies of the proposed exhibits or notice, as applicable, to each other party.

7. The Commissioner shall conduct the hearing in accordance with the provisions of NAC 288.280 to 288.335, inclusive, but may depart or authorize a departure from those provisions as necessary to expedite and minimize the expense of the proceedings. Except as otherwise provided in this subsection, in lieu of using a court reporter, the Commissioner may cause the hearing to be recorded by tape recorder. In the case of a hearing conducted telephonically, each party must consent to the recording of the hearing. Upon the request of any party, the Commissioner shall cause the recording to be transcribed at the expense of the party making the request. If both parties request that the recording be transcribed, the expense of transcription must be shared equally by the parties unless they otherwise agree.

8. After the hearing, the Commissioner shall render a decision in writing. The decision is not subject to review by the Board and is a final decision for the purposes of NRS 233B.130.

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

288.010 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 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 12. NAC 288.020 is hereby amended to read as follows:

288.020 “Board” means ~~the~~ :

- 1. The full* Local Government Employee-Management Relations Board ~~is~~, *consisting of all the members serving on the Board; or*
- 2. A panel of the Board, if one or more panels are established pursuant to section 4 of this regulation.*

Sec. 13. NAC 288.070 is hereby amended to read as follows:

288.070 1. Except as otherwise provided in this chapter, if any written document or other written 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. R010-15, 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, intervener 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. 14. NAC 288.130 is hereby amended to read as follows:

288.130 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 288.375, inclusive ~~H~~, *and sections 4 to 9, inclusive, of this regulation.*

Sec. 15. NAC 288.250 is hereby amended to read as follows:

288.250 1. Not later than 20 days after the service of the answer, unless otherwise ordered by the Board ~~H~~ *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.

2. 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. 16. NAC 288.279 is hereby amended to read as follows:

288.279 1. The ~~{Board}~~ *Chair, or the Vice Chair in the absence of the Chair*, may issue a subpoena *on behalf of the Board* 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}~~ *his or her* discretion, the ~~{Board}~~ *Chair, or the Vice Chair in the absence of the Chair*, may deny a request for a subpoena *on behalf of the Board* if the request commands the production of frivolous, irrelevant, burdensome or privileged material, or other material made confidential by statute.

Sec. 17. NAC 288.360 is hereby amended to read as follows:

288.360 1. Either party may, within 15 days after service of a final decision of the *full* Board, file a petition for a rehearing stating the reasons therefor. *The decision of a panel is not subject to rehearing.*

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 15 days constitutes an agreement that the Board's decision is a final decision for the purposes of NRS 233B.130.