

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

LCB File No. R135-03

October 8, 2003

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

AUTHORITY: §§1-25, NRS 288.110.

Section 1. Chapter 288 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *“Commissioner” means the Commissioner appointed by the Board pursuant to NRS 288.090.*

Sec. 3. 1. *The Board may impose sanctions against a party who fails:*

(a) To comply with an order of 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; and

(b) Ordering the party to pay to the other party reasonable attorney’s fees and costs.

Sec. 4. 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 , ~~[and]~~ 288.030 *and section 2 of this regulation* have the meanings ascribed to them in those sections.

Sec. 5. NAC 288.070 is hereby amended to read as follows:

288.070 Except as otherwise provided in this chapter, if any written document or other written matter is ~~required to be~~ filed with the Board ~~[, the]~~ :

- 1. The original and four copies must be signed and filed ~~[. Additional copies must be served]~~ in the form of a pleading;*
- 2. The written document or other written matter must satisfy the requirements set forth in NAC 288.231; and*
- 3. The filing party must serve a copy* upon the opposing party, intervener and any party in interest.

Sec. 6. NAC 288.110 is hereby amended to read as follows:

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.

~~6.7.~~ 7. If the results are inconclusive, the Board will conduct a runoff election.

~~7.8.~~ 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.

~~8.9.~~ 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.

~~9.10.~~ 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.

Sec. 7. 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 288.370, inclusive ~~1.~~, *and section 3 of this regulation.*

Sec. 8. NAC 288.143 is hereby amended to read as follows:

288.143 ~~{Upon the proper filing of an application}~~ *An employee organization that wishes to be recognized as the bargaining agent for a group of local government employees who are not yet represented by an employee organization must apply to the local government employer for recognition ~~[, any]~~ pursuant to NRS 288.160. The local government employer ~~{objecting to the sufficiency of the application may, within 5 days after receipt of the application, request a hearing before the Board to}~~ may challenge the sufficiency of the application ~~{}~~ *for recognition by filing a petition, in the form of a pleading, with the Board within 10 days after receipt of the application.**

Sec. 9. NAC 288.146 is hereby amended to read as follows:

288.146 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 organization may challenge recognition of another employee organization ~~{or request}~~ *by filing with the Board a petition for* a hearing to determine whether a recognized employee organization has ceased to be supported by a majority of the local government employees in a bargaining unit . *The petition must be filed in the form of a pleading and may only be filed* during the period:

(a) Beginning upon the filing of notice by the recognized employee organization pursuant to NRS 288.180 of its desire to negotiate a successor agreement and ending upon the commencement of negotiations for such an agreement; or

(b) Beginning 242 days before the expiration date of the existing labor agreement and ending 212 days before the expiration of the labor agreement.

Sec. 10. NAC 288.200 is hereby amended to read as follows:

288.200 1. ~~[A]~~ *In addition to any other applicable requirements set forth in NAC 288.231, a* complaint must include:

- (a) The full name and address of the complainant;
- (b) The full name and address of the respondent;
- (c) A clear and concise statement of the facts constituting the alleged practice sufficient to raise a justiciable controversy under chapter 288 of NRS, including the time and place of the occurrence of the particular acts and the names of persons involved; and
- (d) The legal authority under which the complaint is made.

2. The complainant shall file a verified original and four copies of the complaint with the Board *in the form of a pleading* and shall serve a copy by certified mail on all parties in interest at their last known addresses.

Sec. 11. NAC 288.210 is hereby amended to read as follows:

288.210 The Board may dismiss a ~~[complaint]~~ *matter* for any of the following reasons:

- 1. If the Board determines that no probable cause exists for the complaint, or if the complaint has been settled and notice of the settlement has been received by the Board.
- 2. Unless there is a clear showing of special circumstances or extreme prejudice, if the parties have not exhausted their contractual remedies, including all rights to arbitration.

3. If the complainant, within a reasonable time, fails to prosecute its complaint.

4. If, without good cause shown, an applicant, petitioner or complainant fails to appear at the time and place set for hearing by the Board.

5. If an applicant, petitioner or complainant files a spurious or frivolous complaint or a complaint which presents only issues that have been previously decided by the Board.

Sec. 12. NAC 288.220 is hereby amended to read as follows:

288.220 1. The respondent 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. 13. NAC 288.231 is hereby amended to read as follows:

288.231 1. Pleadings and written motions ~~[must be:~~
~~—(a) Properly]~~ *filed with the Board, including, without limitation, a complaint, petition, application or request, must:*

(a) Be properly titled;

- (b) ~~{Signed}~~ *Be signed* by an authorized person;
- (c) State the name and address of each party; ~~{and}~~
- (d) Clearly identify the proceeding by title ; ~~{and docket number.}~~

~~2. Pleadings and motions must set~~

- (e) *Include the case number if a case number has been assigned;*
- (f) *Include an appropriate caption, if applicable;*
- (g) *Set* forth a clear and concise statement of the matters relied upon as a basis for the action or relief requested and an appropriate prayer ; ~~{~~

~~3. Pleadings and written motions must be typewritten, photocopied~~

- (h) *Be clear, legible and typewritten* or printed *by a computer* on ~~{good quality}~~ *white, unglazed* paper *that is* 8 1/2 by 11 inches in size ~~{~~

~~4.} and that is not lighter than 16 pounds;~~

- (i) *Be firmly bound together at the upper left-hand corner of the document; and*
- (j) *Not exceed 30 pages, except with the permission of the Board.*

2. The type used in a pleading or written motion described in subsection 1, must be black in color and must not be smaller than 11 characters per inch. The lines on each page of the pleading or written motion must be numbered consecutively on the left margin. Each page of the pleading or written motion must:

(a) Have a top margin that is 1 inch from the top edge of the paper and a bottom margin that is 1 inch or more from the bottom edge of the paper; and

(b) Be numbered consecutively at the bottom of the page.

3. A pleading initiating a new proceeding must have space for the ~~{docket}~~ case number on the pleading.

Sec. 14. NAC 288.240 is hereby amended to read as follows:

288.240 1. Any request for an order by the Board, except for an order to permit intervention, concerning any matter that has been assigned a ~~[docket]~~ *case* number and that has not been finally decided by the Board must be styled a “motion.”

2. All motions made before or after a hearing must be filed in writing with the Board . ~~[and state briefly the grounds for the motion and the relief requested.]~~ Motions made at a hearing must be stated orally and must be included in the stenographic report of the hearing.

3. A motion directed at a complaint or petition must be written and filed before the answer or response is due.

4. Within 10 days after service of any motion, all parties wishing to respond to the points raised in the motion shall file their opposition to the motion. That opposition must be in writing, unless made during the hearing. Within 10 days after service of the opposition to the motion, the moving party may respond to the points raised in the opposition.

5. An affidavit of service must be attached to the original opposition or response, indicating that the opposition or response has been served on the opposing party, unless the opposition or response is made during a hearing.

6. If a party fails to file and serve his written opposition to a motion, that failure to respond may be construed as an admission that the motion is meritorious and as consent to granting the motion.

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

288.250 Not later than 20 days after the service of the answer, unless otherwise ordered by the Board, each party shall submit to the Board ~~[a]~~ *the original and four copies of the* prehearing statement *of the party* which includes:

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

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

3. A list of witnesses and their qualifications, including a brief summary of their expected testimony; and

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

Sec. 16. NAC 288.260 is hereby amended to read as follows:

288.260 1. Any person claiming an interest in a dispute or controversy which is the subject of a hearing may be made a party upon timely petition and a showing satisfactory to the Board of the person's interest in the controversy.

2. The petition to intervene must include the following information:

- (a) The nature of the petitioner's statutory or other right;
- (b) The nature and extent of the petitioner's interest;
- (c) The effect of any decision in the proceedings on the petitioner's interest;
- (d) Other means available whereby the petitioner's interest may be protected;
- (e) The extent to which the petitioner's interest may be represented by existing parties;
- (f) The extent to which the petitioner's participation can assist in the development of a sound record;
- (g) The extent to which the petitioner's participation will broaden the issues or delay the proceedings;

(h) The extent to which the petitioner's interest in the proceedings differs from that of the general public;

(i) How the petitioner's intervention would serve the public interest;

(j) If affirmative relief is sought, the type and basis of that relief;

(k) A statement as to whether the petitioner intends to present evidence in the proceeding;

and

(l) The name and address of the petitioner.

3. The petition is not timely filed unless it is filed with the Board and served upon all parties by certified mail at least ~~10~~ 30 days before the time set for the hearing. A response to the application or petition may be made by any party not later than 5 days after receipt of the application or petition.

Sec. 17. NAC 288.262 is hereby amended to read as follows:

288.262 1. A petition for leave to intervene and proof of service of a copy of the petition on each party of record must be filed with the Board at least ~~10~~ 30 days before the time set for the hearing. A response to the ~~[application or]~~ petition may be made by any party not later than 5 days after receipt of the ~~[application or]~~ petition.

2. If a petition for leave to intervene is filed after the applicable period, the petition must state to the satisfaction of the Board a substantial reason for the delay. If a reason is not stated, the petition may be summarily denied by the Board.

Sec. 18. NAC 288.273 is hereby amended to read as follows:

288.273 1. The Board *or Commissioner* may, upon written notice to all parties of record, hold a prehearing conference to:

(a) Formulate or simplify the issues;

- (b) Obtain admissions of fact which will avoid unnecessary proof;
- (c) ~~Arrange for the exchange of proposed exhibits or prepared testimony;~~ *Discuss proposed exhibits which should have been previously exchanged between the parties;*
- (d) Limit the number of witnesses; and
- (e) Establish any other procedure which may expedite the orderly conduct and disposition of the proceedings.

2. Upon action of the Board, the action taken and the agreements made at a prehearing conference by the parties concerned must be made a part of the record. When so ordered, the action controls the course of subsequent proceedings unless modified by the Board at the hearing.

3. In any proceeding, the Board may call all parties together for a conference before the taking of testimony or may recess the hearing for a conference to carry out the intent of this section. The Board will state on the record the results of the conference.

Sec. 19. NAC 288.275 is hereby amended to read as follows:

288.275 1. The Board may consolidate two or more ~~docket numbers~~ *cases* in any one hearing when it appears that the issues are substantially the same and that the rights of the parties will not be prejudiced by a consolidated hearing.

2. At a consolidated hearing, the Board will determine the order in which the parties introduce their evidence and the general procedure to be followed during the course of the consolidated proceeding.

3. The Board will apportion the costs of the hearing among the parties.

4. Unless the Board orders otherwise, the Commissioner shall place the same date of issuance and the same effective date, if applicable, on all orders made by the Board in relation to a consolidated hearing.

Sec. 20. NAC 288.278 is hereby amended to read as follows:

288.278 1. Except as otherwise provided in this subsection, representation before the Board in a contested case is limited to representation in proper person or by an attorney who is licensed to practice law in the State of Nevada. The Board may ~~[, within its discretion and without notice,]~~ :

(a) *Upon a motion*, waive the limitation on representation ~~[,]~~; and

(b) *Require an attorney who is not licensed to practice law in the State of Nevada and who is licensed to practice in any other jurisdiction of the United States to associate with an attorney who is licensed to practice law in the State of Nevada.*

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

Sec. 21. NAC 288.285 is hereby amended to read as follows:

288.285 If a petitioner, complainant, respondent or intervener fails , *without good cause*, to appear at the time and place set for hearing, the Board may *impose any of the sanctions set forth in section 3 of this regulation and may* grant or, in the alternative, dismiss the petition or complaint, with or without prejudice, or may recess the hearing to a future date to be set by the Board to enable the petitioner, complainant, respondent or intervener to attend.

Sec. 22. NAC 288.290 is hereby amended to read as follows:

288.290 Any request for the postponement of a scheduled hearing must be in writing and signed by the parties or their counsel. The request must include a statement of the reasons for the requested postponement and must be filed with the Board at least ~~[72 hours]~~ *10 days* before the time the hearing is scheduled ~~[.]~~ *unless good cause is shown to excuse the untimely filing of the request.* In no case will a request for postponement be granted within 30 days after the running of the 90-day period for hearing a complaint.

Sec. 23. NAC 288.324 is hereby amended to read as follows:

288.324 1. Unless otherwise permitted, exhibits submitted to the Board must be limited in size to 8 1/2 by 11 inches. A copy of each documentary exhibit must be furnished to each party of record, and ~~[four]~~ *six* copies must be furnished to the Board. ~~[A copy must be submitted to the court reporter, transcriber or Commissioner of the Board.]~~ If relevant evidence is included in a written or printed statement, book or document of any kind, containing other matters not relevant and not intended to be put into evidence, the statement, book or document containing that other matter may not be received or admitted in whole. Counsel or other parties offering evidence or exhibits shall present, in convenient and proper form for filing, a copy of the relevant portions or, at the discretion of the Board, read these portions into the record. Any documentary evidence offered, whether in the form of an exhibit or introduced by reference is subject to appropriate and timely objection.

2. If documents are numerous or voluminous, and a party desires to offer into evidence more than a limited number of these documents as typical of the others, an orderly abstract of relevant data contained in these documents may be prepared and offered as an exhibit. Other

parties of record will be given a reasonable opportunity to examine both the abstract and the documents.

3. In any proceeding involving detailed accounting exhibits, the Board may require each party to file with the Board, and to serve on each party of record, a copy of these exhibits within a specified time before the hearing to enable the parties of record to study the exhibits and to prepare cross-examination with reference to them.

4. Amendments to exhibits may be made after filing with the Board if the amendments do not prejudice the rights of any party or if the amendments contain a clerical or mathematical error.

Sec. 24. NAC 288.326 is hereby amended to read as follows:

288.326 1. At any hearing the Board may order the presentation of further evidence on any issue. The party required to present further evidence will not be restricted from submitting all evidence which the party believes to be relevant to that evidence ordered to be presented.

2. Upon stipulation of the parties the Board may authorize the filing of specific documentary evidence as a part of the record within a fixed time after submission of the evidence. The Board will reserve exhibit numbers for exhibits which are filed late.

3. The Board may exclude any exhibit which is filed or offered late.

Sec. 25. NAC 288.328 is hereby amended to read as follows:

288.328 The Board will rule on the admissibility of all evidence subject to the provisions of NAC 288.324 ~~and~~ ***and 288.326.*** At the conclusion of the hearing, all evidence will be received into the record subject to the rulings of the Board on evidence to which timely objection was made.