

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS POLICE PROTECTIVE
ASSOCIATION, INC.

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT, IN AND FOR THE COUNTY OF
CLARK, STATE OF NEVADA,
DEPARTMENT XXVII, THE HONORABLE
NANCY L. ALLF,

Respondent,

and

JORDAN TRAVERS and LAS VEGAS
METROPOLITAN POLICE DEPARTMENT,

Real Parties in Interest.

Electronically Filed
Case No. 83793 Sep 07 2022 10:39 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

PETITION FOR REHEARING

Petition from the Eighth Judicial District Court, Clark County, Nevada
Dept. No. XXVII, Case No. A-21-832601-P

ANTHONY P. SGRO, ESQ.
Nevada Bar No. 003811
tsgro@sgroandroger.com
JENNIFER WILLIS ARLEDGE, ESQ.
Nevada Bar No. 008729
jarledge@sgroandroger.com
SGRO & ROGER
720 S. Seventh Street, Third Floor
Las Vegas, NV 89101
(702) 384-9800
Attorneys for Petitioner

DAVID ROGER ESQ.
Nevada Bar No. 002781
droger@lvppa.com
9330 W. Lake Mead Blvd., Suite 200
Las Vegas, NV 89134
(702) 384-8692
Attorneys for Petitioner

HON. NANCY L. ALLF
Eighth Judicial District Court Judge
200 Lewis Avenue
Las Vegas, NV 89155
Respondent

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in Nevada Rule of Appellate Procedure (NRAP) 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal:

1. Attorneys of Record for Petitioner: Anthony P. Sgro, Esq. and Jennifer Willis Arledge, Esq., of Sgro & Roger, and David Roger, Esq.
2. Attorneys of Record for Respondent: Unknown.
3. Attorneys of Record for Real Party in Interest Jordan Travers: Daniel Marks, Esq. and Adam Levine, Esq. of Law Office of Daniel Marks.
4. Attorneys of Record for Real Party in Interest Las Vegas Metropolitan Police Department: Nicholas D. Crosby, Esq. of Marquis Aurbach Coffing.
5. Publicly held companies associated: None.

DATED this 6th day of September, 2022.

SGRO & ROGER

/s/ Jennifer W. Arledge

Anthony P. Sgro, Esq.

Nevada Bar No. 3811

Jennifer Willis Arledge, Esq.

Nevada Bar No. 8729

720 S. 7th Street, Third Floor

Las Vegas, Nevada 89101

Telephone: (702) 384-9800

*Attorneys for Petitioner Las Vegas
Police Protective Association, Inc.*

TABLE OF CONTENTS

NRAP 26.1 DISCLOSURE.....	ii
TABLE OF AUTHORITIES.....	iv
RELIEF SOUGHT.....	1
ARGUMENT.....	1
A. PETITIONS FOR REHEARING.....	1
B. THE COURT OVERLOOKED OR MISAPPREHENDED A MATERIAL FACT.....	2
1. The Negative Policy Implications of Allowing Tactical Advantage Procured by a Party Who Deliberately Fails to Alert All Necessary Parties in a Litigation.....	2
C. THE COURT OVERLOOKED, MISAPPLIED OR FAILED TO CONSIDER A STATUTE, PROCEDURAL RULE, REGULATION OR DECISION DIRECTLY CONTROLLING A DISPOSITIVE ISSUE IN THE CASE.....	5
1. The Court ignored the precedential value of EMRB decisions.....	5
2. The Court expanded the district court’s ruling.....	6
3. The Court misapplied the Bisch case.....	7
CONCLUSION.....	8
VERIFICATION.....	10
CERTIFICATE OF COMPLIANCE.....	10
CERTIFICATE OF SERVICE.....	12

TABLE OF AUTHORITIES

AUTHORITY	Page(s)
STATE CASES	
<i>Bisch v. Las Vegas Metropolitan Police Department</i> , 129 Nev. 328, 302 P.3d 1108 (2013).....	7
<i>Nalder, Lopez v. Meri Ins. Co.</i> , 136 Nev. 200, 462 P.3d 677 (2020).....	2
<i>State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.</i> , 116 Nev. 290, 995 P.2d 482 (2000).....	2
<i>Truckee Meadows Fire Prot. Dist. v. Int’l Ass’n of Firefighters, Local 2487</i> , 109 Nev. 367, 849 P.2d 343 (1993).....	8
STATE STATUTES	
NRS Chapter 289	
NRS 289.057.....	6, 7
NRS 289.080.....	7
COURT RULES	
NRAP 40.....	1
NRAP 40(a).....	1
NRAP 40(c).....	1
ADMINISTRATIVE AGENCY DECISIONS	
<i>Lyon Cnty Educ. Ass’n</i> , Case No. 2016-011, Item No. 817 (Emp. Rel. Mgmt. Board Oct. 20, 2016) (Ord. on Petition for Declaratory Ruling).....	5

<i>Nev. Highway Patrol Ass’n</i> , Case No. 2020-011, Item No. 865 (Emp. Rel. Mgmt. Board June 17, 2020) (Declaratory Ord.).....	5
--	---

RELIEF SOUGHT

Petitioner Las Vegas Police Protective Association, Inc. (“LVPPA”) seeks reconsideration of this Court’s August 18, 2022, Opinion pursuant to NRAP 40 because the panel of this Court has overlooked, misapplied, or misapprehended a material fact. Further, the panel of this Court overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.

ARGUMENT

A. PETITIONS FOR REHEARING

A petition for rehearing may be filed within 18 days after the filing of the appellate court’s decision under Rule 36. NRAP 40(a). NRAP 40(c) provides:

(2) The court may consider rehearings in the following circumstances:

(A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case, or

(B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.

B. THE COURT OVERLOOKED OR MISAPPREHENDED A MATERIAL FACT

1. The Negative Policy Implications of Allowing Tactical Advantage Procured by a Party Who Deliberately Fails to Alert All Necessary Parties in a Litigation

The panel found that LVPPA's motion to intervene was untimely because it was filed after entry of the final judgment in the underlying proceedings. *See* OPINION at 6. The panel held that "timeliness under NRCP 24 must at least mean before entry of a final judgment." OPINION at 7, *citing, Nalder, Lopez v. Meri Ins. Co.*, 136 Nev. 200, 203, 462 P.3d 677, 682 (2020) and *State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 295, 995 P.2d 482, 486 (2000).

This Court's decision overlooks a key fact present in this case. Travers and LVMPD knew that LVPPA had an interest in the outcome of this case and that there was a similar case in another department of the district court involving the same substantive issues, but chose not to join LVPPA as a party. (APP 174 & APP 276).

In case that predates the underlying action, Judge Trujillo denied a temporary restraining order to another association, the Nevada Association of Public Safety Officers (NAPSO), which sought to enjoin LVMPD and LVPPA from preventing NAPSO members from utilizing private counsel to attend hearings and other adjudicatory matters which could result in disciplinary action against the NAPSO member. (APP 056). LVPPA filed an opposition to the temporary restraining order in that case. (APP 101). LVMPD, represented by the same counsel as in this case,

filed a response in that case. (APP 095). Following a hearing where Judge Trujillo orally denied the motion, a written order was filed on March 9, 2021. (APP 162).

On April 8, 2021, TRAVERS filed his petition for injunctive relief in the underlying action in this case. LVMPD was a party in both cases and was present at the temporary restraining order hearing before Judge Trujillo through its in-house labor counsel. Despite this knowledge, LVMPD purposefully failed to inform the district court in the underlying case that LVPPA was a party along with it in a similar action. (APP 095, APP 162, APP 174 & APP 276). Both TRAVERS and LVMPD were aware of LVPPA's rights as exclusive bargaining agent as well as the prior EMRB decisions as both were discussed in their briefing in the district court. (APP 174 & APP 276). However, this information was not appreciated by the district court who could have joined LVPPA *sua sponte*. In fact, Judge Allf noted in her order denying joinder, "[t]he Court wishes that LVPPA had been involved in the case from the beginning, and certainly would have allowed intervention if it had been sought before the final judgment was entered." (APP 570).

Ensuring it could not seek to intervene earlier, LVPPA was not put on notice of the underlying proceedings until after entry of final judgment. (APP 354). The entire process from filing to final order was completed with lightning speed. The time from filing the petition in the underlying case (April 8, 2021) to the entry of the

permanent injunction order (May 27, 2021) was a mere 49 days. (APP 174 & APP 335).

While a timely motion to intervene is contemplated by NRS 12.130, timeliness is necessarily dependent on knowledge, actual or constructive. In this case, the two litigants in the underlying action were aware of LVPPA's interest, but failed to take any action to include LVPPA in the proceedings. In addition, the unbelievably short time the case went from the first filing to final judgment did not afford LVPPA an opportunity to learn about the case and seek intervention as might have occurred under different circumstances. To deny LVPPA the opportunity to intervene to protect its rights under these circumstances encourages litigants to conceal the existence of necessary parties, denying those parties their day in court, while the litigants with unclean hands may obtain a final judgment that favors only themselves and tramples the rights of others who rightfully should have been part of the proceedings. This utter concealment of the interest of the exclusive bargaining agent for peace officers was suspicious at best and intentional at worst.

The opinion of this Court has consequences which reach far beyond the parties involved in this case. Denying LVPPA the opportunity to intervene and be heard at the district court level, sends a message to future litigants that if they hide facts from the court, if they conceal necessary parties until after entry of final judgment, they can obtain orders and judgments that affect the rights of others without consequence.

The entire concept of notice and opportunity to be heard has been nullified. To impose a ruling on LVPPA that directly affects its rights when it did not have an opportunity to be heard is inequitable and sets a bad precedent for future litigants.

C. THE COURT OVERLOOKED, MISAPPLIED OR FAILED TO CONSIDER A STATUTE, PROCEDURAL RULE, REGULATION OR DECISION DIRECTLY CONTROLLING A DISPOSITIVE ISSUE IN THE CASE

1. The Court ignored the precedential value of EMRB decisions

The panel failed to appreciate the precedential value of prior EMRB decisions which held that exclusive bargaining agents have certain rights that other “labor unions” do not have. In the context of NRS 288, the EMRB has held that an agent or representative of a rival employee organization cannot participate in the proceedings where the employer knows or reasonably believes that the representative is serving *to any* extent in his “union” capacity, on behalf of the rival organization. *Lyon Cnty Educ. Ass’n., Case No. 2016-011, Item No. 817 (Emp. Rel. Mgmt. Board Oct. 20, 2016) (Ord. on Petition for Declaratory Ruling), 2016 WL 6947474 (APP 003)*. In the context of representation of peace officers under NRS Chapter 289, the EMRB has held that NRS 289 does not appear in conflict with NRS 288 and can be read to render a harmonious result. *Nev. Highway Patrol Ass’n., Case No. 2020-011, Item No. 865 (Emp. Rel. Mgmt. Board June 17, 2020) (Declaratory Ord.) (“NHPA Decision”)*. (APP 011). The NHPA Decision reaffirmed the *Lyon Co.* decision and went on to discuss the compelling policy

reasons for preventing agents of rival associations to be involved in participating in grievances. Allowing representation by “rival organizations” “would impair the efficiency and utility of the grievance and collective bargaining process, undermine the position of the recognized bargaining agent, and effectively destabilize employee-management relations in the public sector.” NHPA Decision at 7. (APP 016). In applying rules of statutory interpretation, the EMRB wrote, “[i]f the Legislature wishes to provide that an agent or employee of a rival labor organization serving in that capacity, may purport to represent any employee in a bargaining unit with a recognized representation, then that is their legislative prerogative. It is not for the Board to make the law, that is for the Legislature, and the Board is required to follow the law regardless of the result.” NHPA Decision at 8. (APP 017).

2. The Court expanded the district court’s ruling

The Court improperly broadened the ruling of the district court. The district court limited the scope of the permanent injunction to “investigations within the meaning of NRS 289.057. For all other representation matters falling outside the scope of NRS 289.057, the Decisions of the EMRB shall continue to govern.” (APP 338).

NRS 289.057(1) provides: “Except as otherwise provided in this subsection, an investigation of a peace officer may be conducted in response to a complaint or allegation that the peace officer has engaged in activities which could result in

punitive action.” This provision applies to investigations. NRS 289.080 addresses the right to representation of peace officers “during any phase of an interrogation or hearing relating to the investigation.” This includes grievance hearings, administrative boards, and arbitrations. NRS 289.057(1) is limited to investigations and does not include hearings that are held after the investigation is concluded. The plain language of the district court’s decision allows outside associations to represent officers only during an investigative interview. It does not allow the other associations to represent officers during the grievance process or any other administrative hearing. The panel’s decision is broader and seems to suggest that outside associations may represent peace officers during the investigative interviews and any hearings related to the investigation. This reading affects over 50 peace officer organizations across the State of Nevada.

3. The Court misapplied the *Bisch* case

The Court misapplied the *Bisch* case to the case at hand. The panel held that NRS 289.080 does not “expressly impose any affirmative duties” on entities to provide representation and instead only gave the employee a right to choose two representatives to be present during an investigation interview. *Bisch v. Las Vegas Metropolitan Police Department*, 129 Nev. 328, 336, 302 P.3d 1108, 1114 (2013). However, in *Bisch*, the officer sought to *compel* LVPPA to provide representation to her during an investigation. This Court then held that NRS 289.080 does not

require LVPPA to do so because this provision does not impose any duties on LVPPA to provide representation.

The issue in this case is not whether LVPPA has a *duty* to provide representation. The issue is whether LVPPA, as the exclusive bargaining agent, has the *right* to appear and represent officers at hearing to the exclusion of other associations. This status as the “exclusive bargaining agent” affords LVPPA rights that other police employee organizations do not possess. As recognized by this Court in the Opinion and in *Truckee Meadows Fire Prot. Dist. v. Int’l Ass’n of Firefighters, Local 2487*, 109 Nev. 367, 374, 849 P.2d 343, 348 (1993), NRS Chapter 288 gives LVPPA the exclusive right to represent LVMPD peace officers for purposes of collective bargaining, including negotiating disciplinary procedures. NRS 288.150(2)(i) and NRS 288.133.

CONCLUSION

Petitioner respectfully requests that this Court rehear the writ petition and issue a writ directing Judge Allf to terminate the permanent injunction that she issued in Eighth Judicial District Court Case No. A-21-832601-P, *Jordan Travers v. Las Vegas Metropolitan Police Department*, and to permit Las Vegas Police Protective Association, Inc. to join in the action such that the Petitioner has an appropriate opportunity to defend its interests in the matter. Alternatively, Petitioner requests

that this Court issue a writ prohibiting the enforcement of the permanent injunction.

Dated this 6th day of September, 2022.

Respectfully submitted,

SGRO & ROGER

/s/ Jennifer W. Arledge

ANTHONY P. SGRO, ESQ.

Nevada Bar No. 003811

JENNIFER WILLIS ARLEDGE, ESQ.

Nevada Bar No. 008729

720 S. Seventh Street, Third Floor

Las Vegas, NV 89101

(702) 384-9800

DAVID ROGER ESQ.

Nevada Bar No. 002781

9330 W. Lake Mead Blvd., Suite 200

Las Vegas, NV 89134

(702) 384-8692

Attorneys for Petitioner Las Vegas

Police Protective Association, Inc.

VERIFICATION

The undersigned, Jennifer Willis Arledge, Esq., hereby verifies that the facts stated herein are within my knowledge and are true to the best of my information and belief.

I declare under penalty of perjury in the State of Nevada that the foregoing is true.

/s/ Jennifer W. Arledge
Jennifer Willis Arledge, Esq.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more, and contains 1,875 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP(28)(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 6th day of September, 2022.

Respectfully Submitted,

SGRO & ROGER

Jennifer W. Arledge

Anthony P. Sgro, Esq.

Nevada Bar No. 3811

Jennifer Willis Arledge, Esq.

Nevada Bar No. 8729

720 S. 7th Street, Third Floor

Las Vegas, Nevada 89101

Telephone: (702) 384-9800

Facsimile: (702) 554-4120

Attorneys for Petitioner Las Vegas

Police Protective Association, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **PETITION FOR REHEARING** was served via the court's electronic filing system on September 6th, 2022, upon the following:

Adam Levine, Esq.
Law Office of Daniel Marks
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Real Party in Interest
Jordan Travers

Nicholas D. Crosby, Esq.
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Real Party in Interest
Las Vegas Metropolitan Police
Department

And by email upon:

Judge Nancy Allf
Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, Nevada 89155
Respondent

/s/ Jennifer W. Arledge
An employee of Sgro & Roger