

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 Oct 03 2022 03:52 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**PETITION FOR EN BANC
RECONSIDERATION**

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 3rd day of October, 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 <i>EN BANC</i> RECONSIDERATION.....	1
B. THE PANEL’S DECISION INVOLVES A SUBSTANTIAL PRECEDENTIAL ISSUE BECAUSE IT DECIDED A MATTER OF FIRST IMPRESSION.....	2
C. THE PANEL DECISION INVOLVES A SUBSTANTIAL PUBLIC POLICY ISSUE.....	3
D. THE PANEL’S DECISION INVOLVES A SUBSTANTIAL CONSTITUTIONAL AND PUBLIC POLICY ISSUE.....	4
CONCLUSION.....	4
VERIFICATION.....	7
CERTIFICATE OF COMPLIANCE.....	7
CERTIFICATE OF SERVICE.....	9

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).....	2
<i>Las Vegas Police Protective Association, Inc. v. Eighth Jud. Dist. Ct.</i> , 138 Nev. Adv. Op. (2022).....	2, 4
STATE STATUTES	
NRS Chapter 288.....	3
NRS 289.057.....	2
NRS 289.080.....	2
COURT RULES	
NRAP 40A.....	1
NRAP 40A(a).....	1
NRAP 40A(b).....	1
NRAP 40A(c).....	1
ADMINISTRATIVE AGENCY DECISIONS	
<i>Nev. Highway Patrol Ass’n</i> , Case No. 2020-011, Item No. 865 (Emp. Rel. Mgmt. Board June 17, 2020) (Declaratory Ord.).....	4

RELIEF SOUGHT

Petitioner Las Vegas Police Protective Association, Inc. (“LVPPA”) seeks *en banc* reconsideration of this Court’s August 18, 2022, Opinion pursuant to NRAP 40A because the proceeding involves a substantial precedential, constitutional, or public policy issue under NRAP 40A(a)(2).

ARGUMENT

A. PETITIONS FOR *EN BANC* RECONSIDERATION

NRAP 40A provides:

(a) Grounds for En Banc Reconsideration. En banc reconsideration of a decision of a panel of the Supreme Court is not favored and ordinarily will not be ordered except when (1) reconsideration by the full court is necessary to secure or maintain uniformity of decisions of the Supreme Court or Court of Appeals, or (2) the proceeding involves a substantial precedential, constitutional or public policy issue.

(b) Time for Filing; Effect of Filing on Finality of Judgment. Any party may petition for en banc reconsideration of a Supreme Court panel’s decision within 14 days after written entry of the panel’s decision to deny rehearing.

(c) Content of Petition. If the petition is based on grounds that the proceeding involves a substantial precedential, constitutional or public policy issue, the petition shall concisely set forth the issue, shall specify the nature of the issue, and shall demonstrate the impact of the panel’s decision beyond the litigants involved.

B. THE PANEL'S DECISION INVOLVES A SUBSTANTIAL PRECEDENTIAL ISSUE BECAUSE IT DECIDED A MATTER OF FIRST IMPRESSION.

The Panel's Opinion interpreted aspects of a peace officer's right to representation during interviews, interrogations, or hearings under NRS 289.080, for the first time. The only other Nevada Supreme Court case to address a peace officers' right to representation under NRS 289.080, dealt with whether NRS 289.080 imposes any affirmative duties on the police union to represent an officer. *Bisch v. Las Vegas Metropolitan Police Department*, 129 Nev. 328, 302 P.3d 1108 (2013). In *Bisch*, this Court held that NRS 289.080 imposes duties on the peace officer's employer, not the peace officer's union. *Bisch* at 337, 1114. No other reported Nevada Supreme Court cases have attempted to interpret the statute prior to this Opinion.

The issue in this case is different than in *Bisch*. The Panel held that LVPPA was not a necessary party to the underlying action because "NRS 289.080 neither imposes a duty nor gives LVPPA a right to represent peace officers during NRS 289.057 investigations." See Panel Opinion at p. 10. The Panel took the limited holding in the *Bisch* case a step further when it held that LVPPA did not have a right to represent peace officers during NRS 289.057 investigations. Thus, it decided a matter of first impression.

The impact of the Panel's decision goes beyond the litigants in this case. LVPPA is the exclusive bargaining agent of non-commissioned patrol officers and corrections officers of LVMPD. The Panel's holding applies not only to Travers, LVMPD, and LVPPA, but to all peace officers, law enforcement agencies or other employers of peace officers, and all exclusive bargaining agents of those law enforcement agencies in the State of Nevada.

1. *En Banc* reconsideration is necessary to maintain uniformity of decisions.

The Panel's holding is inconsistent with Declaratory Orders and precedent of the Employee-Management Relations Board ("EMRB"), the administrative agency that presides over complaints arising out of the interpretation of, or performance under, the provisions of NRS Chapter 288 – Relations Between governments and Public Employees. Uniformity between the agencies that adjudicate hearings such as these is critical. While LVPPA recognizes that EMRB Orders are not binding on this Court, they cannot be ignored. Instead, there must be consistency in matters that implicate both NRS 288 and NRS 289.

C. THE PANEL DECISION INVOLVES A SUBSTANTIAL PUBLIC POLICY ISSUE.

Labor peace and stability in an area as vital as public safety is indisputably a necessity and serves the public interest, and therefore is a question of public policy. Exclusive bargaining agents throughout the State play an important role.

“Designating one union as the exclusive representative of all employees allows them to speak with one voice, pooling economic strength, ensure their rights are not watered down by divisiveness, respond with institutional knowledge when employers disparately treat them....” *Nev. Highway Patrol Ass’n.*, Case No. 2020-011, Item No. 865 (Emp. Rel. Mgmt. Board June 17, 2020) (Declaratory Ord.) at 8.

As set forth above, the Panel’s holding does not apply only to Travers, LVMPD, and LVPPA, but to all peace officers, law enforcement agencies or other employers of peace officers, and all exclusive bargaining agents of those law enforcement agencies and other employers of peace officers in the State of Nevada.

D. THE PANEL’S DECISION INVOLVES A SUBSTANTIAL CONSTITUTIONAL AND PUBLIC POLICY ISSUE

The Panel held that LVPPA’s motion to intervene was untimely because a final judgment had been entered at the time the motion to intervene was filed. *See* Opinion at p. 7. The Panel completely ignored key facts surrounding the intentional exclusion of interested party LVPPA by the parties in the underlying action which prevented LVPPA from filing an earlier motion to intervene.

First, the parties in the underlying action, Travers and LVMPD, knew that LVPPA was the exclusive bargaining agent of LVMPD peace officers and had an interest in the underlying case. LVPPA was discussed in their briefing in the district court. (APP 174 & 276). Second, Travers and LVMPD were aware of the prior EMRB decisions because they, too, were discussed in their briefing in the district

court. (APP 174 & 276). Further, LVMPD was a party along with LVPPA in a similar case brought by the Nevada Association of Public Safety officers in the district court and was present at the hearing on the temporary restraining order in that case which pre-dated the filing of the underlying action in this case. (APP 095, 162, 174 & 276).

Despite first-hand knowledge of LVPPA's interest in the underlying proceedings, Travers and LVMPD purposefully excluded LVPPA from participating in the case and further concealed LVPPA's interest in the case from the district court. This type of litigation tactic cannot be condoned. With LVPPA's interests not represented and without notice and an opportunity to be heard, Travers and LVMPD allowed the district court to proceed to enter a final order.

The Panel's Opinion which focused on the timing of the motion to intervene serves as a beacon to all future litigants that if they conceal other interested parties in the case and successfully secure a final judgment, they can effectively deny interested parties due process of law. The impact of this message is obvious. Litigants will push the bounds of this ruling to gain an unfair advantage over those adverse to them. This Court should not condone the subversive tactics utilized by Travers and LVMPD in this case. Future litigants will look to the Opinion as a guide for acceptable behavior. Due process and other rights will be violated in other cases,

resulting in unnecessary appeals that could have been avoided had the Panel's opinion not been allowed to stand.

CONCLUSION

Petitioner respectfully requests that this Court grant its petition for *en banc* reconsideration and rehear the writ petition.

Dated this 3rd day of October, 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 1,170 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 3rd day of October, 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 EN BANC RECONSIDERATION** was served via the court's electronic filing system on October 3rd, 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