

THE URBAN LAW FIRM

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STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

INTERNATIONAL UNION OF
ELEVATOR CONSTRUCTORS, LOCAL
18,

Complainant,

vs.

CLARK COUNTY,

Respondent.

EMRB CASE NO: **2022-018**

**PROHIBITED PRACTICES
COMPLAINT**

PROHIBITED PRACTICE COMPLAINT

Complainant, the International Union of Elevator Constructors, Local 18 (“Local 18” or “Union”), by and through its counsel of record, Michael A. Urban and Paul D. Cotsonis of The Urban Law Firm, does hereby make the following Prohibited Practice Complaint pursuant to NRS § 288.270 and 288.280 against Clark County (hereinafter the “County”).

Statement of Parties and Jurisdiction

1. Local 18, at all times material herein, was and is an Employee Organization as defined by NRS § 288.040 and a labor organization within the meaning of NRS 288.048, which represents local government employees within the meaning of NRS 288.050. Local 18’s address is 3301 Spring Mountain Rd., #1 Las Vegas, NV 89102.

2. At all relevant times herein, the County is a local government employer within the meaning

1 of NRS 288.060. Its address is 500 South Grand Central Parkway, Las Vegas, NV 89155.

2 3. The County is governed by a seven-member policy making Board (**hereinafter “County**
3 **Board”**).

4 4. At all material times, Local 18 was the exclusive bargaining representative for certain
5 bargaining units of employees at the County; Airport Senior Automated Transit System
6 Technicians; Airport Automated Transit System Technicians I & II.

7 5. The Government Employee Management Relations Act is codified in the Nevada Revised
8 Statutes (“NRS”) Chapter 288 and governs the collective bargaining obligations of the parties.

9 6. This Board has jurisdiction pursuant to NRS § 288.280 to hear and determine “any
10 controversy concerning **prohibited practices.**”

11 7. The Board has further jurisdiction pursuant to NRS § 288.110(2) to “**hear and determine any**
12 **complaint arising out of the interpretation of, or performance under, the provisions of this chapter**
13 **by any local government employer, local government employee or employee organization.**”

14 8. NRS § 288.150(1) provides in relevant part:

15 “...[E]very local government employer shall negotiate in good faith
16 through one or more representative of its own choosing concerning
17 the mandatory subjects of bargaining set forth in subsection 2 with
18 the designated representative of the recognized employee
19 organization, if any, for each appropriated bargaining unit among its
20 employees. If either party so request, agreements reached must be
21 **reduced to writing.**”

22 9. NRS § 288.270(1)(e) provides:

23 “1. It is a **prohibited practice** for a local government employer or
24 its designated representative willfully to:

25 *

26 (e) Refuse to bargain collectively in good faith with the
27 exclusive representative as required in NRS 288.150.
28 Bargaining collectively includes the entire bargaining
process, including mediation and fact-finding, provided for
in this chapter.

29 *

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Facts Relevant to the Prohibited Practice

10. The County and Local 18 are parties a collective bargaining agreement which was effective from July 1, 2019, through June 30, 2022, which was extended to June 30, 2023, allowing for a re-opener (“hereinafter CBA”).

11. On or about January 21, 2022, Local 18 sent the County notice of its intent to re-open the terms of the CBA.

12. Local 18 and the County attended one bargaining session on or about March 23, 2022, which was held remotely.

13. During the bargaining session proposals regarding wages, holidays and CBA term were passed between the parties.

14. Thereafter the parties discussed the proposals via electronic mail.

15. On or about May 4, 2022, Local 18 notified the County it was accepting the County’s changes to the open Articles to the CBA and specifically requesting to discuss working out a schedule for the ratification vote.

16. On or about May 4, 2022, the County provided the signed Tentative Agreement’s to Local 18 (hereinafter “TA”).

17. On or about May 12, 2022, Local 18 provided its signature to the TA’s and requesting the parties discuss setting up the schedule for the ratification vote.

18. On or about May 17, 2022, Local 18 followed up with the County requesting the parties discuss conducting the ratification vote.

19. On or about May 24, 2022, Local 18 and the County discussed the ratification vote wherein the County planned to have the Board of County Commissioners (hereinafter “BCC”) approve of the TA’s in June and that the County would allow members to vote during working hours but would not pay for employees to vote on their days off.

20. On or about June 16, 2022, the parties confirmed arrangements for Local 18’s ratification vote to occur on July 18 and 19, 2022.

21. The County provided a room for Local 18 to conduct the ratification vote which took place

1 on July 18 and 19, 2022.

2 22. On or about July 20, 2022, Local 18 notified the County that the Local 18 members rejected
3 the TA's and requesting dates for bargaining.

4 23. On or about July 26, 2022, the County notified Local 18 of its position that an agreement
5 was reached regarding the TA's and approved by the BCC.

6 24. The County has thereafter refused to return to the bargaining table with Local 18.

7 **FIRST CAUSE OF ACTION**

8 [Unilateral Change to Terms and Conditions of Employment – by implementing the TA's prior to
9 Union Ratification]

10 25. Local 18 hereby incorporates the allegations contained in paragraphs 1 through 24 above.

11 26. Because it was understood by the parties that the Union's acceptance of the TA's was
12 conditioned on ratification, the bargaining process was not complete until the Union ratified the
13 TA's.

14 27. By implementing the wage increases outlined in the TA's before the Union ratified them the
15 County has unlawfully made changes to the terms and conditions of employment.

16 28. The changes in the TA's are made with respect to matters that are mandatory subjects of
17 bargaining.

18 29. Nothing in NRS 288 permits the County to unilaterally implement changes to the terms and
19 conditions of employment without first bargaining, and completing the bargaining process, with
20 Local 18.

21 **SECOND CAUSE OF ACTION**

22 [Failure to Bargain in Good Faith – Refusing to Return to the Bargaining Table]

23 30. Local 18 hereby incorporates the allegations contained in paragraphs 1 through 29 above.

24
25 31. The County's refusal to return to the bargaining table is a per se violation of its duty to
26 bargain in good faith and is in violation of NRS 288.150.

FILED
JAN 12 2023
STATE OF NEVADA
E.M.R.B.

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State Bar No. 001565
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Deputy District Attorney
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10 **STATE OF NEVADA**

11 **GOVERNMENT EMPLOYEE-MANAGEMENT**
12 **RELATIONS BOARD**

13 INTERNATIONAL UNION OF ELEVATOR)
CONSTRUCTORS, LOCAL 18,)

14 Plaintiff,

15 vs.

16 CLARK COUNTY,

17 Defendant.)

Case No: 2022-0188

18
19 **ANSWER TO COMPLAINT AND COUNTER PETITION FOR BOARD**
20 **PERMISSION TO DECERTIFY INTERNATIONAL UNION OF ELEVATOR**
CONSTRUCTORS AS BARGAINING AGENT

21 COMES NOW, Respondent/Counterclaimant CLARK COUNTY, by and through
22 District Attorney, STEVEN B. WOLFSON, through Scott Davis, Deputy District Attorney
23 and John Witucki, Deputy District Attorney, and pursuant to NAC 288.200 and in Answer to
24 the Complaint on file herein, admits, denies and alleges as follows:

25 1. Answering paragraph 1 of the Complaint, Respondent admits the allegations
26 contained therein.

27 2. Answering paragraph 2 of the Complaint, Respondent admits the allegations
28 contained therein.

1 3. Answering paragraph 3 of the Complaint, Respondent admits the allegations
2 contained therein.

3 4. Answering paragraph 4 of the Complaint, Respondent admits the allegations
4 contained therein.

5 5. Answering paragraph 5 of the Complaint, Respondent admits the allegations
6 contained therein.

7 6. Answering paragraph 6 of the Complaint, Respondent admits that the
8 Complaint accurately quotes a portion of NRS 288.280.

9 7. Answering paragraph 7 of the Complaint, Respondent admits that this
10 paragraph accurately quotes the cited portion of NRS 288.110(2).

11 8. Answering paragraph 8 of the Complaint, Respondent admits that this
12 paragraph accurately quotes the cited portion of NRS 288.150(1).

13 9. Answering paragraph 9 of the Complaint, Respondent admits that this
14 paragraph accurately quotes the cited portion of NRS 288.270(1)(e).

15 10. Answering paragraph 10 of the Complaint, Respondent admits the allegations
16 contained therein and further alleges that the agreement was also extended to June 30, 2024.

17 11. Answering paragraph 11 of the Complaint, Respondent admits that on or about
18 January 21, 2022 Local 18 requested to re-open select terms of the agreement.

19 12. Answering paragraph 12 of the Complaint, Respondent admits the allegations
20 contained therein.

21 13. Answering paragraph 13 of the Complaint, Respondent admits the allegations
22 contained therein.

23 14. Answering paragraph 14 of the Complaint, Respondent admits the allegations
24 contained therein.

25 15. Answering paragraph 15 of the Complaint, Respondent admits that after Local
26 18 had accepted all proposals it requested a discussion over scheduling a ratification vote.

27 16. Answering paragraph 16 of the Complaint, Respondent admits the allegations
28 contained therein.

1 17. Answering paragraph 17 of the Complaint, Respondent admits the allegations
2 contained therein.

3 18. Answering paragraph 18 of the Complaint, Respondent admits the allegations
4 contained therein.

5 19. Answering paragraph 19 of the Complaint, Respondent admits that Local 18
6 was advised that the County would submit the agreement to the Board of County
7 Commissioners for approval, but denies that this action was associated with a ratification
8 vote by Local 18. Respondent further admits that members were allowed time to vote during
9 working hours and that employees were not paid to come in and vote on a day off.

10 20. Answering paragraph 20 of the Complaint, Respondent admits the allegations
11 contained therein.

12 21. Answering paragraph 21 of the Complaint, Respondent admits the allegations
13 contained therein.

14 22. Answering paragraph 22 of the Complaint, Respondent admits the allegations
15 contained therein.

16 23. Answering paragraph 23 of the Complaint, Respondent admits that it
17 communicated to Local 18 that a valid agreement had been reached and that the statutory
18 bargaining process was completed upon approval by the Clark County Board of
19 Commissioners.

20 24. Answering paragraph 24 of the Complaint, Respondent admits that is has not
21 bargained further with Local 18.

22 25. Answering paragraph 25 of the Complaint, Respondent repeats and realleges
23 its responses to paragraphs 1-24, inclusive.

24 26. Answering paragraph 26 of the Complaint, Respondent denies the allegations
25 contained therein.

26 27. Answering paragraph 27 of the Complaint, Respondent denies the allegations
27 contained therein.

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1 agent, and further that the window of opportunity for a rival organization was not open as
2 Local 18 and Clark County were parties to an agreement that ran through June 30, 2024.

3 9. On December 30, 2022 this Board entered an order dismissing the petition in
4 Case No. 2022-015. When stating its reasons for dismissal, this Board noted that “the
5 Petition is not within the time defined by statute relative to the associated collective
6 bargaining agreement.” See Order on Joint Motion to Dismiss, dated December 30, 2022.

7 10. NRS 288.160(3)(c) provides that a local government employer may withdraw
8 recognition from an employee organization which “ceases to be supported by a majority of
9 the local government employees in the bargaining unit for which it is recognized” if it first
10 receives written permission from this Board.

11 11. NAC 288.145(2) provides that a local government employer must “must
12 request a hearing before the Board and receive the written permission of the Board before
13 withdrawing recognition of an employee organization for any reason other than voluntary
14 withdrawal.” The regulation does not place any time restrictions on when a local
15 government employer may seek permission to withdraw recognition.

16 12. As set forth above, Local 18 has ceased to be supported by a majority of
17 employees in the bargaining unit.

18 13. Clark County is entitled a hearing and then to written permission from this
19 Board authorizing it to withdraw recognition and in all aspects to remove Local 18 as
20 recognized bargaining agent for employees in the bargaining unit.

21 WHEREFORE, Respondent/Counterclaiming CLARK COUNTY prays that:

- 22 1. Complainant/Counter-respondent take nothing by reason of the Complaint on
23 file herein;
- 24 2. The Board give written permission for Clark County to withdraw recognition
25 of International Union of Elevator Constructors, Local 18; and

26 ///

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1 3. That Respondent/Counterclaimant be awarded all fees and costs permitted
2 under NRS 288.110(6).

3 DATED this 12th day of January 2023

4 STEVEN B. WOLFSON
5 DISTRICT ATTORNEY

6 By: /s/ Scott Davis

7 SCOTT R. DAVIS
8 Deputy District Attorney
9 State Bar No. 10019

10 JOHN WITUCKI
11 Deputy District Attorney
12 State Bar No. 10800
13 500 South Grand Central Pkwy., Suite 5075
14 Las Vegas, Nevada 89155-2215
15 Attorneys for *Clark County*

16 **CERTIFICATE OF ELECTRONIC SERVICE**

17 I hereby certify that I am an employee of the Office of the Clark County District
18 Attorney and that on this 12th day of January 2023, I served a true and correct copy of the
19 foregoing **Answer to Complaint and Counter Petition for Board Permission to Decertify**
20 **International Union of Elevator Constructors as Bargaining Agent**, by e-mailing the
21 same to the following recipients. Service of the foregoing document by e-mail is in place of
22 service via the United States Postal Service.

23 Michael A. Urban, Esq.
24 Paul D. Cotsonis, Esq.
25 THE URBAN LAW FIRM
26 4270 S. Decatur Blvd., Suite A-9
27 Las Vegas, Nevada 89103
28 Counsel for Local 18
murban@theurbanlawfirm.com
pcotsonis@theurbanlawfirm.com

/s/ Aisha Rincon

An Employee of the Clark County District
Attorney's Office – Civil Division

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10 **Counsel for Local 18**

FILED
January 26, 2023
State of Nevada
E.M.R.B.
12:40 p.m.

6 **STATE OF NEVADA**
7 **GOVERNMENT EMPLOYEE-MANAGEMENT**
8 **RELATIONS BOARD**

9 INTERNATIONAL UNION OF
10 ELEVATOR CONSTRUCTORS, LOCAL
11 18,

12 Complainant,

13 vs.

14 CLARK COUNTY,

15 Respondent.

EMRB CASE NO: 2022-018

16 **RESPONSE TO COUNTER PETITION FOR BOARD PERMISSION TO DECERTIFY**
17 **INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS AS BARGAINING**
18 **AGENT**

19 Complainant/Counter Respondent, the International Union of Elevator Constructors, Local
20 18 (“Local 18” or “Union”), by and through its counsel of record, Michael A. Urban and Paul D.
21 Cotsonis of The Urban Law Firm, does hereby respond to Respondent/Counterclaimant Clark
22 County’s (“County”) Counter Petition to Decertify International Union of Elevator Constructors as
23 Bargaining Agent (“Petition”) pursuant to NAC 288.220 as follows:

- 24 1. Answering paragraph 1 of the Counter Petition, Counter Respondent admits the allegations
25 therein.
26 2. Answering paragraph 2 of the Counter Petition, Counter Respondent admits the allegations
27 therein.
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1 3. Answering paragraph 3 of the Counter Petition, Counter Respondent is without sufficient
2 knowledge or information to form a belief as to the truth of the allegations therein, and upon said
3 grounds, denies same.

4 4. Answering paragraph 4 of the Counter Petition, Counter Respondent admits that on or about
5 October 11, 2022, an employee from the bargaining unit in which Counter Respondent is the
6 bargaining agent filed a petition with this Board containing signatures of 18 employees in the
7 **bargaining unit attesting they “do not want to be represented by The International Union of Elevator**
8 **Constructions” and that the County** was served with the petition. To the extent that this paragraph
9 **contains additional allegations and/or allegations inconsistent with this Counter Respondent’s**
10 admission, this Counter Respondent denies same.

11 5. Answering paragraph 5 of the Counter Petition, Counter Respondent admits the allegations
12 therein.

13 6. Answering paragraph 6 of the Counter Petition, Counter Respondent admits the allegations
14 therein.

15 7. Answering paragraph 7 of the Counter Petition, Counter Respondent admits the allegations
16 therein.

17 8. Answering paragraph 8 of the Counter Petition, Counter Respondent admits the allegations
18 therein.

19 9. Answering paragraph 9 of the Counter Petition, Counter Respondent admits the allegations
20 therein.

21 10. Answering paragraph 10 of the Counter Petition, Counter Respondent admits NRS
22 288.160(3)(c) provides that an employer may seek permission from this Board to withdraw
23 recognition from an employee organization under certain circumstances. To the extent this
24 paragraph contains additional allegations and/or allegations inconsistent with Counter Respondent’s
25 admission, Counter Respondent denies same.

26 11. Answering paragraph 11 of the Counter Petition, Counter Respondent admits NAC
27 288.145(2) requires a local government employer to request a hearing before the Board and receive
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1 written permission from the Board before withdrawing recognition. To the extent this paragraph
2 contains addition allegations and/or allegations inconsistent with Counter Respondent's admission,
3 Counter Respondent denies same.

4 12. Answering paragraph 12 of the Counter Petition, Counter Respondent denies the allegations
5 contained therein.

6 13. Answering paragraph 13 of the Counter Petition, Counter Respondent denies the allegations
7 contained therein.

8 14. Any allegations not otherwise responded to above is denied.

9 **AFFIRMATIVE DEFENSES**

10 **FIRST AFFIRMATIVE DEFENSE**

11 The "contract bar" doctrine prevents an employer from withdrawing recognition.

12 **SECOND AFFIRMATIVE DEFENSE**

13 That a reasonable time for bargaining has not passed and that, therefore, the County may
14 not withdraw recognition.

15 **THIRD AFFIRMATIVE DEFENSE**

16 That any lose of support was a direct result of the County's unfair labor practices.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 All possible affirmative defenses may not have been alleged herein insofar as sufficient facts
19 were not available after reasonable inquiry upon the filing of the Response and, therefore, Counter
20 Respondent reserves the right to amend this Response if its subsequent investigation so warrants.

21 **WHEREFORE**, Counter Respondent respectfully prays as follows:

22 1) The Board deny the County permission to withdraw recognition of Counter
23 Respondent;

24 3) For an award of reasonable attorney's fees and costs; and

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4) For such other relief deemed just and proper.

Dated: January 26, 2023

THE URBAN LAW FIRM

/s/ Paul D. Cotsonis
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pcotsonis@theurbanlawfirm.com
Counsel for Local 18

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Urban Law Firm and that on the 26th day of January 2023, I filed an original of the forgoing **RESPONSE TO COUNTER PETITION FOR BOARD PERMISSION TO DECERTIFY INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS AS BARGAINING AGENT** via e-mail as follows:

Employee Management Relations Board
3300 W. Sahara Avenue, Suite 260
Las Vegas, Nevada 89104
emrb@business.nv.gov

I also served a true and correct copy by e-mailing the same to the following:

Scott R. Davis, Esq.
John Witucki, Esq.
Deputy District Attorney
500 South Grand Central Pkwy., Suite 5075
Las Vegas, Nevada 89155-22515
Attorneys for Clark County
Scott.Davis@ClarkCountyDA.com
John.Witucki@ClarkCountyDA.com

/s/ April Denni

An employee of THE URBAN LAW FIRM

1 STEVEN B. WOLFSON
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Deputy District Attorney
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FILED
February 2, 2023
State of Nevada
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3:39 p.m.

10 **STATE OF NEVADA**
11 **GOVERNMENT EMPLOYEE-MANAGEMENT**
12 **RELATIONS BOARD**

13 INTERNATIONAL UNION OF ELEVATOR)
CONSTRUCOTRS, LOCAL 18,)
14)
15 Complainant,)
16 vs.)
17 CLARK COUNTY,)
18 Respondent)

Case No: 2022-018

19 CLARK COUNTY,)
20 Counter-petitioner)
21 vs.)
22 INTERNTATIONAL UNION OF)
ELEVATOR CONSTRUCTORS, LOCAL 18,)
23)
24 Counter-respondent)

25 **RESPONDENT/COUNTERPETITIONER CLARK COUNTY'S**
26 **PRE-HEARING STATEMENT**

27 COMES NOW, Respondent/Counterpetitioner CLARK COUNTY, by and through
28 District Attorney, STEVEN B. WOLFSON, through Scott Davis, Deputy District Attorney

1 and John Witucki, Deputy District Attorney, and pursuant to NAC 288.250 and files its pre-
2 hearing statement in the above-referenced matter.

3 **I. STATEMENT OF ISSUES OF FACT AND LAW TO BE DETERMINED BY**
4 **THE BOARD**

5 For the hearing to be held on Clark County's Petition for Decertification, the issues
6 are:

- 7 - Whether IUEC, Local 18 has majority support from the bargaining unit for which
8 it has previously been recognized; and
- 9 - Whether the Board has any good faith doubt about majority support that calls for
10 an election to measure majority support within the bargaining unit.

11 As stated below, the Board should segment this case in order first to address and
12 resolve the foregoing questions before reaching the merits of IUEC, Local18's Complaint. If
13 the Board does reach the merits of IUEC's Complaint, the issues are:

- 14 - Whether the parties agreed to ground rules that specifying union ratification as a
15 condition precedent to the contract;
- 16 - Whether the proposals that were exchanged and agreed upon by the parties during
17 negotiations included union ratification as a condition precedent to the contract;
- 18 - Whether the negotiated proposals between IUEC and Clark County resulted in a
19 valid contract;
- 20 - Whether IUEC can show by a preponderance of the evidence that Clark County
21 failed to bargain in good faith ;and
- 22 - Whether IUEC can show by a preponderance of the evidence that Clark County
23 committed a unilateral change.

24 **II. MEMORANDUM OF POINTS AND AUTHORITIES**

25 **A. The Counterpetition for Decertification Negates IUEC's**
26 **Prohibited Labor Practices Complaint and Should Be Considered**
27 **First**

28 The statutory duty to bargain in good faith presupposes that there is, in the first place,
a recognized employee organization with whom to bargain. Thus, when a bargaining agent

1 becomes ineligible for recognition and is removed pursuant to NRS 288.160(3) it effectively
2 moots any residual claim for bad faith bargaining. *Int'l Union of Op. Eng'rs Local 501 v.*
3 *Esmeralda County*, Item No. 876, EMRB Case No. 2020-022 (Feb. 15, 2022). And this is a
4 sound approach to any such case because any remedial order to bargain cannot be
5 implemented without a legitimate bargaining agent.

6 In *Esmeralda County*, a Complainant had filed a claim for bad faith bargaining and in
7 response the county had challenged the union's status as bargaining agent. This is the same
8 procedural history as has taken place in the current case. In order to work through both the
9 claim and the counterclaim this Board adopted a logical approach in *Esmeralda County*,
10 opting to first resolve the questions surrounding the union's majority support before
11 approaching the other issues. See Item No. 876 at p. 2. The Board ultimately conducted an
12 election that revealed a lack of majority support for the union and as a result the Board
13 granted the county permission to withdraw recognition of the union. In the Board's well-
14 reasoned consideration in *Esmeralda County*, the bigger-picture issue of union
15 decertification subsumed the associated allegations of bad-faith bargaining. *Id.* at p. 3

16 The Board should follow the same established path in order to address the issues in
17 this case, the lone difference being that an election in this case will likely be unnecessary
18 given the clarity of the employees' desires to remove IUEC as bargaining agent. In this case
19 the requested remedy sought by IUEC in its bad faith bargaining complaint is a return to the
20 bargaining table. But if IUEC does not hold the majority support of the employees in the unit
21 then it will no longer have the standing as the recognized bargaining agent to sit down and
22 negotiate with the County on behalf of those same employees. IUEC's requested relief is
23 effectively rendered moot in that case.

24 **B. Clark County Is Entitled to Permission From this Board to Withdraw the**
25 **Recognition of IUEC, Local 18**

26 NRS 288.160(3)(c) provides that a local government employer may withdraw
27 recognition from an organization that "[c]eases to be supported by a majority of the local
28 government employees in the bargaining unit for which it is recognized."

1 Procedurally, the first step to take is the Board should hold a hearing on the question
2 of majority support. NAC 288.145(2). It is expected that at that hearing the County will
3 demonstrate a clear lack of majority support for IUEC, Local 18. However, if that hearing
4 leaves the Board with a good faith doubt about a union’s majority support the Board may
5 then turn to an election in order to resolve that doubt. NRS 288.160(4).

6 While an election is one possibility in this case, it will actually prove to be
7 unnecessary, as a simply hearing will decidedly confirm that IUEC has lost majority support
8 from the bargaining unit it represents. This Board has recently seen for itself the firm lack of
9 support for IUEC, Local 18. In *Petition to Remove Union as Representative*, EMRB Case
10 No. 2022-015 (2022) this Board was presented with a recent petition signed by 18 of the 20
11 employees in the bargaining unit attesting to their desire to remove IUEC as the bargaining
12 agent. While the individual employees in that case were unable to pursue decertification on
13 their own due to the procedural rules governing the withdrawal of recognition, the
14 underlying fact of IUEC’s pronounced lack of support remains. A hearing will only
15 establish that there is no doubt at all, good faith or otherwise, concerning the lack of majority
16 support for IUEC.

17 However, even if the Board finds a “good faith” doubt after the hearing and resorts to
18 an election in order to measure majority support, the results of the election will similarly
19 reveal a lack of majority support.

20 Regardless of the path that the Board follows the outcome will be the same - that
21 there is no majority support within the bargaining unit for IUEC and that Clark County may
22 decertify IUEC.

23 **C. IUEC’s Bad Faith Bargaining Complaint is Without Merit**

24 While a decision on the County’s Counterpetition will resolve this case in its entirety,
25 if the Board were to reach the merits of IUEC’s complaint then IUEC will not be able to
26 establish a prohibited labor practice.

27 IUEC’s Complaint brings two claims against the County: failure to bargain in good
28 faith and unilateral change, which is its own unique type of bad faith bargaining charge. The

1 gist of the complaint alleges that the County and IUEC negotiated terms of a re-opener, and
2 mutually agreed to those terms at the bargaining table. After agreeing to those terms, IUEC
3 requested a ratification vote. The County agreed to facilitate a ratification vote, but as there
4 were no ground rules or proposals that conditioned the agreement upon union ratification,
5 the County considered the ratification an internal union matter. In a case of no-good-deed-
6 goes-unpunished the County did agree to help IUEC out with this internal matter and in the
7 meantime presented the agreed-upon terms to the Board of County Commissioners for
8 approval, as required by NRS 288.153. This also ensured that the employees in the
9 bargaining unit would receive the negotiated and agreed-upon wage increases. The
10 ratification vote was not in favor of the contract, and IUEC then requested to return to the
11 bargaining table.

12 If those negotiations created a legitimate contract then there can be no prohibited
13 labor practice. Chapter 288 permits, but it does not require, either a union or an employer to
14 return to the bargaining table during the term of a contract. That is why there are rules
15 requiring a defined term for an agreement, NRS 288.150(2)(q), and rules specifying when a
16 demand to return to the bargaining table is proper. NRS 288.180(1).

17 The heart of this case turns on whether or not IUEC's ratification was a required
18 condition in order to reach an agreement. If it was not, then the agreement became effective
19 upon the approval of the Board of County Commissioners and there is no legitimate legal
20 basis for IUEC to claim bad faith bargaining or to demand a return to the bargaining table.

21 1. The Dodge Act Does Not Guarantee a Right for an Employee
22 Organization to Ratify an Agreement

23 Chapter 288 does not provide a statutory right for a union to ratify a contract. *In the*
24 *Matter of City of Reno*, Item No. 86, EMRB Case No. A1-045315 (1978). By its terms,
25 Chapter 288 neither affords nor restricts a union from voting on a negotiated contract. It is
26 simply silent. This stands in contrast to the requirement in NRS 288.153 that a public
27 employer must submit a contract for an approval vote to its governing board.

28 Notably, even IUEC's complaint does not point to any provision of Chapter 288 that

1 ostensibly guarantees a union's right to ratification, alleging only generally that the County's
2 acceptance of the contract over the failed ratification vote was a failure to bargain in good
3 faith.

4 In the absence of any such special statutory provisions, the ratification question is
5 decided by ordinary principles of contract law. Those principles of contract law require that
6 any term or condition of an agreement must be (1) included in an offer and (2) there must be
7 acceptance of it by the other party. E.g. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d
8 1254, 1257 (2005) (stating that an enforceable contract requires an offer and acceptance of
9 the offer).

10 The takeaway for the Board to apply to this case is this: because there are no statutory
11 requirements on point, in order for union ratification to become a necessary condition when
12 forming a contract, that condition must be an ingredient in the offers that are exchanged and
13 accepted at the bargaining table.

14 a. *NLRB Precedent on Union Ratification and the Two Types of*
15 *Union Ratification*

16 This Board has often turned to the NLRB for guidance. The NLRB has recognized
17 that there are actually two different types of union ratification: (1) ratification as a condition
18 precedent to reaching a contract; and (2) ratification as an internal or "self-imposed" union
19 matter.

20 Under the first type, ratification would indeed be required in order to form a valid and
21 binding agreement because in that case the condition of union ratification is included within
22 the contract proposals that have been exchanged and accepted at the bargaining table. But
23 under the second type, a union's ratification is merely an internal matter and is entirely
24 immaterial when considering the validity of an agreement. See e.g. *Observer-Dispatch*, 334
25 NLRB 1067, 1072 (2001) (discussing the two types of union ratifications and the
26 implications of each type). The second type is not a prohibited labor practice at all. And in
27 this case, IUEC's desire for ratification was clearly of the second type.

28 The NLRB has further expressed that the way to discern between these two types is to

1 ask whether or not union ratification was expressed as a condition in a concrete proposal at
2 the bargaining table and then accepted by the other party. If ratification is not made as an
3 actual proposal, thus giving an employer the opportunity to either accept or reject it, then it is
4 not the first type of ratification; it is merely a statement of union intent, *i.e.* a self-imposed
5 matter. *C & W Lektra Bat Co.*, 209 NLRB 1038, 1039 (1974).

6 There are two principal ways that a union will propose that ratification be required to
7 reach an agreement – either as an overarching condition included as part of the negotiations
8 ground rules; or by specifying it within a given proposal.

9 b. *This Board’s Precedent Confirms that Union Ratification Is Not*
10 *Required Unless the Parties Agree on Union Ratification*

11 This Board’s precedent mirrors the general principles of contract law and is generally
12 in accord with NLRB precedent on this matter (although the NLRA contains no parallel to
13 NRS 288.153).

14 *In the Matter of City of Reno*, Item No. 86, EMRB Case No. A1-045315 (1978) was
15 the Board’s first foray into union ratification matters. There the Board was asked to directly
16 consider whether or not the Dodge Act required union ratification. *Id.* p. 2, Question # 3.
17 The Board’s answer to that question aligns with the NLRB’s two-types-of ratification
18 approach. The Board ruled that the parties can agree to include union ratification as part of
19 the process (“if the parties can agree to mutually acceptable criteria for bargaining team
20 composition and contract ratification procedures there is little in the Dodge Act to
21 circumscribe their agreements”). But the Board then went on to say that if ratification
22 method is not first agreed upon by the parties, then ratification is just an internal union
23 matter and no concern of the employer or the Board. (“However, if the parties do not see fit
24 the agree upon ratification procedures, they must remain a matter for internal determination
25 by the employee organization.”). *Id.*

26 In *IAFF Local 1883 v. City of Henderson*, Item No. 239, EMRB Case No. A1-045455
27 (1990) this Board considered a union ratification vote that had been supposedly botched by
28 the union, and the union claimed that the failed ratification vote nullified the contract. But

1 the Board again recognized that a valid ratification vote was not essential to form a valid
2 CBA under Chapter 288. In doing so the Board described the union's ratification vote as
3 "internal employee organization matters" and refused to become involved any further.

4 2. IUEC Will Not Be Able to Show that Its Ratification Was Anything
5 Other than an Internal Union Matter

6 In light of the foregoing precedent, the chief task of the Board will be to decide
7 whether IUEC's request for a ratification vote was the first type (imposing a condition
8 precedent as a barrier to a contract) or the second type (merely an internal union matter).
9 And that question will be decided by whether or not union ratification as a condition
10 precedent to forming a contract had been offered to and accepted by the County.

11 In this case there were no agreed-upon ground rules. IUEC thus will not be able to
12 show that ratification was an overarching condition. Nor will it be able to show that
13 ratification was a part of any of the actual proposals that were exchanged and agreed upon.
14 In other words there is no offer and acceptance for IUEC to hang its hat on in this case.

15 Rather the evidence will show that IUEC only raised the issue of ratification after the
16 parties agreed upon the specific proposals. Union ratification was never floated as a part of
17 any offer during the negotiations themselves. The union ratification involved here was
18 strictly of the second-type: an internal matter that falls outside the concerns of Chapter 288.
19 It cannot now be raised as a supposed barrier to forming a valid contract. The contract was
20 completed under NRS 288.153 when the Board of County Commissioners approved the
21 agreement

22 And because there is a valid agreement in place, IUEC's claims of bad faith
23 bargaining and unilateral change must fail.

24 3. Elements of IUEC's Claims

25 IUEC's second cause of action is for a failure to bargain in good faith. The duty to
26 bargain in good faith requires that the parties "...must evidence a sincere desire to come an
27 agreement." *City of Reno v. IAFF Local 731*, Item No. 253-A (1991).

28 In this case, there will be no dispute that the County and IUEC reached an agreement

1 at the bargaining table, that agreement passed all of 288's statutory requirements, and that
2 the County has been following that agreement. Although there is no counterclaim for bad
3 faith bargaining, the reality is that the County is not the party acting in bad faith. Rather it is
4 IUEC, by invoking its failed ratification vote as an impediment to a valid agreement, that is
5 not sincere in its desire to reach an agreement.

6 IUECs' other claim is for a unilateral change. A claim for unilateral change consists
7 of four elements, each of which must be proven by IUEC: (1) the employer breached or
8 altered the collective bargaining agreement; (2) the employer's action was taken without
9 bargaining with the recognized bargaining agent over the change; (3) the change in policy
10 concerns a matter within the scope of representation; and (4) the change is not merely an
11 isolated breach of the contract, but amounts to a change of policy; i.e., the change has a
12 generalized effect or continuing impact on bargaining unit members' terms and conditions of
13 employment. *O'Leary v. Las Vegas Metropolitan Police Department*, Item No. 803, EMRB
14 Case No. A1-046116 (May 15, 2015).

15 Here, the claim will fail for the simple matter that the County has not breached or
16 altered the agreement, rather it is following the valid contract. In any event the changes that
17 were implemented following the re-opener negotiations (principally the negotiated pay
18 increase for employees in the unit) were taken with bargaining. A ratification requirement is
19 not a mandatory subject of bargaining.

20 **III. LIST OF POSSIBLE WITNESSES**

- 21 1. Any witness identified by Complainant.

22 The following witnesses are c/o
23 Scott Davis, Deputy District Attorney
24 500 South Grand Central Parkway
Las Vegas, Nevada 89155

- 25 2. Joseph Piurkowski
 - 26 3. Jennifer Scharn
 - 27 4. Curtis Germany
- 28

1 5. To be determined representative employee(s) from ATS shop

2 6. Any necessary rebuttal witness.

3 **IV. ESTIMATE OF TIME**

4 1-2 days

5 **V. STATEMENT REQUIRED BY NAC 288.250(1)(c)**

6 Pursuant to NAC 288.250(1)(c), the County submits that there are no other pending or
7 anticipated proceedings related to this matter.

8 DATED this 2nd day of February 2023.

9 STEVEN B. WOLFSON
10 DISTRICT ATTORNEY

11 By: /s/ Scott Davis

12 SCOTT DAVIS
13 Deputy District Attorney
14 State Bar No. 10019
15 JOHN WITUCKI
16 Deputy District Attorney
17 State Bar No. 10800
18 500 South Grand Central Pkwy., Suite 5075
19 Las Vegas, Nevada 89155-2215
20 Attorneys for *Clark County*

17 **CERTIFICATE OF ELECTRONIC SERVICE**

18 I hereby certify that I am an employee of the Office of the Clark County District
19 Attorney and that on this 2nd day of February 2023, I served a true and correct copy of the
20 foregoing **Respondent/Counterpetitioner Clark County's Pre-Hearing Statement** by e-
21 mailing the same to the following recipients. Service of the foregoing document by e-mail is
22 in place of service via the United States Postal Service.

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26 Las Vegas, Nevada 89103
27 *Attorneys for Complainant Local 1107*
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/s/ Aisha A. Rincon

An Employee of the Clark County District
Attorney's Office – Civil Division

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FILED
February 7, 2023
State of Nevada
E.M.R.B.
1:32 p.m.

6 **STATE OF NEVADA**
7 **GOVERNMENT EMPLOYEE-MANAGEMENT**
8 **RELATIONS BOARD**

9 INTERNATIONAL UNION OF
10 ELEVATOR CONSTRUCTORS, LOCAL
11 18,

Case No. 2022-018

Complainant,

12 vs.

13 CLARK COUNTY,

14 Respondent

15
16 CLARK COUNTY,

Counter-petitioner

17 vs.

18
19 INTERNATIONAL UNION OF
20 ELEVATOR CONSTRUCTORS, LOCAL
21 18,

Counter-respondent

22
23 **COMPLAINANT/COUNTER RESPONDENT’S PRE-HEARING STATEMENT**

24 COMES NOW Complainant/Counter Respondent, the International Union of Elevator
25 Constructors, Local 18 (“Local 18” or “Union”), by and through its counsel of record, and
26 pursuant to NAC 288.250 and hereby files its Pre-Hearing Statement as follows:
27
28

1 **I. ISSUE**

- 2 1. Whether the County committed an unfair labor practice by refusing to return to the
3 bargaining table upon notification that the Union membership rejected the tentative
4 agreements?
- 5 2. **Whether Clark County (“the County”) committed an unfair labor practice by**
6 **implementing tentative agreements without the Union’s ratification?**
- 7 3. Whether the Union ceased to be supported by a majority of employees in the bargaining
8 unit?
- 9 4. If the Union did cease to be supported by a majority of employees in the bargaining unit,
10 **whether the County’s unfair labor practices contributed to the loss of majority support?**
- 11 5. **If, the “contract bar” doctrine bars the County from challenging the Union’s status as a**
12 **majority representative?**

13 **II. STATEMENT OF FACTS**

14 Local 18 represents certain employees employed by the County holding the job
15 classification of Airport Senior Automated Transit System Technicians; Airport Automated
16 Transit System Technicians I & II. Local 18 and Clark County were parties to a Collective
17 **Bargaining Agreement (“CBA”) that was set to expire on June 30, 2022, which was extended to**
18 **June 30, 2023, by Letter of Agreement (“LOA”) on or about June 24, 2020. The LOA was**
19 ratified by the bargaining unit on June 25, 2020, and subsequently approved by the Board of
20 County Commissioners on July 7, 2020.

21 On or about January 21, 2022, the Union sent to the County notice of its intent to re-
22 open the terms of the CBA. On or about January 31, 2022, the County responded with dates of
23 its availability for bargaining as well as proposed ground rules for bargaining which were
24 substantially the same as the ground rules the parties used in the past. The proposed ground
25 rules included a clause requiring any Tentative **Agreements (hereinafter “TA’s”) conditioned on**
26
27
28

1 ratification by both the Board of County Commissioners (hereinafter “BCC”) as well as the
2 membership of the Union¹.

3 The parties held a remote bargaining session on or about March 23, 2022. Thereafter,
4 the parties continued bargaining via a series of email exchanges. The Articles being bargained
5 were Article 3 “Wages,” Article 6 “Holidays,” and Article 28 “Term-Termination-Renewal.” Of
6 note, Article 28 extended the CBA through June 30, 2024. Because of the rapidity in which the
7 negotiations were concluded the ground rules were never officially signed. However, on May 4,
8 2022, Local 18, through its chief negotiator, Michael A. Urban, notified the County’s chief
9 negotiator, Joseph Piurkowski, the Airport CFO for the Clark County Department of Aviation,
10 that the Union was agreeable to the last set of changes to the proposals by the County by email
11 and specifically requested Mr. Piurkowski to “contact [him] to work out a schedule for the
12 ratification vote to avoid the issues [they] had last time.”

13 On May 12, 2022, Local 18 provided the County with the fully executed TA’s
14 reiterating its request the County contact Mr. Urban regarding scheduling for ratification. On
15 May 17, 2022, Mr. Urban again requested Mr. Piurkowski contact him to discuss conducting the
16 ratification vote. On May 24, 2022, Mr. Urban and Mr. Piurkowski held a conference call to
17 discuss the ratification of the tentative agreements. During the conversation, Mr. Piurkowski
18 indicated the County planned to have the extended CBA before the BCC for approval at the first
19 meeting in June and that the County would allow members to vote while on duty but not pay
20 members to vote on their days off. Through a series of email exchanges between June 2 and
21 June 16, 2022, Mr. Urban and Mr. Piurkowski discussed ratification. Specifically, the County
22 agreed to allow the Union to use its conference rooms on July 18 and 19 for its members to vote
23

24 ¹ Paragraph 4 of the proposed ground rules provided:

25 Any tentative agreements reached during the course of negotiations shall be put in writing and
26 initialed or signed by the chief negotiator of each team. The parties understand that all tentative
27 agreements are subject to ratification by the IUEC membership and approval by the Clark County
28 Board of Commissioners. The complete tentative agreement will be presented in good faith to
each ratifying body in a timely manner and as soon as possible and all members of the bargaining
committees shall recommend it for ratification.

1 **and that the TA's would be presented to the** Board of County Commissioners at its meeting on
2 June 21, 2022. On July 15, 2022, the County confirmed **that the BCC approved the TA's at the**
3 **June 21, 2022, meeting and confirmed the Union's use of the County's** conference rooms for
4 **July 18, and 19, 2022, for the Union's ratification** vote. Of note, the County immediately
5 **implemented the wage increase prior to the Union's ratification of the TA's.**

6 On July 20, 2022, after tallying the ratification vote, the Union notified the County that
7 **the TA's were not ratified by** the bargaining unit and requested dates and times to resume
8 bargaining. On July 26, 2022, the County indicated that the parties have already come to an
9 agreement and that it would honor the agreement through the expiration date of June 30, 2024.
10 This was the first time the County ever indicated that it believed the **Union's ratification of the**
11 **TA's was unnecessary. Despite several attempts by** the Union to get the County to return to the
12 bargaining table, the County refused.

13 **Thereafter, as mentioned in the County's** Counter Petition on file herein, on or about
14 August 5, 2022, certain employees filed a petition for decertification of the Union with the
15 **National Labor Relations Board ("NLRB"), which** was subsequently closed for lack of
16 jurisdiction. While the County was continuing to refuse to return to the bargaining table, a
17 bargaining unit member filed a petition with this Board, Case No. 2022-015 seeking to remove
18 the Union as the bargaining agent, which was itself dismissed.

19 **III. Argument**

20 **A. Clark County violated NRS 288, et seq, in refusing to return to the** 21 **bargaining table upon notification by the Union that the TA's were not** 22 **ratified by the bargaining unit members and by implementing the TA's** 23 **without a bargained for agreement.**

24 NRS 288 require parties to bargain in good faith throughout the entire process. *See In*
25 *the Matter of the Request of Las Vegas Metropolitan Police Department to Withdraw*
26 *Recognition of Police Protective Association as Representative for Certain Members, namely*
27 *Police Officers I and II, and Corrections Officers I and II, Item No. 486A, EMRB Case No. A1-*
28 *045700 (2001). Refusal to continue bargaining after commencing, but not completing*
negotiations is a prohibited practice as defined by NRS 288.270(1)(e). see Mineral County

1 *Public Safety Dispatchers Association vs. Mineral County*, Item No. 265, EMRB Case No. A1-
2 045482 (1991). Under Nevada law, an employer may not unilaterally implement a change to the
3 terms and conditions of employment concerning one or more of the mandatory subjects of
4 bargaining listed in NRS 288.150(2) without bargaining over the change with the recognized
5 bargaining agent. *See City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 59 P.3d
6 1212 (2002).

7 **1. The acceptance of the TA's was clearly conditioned on ratification**
8 **by the Union's members and the County's refusal to return to the**
9 **bargaining table upon notification of the membership's rejection**
10 **of same amounts to a failure to bargain in good faith.**

11 Here, although the ground rules which required **ratification by the Union's members was**
12 **not officially signed, the Union's repeated** communications with the County regarding
13 **ratification made it clear that the Union's acceptance of the TA's were conditioned on**
14 ratification by its members. Furthermore, the County's own conduct evidences its understanding
15 of this conditional acceptance. Specifically, during a telephone conference on or about May 24,
16 2022, the County indicated that members could vote **on the TA's while on duty but that it would**
17 not pay members to vote on their respective days off. Additionally, the County provided the
18 Union with use of its conference rooms to conduct the ratification vote. Naturally, this begs the
19 question: if the County did not **think the TA's were conditioned** on ratification by the bargaining
20 unit members, why would it allow employees to vote during working hours, make clear they
21 **wouldn't be paid to vote during off-days, and providing the Union with the facilities in which**
22 the Union would conduct the ratification vote?

23 Simply put, the parties had not reached an **agreement because the TA's were not ratified**
24 by the Union. Since there was no agreement and the issues unresolved fall within the subjects of
25 mandatory bargaining under NRS 288.150, the County was obliged to return to the bargaining
26 table. It is axiomatic that refusal to meet with the Union to continue bargaining is an
27 indisputable instance of a failure to bargain in good faith. *See Education Support Employees*
28 *Ass'n and Police Officers Ass'n v. Clark County School District*, Item No. 809, EMRB Case
No. A1-046113 (2015); *see also City of Reno v. Reno Police Protective Ass'n*, 98 Nev. 472, 653

1 P.2d 156 (1982). Therefore, for the foregoing reasons this Board **should find: (1) that the TA's**
2 **were conditioned on ratification by both the BCC and the bargaining unit members; (2) that**
3 **because the bargaining unit did not ratify the TA's that the bargaining process had not been**
4 **complete and that the County breached its duty to bargain in good faith by refusing to return to**
5 **the bargaining table and; (3) exercise its authority under 288.110(2) and order the County back**
6 **to the bargaining table.**

7 **2. Because the parties did not reach agreement the County's**
8 **implementation of the wage increase was an unlawful unilateral**
9 **change to the terms of employment.**

10 Under Nevada law, an employer may not unilaterally implement a change to the terms
11 and conditions of employment concerning one or more of the mandatory subjects of bargaining
12 listed in NRS 288.150(2) without bargaining over the change with the recognized bargaining
13 agent. *See. City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 59 P.3d 1212 (2002).
14 **Here, the unratified TA's involved wages, holidays and the duration of the CBA, all of which**
15 **are subjects of mandatory bargaining. See NRS 228.150(2)(a), (d) and (q) respectively. Because**
16 **the bargaining unit members rejected the TA's, the bargaining process was not complete and the**
17 **County's unilateral implementation of them was an unlawful act.² Therefore, this Board should**
18 **invalidate the County's unilateral acts until said time as the parties have completed the**
19 **bargaining process or impasse proceedings pursuant to NRS 288.200.**

20 **B. Any loss of support for the Union by the members of the bargaining unit**
21 **members is a direct result of the County's unfair labor practices.**
22 **Alternatively, if as the County has asserted, the parties have an**
23 **agreement the contract bar doctrine operates to presume majority**
24 **support.**

25 “[A]n employer may not withdraw recognition from a union while there are unremedied
26 unfair labor practices tending to cause employees to become disaffected from the union.”
27 *Broadway Volkswagen*, 342 NLRB 1244, 1247 (2004) (citations omitted). Factors to be
28 considered on whether there is a causal relationship between the unfair labor practices and loss

² The Union is not asserting that the BCC's ratification of the TA's was the unilateral act. Rather, it was the County's immediate implementation prior to the Union's ratification that was the unilateral act.

1 of support are: (1) length of time between the unfair labor practices and withdrawal of
2 recognition; (2) the nature of the violation, including detrimental or lasting effect on employees;
3 (3) the tendency of the violation to cause employees disaffection; and (4) the effect of the
4 **unlawful conduct on employees' morale, organizational activities, and membership in the union.**
5 *Master Slack Corp.* 271 NLRB 78, 84 (1984); *see also Beverly Health & Rehab Servies*, 346
6 NLRB 1319 (2006).

7 Alternatively, where a contract is in place that is in writing, signed by the parties, and
8 contain substantial terms and conditions of employment deemed sufficient to stabilize the
9 **bargaining relationship, the "contract bar" doctrine constitutes a bar** to the decertification of a
10 union as the exclusive representative. *Appalachian Shale Products Company*, 121 NLRB 1160
11 (1958); *see also Gaylord Broadcasting Co.*, 250 NLRB 198 (1980). This Board first adopted the
12 **"contract bar" doctrine in Reno Police Protective Association v. City of Reno**, Item No. 120,
13 EMRB Case No. A1-045338 (1981).

14 **1. Any loss of Union support by members of the bargaining unit is a**
15 **direct result of the County's unfair labor practices.**

16 The sequence of events in this case are not coincidental. The County implemented the
17 **wage increase prior to the Union's ratification** vote. This action conveyed to the members they
18 had no say in the matter and that their ratification vote was superfluous. The members
19 **overwhelmingly reject the TA's during the ratification** vote on July 18 and 19 of 2022, with the
20 number one reason given being they believed the wage increase was insufficient. On July 26,
21 2022, the County refuses to return to the bargaining table claiming that bargaining was
22 completed. Barely a week later, certain employees of the bargaining unit seek to decertify the
23 Union, erroneously filing a decertification petition with NLRB and then subsequently filing
24 with this Board. Here, there can be little doubt the cause of the member disaffection with the
25 **Union was caused by the County's unilateral implementation** of a wage increase deemed
26 unsatisfactory to the membership **and the County's subsequent** refusal to return to the
27 bargaining table. Therefore, because any loss of the **Union's support by the members has been**
28 **caused by the County's unfair labor practices** this Board should **deny the County's Petition to**

1 Decertify the Union.

2 **2. Alternatively, if the Agreement is final as the County asserts, this Board**
3 **should apply the “contract bar” doctrine.**

4 In *Douglas County Support Staff Organization/NSEA v. Nevada Classified School*
5 *Employees Association, Chapter 6*, this Board modified the contract bar doctrine to better
6 comport with the requirements of NRS 288 by delineating a window period that opens when an
7 incumbent organization files notice of its desire to negotiate a successor agreement which closes
8 upon commencement of negotiations and a 30-day window period beginning 242 days before
9 expiration of the labor agreement and closing 212 days prior to the expiration date. Item No.
10 313, EMRB Case No. A1-045535. To constitute a bar **under the NLRB’s contract bar rules**, a
11 contract must be in writing, signed by the parties, and contain **“substantial terms and conditions**
12 **of employment deemed sufficient to stabilize the bargaining relationship ...”** See *Appalachian*
13 *Shale Products Company*, 121 NLRB 1160 (1958).

14 Here, the County is asserting it does not have to return to the bargaining table because
15 **the Union’s ratification is not necessary and the parties have reached agreement reflected in the**
16 **signed TA’s and as ratified by the County. If that is the case**, then the elements for applying the
17 contract bar are present here. **Both the CBA and the TA’s modifying it are in writing.** Both the
18 **CBA and the TA’s modifying it are signed by the parties.** The **CBA and TA’s modifying it**
19 contain the substantial terms and conditions of employment sufficient to stabilize the bargaining
20 relationship. Therefore, if the Board sides with the County on its obligation to return to the
21 bargaining table, this Board is urged to apply the contract bar to **the County’s subsequent**
22 **Petition to Decertify the Union.**

24 **IV. Conclusion**

25 Therefore, for the foregoing reasons Local 18 respectfully requests this Board to find that
26 **acceptance of the TA’s were conditioned on ratification** by both the BCC and the bargaining
27 unit members; that there is no agreement due to the bargaining unit members rejection of the
28 **TA’s; that the County committed an unfair labor practice in implementing the TA’s without**

1 ratification by the bargaining unit; that the County committed an unfair labor practice in
2 refusing to return to bargaining **upon notice that the members rejected the TA's; require the**
3 County to return to the bargaining table; and to deny the County's **Petition to Decertify the**
4 Union.

5 **V. WITNESS LIST**

6 If this matter goes to hearing, Local 18 may call one or more of the following:

7 Michael A. Urban, Chief negotiator for Local 18;

8 He will be able to testify as to his communications with the County regarding ratification and
9 the parties understanding thereto as well as his attempts to get the County to return to the
10 bargaining table.

11 Joe Boswell, Local 18 Business Agent/Financial Secretary;

12 **He will be able to testify regarding the Union's ratification vote and reasons for rejection of the**
13 **TA's.**

14 Local 18 reserves the right to supplement this list.

15 Necessary rebuttal witnesses.

16 **VI. ESTIMATE OF TIME:**

17 Local 18 estimates that its presentation will take no longer than one-half (1/2) day.
18

19 Dated this 7th day of February 2023.

20 **THE URBAN LAW FIRM**

21 By: /s/ Paul D. Cotsonis
22 MICHAEL A. URBAN, NVSB #3875
23 PAUL D. COTSONIS, NVSB #8786
24 *Counsel for International Union of Elevator*
25 *Constructors, Local 18*
26
27
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**STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD**

INTERNATIONAL UNION OF ELEVATOR
CONSTRUCTORS, LOCAL 18,

Complainant,

vs.

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CLARK COUNTY,

Counter-petitioner

vs.

INTERNATIONAL UNION OF
ELEVATOR CONSTRUCTORS, LOCAL 18,

Counter-respondent

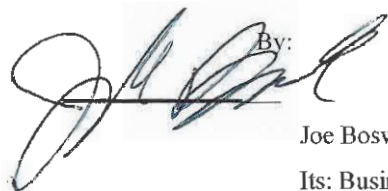
Case No. 2022-018

NOTICE OF SUBSTITUTION OF ATTORNEY

Complainant/Counter Respondent, the International Union of Elevator Constructors, Local 18 ("Local 18" or "Union"), hereby designates Adam Levine, Esq., of the Law Office of Daniel Marks, as the attorney representative for Local 18 in the above-captioned matter, and hereby rescinds the designation of The Urban Law Firm as Local 18's attorney representative.

DATED this __ day of February, 2023.

**International Union of Elevator Constructors,
Local 18**

By: 

Joe Boswell

Its: Business Agent and Financial Secretary

1 STEVEN B, WOLFSON
District Attorney
2 **CIVIL DIVISION**
State Bar No. 001565
3 By: **SCOTT R. DAVIS**
Deputy District Attorney
4 State Bar No. 10019
By: **JOHN WITUCKI**
5 Deputy District Attorney
State Bar No. 10800
6 500 South Grand Central Pkwy., Suite 5075
Las Vegas, Nevada 89155-2215
7 Telephone (702) 455-4761
Fax (702) 382-5178
8 E-Mail: Scott.Davis@ClarkCountyDA.com
John.Witucki@ClarkCountyDA.com
9 Attorneys for *Clark County*

10 **STATE OF NEVADA**

11 **GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD**

12 INTERNATIONAL UNION OF ELEVATOR)
13 CONSTRUCTORS, LOCAL 18,)

Case No: 2022-018

14 Complainant,)
15)

16 vs.)
17)

17 CLARK COUNTY,)
18)

18 Respondent)
19)

19 CLARK COUNTY,)
20)

20 Counter-petitioner)
21)

22 vs.)
23)

23 INTERNATIONAL UNION OF ELEVATOR)
24 CONSTRUCTORS, LOCAL 18,)

25 Counter-respondent)
26)

26 **RESPONDENT/COUNTER-PETITIONER CLARK COUNTY'S**
27 **SUPPLEMENT TO PRE-HEARING STATEMENT**

27 ///

28 ///

1 COMES NOW, Respondent/Counter-petitioner CLARK COUNTY, by and through
2 District Attorney, STEVEN B. WOLFSON, through Scott Davis, Deputy District Attorney
3 and John Witucki, Deputy District Attorney, and pursuant to NAC 288.250 and supplements
4 its existing prehearing statement as follows:

5 **I. STATEMENT OF ISSUES OF FACT AND LAW TO BE DETERMINED BY**
6 **THE BOARD**

7 In addition to the issues previously stated, Clark County adds the following issue:

- 8 - Whether IUEC, Local 18 is precluded by judicial estoppel from asserting that the
9 negotiated contract changes in this case require union ratification to be effective.

10 **II. MEMORANDUM OF POINTS AND AUTHORITIES (IN SUPPORT OF**
11 **SUPPLEMENTAL ISSUE)**

12 The doctrine of judicial estoppel applies to administrative proceedings. *S. California*
13 *Edison v. First Jud. Dist. Ct*, 127 Nev. 276, 285, 255 P.3d 231, 237 (2011). Judicial estoppel
14 applies where:

- 15 (1) the same party has taken two positions; (2) the positions were
16 taken in judicial or quasi-judicial administrative proceedings; (3)
17 the party was successful in asserting the first position ...; (4) the
two positions are totally inconsistent; and (5) the first position
was not taken as a result of ignorance, fraud, or mistake.

18 *Id.* 127 Nev. at 285-86.

19 These elements are met here. In a prior case before this Board (Case No. 2022-015),
20 IUEC expressly took the position that the CBA extends through June 30, 2024. It took this
21 position on November 7, 2022 in a motion that was made in response to a challenge from a
22 group of individual employees seeking to de-certify IUEC and on the basis that the petition
23 was untimely. NAC 288.146(2)(b) provides a limited time period in which one organization
24 seeks to challenge the recognition of another organization (beginning 242 days before the
25 expiration of the agreement). IUEC was successful in this motion, having obtained a complete
26 dismissal of the prior proceeding in an order issued by this Board on December 30, 2022.

27 IUEC now asserts a totally inconsistent position. The expiration date of June 30, 2024
28 that IUEC previously espoused as valid is one of the provisions included in the very same

1 negotiated re-opener that is at issue in this case, and that was not ratified by IUEC. IUEC now
2 claims that that negotiated re-opener provisions are invalid. Thus, IUEC has taken two
3 contrary positions regarding the validity of the negotiated reopener. There is no plausible claim
4 that this was due to a mistake or fraud, as the motion filed in Case No. 2022-015 specifically
5 noted that the CBA’s extension through June 30, 2024 was part of the same 2022 re-opener
6 and that “...the current agreement runs through June 30, 2024...”)

7 DATED this 17th day of May 2023.

8 STEVEN B. WOLFSON
9 DISTRICT ATTORNEY

10 By: /s/ Scott Davis
11 SCOTT R. DAVIS
12 Deputy District Attorney
13 State Bar No. 10019
14 JOHN WITUCKI
15 Deputy District Attorney
16 State Bar No. 10800
17 500 South Grand Central Pkwy., Suite 5075
18 Las Vegas, Nevada 89155-2215
19 Attorneys for *Clark County*
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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Office of the Clark County District Attorney and that on this 17th day of May, 2023, I served a true and correct copy of the foregoing **RESPONDENT/COUNTER-PETITIONER CLARK COUNTY’S SUPPLEMENT TO PRE-HEARING STATEMENT**, by e-mailing the same to the following recipients. Service of the foregoing document by e-mail is in place of service via the United States Postal Service.

Adam Levine, Esq.
610 S. 9th Street
Las Vegas, Nevada 89101
Counsel for Local 18
office@danielmarks.net

/s/ Christine Wirt
An Employee of the Clark County District
Attorney’s Office – Civil Division

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STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

Case No. 2022-018

INTERNATIONAL UNION OF ELEVATOR
CONSTRUCTORS, LOCAL 18,

Complainant,

v.

CLARK COUNTY,

Respondent.

SECOND AMENDED NOTICE OF
HEARING

CLARK COUNTY,

Counter-Petitioner,

v.

INTERNATIONAL UNION OF ELEVATOR
CONSTRUCTORS, LOCAL 18,

Counter-Respondent,

TO: Complainant¹ and its attorneys, Daniel Marks, Esq. and Adam Levine, Esq., of the Law Office of Daniel Marks; and

TO: Respondent² and its attorneys, Scott Davis, Esq. and John Witucki, Esq. of the Office of the Clark County District Attorney;

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE pursuant to NRS 233B.121(2), that the Government Employee-Management Relations Board ("Board") will conduct a hearing in the above-captioned matter:

Panel

¹ The term "Complainant" also includes being the Counter-Respondent.

² The term "Respondent" also includes being the Counter-Petitioner.

1 This case has been assigned to the Board sitting *en banc*. Chair Brent C. Eckersley, Esq. shall be
2 the Presiding Officer. Board Member Michael Urban has recused himself from the case.

3
4 **Dates and Times of Hearing**

5 Tuesday, December 12, 2023 at 8:15 a.m.; and continuing on Wednesday, December 13, 2023,
6 if necessary, at 8:15 a.m.; and continuing on Thursday, December 14, 2023, if necessary, at a time to be
7 determined during the hearing.

8
9 **Location of Hearing**

10 The hearing will be held in the Tahoe Room, which is located on the fourth floor of the Nevada
11 State Business Center, 3300 W. Sahara Avenue, Las Vegas, NV 89102. The hearing will also be held
12 virtually using a remote technology system called WebEx. The attorneys of record, witnesses, court
13 reporter, the Commissioner, and one or more of the panel members will be present in-person. The
14 remaining panel members will be present via WebEx. The Deputy Attorney General assigned to the
15 EMRB will either be present in person or via WebEx. Preliminary motions will be heard at the
16 beginning of the hearing. The Panel may deliberate and take possible action on this case after the
17 hearing has concluded.

18
19 **Details Regarding Events Prior to the Hearing**

20 1. The parties shall submit four (4) sets of tagged joint exhibits to be received by the
21 EMRB, 3300 W. Sahara Avenue, Suite 260, Las Vegas, Nevada 89102, no later than one week prior to
22 the start of the hearing, so as to enable the office staff to distribute the exhibits to two of the panel
23 members in time for the hearing. Please note that the number of sets of exhibits to be received by the
24 EMRB is in addition to any sets of exhibits that may be used by the attorneys of record. Each attorney
25 shall also be responsible to have a set of exhibits at the designated location for its witnesses.

26 2. The parties will also need to submit an electronic version of the exhibits, along with a
27 table of contents of the exhibits, no later than one week prior to the start of the hearing. Each electronic
28

1 exhibit shall be a .pdf file. Arrangements on the means of transmittal shall be made with the Board
2 Secretary.

3 3. Unless otherwise excused by the Chair for good cause, all subpoena requests must be
4 submitted to the EMRB no later than one week prior to the hearing.

5 6 **Details of Hearing**

7 1. The legal authority and jurisdiction for this hearing are based upon NRS 288.110, NRS
8 288.280 and the Nevada Administrative Code, Chapter 288.

9 2. The time allotted for the hearing shall be eight (8) hours for the Complainant and eight
10 (8) hours for the Respondent, including cross-examination.

11 3. The Complainant shall be responsible for retaining a certified court reporter to take
12 verbatim notes of the proceedings. Pursuant to NAC 288.370, the cost of reporting shall be shared
13 equally by the parties and the Board shall be furnished the original of the transcript so taken.
14 Complainant shall work with the court reporter to ensure that the court reporter will also be able to
15 attend online using the afore-mentioned software product.

16 17 **Statement of Issues Involved**

18 Based upon the prehearing statements filed in this matter, and pursuant to NRS 233B.121(2)(d),
19 the issues to be addressed at the hearing are identified as follows:

20 **Complainant's Statement of Issues**

- 21 1. Whether Clark County committed an unfair labor practice in violation of NRS 288.270 by
22 refusing to return to the bargaining table upon notification that the Union membership rejected
23 the tentative agreements?
- 24 2. Whether Clark County committed an unfair labor practice in violation of NRS 288.270 by
25 implementing tentative agreements without the Union's ratification?
- 26 3. Whether the Union ceased to be supported by a majority of employees in the bargaining unit?
- 27 4. If the Union did cease to be supported by a majority of employees in the bargaining unit,
28 whether Clark County's unfair labor practices contributed to the loss of majority support?

1 5. Whether the "contract bar" doctrine bars Clark County from challenging the Union's status as a
2 majority representative?

3 **Respondent's Statement of Issues**

4 **With Respect to the Petition**

5 1. Whether IUEC, Local 18 has majority support from the bargaining unit for which it has
6 previously been recognized?

7 2. Whether the Board has any good faith doubt about majority support that calls for an election to
8 measure majority support within the bargaining unit?

9 **With Respect to the Complaint**

10 3. Whether the parties agreed to ground rules specifying union ratification as a condition precedent
11 to the contract?

12 4. Whether the proposals that were exchanged and agreed upon by the parties during negotiations
13 included union ratification as a condition precedent to the contract?

14 5. Whether the negotiated proposals between IUEC and Clark County resulted in a valid contract?

15 6. Whether IUEC can show by a preponderance of the evidence that Clark County failed to bargain
16 in good faith?

17 7. Whether IUEC can show by a preponderance of the evidence that Clark County committed a
18 unilateral change?

19 8. Whether IUEC, Local 18 is precluded by judicial estoppel from asserting that the negotiated
20 contract changes in this case require union ratification to be effective?

21
22 This Amended Notice of Hearing will further serve as notice to all parties herein, that upon
23 conclusion of the Hearing, or as otherwise necessary to deliberate toward a decision on the complaint,
24 the Board may move to go into closed session pursuant to NRS 288.220(5).

25 DATED this 20th day of July 2023.

26 GOVERNMENT EMPLOYEE-
27 MANAGEMENT RELATIONS BOARD

28 BY 
BRUCE K. SNYDER, Commissioner

1 CERTIFICATE OF MAILING

2 I hereby certify that I am an employee of the Government Employee-Management Relations
3 Board, and that on the 20th day of July 2023, I served a copy of the foregoing **SECOND AMENDED**
4 **NOTICE OF HEARING** by mailing a copy thereof, postage prepaid to:

5 Law Office of Daniel Marks
6 Daniel Marks, Esq.
7 Adam Levine, Esq.
8 610 South Ninth Street
9 Las Vegas, NV 89101

10 Scott Davis, Esq.
11 John Witucki, Esq.
12 Clark County District Attorney's Office
13 500 S. Grand Central Parkway, Suite 5075
14 Las Vegas, NV 89155

15 
16 _____
17 ISABEL FRANCO
18 Administrative Assistant II
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1 LAW OFFICE OF DANIEL MARKS
DANIEL MARKS, ESQ.
2 Nevada State Bar No. 002003
office@danielmarks.net
3 ADAM LEVINE, ESQ.
Nevada State Bar No. 004673
4 alevine@danielmarks.net
610 South Ninth Street
5 Las Vegas, Nevada 89101
(702) 386-0536; FAX (702) 386-6812
6 *Attorneys for Complainant/Counter-Respondent*

FILED
December 4, 2023
State of Nevada
E.M.R.B.
1:48 p.m.

7
8 **STATE OF NEVADA**
9 **GOVERNMENT EMPLOYEE-MANAGEMENT**
10 **RELATIONS BOARD**

11 INTERNATIONAL UNION OF ELEVATOR
CONSTRUCTORS, LOCAL 18,

Case No. 2022-018

12 Complainant,

13 vs.

14 CLARK COUNTY,

SUPPLEMENTAL PREHEARING

15 Respondent

STATEMENT

16 CLARK COUNTY,

Counter-Petitioner

17 vs.

18 INTERNATIONAL UNION OF
19 ELEVATOR CONSTRUCTORS, LOCAL 18,

20 Counter-Respondent

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1 SUPPLEMENTAL PREHEARING STATEMENT

2 COMES NOW Complainant/Counter-Respondent, the International Union of Elevator
3 Constructors, Local 18 (“Local 18” or “Union”) by and through its undersigned attorney Adam Levine,
4 Esq. of the Law Office of Daniel Marks hereby submit the follow Supplemental Pre-Hearing Statement.

5 **I. JUDICIAL ESTOPPEL DOES NOT APPLY.**

6 In its Supplement To Pre-Hearing Statement filed May 17, 2023, Clark County argues that
7 judicial estoppel applies to administrative proceedings, and cites to the *Joint* Motion to Dismiss filed by
8 both parties in Case No. 2022-015 which contained the statement “As part of a re-opener in 2022, the
9 parties negotiated an extension of the current collective bargaining agreement to run through June 30,
10 2024” and attaching the Tentative Agreement for Article 28 extending the contract through June 2024.
11 County seeks to assert that IUEC Local 18 is somehow estopped from claiming that Clark County is
12 obligated to return to the bargaining table after the tentative agreements were voted down by Local 18’s
13 members.

14 Judicial estoppel does not apply for several reasons. First, Case No. 2022-015 was the result of a
15 Petition filed by employee Stephen McSally seeking to decertify the bargaining unit. The basis for the
16 Joint Motion was that McSally lacked standing for his Petition. As an aside, the parties further jointly
17 argued that the Petition was outside of the “window” provided under NAC 288.146. The Board granted
18 the Motion primarily due to the failure of McSally to file an Opposition, and based upon its observation
19 that his Petition was outside the NAC 288.146 window. Clark County cannot claim it was somehow
20 misled.

21 Second, and more significantly, Clark County knew prior to the filing of that Joint Motion that
22 it was Local 18’s position that Clark County was obligated to return to the bargaining table. The emails
23 to be introduced into evidence at the upcoming hearing will demonstrate this fact. It was not the
24 duration of the agreement which caused local 18’s membership to vote the tentative agreement down.

1 Third, and most significantly, Clark County cannot establish that Local 18 prevailed *against*
2 *Clark County* by asserting a position, or that its joinder with Clark County in the Joint Motion was
3 intended to mislead the Board or obtain some sort of “unfair advantage”. Judicial estoppel is a doctrine
4 designed to protect the integrity of the tribunal. As explained by the Nevada Supreme Court in *Deja Vu*
5 *Showgirls of Las Vegas, LLC v. Nev. Dep't of Taxation*, 130 Nev. 711, 334 P.3d 387 (2014):

6 Judicial estoppel is an equitable doctrine used to protect the judiciary's integrity and is
7 invoked by a court at its discretion. See *NOLM, L.L.C. v. Cnty. of Clark*, 120 Nev. 736,
8 743, 100 P.3d 658, 663 (2004). Whether judicial estoppel applies is a question of law
9 that we review de novo. *Id.*

10 We have explained that judicial estoppel "should be applied only when a party's
11 inconsistent position [arises] from intentional wrongdoing or an attempt to obtain an
12 unfair advantage." Notably, judicial estoppel "does not preclude a change in position that
13 is not intended to sabotage the judicial process."

14 334 P.3d at 390-301 (internal citations omitted).

15 **II. WITNESSES**

16 In addition to the witnesses previously identified, IUEC Local 18 will be calling:

17 **Ken DiPiero.** Mr. DiPiero is an member of the bargaining unit and will be testifying regarding
18 the bargaining prior to the membership voting down the tentative agreement, the failure of the
19 membership to ratify the tentative agreement, and Clark County’s meeting with bargaining unit
20 members on November 8, 2023 which excluded those members of the bargaining unit who remained
21 Local 18 dues paying members.

22 **Mario Vicchiullo.** Mr. Vicchiullo is employed by the International Union of Elevator
23 Constructors and will be testifying about the formation and bargaining history of the bargaining unit.

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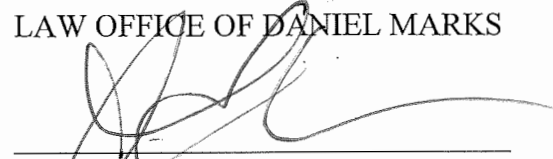
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1 **Will Smith.** Mr. Smith will be testifying about Clark County's meeting with bargaining unit
2 members on November 8, 2023 which excluded those members of the bargaining unit who remained
3 Local 18 dues paying members.

4 DATED this 4th day of December, 2023.

5 LAW OFFICE OF DANIEL MARKS



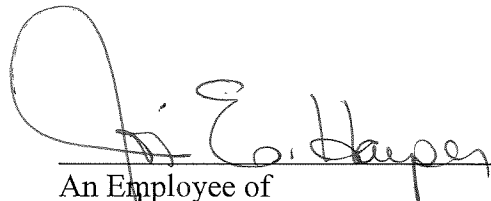
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7 DANIEL MARKS, ESQ.
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14 Las Vegas, Nevada 89101
15 Attorneys for IUEC Local 18

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS and on the 4th day of December, 2023, I did serve the above and foregoing SUPPLEMENTAL PRE-HEARING STATEMENT by depositing a true and correct copy with first class postage fully prepaid thereon with the United States Post Office at Las Vegas, Nevada to the following address:

Scott Davis, Esq.
John Witucki, Esq.
Clark County District Attorney's Office
500 S. Grand Central Parkway, Suite 5075
Las Vegas, Nevada 89155
Scott.Davis@ClarkCountyDA.com
John.Witucki@ClarkCountyDA.com
Attorney for Respondent-Employer


An Employee of
THE LAW OFFICE OF DANIEL MARKS