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State of Nevada
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11
12 Before the State of Nevada
13 Government Employee-Management
14 Relations Board

15 AFSCME, LOCAL 4041,
16 Complainant,
17 v.

18 STATE OF NEVADA, EXECUTIVE
19 DEPARTMENT, JOE LOMBARDO, in
20 his official capacity as the Governor of the
State of Nevada,

21 Respondents.
22

CASE NO.: **2023-026**
AFSCME, LOCAL 4041'S PROHIBITED
PRACTICE COMPLAINT

1 **INTRODUCTION**

2 This is a prohibited practice complaint pursuant to the Nevada Government
3 Employee-Management Relations Act (the “Act” or the “EMRA”) codified under Nevada
4 Revised Statutes (“NRS”) Chapter 288. The cornerstone of the collective bargaining process
5 under the EMRA is the mutual obligation to bargain in good faith to fulfil the statutory
6 requirement to execute agreements evidencing the result of collective bargaining over terms and
7 conditions of employment. Under NRS 288.620(1)(b), it is a prohibited practice for the Executive
8 Department to bargain in bad faith. The duty to bargain in good faith under the EMRA applies
9 universally, with one statutory exemption not at issue in this Complaint. *See* NRS 288.510
10 (Governor may include “any amount of money the Governor deems appropriate” in the
11 Governor’s “biennial proposed executive budget”).

12 At issue here is Governor Lombardo’s vote to disapprove a collective bargaining
13 agreement (“CBA”) before the Nevada State Board of Examiners (“BOE”)—an agreement that
14 was negotiated and executed by the Governor’s own designee on behalf of the Executive
15 Department, as required of the Governor by law. *See* NRS 288.565 (“Duty of Governor to
16 designate a representative to negotiate collective bargaining agreements on behalf of Executive
17 Department”).

18 The Governor’s role as both the head of the Executive Department and a member of the
19 BOE puts him in a unique position where his vote as a member of the three-official BOE—in
20 voting, pursuant to NRS 288.555, to approve or reject collective bargaining agreements—must
21 be cast consistent with his statutory obligations under the EMRA with respect to bargaining the
22 underlying CBA. As the head and chief executive officer of the Executive Department, i.e., the
23 employer of state employees under the EMRA, the Governor must engage in collective bargaining

1 2. The Board may hear and determine any complaint arising out of the
2 interpretation of, or performance under, the provisions of this chapter by the
3 Executive Department, any local government employer, any employee, as defined
4 in NRS 288.425, any local government employee, any employee organization or
5 any labor organization . . .

4 4. The Board may not consider any complaint or appeal filed more than 6 months
5 after the occurrence which is the subject of the complaint or appeal.

6 4. NRS 288.620 provides, in relevant part:

7 1. It is a prohibited practice for the Executive Department or its designated
8 representative willfully to:

9 (b) Refuse to bargain collectively in good faith with an exclusive representative
10 as required in NRS 288.565. Bargaining collectively includes the entire bargaining
11 process, including, without limitation, mediation or arbitration.

11 5. Employee organizations are required to raise before the Board issues within the
12 jurisdiction of the Board before resorting to civil suit. *See Rosequist v. Int'l Ass'n of Firefighters*,
13 118 Nev. Adv. Op. No. 47, 49 P.3d 651 (2002).

14 **FACTUAL ALLEGATIONS**

15 6. Complainant has been the certified bargaining representative of Unit A: Labor,
16 maintenance, custodial, and institutional employees, including without limitation, employees of
17 penal and correctional institutions who are not responsible for security at those institutions (“Unit
18 A”), for the State of Nevada since March 9, 2020.

19 7. Complainant has been the certified bargaining representative of Unit E:
20 Professional employees who provide health care, including without limitation, physical therapists
21 and other employees in medical and other professions related to health (“Unit E”), for the State
22 of Nevada since January 22, 2020.

1 8. Complainant has been the certified bargaining representative of Unit F: Employees,
2 other than professional employees, who provide health care and personal care, including without
3 limitation, employees who provide care for children (“Unit F”), for the State of Nevada since
4 January 22, 2020.

5 9. In October 2022, Complainant and Respondents entered negotiations for a new
6 collective bargaining agreement covering Units A, E, and F.

7 10. As required by NRS 288.565, then-Governor Steve Sisolak designated a
8 representative and delegated his authority to conduct negotiations and enter into agreements
9 concerning terms and conditions of employment on behalf of the Executive Department to then-
10 Deputy Administrator of the Department of Administration’s Division of Human Resource
11 Management (“DHRM”), Mandee Bowsmith.

12 11. On January 2, 2023, Joe Lombardo was sworn in as Governor of the State of
13 Nevada.

14 12. As of January 2, 2023, Governor Lombardo had a statutory duty to designate a
15 representative to negotiate collective bargaining agreements on behalf of the Executive
16 Department. NRS 288.565. That duty can be executed at any time, and nothing in the EMRA bars
17 an incoming Governor from changing the current designee. Under Governor Lombardo, Ms.
18 Bowsmith continues to serve as the State’s Chief Negotiator for collective bargaining negotiations
19 as the current Administrator of DHRM (“Administrator Bowsmith”), to this very day.

20 13. On February 9, 2023, more than a month after Governor Lombardo took office,
21 Complainant and Respondents entered into a tentative agreement (“TA”) for a CBA covering
22 Units A, E, and F for the 2023-2025 biennium (the “CBA”).

1 days per calendar year to 4 personal leave days per calendar year as well as the agreement of
2 increasing annual leave from 240 hours to 480 hours.”

3 31. Based on a majority of votes, the CBA was approved over the Governor’s vote
4 against approving the CBA, and the CBA became effective on July 1, 2023.

5 CLAIMS FOR RELIEF

6 **Prohibited Practice Claim under NRS 288.620(1)(b) and Other Violations of the EMRA**

7 32. The allegations contained in all preceding paragraphs of this complaint are
8 incorporated herein by reference.

9 33. The primary purpose of the EMRA is to require the State of Nevada to negotiate
10 over wages, hours, and other terms and conditions of employment with labor organizations that
11 represent state employees. In furtherance of this purpose, the EMRA imposes a mutual obligation
12 to bargain in good faith to fulfil the statutory mandate to execute agreements evidencing the result
13 of collective bargaining. Specifically, the Nevada Legislature declared that it is “within the public
14 interest that the Legislature enact provisions . . . [r]equiring the State to recognize and negotiate
15 wages, hours and other terms and conditions of employment with labor organizations that
16 represent state employees and to *enter into written agreements evidencing the result of collective*
17 *bargaining.*” NRS 288.400(2)(b) (emphasis added). Under NRS 288.620(1)(b) “[i]t is a
18 prohibited practice for the Executive Department or its designated representative willfully to
19 bargain in bad faith.” *See AFSCME, Local 4041, Complainant State of Nevada, Department of*
20 *Health and Human Services, Aging and Disability Services Division, Desert Regional Center,*
21 *Respondents*, 2021 WL 5493953, at *3. Further, the Legislature provided that “‘Collective
22 bargaining’ means a method of determining conditions of employment by negotiation between
23 representatives of the Executive Department . . . and [a] labor organization, entailing a mutual

1 obligation of the Executive Department . . . and the representative of the state . . . employees to
2 meet at reasonable times and *bargain in good faith* with respect to . . . Wages, hours and other
3 terms and conditions of employment; . . . The negotiation of an agreement; or . . . *The execution*
4 *of a written contract incorporating any agreement reached if requested by either party.*” NRS
5 288.032 (emphasis added).

6 34. Respondents violated the text, legislative intent, and spirit of the EMRA and
7 committed a prohibited practice under NRS 288.620(1)(b) by bargaining in bad faith when
8 Governor Lombardo, in his capacity as a BOE Chairman under the CBA approval process
9 required by the EMRA pursuant to NRS 288.555, voted against approving the Parties’ CBA which
10 was negotiated and executed by the Governor’s designee on behalf of the Executive Department.

11 35. It is a per se violation of the duty to bargain in good faith for the Governor to
12 negotiate and execute a CBA, during his own term as Governor through his own
13 statutorily-mandated designee, and then to vote against approval of that CBA on the BOE at a
14 later date. Here, Article 11.2 and 11.9, were discussed on the last day of negotiations between the
15 Parties and agreed to on February 9, 2023, more than a month after Governor Lombardo was
16 sworn into office. As such, any “operating” concerns with these articles were laid to rest at
17 negotiations by Governor Lombardo’s designee, Administrator Bowsmith.

18 36. Governor Lombardo further engaged in bad faith bargaining in violation of NRS
19 288.620(1)(b) by justifying his disapproval of the CBA based on a willful mischaracterization of
20 the agreement negotiated and executed by his own designee. On February 9, 2023, the Executive
21 Department, through Administrator Bowsmith and the State’s negotiating team, agreed to
22 increase personal days from 2 to 4 under Article 11.2 of the CBA and to increase the amount of
23 accrued and unused annual leave that can be carried over from year to year from 240 hours to 480

1 **PRAYER FOR RELIEF**

2 Complainant, AFSCME Local 4041, while reserving its right to amend this Complaint to
3 set forth additional facts, additional parties, or additional causes of action and prayers for relief
4 that are presently unknown to it, respectfully requests that this Board:

5 1. Find in favor of Complainant and against the Respondents on each and every claim
6 in this Complaint;

7 2. Find that Respondent, Governor Lombardo, violated NRS 288.620(1)(b) by
8 bargaining in bad faith and that Respondents have committed prohibited practices from which
9 Respondents must immediately cease and desist;

10 3. Find that Respondent, Governor Lombardo, violated NRS 288.555(3) by voting
11 against a CBA, that was fully agreed to and executed by the Executive Department, for reasons
12 outside of the scope of his limited budgetary responsibilities as a member of the BOE;

13 4. Order that Respondents post a notice of their prohibited practices found in this
14 action at all work sites covered under the CBA and to also communicate this notice electronically
15 via email to all employees belonging to Units A, E, and F;

16 5. Order that Respondents be made to pay the Complainant’s attorney’s fees and
17 costs incurred in this matter; and

18 6. Order further relief as the Board deems appropriate under the circumstances.

19 Date: September 5, 2023

20 Respectfully submitted,

21 /s/ Fernando R. Colón

22 FERNANDO R. COLÓN
23 MATT BLUMIN
ASSOCIATE GENERAL COUNSEL

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on September 5, 2023, I have mailed, via Electronic Filing in portable
3 document format as required by NAC 288.070(d)(3), a true and correct copy of Complainant
4 AFSCME Local 4041's Complaint to Respondents, STATE OF NEVADA, EXECUTIVE
5 DEPARTMENT, JOE LOMBARDO, in his official capacity as the Governor of the State of
6 Nevada, as addressed below:

7
8 State of Nevada
9 Office of the Attorney General
10 Attn: Greg Ott, Chief Deputy Attorney General
11 Nathan C. Holland, Deputy Attorney General
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14 gott@ag.nv.gov
15 nholland@ag.nv.gov

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/s/ Suzanne Levenson

An employee of Stranch, Jennings & Garvey

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

10 AFSCME, LOCAL 4041,
11 Complainant,
12 vs.
13 STATE OF NEVADA, EXECUTIVE
DEPARTMENT, JOE LOMBARDO, in
14 his official capacity as the Governor of the
State of Nevada,
15 Respondents.
16

Case No. 2023-026

**STATE OF NEVADA'S
ANSWER AND COUNTER CLAIM TO
AFSCME, LOCAL 4041'S PROHIBITED
PRACTICE COMPLAINT**

17 Respondents, Executive Department, Joe Lombardo, in his official capacity as the
18 Governor of the State of Nevada (hereafter "the State"), by and through counsel, Nevada
19 Attorney General Aaron D. Ford and Deputy Attorney General Nathan C. Holland, hereby
20 file this Answer and Counter Claim for Prohibited Practice.

21 **INTRODUCTION**

22 This Answer is submitted in response to a prohibited practice complaint filed
23 pursuant to the Nevada Government Employee-Management Relations Act ("the Act" or
24 "EMRA"), codified under Nevada Revised Statutes ("NRS") Chapter 288. The Act embodies
25 the fundamental principles of collective bargaining and mandates the duty to bargain in
26 good faith, leading to the creation of agreements that reflect the outcomes of such
27 bargaining pertaining to employment terms and conditions. It is duly acknowledged under
28 NRS 288.620(1)(b) that any act of bargaining in bad faith by the Executive Department is

1 considered a prohibited practice, save for certain statutory exceptions which are not under
2 contention in this Complaint, as exemplified by NRS 288.510.

3 The matter under dispute pertains to Governor Lombardo’s decision to vote against
4 the July 1, 2023–June 30, 2025, collective bargaining agreement (“CBA”) between the State
5 of the Nevada and the American Federation of State County and Municipal Employees,
6 Local 4041 (“AFSCME”) after its presentation to the Nevada State Board of Examiners
7 (“BOE”).¹ It is imperative to understand the two individual and separate roles of the
8 Governor—as the head of the Executive Department and as a member of the BOE.
9 NRS 288.580 places a good faith bargaining obligation on the Executive Department
10 generally and the designated representative specifically. It does not specifically name the
11 Governor as carrying an independent obligation of good faith bargaining that could be
12 construed to extend beyond the negotiating process, despite AFSCME’s creative contrary
13 interpretation. As the principal executive officer of the Executive Department and thus the
14 employer of state employees pursuant to the EMRA, the Governor is bound by a duty to
15 engage in good faith in collective bargaining activities with state employees, as elaborated
16 upon in NRS 288.565 and 288.620, however nothing in NRS 288.620 extends to the
17 Governor’s other duties as chief executive of the state, including his obligation to serve as
18 head of the BOE under NRS 353.010, or its chair under NRS 353.033.

19 In this context, the assertion that a vote through a statutorily required against the
20 CBA, constitutes a part of the bargaining process that could be the subject of a prohibited
21 practice complaint or a breach of the Act’s provisions is contrary to the intent and plain
22 language of the Act. The Respondent’s actions were in keeping with the obligations, rights,
23 and duties conferred upon him at the BOE were consistent with his obligations under
24 NRS Chapter 353 and occurred after bargaining was completed and were thus not subject
25 to EMRB scrutiny and cannot be the subject of a prohibited practice complaint.

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27 ¹ The approved CBA can be found the internet at:
28 [https://hr.nv.gov/uploadedFiles/hrnvgov/Content/Sections/LRU/Collective_Bargaining_Training/CBA%20AFSCME%2023-25_fin_\(nvafscme.org\)](https://hr.nv.gov/uploadedFiles/hrnvgov/Content/Sections/LRU/Collective_Bargaining_Training/CBA%20AFSCME%2023-25_fin_(nvafscme.org)) (last accessed Oct. 19, 2023).

1 In addition to the defense of the primary complaint, the Labor Relations Unit
2 (“LRU”) also advances a counterclaim against AFSCME, Local 4041 based on an alleged
3 breach of the parties’ CBA. Specifically, Article 21.5 titled “Union Grievances” outlines the
4 shared commitment of both the Employer and the Union to address disputes in an
5 expedient manner and at the most immediate level. A fundamental aspect of this article is
6 the agreed-upon procedure of giving notice and engaging in a meeting or consultation to
7 address and hopefully resolve concerns regarding the Agreement’s application or
8 interpretation before initiating formal complaints with a judicial body, such as the EMRB
9 or a Court.

10 The LRU contends that AFSCME, Local 4041 (“AFCSME” or the “Union”) failed to
11 adhere to these provisions, evidenced by their filing of a formal complaint to the EMRB on
12 September 14, 2023. This action occurred a full five days before the Union presented a
13 grievance to the LRU on September 19, 2023. This deviation from the agreed-upon
14 procedures not only circumvents the process envisioned by both parties for efficient dispute
15 resolution but also undermines the very essence of good faith that should underpin all
16 dealings between the parties.

17 The LRU, therefore, seeks a declaration from the EMRB affirming the Union’s
18 breach of Article 21.5, along with appropriate remedies to ensure compliance with the said
19 provision in the future. The Respondent, by and through its representative herein presents
20 its Answer and Counterclaim, detailing the refutations to the allegations set forth in the
21 Complaint.

22 JURISDICTION AND PARTIES

23 1. In response to Paragraph 1: The Respondents admit that at all relevant times
24 herein, Complainant, AFSCME, Local 4041 was and is an “employee organization”
25 pursuant to NRS 288.040 and/or a “labor organization” pursuant to NRS 288.048. The
26 Respondents further admit the Complainant’s current mailing address as 504 East Musser
27 Street, Suite #300, Carson City, NV 89701.

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1 9. In response to Paragraph 9: Admits that in October 2022, Complainant and
2 Respondents entered negotiations for a new CBA covering Units A, E, and F.

3 10. In response to Paragraph 10: Admits that as required by NRS 288.565,
4 then-Governor Steve Sisolak designated a representative and delegated his authority as
5 described in the complaint.

6 11. In response to Paragraph 11: Admits that on January 2, 2023, Joe Lombardo
7 was sworn in as Governor of the State of Nevada.

8 12. In response to Paragraph 12: Admits the facts as stated regarding Governor
9 Lombardo’s statutory duty under NRS 288.565 and that Ms. Bowsmith continues to serve
10 as the State’s Chief Negotiator. However, Respondent denies any implications or
11 insinuations of misconduct or impropriety.

12 13. In response to Paragraph 13: Admits that on February 9, 2023, a tentative
13 agreement was entered into for a CBA covering Units A, E, and F for the 2023–2025
14 biennium as stated in the complaint.

15 14. In response to Paragraph 14: Admits that Article 11.2 (“Annual Leave”) of the
16 CBA has the provisions regarding Annual Leave as stated in the complaint.

17 15. In response to Paragraph 15: Admits that Article 11.9 (“Personal Leave”) of
18 the CBA contains the stipulations regarding Personal Leave as detailed in the complaint.

19 16. In response to Paragraph 16: Admits that Articles 11.2 and 11.9 were
20 discussed and mutually agreed upon on February 9, 2023, subsequent to Governor
21 Lombardo’s inauguration.

22 17. In response to Paragraph 17: Admits that on April 3, 2023, the membership
23 of Complainant, AFSCME, Local 4041, ratified the CBA.

24 18. In response to Paragraph 18: Admits that on May 11, 2023, Complainant and
25 Respondents, represented by their respective designees, executed the ratified CBA.

26 19. In response to Paragraph 19: Admits that the Division of Human Resource
27 Management (“DHRM”), representing the Executive Department of the State of Nevada,

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1 conveyed the finalized agreement to the BOE for endorsement following the procedure
2 mandated by the EMRA and as per NRS 288.555.

3 20. In response to Paragraph 20: Admits the membership composition of the BOE
4 as outlined in the complaint, including the roles held by Governor Lombardo, Secretary of
5 State Francisco V. Aguilar, and Attorney General Aaron Ford.

6 21. In response to Paragraph 21: Admits that in its request for the BOE's
7 endorsement of the CBA, the Executive Department conveyed its fiscal impact estimation
8 of the CBA as described in the complaint.

9 22. In response to Paragraph 22: Admits that the Executive Department reported
10 no fiscal impact related to Article 11.2 and Article 11.9 in its Fiscal Impact Statement due
11 to the stipulation that these provisions did not provide "incremental pay" to employees.

12 23. In response to Paragraph 23: Admits that on May 17, 2023, the BOE convened
13 a meeting, one of the agenda items of which was to deliberate on new, extended, or amended
14 collective bargaining agreements, encompassing the CBA.

15 24. In response to Paragraph 24: The Respondents admit that during the BOE
16 meeting, the Clerk of the Board did indeed remind the BOE about the stipulations of
17 "Senate Bill 135 of the 2019 Legislative Session," which mandates the state to negotiate
18 concerning wages, hours, and other employment terms and conditions with labor
19 organizations representing state employees. The Respondents further acknowledge that
20 the BOE was reminded of its duty to "consider the fiscal impacts of these agreements" as
21 specified under NRS 288.555.

22 25. In response to Paragraph 25: Admits that the Clerk of the Board reported an
23 estimated fiscal impact related to the Agreement that was above the proposed executive
24 budget for the stipulated biennium period.

25 26. In response to Paragraph 26: Admits that post the fiscal impact report
26 concerning the CBA, Secretary of State Aguilar moved to endorse the CBA and, after no
27 questions or discussions, the Chairman of the BOE, Governor Lombardo, called for a vote.

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1 practices as alleged. They further deny any implications or inferences not expressly stated
2 in the paragraph.

3 36. Respondents deny the Complainant's assertions and characterizations
4 regarding Governor Lombardo's actions and rationale for voting. They further deny any
5 implications or inferences not expressly stated in the paragraph.

6 37. The Respondents deny the contention that the Governor's objection to the
7 approval of the Parties' CBA was solely based on ambiguous "operating concerns." The
8 Respondents further deny that the Governor's objections were outside the purview of the
9 BOE's mandate under NRS 288.555(3) to "consider the fiscal impact of the agreement." The
10 Respondents dispute the assertion that the Governor was under a strict obligation to vote
11 in affirmation of the CBA merely based on its ratification and execution by his designee.
12 Lastly, the Respondents deny the claim that the Governor's vote contravened the Executive
13 Department's statutory obligation to bargain in good faith as outlined by the EMRA, and
14 further reject any assertion that such action is contrary to NRS 288.555(3) or the EMRA's
15 collective bargaining process.

16 **AFFIRMATIVE DEFENSES**

17 Respondents also assert the following Affirmative Defenses:

18 1. Respondent alleges that the Prohibited Practice Complaint fails to state a
19 claim upon which relief can be granted.

20 2. Respondent alleges that the Complainant lacks standing to bring the claims
21 asserted in the Prohibited Practice Complaint.

22 3. Respondent asserts that any actions or decisions made were based on
23 legitimate and non-discriminatory reasons.

24 4. Respondent maintains that its actions were taken in good faith and were
25 based on reasonable interpretations of applicable laws, regulations, and contractual
26 provisions.

27 5. Respondent maintains the EMRB lacks jurisdiction to hear this complaint
28 because BOE meetings are not part of bargaining process.

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

10 AFSCME, LOCAL 4041,

11 Complainant,

12 vs.

13 STATE OF NEVADA, EXECUTIVE
DEPARTMENT, JOE LOMBARDO, in
14 his official capacity as the Governor of the
State of Nevada,

15 Respondents.
16

Case No. 2023-026

**NOTICE OF DISMISSAL
OF ALL COUNTER CLAIMS
WITHOUT PREJUDICE**

17 PLEASE TAKE NOTICE THAT, whereas no opposing party has yet served either
18 an answer or a motion for summary judgement, Respondents, State of Nevada, Executive
19 Department, Joe Lombardo, in his official capacity as the Governor of the State of Nevada
20 (hereafter “the State”), by and through counsel, Nevada Attorney General Aaron D. Ford
21 and Deputy Attorney General Nathan C. Holland, hereby dismiss all counter claims filed
22 in the above-captioned matter without prejudice.

23 DATED this 3rd day of November, 2023.

24 AARON D. FORD
Attorney General

25 By: /s/ Nathan C. Holland
26 NATHAN C. HOLLAND
27 Deputy Attorney General
28

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Representatives for Complainant

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12 Before the State of Nevada
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14 Relations Board
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16 AFSCME, LOCAL 4041,
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19 STATE OF NEVADA, EXECUTIVE
DEPARTMENT, JOE LOMBARDO, in his
20 official capacity as the Governor of the
State of Nevada,
21 Respondents.
22

CASE NO.: 2023-026
**COMPLAINANT AFSCME, LOCAL
4041'S PREHEARING STATEMENT**

23 AFSCME LOCAL 4041'S PREHEARING STATEMENT

1 COMES NOW, Complainant AFSCME, Local 4041 (“AFSCME”), by and through its
2 representatives and counsel, pursuant to NAC 288.250, submits the following Prehearing
3 Statement in this action now pending before the Nevada Government Employee-Management
4 Relations Board (“Board” or “EMRB”). AFSCME reserves the right to supplement or amend this
5 Position Statement as new or additional information becomes available. The EMRB has
6 jurisdiction over this matter under NRS 288.280 because the facts alleged herein demonstrate a
7 prohibited practice by Respondents under NRS 288.620(1)(b).

8 **I. STATEMENT OF THE ISSUE**

9 Whether Respondents violated the EMRA and committed a prohibited practice under
10 NRS 288.620(1)(b) by bargaining in bad faith when Governor Lombardo, casting his vote on the
11 BOE under the CBA approval process required by the EMRA pursuant to NRS 288.555, voted
12 against approving the Parties’ CBA which was negotiated and executed by the Governor’s
13 designee on behalf of the Executive Department?

14 **II. PROCEDURAL HISTORY**

15 On September 5, 2023, Complainant filed the Complaint in this matter. On October 20,
16 2023, Respondents filed an Answer and Counterclaim to the Complaint. On November 3, 2021,
17 Respondents voluntarily dismissed their Counterclaim without prejudice and the Board issued a
18 Notice of Dismissal of the Counterclaim.

19 **III. MEMORANDUM OF LAW, POINTS OR AUTHORITIES**

20 **A. LEGAL AUTHORITY**

21 The cornerstone of the collective bargaining process under the EMRA is the mutual
22 obligation to bargain in good faith to fulfil the statutory requirement to execute agreements

1 evidencing the result of collective bargaining over terms and conditions of employment. Under
2 NRS 288.620(1)(b) “[i]t is a prohibited practice for the Executive Department or its designated
3 representative willfully to . . .[r]efuse to bargain collectively in good faith with an exclusive
4 representative as required in NRS 288.565.” The duty to bargain in good faith under the EMRA
5 applies universally, with one statutory exemption not at issue in this Complaint. *See* NRS
6 288.510 (Governor may include “any amount of money the Governor deems appropriate” in the
7 Governor’s “biennial proposed executive budget”).

8 **B. FACTS**

9 Complainant, AFSCME Local 4041, is the designated exclusive representative of Unit A:
10 Labor, maintenance, custodial, and institutional employees, including without limitation,
11 employees of penal and correctional institutions who are not responsible for security at those
12 institutions (“Unit A”); Unit E: Professional employees who provide health care, including
13 without limitation, physical therapists and other employees in medical and other professions
14 related to health (“Unit E”); and Unit F: Employees, other than professional employees, who
15 provide health care and personal care, including without limitation, employees who provide care
16 for children (“Unit F”).

17 In October 2022, Complainant and Respondents entered negotiations for a new collective
18 bargaining agreement covering Units A, E, and F. As required by NRS 288.565, then-Governor
19 Steve Sisolak designated a representative and delegated his authority to conduct negotiations and
20 enter into agreements concerning terms and conditions of employment on behalf of the
21 Executive Department to then-Deputy Administrator of the Department of Administration’s
22 Division of Human Resource Management (“DHRM”), Mandee Bowsmith.

1 On January 2, 2023, Joe Lombardo was sworn in as Governor of the State of Nevada. As
2 of that day, Governor Lombardo had a statutory duty under NRS 288.565 to designate a
3 representative to negotiate collective bargaining agreements on behalf of the Executive
4 Department. That duty can be executed at any time, and nothing in the EMRA bars an incoming
5 Governor from changing the current designee. Under Governor Lombardo, Ms. Bowsmith
6 continued to serve as the State’s Chief Negotiator for collective bargaining negotiations as the
7 current Administrator of DHRM (“Administrator Bowsmith”), and she continues to serve in that
8 role to date.

9 On February 9, 2023, more than a month after Governor Lombardo took office,
10 Complainant and Respondents entered into a tentative agreement (“TA”) for a CBA covering
11 Units A, E, and F for the 2023-2025 biennium (the “CBA”).

12 Of particular relevance to the instant Complaint are Articles 11.2 and 11.9. Article 11.2
13 (“Annual Leave”) of the CBA provides that “Employees will retain and carry forward any
14 eligible and unused Annual Leave accrued prior to the effective date of this Agreement. Carry
15 forward of eligible and unused accrued Annual Leave is subject to a maximum of four hundred
16 eighty (480) hours of banked Annual Leave.” Article 11.9 (“Personal Leave”) of the CBA
17 provides that “Full time employees shall be credited with the hours equal to their regularly
18 scheduled work shift for four (4) Personal Leave days each calendar year regardless of hire
19 date.”

20 Articles 11.2 and 11.9 were discussed on the last day of negotiations and agreed to on
21 February 9, 2023, more than a month after Governor Lombardo was sworn into office.

1 On April 3, 2023, the membership of Complainant, AFSCME Local 4041, ratified the
2 TA'd CBA. On May 11, 2023, Complainant, through its Chief Negotiator, Chris Fox, and
3 Respondents, through the Governor's statutorily-mandated designee, Administrator Bowsmith,
4 executed the ratified CBA.

5 DHRM, acting on behalf of the Executive Department of the State of Nevada, sent the
6 executed agreement to the BOE for approval under the process required by the EMRA pursuant
7 to NRS 288.555. The BOE's membership consists of Governor Lombardo, Secretary of State
8 Francisco V. Aguilar, and Attorney General Aaron Ford.

9 The Executive Department itself requested that the BOE approve the CBA. In its request
10 for approval of the CBA to the BOE, the Executive Department reported that it estimated "the
11 total fiscal impact of [the] CBA [is] \$5,549,848 for the biennium." The Executive Department
12 did not find any fiscal impact of Article 11.2 and Article 11.9 on the budget as reported in its
13 Fiscal Impact Statement because these provisions provided "no incremental pay" to employees.

14 On May 17, 2023, the BOE held a meeting to, in part, approve new, extended, or
15 modified collective bargaining agreements, including the CBA between Complainant and
16 Respondents. At the BOE meeting, the Clerk of the Board reminded the BOE that "Senate Bill
17 135 of the 2019 Legislative Session requires the state to negotiate wages, hours, and other terms
18 and conditions of employment with labor organizations that represent state employees" and that
19 the BOE "shall consider the fiscal impacts of these agreements" under NRS 288.555. The Clerk
20 of the Board also reported that "the total fiscal impact for this agreement above the proposed
21 executive budget is estimated to be \$5,549,848 over the biennium."

1 After hearing the report on the fiscal impact of the CBA, Secretary of State Aguilar made
2 a motion to approve the CBA, and after no questions or discussion, the Governor, as the
3 Chairman of the BOE, called for a vote. Attorney General Ford voted in favor of approving the
4 CBA. Secretary of State Aguilar voted in favor of approving the CBA. Governor Lombardo
5 voted against approving the CBA.

6 In his message explaining his vote against the CBA at the BOE, the Governor stated that
7 he had “operational concerns for State Executive Departments if some of the language [of the
8 CBA] is implemented.” Specifically, the Governor stated “[t]he reasons for the vote against are
9 concerns specifically with article 11.9 [of the CBA] in that we are currently experiencing a 23%
10 vacancy factor associated with this particular association and I have concerns with the personal
11 leave change from 2 personal leave days per calendar year to 4 personal leave days per calendar
12 year as well as the agreement of increasing annual leave from 240 hours to 480 hours.” The
13 Governor did not cite any fiscal impact issues with Article 11.9 or any other provision of the
14 CBA.

15 Based on a majority of votes at the BOE, the CBA was approved and became effective on
16 July 1, 2023.

17 **C. ARGUMENT**

18 Respondents violated the text, legislative intent, and spirit of the EMRA and committed a
19 prohibited practice under NRS 288.620(1)(b) by bargaining in bad faith when Governor
20 Lombardo voted against approving the Parties’ CBA, which had already been negotiated and
21 executed by the Governor’s designee on behalf of the Executive Department.

1 conduct of the parties as a whole.” *Clark County Edu. Ass’n v. Clark County School Dist.*, Case
2 No. AI-045472, Item No. 869, n.11 (2020) (citing *City of Reno v. Int’l Ass’n of Firefighters,*
3 *Local 731*, Item No. 253-A (1991)). To show bad faith, a complainant must present “substantial
4 evidence of fraud, deceitful action or dishonest conduct.”” *Juvenile Justice Supr. Ass’n v. County*
5 *of Clark*, Case No. 2017-20, Item No. 834 at 7 (2018).

6 It is blatant and willful bad-faith bargaining for the Governor to negotiate and execute a
7 CBA, during his own term as Governor through his own statutorily-mandated designee, and then
8 to vote against approval of that CBA before the BOE at a later date—especially where, as here,
9 the justifications cited by the Governor for that vote against the CBA are both a willful
10 mischaracterization of the CBA itself and, even if they were not misrepresentations, reference
11 operational concerns irrelevant to the BOE’s role as financial steward that would have been
12 readily evident at the time the CBA was negotiated and ratified by the Governor.

13 Specifically, Articles 11.2 and 11.9 were discussed on the last day of negotiations
14 between the Parties and agreed to on February 9, 2023, more than a month after Governor
15 Lombardo was sworn into office. As such, any “operational” concerns with these articles were
16 laid to rest during negotiations by Governor Lombardo’s designee, Administrator Bowsmith.
17 These negotiations resulted in an agreement on the CBA that was ratified by both parties. The
18 Governor’s vote against the CBA before the BOE was a willful act of bad faith bargaining that
19 standing alone constitutes substantial evidence the Governor had no sincere desire to reach an
20 agreement concerning Article 11.2 and 11.9 at the bargaining table. But there is further
21 substantial evidence of bad faith beyond just the vote against the CBA: the Governor’s attempted
22 justification for his unilateral attempt to undo the entirety of the parties’ negotiations by voting

1 against the contract at a later date and referencing operational concerns, irrelevant to the BOE’s
2 role, that were readily evident at the time the CBA was negotiated and ratified by his designee.

3 That the Governor’s conduct here constituted bad faith bargaining is further confirmed by
4 the fact that NRS 288.032 requires the parties execute a contract evidencing an agreement
5 between the parties if either party requests it. The National Labor Relations Act (“NLRA”) has
6 an identical statutory requirement.¹ See 29 U.S.C. § 158(d).

7 In interpreting Section 158(d) of the NLRA, the National Labor Relations Board
8 (“NLRB”) has long held that the refusal to sign or honor a CBA evidencing a written agreement
9 of the parties is per se bad faith bargaining under the NLRA. See, e.g., *NLRB v. Auciello Iron*
10 *Works*, 980 F.2d 804 (1st Cir. 1992) (citing *NLRB v. Strong*, 393 U.S. 357, 359, 362 (1969)).
11 This black letter rule of labor law applies even if the collective bargaining agreement was
12 negotiated on behalf of the employer by a third-party agent of the employer, as was the case with
13 Governor Lombardo and his designee Administrator Bowsmith. For example, in *Strong Roofing*
14 *& Insulating Co.*, the employer refused to sign or honor a contract that was negotiated on its
15 behalf by a trade association to which it belonged. The union in that case filed several unfair
16 labor practice charges, and the NLRB held that the employer’s conduct of refusing to sign and
17 honor the agreement with the Union negotiated by a trade association on its behalf is bad faith

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21 ¹ This Board has long held that the EMRA “is generally modeled after the National Labor Relations Act (“NLRA”).
22 The Nevada Supreme Court has recognized that the intent of the EMRA is to apply the governing principles of the
23 NLRA to Nevada’s government employees. *City of Elko, Petitioner the Elko Police Officers Protective Association,*
Nevada Public Safety Officer Communications Workers of America, AFL-CIO, Local 9110, Respondent, 2018 WL
7049362, at *3 (citing *Truckee Meadows Fire Prot. Dist. v. Int’l Ass’n of Fire Fighters, Local 2487*, 849 P.2d 343,
348 (Nev. 1993)).

1 bargaining and an unfair labor practice within the meaning of Section 8(a)(5) and (1) of the
2 NLRA. 152 NLRB 9, 13 (1965), affd. *NLRB v. Strong*, 393 U.S. 357 (1969)).

3 Here, the Governor’s designee executed the CBA only for the Governor to refuse to
4 honor that agreement and disapprove the CBA before the BOE at a later date. In *NLRB v. Strong*,
5 the U.S. Supreme Court clarified that the act of refusing to sign or honor a collective bargaining
6 agreement may not amount to a breach of that contract, but it is nonetheless an unfair labor
7 practice. 393 U.S at 362. The Governor, as the head of the Executive Department, is obligated by
8 NRS 288.032 to execute and honor any agreement reached through the EMRA’s collective
9 bargaining process. Although the Governor did not breach the contract itself, Governor
10 Lombardo violated the EMRA and committed a prohibited practice by voting against the CBA,
11 and thus failing to honor the agreement reached by the parties under NRS 288.032, that was
12 negotiated and agreed to on behalf of the Executive Department by the Governor’s designee.

13 Further substantial evidence of Governor Lombardo’s bad faith is to be found in his
14 attempt to justify his vote against the CBA based on a willful mischaracterization of the
15 agreement negotiated and executed by his own designee. On February 9, 2023, the Executive
16 Department, through Administrator Bowsmith and the State’s negotiating team, agreed to
17 increase personal days from 2 to 4 under Article 11.2 of the CBA and to increase the amount of
18 accrued and unused annual leave that can be carried over from year to year from 240 hours to
19 480 hours in Article 11.9 of the CBA. Governor Lombardo’s articulated “operational” concerns
20 with Article 11.9 of the CBA evinced a willful misrepresentation of the provision—contrary to
21 the Governor’s assertion before the BOE, the CBA did not “increase[e] annual leave from 240
22

1 hours to 480 hours” or change the rate at which employees earn annual leave—Article 11.9
2 merely allows employees to carry over more accrued and unused annual leave from year to year.

3 Furthermore, the Governor’s objection to the approval of the Parties’ CBA concerned
4 only vague “operating concerns,” and therefore his objection was not within the scope of the
5 BOE’s obligation under NRS 288.555(3) to “consider fiscal impact of the agreement” and
6 instead his vote against the CBA substantially evidences, once again, a bad faith approach to the
7 underlying collective bargaining negotiations at issue here. Nor could the Governor’s vote
8 against the CBA have been based on any sincere fiscal concerns. The Executive Department, of
9 which the Governor is the head, itself reported to the BOE in its Fiscal Impact Statement that
10 there was no fiscal impact of Article 11.2 and Article 11.9 on the budget because these
11 provisions provided “no incremental pay” to employees.

12 **D. CONCLUSION**

13 AFSCME requests that the EMRB declare the Respondent, Governor Lombardo, violated
14 NRS 288.620(1)(b) and NRS 288.555(3) by voting against a CBA that was fully agreed to and
15 executed by the Executive Department, through his designee, and for doing so based on a
16 misrepresentation of that very CBA and (by his own account) for “operational” reasons outside
17 of the scope of his limited budgetary responsibilities as a member of the BOE. The judgment
18 requested to be rendered in favor of AFSCME is as follows:

- 19 1. Respondent engaged in a prohibited labor practice under the EMRA.
- 20 2. Respondent’s actions violated NRS 688.620(1)(b) and NRS 288.555(3).
- 21 3. AFSCME recovers its attorneys’ fees and costs incurred herein.

22 **IV. LIST OF WITNESSES**

23 AFSCME LOCAL 4041’S PREHEARING STATEMENT

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Representatives for AFSCME, Local 4041

1 I CERTIFY THAT on December 7, 2023, I filed the above and foregoing
2 COMPLAINANT'S PREHEARING STATEMENT by emailing the document to
3 emrb@business.nv.gov.

4 I FURTHER CERTIFY THAT on the same date, I mailed the above and foregoing
5 COMPLAINANT'S PREHEARING STATEMENT by mailing the document via United States
6 Certified Mail, Return Receipt Requested, and email to the following:

7
8 State of Nevada
9 Office of the Attorney General
10 Attn: Greg Ott, Chief Deputy Attorney General
11 Nathan Holland, Deputy Attorney General
12 100 North Carson Street
13 Carson City, NV 89701
14 gott@ag.nv.gov
15 nholland@ag.nv.gov

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/s/ Fernando R. Colón

1 AARON D. FORD
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6 *Attorneys for Respondents*

FILED
December 13, 2023
State of Nevada
E.M.R.B.
3:16 p.m.

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

10 AFSCME, LOCAL 4041,
11 Complainant,
12 vs.
13 STATE OF NEVADA, EXECUTIVE
DEPARTMENT, JOE LOMBARDO, in
14 his official capacity as the Governor of the
State of Nevada,
15 Respondents.
16

Case No. 2023-026

**STATE OF NEVADA'S
PRE-HEARING STATEMENT**

17 Respondents, Executive Department, Joe Lombardo, in his official capacity as the
18 Governor of the State of Nevada (hereafter “the State”), by and through counsel, Nevada
19 Attorney General Aaron D. Ford and Deputy Attorney General Nathan C. Holland, hereby
20 submit their Pre-hearing Statement under NAC 288.250 to clarify the issues for
21 determination by the Employee-Management Relations Board (“EMRB” or “the Board”)
22 regarding AFSCME Local 4041’s Prohibited Practice Complaint (“the Complaint”) filed by
23 Complainant, AFSCME, Local 4041 (“Complainant” or “the Union”).

24 **I. STATEMENT OF ISSUE FOR DETERMINATION**

25 Whether Governor Lombardo committed a Prohibited Practice under
26 NRS 288.620(1)(b) by voting against AFSCME’s Collective Bargaining Agreement at the
27 Board of Examiners (“BOE”). In other words, AFSCME is asking the EMRB to find that

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1 the rights enshrined by the Nevada Constitution regarding the Governor’s role within the
2 BOE are inferior to the obligations of chapter 288 of the Nevada Revised Statutes.

3 **II. MEMORANDUM OF LAW**

4 **A. Board of Examiners Meetings are Not a Part of the Bargaining**
5 **Process**

6 NRS 288.620(1)(b) imposes a duty to bargain in good faith during “the entire
7 bargaining process.” The obligation to bargain in good faith does not exist outside of the
8 bargaining process. This excludes pre- or post-negotiation activities. The bargaining
9 process, involving the state government and AFSCME, is well-defined, covering
10 negotiations, concessions, mediations, and arbitrations.¹ The bargaining process begins
11 either 60 days after one party notifies the other of a desire to negotiate or on November 1
12 of an even numbered year, whichever is earlier.² The end of bargaining is less clearly
13 defined in statute, but cannot reasonably extend beyond the achievement of a Proposed
14 Agreement, be it through negotiation, mediation, or arbitration. There is no statute,
15 administrative code, or case law that extends the bargaining process, or the duty to
16 negotiate in good faith, to the Governor’s obligations at the BOE under Article 5,
17 Section 21 of the Nevada Constitution.

18 AFSCME posits the unsupported argument that the Governor’s BOE vote should be
19 part of this process. However, this interpretation extends far beyond the statute’s scope
20 and ascribes a personal obligation to the Governor that is contrary to state law. The
21 Governor’s obligation is to designate a representative to conduct negotiations, not to
22 personally negotiate them.³ When the law compels the Governor to take a specific
23 discretionary act, it is specific.⁴ The Governor’s role in the BOE is established by
24 NRS 353.010 through NRS 353.055. NRS 353.040 states that “The State Board of
25 Examiners shall have authority to establish policies and procedures for its government not

26 ¹ NRS 288.620(1)(b).

27 ² NRS 288.565(2).

28 ³ NRS 288.565(1).

⁴ See generally NRS 288.560(2)(a) requiring the governor to request the drafting of a legislative measure pursuant to NRS 218D.175 to effectuate a provision of a collective bargaining agreement.

1 inconsistent with law.” Nowhere does it state that the establishment of these policies and
2 procedures must adhere to negotiated agreements. AFSCME’s position is meritless, as the
3 duty to bargain in good faith only pertains to negotiations and cannot be extended to
4 Governor’s BOE vote.

5 **B. AFSCME’s Argument Violates the Nevada Constitution**

6 AFSCME’s proposed interpretation conflicts with the Nevada Constitution
7 (Article V, Section 21), outlining the BOE’s composition and powers. The Nevada
8 Constitution creates the BOE and explicitly designates the Governor, Attorney General,
9 and Secretary of State as its members, empowering them with specific authority to
10 “examine all claims against the State” and perform prescribed duties, stating, “no claim
11 against the State . . . shall be passed upon by the Legislature without having been
12 considered and acted upon by said ‘Board of Examiners.’” Chapter 288 of the Nevada
13 Revised Statutes cannot modify or restrict the Governor’s constitutional obligations under
14 Article 5, Section 21. It is well understood that “[t]he constitution may not be construed
15 according to a statute enacted pursuant thereto; rather, statutes must be construed
16 consistent with the constitution.”⁵ Thus, chapter 288’s good faith obligations must be read
17 not to conflict with the Governor’s constitutional obligation to participate in the BOE.

18 In essence, AFSCME’s Petition urges the EMRB to chastise the Governor for
19 upholding his disregard statutory and constitutional duties. The Nevada Constitution
20 unequivocally establishes that the bargaining obligation cannot extend to BOE meetings
21 without undermining the core constitutional duties of the Governor.

22 **C. AFSCME’s Request Runs Contrary to Their Own Adopted and**
23 **Ratified Collective Bargaining Agreement**

24 The Collective Bargaining Agreement (“CBA”) that AFSCME complains of here was
25 ratified by the BOE at its May 17, 2023, meeting.⁶ Article 33.6 of the approved and ratified
26 ///

27 ⁵ *Strickland v. Waymire*, 126 Nev. 230, 241 (2010).

28 ⁶ The entire basis of this petition is to complain about a vote that had no legal impact, because the CBA was already approved by a majority of the BOE members by the time the Governor voted.

1 CBA between the State of Nevada and AFSCME explicitly bars provisions of the CBA from
2 interfering with the Governor’s rights under the law.⁷

3 AFSCME’s own CBA, Article 33.6 aims to prevent CBA constraints from encroaching
4 on executive powers which have been constitutionally reserved. Article 33.6 states; “[t]he
5 provisions of this Agreement shall not interfere with or supersede in any way the
6 Governor’s rights under law.” AFSCME’s position contravenes Article 33.6, jeopardizing
7 the rightful priority of responsibilities assigned to the Executive Branch by the Nevada
8 Constitution.

9 **D. AFSCME’s Request Violates the Political Question Doctrine**

10 Under the political question doctrine, controversies are precluded from judicial
11 review when they “revolve around policy choices and value determinations constitutionally
12 committed for resolution to the legislative and executive branches.” *N. Lake Tahoe Fire*
13 *Prot. Dist. v. Washoe Cty. Comm’rs*, 129 Nev. 682, 687 (2013) (quoting 16A Am. Jur. 2d
14 *Constitutional Law* § 268 (2013)); *Shea v. State Dep’t of Educ.*, 138 Nev. Adv. Op. 36,
15 510 P.3d 148 (2022).

16 Here the obligation to participate in and consider items before the BOE is clearly
17 committed to the Governor, and the EMRB should not and cannot question or opine on the
18 exercise of that power.

19 **E. AFSCME’s Request Violates the Separation of Powers**

20 The relief sought by AFSCME directly violates constitutional separation of powers
21 between Nevada’s branches of government. Article 3, Section 1 of the Nevada Constitution
22 codifies this core tenet, stating, “The powers of the Government of the State of Nevada shall
23 be divided into three separate departments . . . and no persons charged with the exercise
24 of powers properly belonging to one of these departments shall exercise any functions,
25 appertaining to either of the others . . .”

26 The BOE’s analysis of fiscal claims before presentation to the Legislature constitutes
27 inherent executive power over budget recommendations and appropriations advice.
28 Compelling the Governor’s vote on the Board to account for AFSCME’s interests in

⁷ See § 33.6, p. 94 ([AFSCME 23-25 fin.pdf \(nv.gov\)](#)).

1 collective bargaining injects legislative considerations into this exclusive executive
2 function.

3 Furthermore, it infringes upon the Governor’s preserved rights under Article 5,
4 Section 14 to exercise sole discretion over legislative appropriations through veto authority.
5 Effectively, AFSCME asks the courts to prompt legislative action through an order
6 directing how the executive branch must operate the BOE. This plainly exceeds the
7 EMRB’s authority and trespasses into legislative budget powers and executive veto
8 prerogatives.

9 In conclusion, the demanded relief compelling the executive branch’s internal vote
10 within the BOE clearly “exercise[s] functions, appertaining to” the separate legislative
11 appropriations power in direct violation of Nevada’s Constitution. Courts and the EMRB
12 cannot mandate budget outcomes or veto choices by interfering with executive fiscal
13 analysis. The separation of powers must be upheld by rejecting demands to improperly
14 intermingle essential authorities expressly divided across branches.

15 **F. The EMRB Cannot Order the Governor to Vote a Particular Way at**
16 **the BOE**

17 Additionally, AFSCME is asking the EMRB to “Find that Respondent, Governor
18 Lombardo, violated NRS 288.555(3) by voting against a CBA, that was fully agreed to and
19 executed by the Executive Department, for reasons outside of the scope of his limited
20 budgetary responsibilities as a member of the BOE.”⁸ NRS 288.555(3) states, “At the
21 hearing, the State Board of Examiners shall consider the fiscal impact of the agreement.”
22 This leaves the BOE free to consider other factors beyond the fiscal impact of the
23 agreement. However, the EMRB lacks any jurisdiction to consider the reasons for or
24 substance of votes of the members of the BOE at their meetings. This argument is meritless
25 and without precedent.

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28 ⁸ Complaint, p. 11, ¶ 3.

1 **III. STATEMENT OF RELATED PROCEEDINGS**

2 **A. Case No. 23 EW 00016 1D**

3 The issue in this case was the Governor’s authority to veto Senate Bill 440 which
4 would have appropriated monies to fund an AFSCME arbitration award. Oral arguments
5 for this case were held before the First Judicial District Court on November 30, 2023. In
6 this case, the Court denied AFSCME’s writ petition and request for confirmation of an
7 arbitration award. The court found that it lacked the authority to order the payment of the
8 arbitration award.

9 **IV. STATEMENT OF ANTICIPATED WITNESSES AND TESTIMONY**

10 Mande Bowsmith, Administrator, State of Nevada, Department of Human
11 Resources Management, Labor Relations Unit. Ms. Bowsmith acted as Chief Negotiator
12 for Respondents. She is expected to testify regarding the relationship between the State
13 and the Union and the requirements and authority of the Governor to act in the BOE.

14 **V. ESTIMATE OF TIME NEEDED TO RESENT POSITION AT HEARING**

15 The State anticipates it will need approximately one hour to present its position at
16 the hearing on this matter.

17 DATED this 13th day of December, 2023.

18 AARON D. FORD
19 Attorney General

20 By: /s/ Nathan C. Holland
21 NATHAN C. HOLLAND
22 Deputy Attorney General
23
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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the State of Nevada, Office of the Attorney General,
3 and that on this 13th day of December, 2023, I served a true and correct copy of the
4 foregoing STATE OF NEVADA’S PRE-HEARING STATEMENT, by electronic service to:

5 Fernando R. Colon, Esq.
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7 Associate General Counsel
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18 */s/ Dorene A. Wright*
19 _____
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