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STATE OF NEVADA
EMPLOYEE-MANAGEMENT RELATIONS BOARD

10 NYE COUNTY MANAGEMENT
11 EMPLOYEE ASSOCIATION,

Case No.: 2024-002

12 Complainant,

13 vs.

14 NYE COUNTY,

15 Respondent.

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RESPONDENT’S MOTION TO CONSOLIDATE

Respondent Nye County (“the County”), by and through its counsel of record, Fisher & Phillips LLP, hereby moves to consolidate the above-captioned case with Case No.: 2023-033, pursuant to NAC 288.275.

BACKGROUND

The County and Complainant Nye County Management Employee Association (“NCMEA”) began negotiating for a successor collective bargaining agreement (“CBA”) in 2022. NCMEA declared impasse in November 2022 and, pursuant to NRS 288.200, a fact finding hearing before Fact Finder, David Gaba, was scheduled for September 5, 2023. The County attempted to continue the fact finding hearing based on concerns regarding the appropriateness of the composition of the bargaining unit. However, Gaba denied the County’s attempts, and the hearing occurred as scheduled.

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1 On November 27, 2023, the County filed a Petition for Declaratory Order
2 Clarifying the Bargaining Unit (“Petition”) with the Government Employee-
3 Management Relations Board (“the Board”) in Case No.: 2023-033. On December 10,
4 2023, Gaba issued his written findings and recommendations from the September 5
5 hearing. On January 9, 2024, NCMEA filed an Answer to the County’s Petition in
6 which it argued that the County had “forever waived” its right to challenge the
7 appropriateness of the unit and, consequently, was frustrating the statutory impasse
8 procedures under NRS 288.200. *See* NCMEA’s Answer in Case 2023-033, p. 3 (“Given
9 that such claims were waived almost a decade ago, the Board may be wondering why
10 this matter is again coming before the Board. The answer lies in connection with Nye
11 County’s attempts to frustrate the statutory impasse procedures under NRS 288.200.”).

12 On January 17, 2024, the County’s Board of County Commissioners (“BOCC”)
13 held a public meeting but declined to take action on Gaba’s December 10 findings, as it
14 was privileged by law to do. The following day, NCMEA attempted to submit the
15 matter to final and binding interest arbitration pursuant to NRS 288.600(6). On January
16 23, 2024, the County filed its Reply to NCMEA’s Answer in Case No.: 2023-033, and
17 on January 30, 2024, the County filed a Request for Hearing on the Petition. Because
18 Case No.: 2023-033 is still pending before the Board, the County’s position is that
19 binding fact finding is not appropriate or necessary.

20 On February 2, 2024, NCMEA filed the instant Complaint claiming that the
21 County failed to bargain in good faith in violation of NRS 288.270(1)(a) and (e) by
22 attempting to delay the nonbinding fact finding process and by refusing to move
23 forward with binding fact finding under NRS 288.200. On February 9, 2024, NCMEA
24 filed a Motion to Require Nye County to Strike Names to Select an Interest Arbitrator
25 Pursuant to NRS 288.200(6), or Alternatively to Authorize NCMEA to Select the
26 Interest Arbitrator from the Strike List Provided from FMCS.

27 While the relative merits of the County’s and NCMEA’s respective positions on
28 the issue of whether binding fact finding before another arbitrator is appropriate will, of

1 course, need to be weighed and evaluated by the Board, there can be no genuine dispute
2 that the instant case should not be consolidated with Case No.: 2023-033 to promote
3 efficiency and consistency and to preserve the Board’s resources.¹

4 **GROUNDS FOR MOTION**

5 NAC 288.275(1) provides that “[t]he Board may consolidate two or more cases
6 in any one hearing when it appears that the issues are substantially the same and that the
7 rights of the parties will not be prejudiced by a consolidated hearing.” Both of these
8 criteria are met here.

9 First, a critical issue in both cases is whether certain Directors are supervisory
10 employees who can be included in the same bargaining unit as the employees they
11 oversee. It is a critical issue in Case No.: 2023-033 because the County is squarely
12 asking the Board to resolve that issue. *See* NRS 288.170(3) (“**Any** dispute between the
13 parties as to whether an employee is a supervisor must be submitted to the Board.”)
14 (emphasis added). And it is a critical issue in the instant case because, if the unit is *not*
15 appropriate given that it includes supervisors, then the County’s actions in allegedly
16 delaying/avoiding the fact finding process may be privileged. *See* NRS 288.150(1)
17 (“[E]very local government employer shall negotiate in good faith . . . with the
18 designated representatives of the recognized employee organization . . . for each
19 **appropriate** bargaining unit among its employees.”).

20 Second, the parties’ rights will not be prejudiced by consolidating these cases
21 for hearing. The Board cannot determine whether the County has violated NRS
22 288.270(1)(a) and (e), as NCMEA alleges, without first determining whether the unit is
23 appropriate for bargaining. *See Nye County v. Nye County Association of Sheriff’s*
24 *Supervisors*, EMRB Case No. 2022-009, Item No. 887 (2023) (finding lawful Nye
25 County’s refusal to bargain given presence of statutory supervisor on union’s
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28 ¹ NCMEA’s Motion to Require the County to Strike an Interest Arbitrator is misplaced. NCMEA cannot
move for summary relief without a hearing. *See* NRS 288.625(2)(b) (“If the Board determines that the
complaint may have a basis in law or fact, the Board shall order a hearing to be conducted . . .”).

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negotiating team). Consequently, the unit appropriate issue will have to be litigated in both cases if they are not consolidated.

Accordingly, the County requests that the Board consolidate Case No.: 2023-033 with the above-captioned case and receive evidence and testimony to clarify the scope of the bargaining unit at issue.

DATED this 28th day of February, 2024.

FISHER & PHILLIPS LLP

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Attorneys for Respondent, Nye County

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 28th day of February, 2024, I filed and served by
3 electronic means the foregoing **RESPONDENT’S MOTION TO CONSOLIDATE**, as
4 follows:

5 Employee-Management Relations Board
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10 Daniel Marks, Esq.
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18 *Attorneys for Complainant,*
19 *Nye County Management Employees Association*

20 By: /s/ Susan A. Owens
21 An employee of Fisher & Phillips LL

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FILED
March 7, 2024
State of Nevada
E.M.R.B.
3:29 p.m.

8 STATE OF NEVADA
9 GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

10 NYE COUNTY MANAGEMENT EMPLOYEE
11 ASSOCIATION

Case No. 2024-002

12 Complainant,
13 v.

**OPPOSITION TO MOTION TO
CONSOLIDATE**

14 NYE COUNTY

Respondent.

16 COMES NOW Complainant Nye County Management Employee Association (“NCMEA”), by
17 and through undersigned counsel, Adam Levine, Esq. of the Law Office of Daniel Marks and hereby
18 opposes Nye County’s Motion to Consolidate.

19 Nye County cites to NAC 288.275(1) providing that the Board may consolidate two or more
20 cases in any one hearing “when it appears that the issues are substantially the same and that the rights
21 of the parties will not be prejudiced by a consolidated hearing”. Contrary to the assertions made by
22 Nye County in its’ Motion, neither of the criteria are met.

23 What should be the *sole issue* in Case No. 2023-033 is the Settlement Agreement entered into
24 by Nye County and NCMEA in 2014, which settled the dispute relating to the composition of the

1 bargaining unit once and for all. This issue has nothing to do with the recent conduct of Nye County
2 where the County designated a management bargaining team, and bargained to impasse. After impasse
3 was declared, the parties selected a fact finder (David Gaba) *who was suggested by Nye County*. Then,
4 at the eleventh and half hour, when Mr. Ricciardi's firm became involved (and identified a lucrative
5 billing opportunity in connection with repudiating a decade old agreement), Nye County did an
6 "about-face" and decided to attempt to back out of the mutually agreed upon fact finding proceedings.
7 Nye County could have gone forward with binding interest arbitration for a new contract, and if it
8 somehow in the future persuaded the Board to ignore the Settlement Agreement between the parties,
9 carve out any affected employees.

10 Second, the NCMEA will be prejudiced by consolidation of the two cases. This is because the
11 2014 Settlement Agreement was negotiated by undersigned NCMEA General Counsel Adam Levine
12 who will be a necessary (likely the primary) witness in connection with Case No. 2023-033. If the
13 cases are consolidated, undersigned counsel will not be able to represent the NCMEA in Case No.
14 2024-002. This reason alone is grounds to deny the Motion for consolidation.

15 DATED the 7th day of March 2024.

16 LAW OFFICE OF DANIEL MARKS

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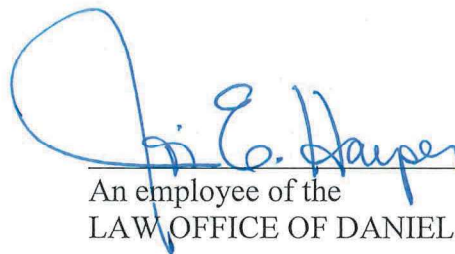
1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS and that on
3 the 7th day of March 2024, I filed by electronic means the foregoing OPPOSITION TO MOTION
4 TO CONSOLIDATE, as follows:

5 Employee-Management Relations Board
6 3300 W. Sahara Ave., Suite 260
7 Las Vegas, Nevada 89102
8 emrb@business.nv.gov

9 I also did deposit in the United States Post Office, at Las Vegas, Nevada, in a sealed envelope
10 with first class postage fully prepaid thereon, a true and correct copy of the above and foregoing, to the
11 address(es) as follows:

12 **FISHER & PHILLIPS LLP**
13 **MARK J. RICCIARDI, ESQ.**
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FILED
March 18, 2024
State of Nevada
E.M.R.B.
3:59 p.m.

13 **STATE OF NEVADA**
14 **EMPLOYEE-MANAGEMENT RELATIONS BOARD**

15 NYE COUNTY MANAGEMENT
16 EMPLOYEE ASSOCIATION,

Case No.: 2024-002

Complainant,

vs.

17 NYE COUNTY,

Respondent.

18 **RESPONDENT’S REPLY TO COMPLAINANT’S OPPOSITION TO MOTION**
19 **TO CONSOLIDATE**

20 Respondent Nye County (“the County”), by and through its counsel of record,
21 Fisher & Phillips LLP, hereby submits its Reply to Complainant Nye County
22 Management Employee Association’s (“NCMEA”) Opposition to the County’s Motion
23 to Consolidate (the “Opposition”).

24 **POINTS AND AUTHORITIES IN REPLY**

25 This matter and Case No. 2023-033 invoke substantially the same legal and
26 factual issues and the Opposition contains no valid argument to the contrary. The
27 completely parallel legal and factual issues justify consolidation of the two cases under
28 NAC § 288.275. The Opposition is based on two flawed arguments. First, NCMEA
misstates the nature of the 2014 settlement agreement (the “2014 Settlement Agreement”)

1 entered into by the County and NCMEA. It then manufactures a meaningless distinction
2 between the key, common issues in this matter and those in the County’s Petition to
3 Clarify NCMEA’s Bargaining Unit (the “Petition”) in Case No. 2023-033. Second,
4 NCMEA fails to show that it will be prejudiced by consolidation. It mischaracterizes a
5 mundane inconvenience, (that the NCMEA and its counsel knew could arise *as far back*
6 *as 2014*), as prejudice.

7 **1. The Central, Common Issue In This Matter And The County’s**
8 **Petition Is The Proper Composition Of NCMEA’s Bargaining Unit**

9 NCMEA argues that the sole issue in the County’s Petition “should be” the 2014
10 Settlement Agreement. It claims that the County forever waived its ability to challenge
11 the composition of any future bargaining unit by signing this agreement. NCMEA
12 suggests the 2014 Settlement Agreement “has nothing to do” with the County’s decision
13 to defer fact finding proceedings until after the proper composition of the bargaining unit
14 is resolved. But this argument misapprehends the actual, common legal issue presented
15 in both this matter and the County’s Petition, along with the 2014 Settlement Agreement’s
16 common relevance to both.

17 NCMEA ignores or overlooks that a central issue in both this matter and the
18 County’s Petition is the proper composition of NCMEA’s bargaining unit. The 2014
19 Settlement Agreement is not an “issue.” It is a document. It is evidence. Indeed, it is
20 relevant evidence to NCMEA’s defense that the County waived its right to challenge the
21 composition of the bargaining unit. The (improper) composition of NCMEA’s bargaining
22 unit is the basis for the County’s Petition. It is also the County’s central defense to
23 NCMEA’s claims in this matter. The County’s decision to defer fact finding proceedings
24 is certainly justified if NCMEA’s bargaining unit is improper.¹ From this perspective,
25 the 2014 Settlement Agreement and the composition of NCMEA’s bargaining unit are
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28 ¹ See NRS 288.150(1) (“[E]very local government employer shall negotiate in good faith . . . with the designated representatives of the recognized employee organization . . . for each appropriate bargaining unit among its employees.”).

1 directly related to the County’s conduct that is in dispute in this case. It is relevant to
2 both matters and that is why consolidation is appropriate.

3 The Board’s need to assess the parties’ competing arguments regarding the legal
4 consequences of the 2014 Settlement Agreement reinforces the need to consolidate these
5 matters. Consolidation will ensure a consistent interpretation and application of the 2014
6 Settlement Agreement and promote the efficient resolution of the dispute between the
7 County and NCMEA.

8 **2. NCMEA Will Not Be Prejudiced By Consolidation**

9 NCMEA argues that it will be prejudiced if these matters are consolidated because
10 its current counsel, Adam Levine, Esq., will be a necessary, (and likely the primary)
11 witness regarding the negotiation and drafting of the 2014 Settlement Agreement. The
12 mere fact NCMEA may have to retain different counsel does not per se amount to
13 actionable prejudice. NCMEA certainly cites no authority to support such a conclusion.
14 It is clear that inconvenience is not analogous to prejudice.

15 In fact, any “inconvenience” has already been anticipated and presumably planned
16 for by the NCMEA. Mr. Levine was hired by the NCMEA for the initial defense of Case
17 2023-033 and, as it knows it must, the NCMEA is obviously planning to retain new
18 counsel for the hearing in that case. *See* Opposition at page 2, lines 10-12. In light of
19 the parallel factual and legal issues, that same new counsel could easily handle the hearing
20 for the consolidated cases. If the Board grants the consolidation motion, the existing June
21 11, 2024 hearing date would afford the NCMEA and its new counsel sufficient time to
22 prepare. And of course if more time is needed for preparation, the NCMEA and its new
23 counsel are free to request a continuance from the Board. NCMEA has not shown that it
24 will be prejudiced by consolidation.

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CONCLUSION

Based on the foregoing facts and analysis, the County requests that the Board consolidate Case No. 2023-033 with the above-captioned case and receive evidence and testimony to clarify the scope of NCMEA's bargaining unit.

DATED this 18th day of March, 2024.

FISHER & PHILLIPS LLP

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of March, 2024, I filed and served by electronic means the foregoing **RESPONDENT’S REPLY TO COMPLAINANT’S OPPOSITION TO MOTION TO CONSOLIDATE** as follows:

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