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FILED
November 21, 2023
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STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

8 CLARK COUNTY EDUCATION ASSOCIATION,

9 Complainant,

10 vs.

11 CLARK COUNTY SCHOOL DISTRICT,

12 Respondent, and

13 EDUCATION SUPPORT EMPLOYEES
14 ASSOCIATION

15 Intervenor.

Case No.: 2023-009

MOTION FOR SANCTIONS

16
17 **COMES NOW Complainant, Clark County Education Association (“CCEA”),** by and through their counsel,
18 Steve Sorensen, and respectfully submits this Motion for Sanctions against Respondent the Clark County School
19 District.

20 **I. INTRODUCTION**

21 **This Motion for Sanctions is necessitated by CCSD’s explicit assertion that text messages between Dr. Jesus**
22 **Jara, Superintendent of CCSD (“Jara”) and members of the Teamsters 14 management, which were the subject of a**
23 **legally served subpoena, did not exist. In striking contradiction to this claim, CCEA has subsequently obtained one**
24 **of these allegedly non-existent text messages, clearly indicating CCSD’s failure to comply with the subpoena.**

25 This act of non-disclosure by CCSD not only undermined the integrity of the Government Employee-
26 **Management Relations Board’s (“EMRB”) proceedings, but also significantly disadvantaged CCEA’s position in**
27 **the matter. Given the absence of a formal discovery process in EMRB proceedings, compliance with subpoenas**
28 **holds heightened importance. Therefore, CCEA respectfully requests that the EMRB impose appropriate sanctions,**

1 specifically an adverse inference or a rebuttable presumption against CCSD for this deliberate and misleading non-
2 compliance.

3 As the hearing has already concluded, an adverse inference or a rebuttable presumption **finding that Jara’s text**
4 messages would have shown direct bargaining between CCSD and Teamsters 14 over conditions of employment for
5 Unit 2 employees in a separate agreement **is the proper remedy to address the inequity introduced by CCSD’s**
6 actions and to underscores the essential role of truthfulness and full disclosure in the unique procedural context of
7 the EMRB.

8 II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

9 On September 28, 2023, at the request of CCEA, the EMRB issued a subpoena *duces tecum* to Jara ordering
10 him to appear at the October 17, 2023 hearing and to produce the following documents to CCEA by October 10,
11 2023 (“September 28th Subpoena”):

12 “All written communications, including emails, texts, and memorandums to, from, or copied to
13 Teamsters Local 14 including Fred Horvath, Johnny Ortega, Mark Peter, Grant Davis, Eymhy
14 Gateley, Travis Nelson, Jay Randazzo, Jason Gateley, Carolina Ospina, Debra Ledon, Christi
15 Springer, and Val Thomason from Superintendent Jesus Jara and from January 1, 2023 to the
16 present.” (see Exhibit 1)

17 CCEA served CCSD with the September 28th Subpoena on October 2, 2023. On October 9, 2023 CCSD Senior
18 Assistant General Counsel Crystal Herrera (“Herrera”) emailed a letter to CCEA General Counsel Steve Sorensen
19 (“Sorensen”) stating that the records sought were within the custody and control of CCSD and not Jara himself. (see
20 Exhibit 2) When asked for clarification as to whether CCSD was claiming that texts on Jara’s personal phone were
21 not within Jara’s custody and control Herrera responded

22 “The request does not ask for personal text messages, but rather communications
23 from/to *Superintendent* Jesus Jara. To the extent you are reading the request to include personal
24 text messages from Dr. Jara from his personal cell phone, the request is still objectionable as
25 overbroad and not relevant to CCEA's **claims or proportional to the needs of the case.**” (see
26 Exhibit 3)

27 On October 10, 2023 the EMRB subsequently issued another subpoena *duces tecum* at the request of CCEA for
28 the same information from the September 28 Subpoena, but addressed to the Custodian of Records or Person Most

1 Knowledgeable **within CCSD (“October 10th Subpoena”)**. (see **Exhibit 4**) CCEA served CCSD with the October
2 10th Subpoena on October 10, 2023.

3 On October 16, 2023 CCSD sent documents which they claimed to be responsive to the October 10th
4 Subpoena. These documents consisted of a few emails, but no text messages. (see **Exhibit 5**)

5 At the EMRB hearing for the present matter held on October 17, 2023, CCEA made a motion to compel records
6 alleging that Jara would have text messages which were responsive to the subpoenas on his personal phone because
7 he often uses his personal phone for CCSD business. After some discussion between Sorensen, Herrera, and the
8 members of the EMRB panel hearing regarding the motion, **Board Member Michael Urban asked Herrera, “So you**
9 **are saying that anything that was on his (Jara’s) personal device that was relevant or related to Teamsters or this**
10 **particular proceeding have been produced?”**

11 **Herrera replied, “Correct.” (see Transcripts page 14)**

12 During testimony the following exchange occurred on questioning of Jara by CCEA **regarding Jara’s**
13 **communication with Fred Horvath, then Secretary Treasurer of Teamsters 14 (“Horvath”):**

14 **Sorensen:** *Do you ever communicate with Mr. Horvath via text?*

15 **Jara:** *Occasionally, yeah.*

16 **Sorensen:** *Does it concern any related to working conditions of -- of support staff members?*

17 **Jara:** *I think they're mostly personal.*

18 **Sorensen:** *But some?*

19 **Jara:** *I -- I -- to the best of my knowledge, I think this, you know, mostly personal or let's have a*
20 *conversation, but...(see Transcripts page 103)*

21 Before resting CCEA renewed its motion to compel. The EMRB ruled that the motion was denied on the
22 grounds that it was not relevant based on the complaint. (see Transcripts page 169)

23 On October 25, 2023 CCEA received a response from a public records request made to CCSD on August 28,
24 2023 (**“FOIA Response”**). CCSD had delayed producing these records twice, the final time putting production after
25 the EMRB hearing. Overall the FOIA Response showed a good deal of communication between Horvath and
26 Executive Officers of CCSD, including Chief Financial Officer Jason **Goudie (“Goudie”)** and Chief
27 **Communications Officer Tod Story (“Story”)**. The FOIA Response also contained a text chain between Jason
28 Goudie, Horvath, and Jara. with a message from Horvath on August 12, 2023 to both Goudie and Jara which stated

1 “We will have a vote count in 20 mins on the contract” followed by a text from Horvath to Goudie and Jara stating
2 “570 yes 22 no. Please extend our appreciation to the entire Board of Trustees and thank you gentlemen.” (see
3 Exhibit 6 pages 12-13)

4 The text chain begins with a text from Horvath to Goudie and Jara which states, “Gentlemen: Thank you for
5 supporting the addition \$\$ for medical and the 2nd retention bonus for Support Staff.” (see Exhibit 6 page 11)

6 Notably, CCSD only produced this as a public record from Goudie’s phone. Despite the public records request
7 specifying that same information from Jara which was contained in the September 28th Subpoena and the October 10
8 Subpoena, no communications from Jara’s phone were produced. CCSD maintained that there was nothing
9 responsive to the request on Jara’s phone. (see Exhibit 7)

10 III. LEGAL AUTHORITY

11 NAC 288.279(1): The Chair, or the Vice Chair in the absence of the Chair, may issue a subpoena on behalf of
12 the Board pursuant to NRS 288.120 upon the request of a party to the case or a person who has a pending motion to
13 intervene.

14 NRS 288.120(1): For the purpose of hearing and deciding appeals or complaints, the Board may issue
15 subpoenas requiring the attendance of witnesses before it, together with all books, memoranda, papers and other
16 documents relative to the matters under investigation, administer oaths and take testimony thereunder.

17 NAC 288.373 Imposition of sanctions.

18 1. The Board may impose sanctions against a party who fails: (a) To comply with an order of the Board; (b)
19 Without good cause, to appear at the time and place set for hearing by the Board; or (c) To comply with any applicable
20 provisions of this chapter or chapter 288 of NRS.

21 2. The sanctions that may be imposed pursuant to subsection 1 include, without limitation: (a) Striking a pleading
22 of a party; and (b) **Ordering the party to pay to the other party reasonable attorney’s fees and costs.**

23 NAC 288.322(1): In conducting any investigation, inquiry or hearing, the Board and the presiding officer are
24 not bound by the technical rules of evidence, and no informality in any proceeding or in the manner of taking
25 testimony will invalidate any order or decision of the Board or the presiding officer. The rules of evidence of courts
26 of the State will be generally followed but may be relaxed at the discretion of the Board or the presiding officer
27 when deviation from the technical rules of evidence will aid in ascertaining the facts.

28 NRS 47.250 Disputable presumptions. All other presumptions are disputable. The following are of that kind:

1 ...3. That evidence willfully suppressed would be adverse if produced....

2 In *Bass-Davis v. Davis*, 122 Nev. Adv. Op. 39 (2006) the Court concluded that “When evidence is willfully
3 suppressed, NRS 47.250(3) creates a rebuttable presumption that the evidence would be adverse if produced.”

4 Additionally in *Bass-Davis* the Court cited *Turner v. Hudson Transit Lines, Inc.*, 724 F. Supp. 242 (S.D.N.Y.
5 1989) stating that “[The] sanction [of an adverse inference] should be available even for the negligent destruction of
6 documents if that is necessary to further the remedial purpose of the inference.”

7 The Court in *Bass-Davis* goes on to state “when presented with a spoliation allegation, the threshold question
8 should be whether the alleged spoliator was under any obligation to preserve the missing or destroyed evidence.”

9 Under the Local Government Records Retention Schedules¹ **Executive Correspondence, defined as “Records**
10 **not duplicated elsewhere that contain executive level correspondence (emails, social media, letters, memos, etc...)**
11 **documenting the entities functions, pattern of action, policies and achievements. Correspondence may pertain to but**
12 **is not limited to budgeting and financial, decisions, official positions, planning, directing, policy and rulemaking,**
13 **prominent; celebrated and/or noteworthy achievements, formal announcements, awards and/or events” are to be**
14 **retained permanently.**

15 **Routine Business Correspondence defined as “correspondence (emails, social media, letters, memos, etc.) that is**
16 **work related and deals with the day-to-day office administration and activities. Examples may include but are not**
17 **limited to internal correspondence, external correspondence from various individuals, companies, and organizations**
18 **requesting information pertaining to the agency business, and other routine inquiries” are to be retained for one year.**

19 **Union Contracts defined as “union contracts and amendments, tentative agreements, research background**
20 **material, employee classification printouts, correspondence and related records” are to be retained for 6 fiscal years**
21 **after the contract is renewed, amended, expired, or for the duration contained in the contract, whichever is longer.**

22 **NRS 386.010(2): “Every county school district created by this chapter is hereby declared to be a political**
23 **subdivision of the State of Nevada....”**

24 **NRS 239.005(5): “Governmental entity” means: (a) An elected or appointed officer of this State or of a political**
25 **subdivision of this State; (b) An institution, board, commission, bureau, council, department, division, authority or**

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28 ¹ https://nsla.nv.gov/ld.php?content_id=60238524 (pages 9 and 302)

1 other unit of government of this State, including without limitation, an agency of the Executive Department, or of a
2 political subdivision of this State....

3 **NRS 239.001(4):** The use of private entities in the provision of public services must not deprive members of the
4 **public access to inspect, copy or receive a copy of books and records relating to those services....**

5 A party has a duty to preserve evidence "which it knows or reasonably should know is relevant," *Bass-Davis*,
6 122 Nev. at 450 n.19, 134 P.3d at 108 n.19, to litigation that is pending or reasonably foreseeable, *Micron Tech.*,
7 *Inc. v. Rambus Inc.*, 645 F.3d 1311, 1328 (Fed. Cir. 2011) at 1320

8 **IV. LEGAL ARGUMENT**

9 **A. CCSD's noncompliance with an order of the EMRB.**

10 NAC 288.373(1) permits the EMRB to impose sanctions on a party who fails to comply with an order of the
11 EMRB. The first question that must be addressed is, was there an order by the EMRB that CCSD produce text
12 messages between Jara and Horvath? The answer to this question is unambiguously yes. The EMRB issued two
13 **separate subpoenas, one to Jara and one to CCSD's Custodian of Records** (September 28th Subpoena and October
14 10th Subpoena respectively), both of which ordered the production of all communications to, from or copied to Jara
15 including Teamsters Local 14 with Fred Horvath specifically named. (see **Exhibits 1** and **Exhibit 4**) Both of these
16 subpoenas were properly served on CCSD. These facts are not disputable.

17 Under the subpoena powers granted to the EMRB under NRS 288.120(1), the order for production of
18 communications contained within the subpoenas were a legal and valid order of the EMRB.

19 The second question to be answered under NAC 288.373(1) as to whether sanctions are permissible is whether
20 the party failed to comply with an order of the EMRB. The answer, once again, is unambiguously yes.

21 Neither CCSD nor Jara produced any text communications to, from, or copied to Jara with Teamsters 14 and
22 told the EMRB directly that these messages did not exist. (see Transcripts page 14) Just one week later, in response
23 to a public records request which had been made two months earlier, CCSD produced a text communication
24 between Jara, Goudie, and Horvath, that was both responsive to the subpoenas and relevant to the present case.

25 Clearly there was an order issued by the EMRB that CCSD and Jara produce these text communications and
26 clearly this order was not complied with. Sanctions are therefore permissible and appropriate under NAC 288.373.

27 **B. CCSD willfully failed to produce the text messages giving rise to a disputable presumption.**

1 Having established above that sanctions are permissible **due to CCSD's failure to comply with an EMRB order,**
2 it must now be determined what sanctions, if any, would be appropriate. Because the EMRB generally follows the
3 rules of evidence for the courts (NRS 288.322(1)), it is appropriate to look to the rules of evidence for appropriate
4 remedies and sanctions.

5 In *Bass-Davis v. Davis*, 122 Nev. Adv. Op. 39 (2006) the Court concluded that **"When evidence is willfully**
6 **suppressed, NRS 47.250(3) creates a rebuttable presumption that the evidence would be adverse if produced."** The
7 question before the EMRB is whether the conduct of CCSD in not producing the text messages was willful. The
8 answer would appear to be yes.

9 CCSD claimed at the hearing that Jara had no responsive texts on his personal phone. (see Transcripts page 14)
10 Because a text message which was responsive was produced by CCSD a week after the hearing (see **Exhibit 6** pages
11 12-13) pursuant to the FOIA Request there are only two possibilities. The first is that CCSD willfully
12 **misrepresented the contents of Jara's phone.** The second is that Jara deleted the messages on his phone which were
13 responsive to the subpoena and they could therefore not be produced. In either case a rebuttable presumption that the
14 evidence would be adverse is appropriate.

15 Under the first scenario, CCSD willfully withholding the text messages, the willful nature of the act is clear.
16 CCSD willfully failed to disclose evidence it had been ordered to and then misrepresented the existence of that
17 evidence to the EMRB. This would certainly give rise to a rebuttable presumption that the text messages on **Jara's**
18 **phone, had they been produced, would have been adverse to CCSD's case.** This is the more likely of the scenarios,
19 as CCSD did not ever state that Jara had deleted the messages on his phone. There would be no reason for CCSD to
20 **not to disclose this fact when asked by the EMRB whether Jara's personal phone had been searched for responsive**
21 texts.

22 Under the second scenario, CCSD could not produce the texts because Jara deleted the messages. If this were
23 **the case it would support CCSD's assertion that they checked Jara's phone for texts and found nothing related to the**
24 **Teamsters, but Jara's deletion of the messages should have been disclosed.** In order to create a rebuttable
25 presumption Jara would have had to have destroyed the text messages with the intent to harm another party. (see
26 **Reingold v. Wet 'N Wild Nev., Inc 944 P.2d 800, 802 (Nev 1997)** If CCSD's failure to produce Jara's text messages
27 was the result of Jara deleting **the messages then the intent to harm CCEA's case would be clear.** The Court in *Bass-*
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1 *Davis* states that “when presented with a spoliation allegation, the threshold question should be whether the alleged
2 spoliator was under any obligation to preserve the missing or destroyed evidence.”

3 As Superintendent of CCSD, Jara had multiple duties to retain the text messages. As of August 12, 2023, the
4 date that the one message that CCEA has been able to obtain was created (see **Exhibit 6** pages 12-13) the present
5 case had already been filed. A party has a duty to preserve evidence "which it knows or reasonably should know is
6 relevant," *Bass-Davis*, 122 Nev. at 450 n.19, 134 P.3d at 108 n.19, to litigation that is pending or reasonably
7 foreseeable, *Micron Tech., Inc. v. Rambus Inc.*, 645 F.3d 1311, 1328 (Fed. Cir. 2011) at 1320. Jara knew that the
8 present case had commenced, would have known that the present case involved bargaining between CCSD and the
9 Teamsters 14, and should have known that records related to that topic would need to be preserved.

10 Even if Jara was unaware of a duty to preserve records for litigation, Jara would have been under an obligation
11 to preserve records related to CCSD under public records retention statutes. Under NRS 239 records of
12 governmental entities are subject to inspection by the public and therefore must be preserved. NRS 386.010(2) states
13 that county school districts are political subdivisions of the state of Nevada and NRS 239.005(5) defines
14 governmental entities which are subject to the public records requirements as including political subdivisions of the
15 State.

16 Under Local Government Records Retention Schedules, which CCSD is subject to pursuant to NRS 239,
17 Executive Correspondence and Union Contracts, which includes correspondence related to union contracts, are both
18 subject to retention. The text messages from Horvath to Jara and Goudie would have been subject to both categories.
19 Executive Correspondence are “Records not duplicated elsewhere that contain executive level correspondence
20 (emails, social media, letters, memos, etc...) documenting the entities functions, pattern of action, policies and
21 achievements. Correspondence may pertain to but is not limited to budgeting and financial, decisions, official
22 positions, planning, directing, policy and rulemaking, prominent; celebrated and/or noteworthy achievements,
23 formal announcements, awards and/or events” and are to be retained permanently.² Jara is the Superintendent of
24 CCSD and texts to or from him related to the ESEA contract ratification would fall under this category.

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28 ² https://nsla.nv.gov/ld.php?content_id=60238524 (pages 302)

1 Union Contract **defined as** “union contracts and amendments, tentative agreements, research background
2 **material, employee classification printouts, correspondence and related records**” and are to be retained for six years
3 after the contract is renewed.³ The text message was certainly about the ESEA contract ratification and would
4 therefore fall under this category.

5 In either case, Jara had a duty to preserve the text messages, and as Superintendent of CCSD, would know of
6 **this duty. Even if it were argued that the record was on Jara’s personal phone and therefore private**, NRS 239.001(4)
7 states that “the use of private entities in the provision of public services must not deprive members of the public
8 **access to inspect, copy or receive a copy of books and records relating to those services....**” The text message
9 concerned the contract between CCSD and ESEA. The text was not of a personal nature. It was about CCSD
10 business.

11 **Therefore, whether CCSD willfully withheld Jara’s text messages, or Jara destroyed them to prevent CCEA**
12 from obtaining them, the result is the same. The EMRB should impose a rebuttable presumption that the text
13 **messages on Jara’s phone would have been adverse** to CCSD had they been produced.

14 **C. Negligent destruction of the texts would still permit an adverse inference.**

15 Even if CCSD were to argue that the text messages were not turned over because Jara deleted them, which it
16 has not argued, and even if the EMRB determined that Jara did not delete the text messages to harm CCEA, it would
17 still be appropriate for the EMRB to draw an adverse inference that the **Jara’s** text messages would be harmful to
18 **CCSD’s case if they had been produced.**

19 In *Bass-Davis* the Court cited *Turner v. Hudson Transit Lines, Inc.*, 724 F. Supp. 242 (S.D.N.Y. 1989) stating
20 that “[The] sanction [of an adverse inference] should be available even for the negligent destruction of documents if
21 that is necessary to further the remedial purpose of the inference.” Any deletion of the texts would clearly at least be
22 negligent on the part of Jara as he had multiple duties to preserve the texts as discussed above.

23 Therefore, should CCSD argue that Jara deleted his texts, and should the EMRB determine that the deletion was
24 merely negligent and not willful then an adverse inference would still be appropriate.

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28 ³ https://nsla.nv.gov/ld.php?content_id=60238524 (page 9)

1 **D. The presumption or inference should be that Jara's texts would show Teamsters 14 engaging in**
2 **bargaining with CCSD regarding working conditions for Unit 2 employees.**

3 As discussed above a rebuttable presumption or adverse inference is appropriate in the present case due to the
4 **failure of CCSD to produce Jara's text messages pursuant to an EMRB subpoena. CCEA requests that the**
5 **presumption or inference be that, had they been produced, Jara's text would have shown that Teamsters 14**
6 **bargained directly with Jara over conditions of work of Unit 2 employees separately from Unit 1 employees, thus**
7 **demonstrating that Unit 2 was recognized as its own union. The text messages between Goudie and Horvath and the**
8 **fact that CCSD is still hiding Jara's text messages from CCEA and the EMRB after two subpoenas and a public**
9 **records request support the imposition of this presumption or inference.**

10 Exhibit 5 contains extensive conversation related to bargaining between Goudie and Horvath and one section in
11 particular support the presumption or inference sought by CCEA. Starting on page 9 and going into page 10 of
12 Exhibit 5, Goudie and Horvath have a conversation regarding the reclassification of custodians being approved
13 through a separate MOA. The custodians are members of Unit 2, which is the group of support employees
14 represented by Teamsters 14. This is clear evidence that Horvath was bargaining separate agreements with CCSD
15 regarding the pay of Unit 2 employees. From this text conversation a presumption or inference could be made that
16 similar or even more adverse text communications were occurring between Jara and members of Teamsters 14.

17 As the present matter was about whether or not CCSD had de facto recognized Teamsters 14 as a new
18 bargaining unit, and as there is evidence that Teamsters 14 was texting regarding separate agreements for the Unit 2
19 employees that they were the representative of, **the willful withholding of Jara's text messages by CCSD greatly**
20 **interfered with CCEA's ability to present its case. In order to remedy this egregious conduct by CCSD, the EMRB**
21 **should impose the requested presumption or make the requested inference.**

22 **V. CONCLUSION**

23 The evidence shows that CCSD willfully failed to comply with multiple orders of the EMRB and then
24 misrepresented the facts when asked about its compliance. **CCSD's non-compliance was regarding the production of**
25 **evidence which was central to the case before the EMRB and the failure to produce the evidence harmed CCEA's**
26 **ability to present its case. Text messages between Goudie and Horvath show that Teamsters were bargaining**
27 **separate MOAs for Unit 2 employees making the requested presumption or inference logical as there is no other**
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1 reason for CCSD to continually refuse production of the text messages and refuse to explain the reason for the
2 failure to produce.

3 CCEA respectfully asks that the EMRB to remedy this situation in the only way equitable, which is to impose a
4 **presumption or to take an inference that Jara's text communications, had they been produced, would have shown**
5 that Teamsters 14 and CCSD were bargaining separate agreements regarding the conditions of employment of Unit
6 2 employees.

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8 Dated this 21st day of November, 2023

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11 **Clark County Education Association**

12 /s/ Steve Sorensen

13 Steve Sorensen, Nevada Bar No. 15472
14 General Counsel
15 Clark County Education Association
16 4230 McLeod Drive
17 Las Vegas, NV 89121
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CERTIFICATE OF MAILING

I hereby certify that on the 21st day of November, 2023, I deposited an electronically sent and correct copy of the forgoing **MOTION FOR SANCTIONS** via email, addressed as follows:

Crystal Herrera, Esq.
CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL
herrec4@nv.ccsd.net

Frank Flaherty, Esq.
DYER LAWRENCE, LLP
FFlaherty@dyerlawrence.com

Attorney for the Respondent

Attorney for Intervenor

/s/ Alex Shelton
An employee of CCEA

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Exhibit 1

Exhibit 1

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STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CLARK COUNTY EDUCATION ASSOCIATION,

Complainant,
v.
CLARK COUNTY SCHOOL DISTRICT,

Respondent.

and
EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,

Intervenor.

Case No. 2023-009

SUBPOENA DUCES TECUM

THE STATE OF NEVADA SENDS GREETINGS TO:

**Dr. Jesus Jara
5100 W. Sahara Ave
Las Vegas, NV 89146**

WE COMMAND YOU to set aside all business and personal excuses in order to attend and appear before the Government Employee-Management Relations Board on the **17th day of October 2023, at the hour of 8:15 a.m.** at the Tahoe Conference Room, Fourth Floor, Nevada State Business Center, 3300 W. Sahara Avenue, Las Vegas, NV 89102 to then and there testify in the above captioned matter. This subpoena shall continue in full force and effect until such time as your appearance is no longer required.

YOU ARE FURTHER ORDERED to produce and deliver to CCEA, 4230 McLeod Drive, Las Vegas, NV 89121, by **Tuesday, October 10, 2023**, the following books, documents, or tangible things set forth below that are in your possession, custody, or control. All documents shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories listed:

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All written communications, including emails, texts, and memorandums to, from, or copied to Teamsters Local 14 including Fred Horvath, Johnny Ortega, Mark Peter, Grant Davis, Eymhy Gateley, Travis Nelson, Jay Randazzo, Jason Gateley, Carolina Ospina, Debra Ledon, Christi Springer, and Val Thomason from Superintendent Jesus Jara and from January 1, 2023 to the present.

Failure to comply and/or attend shall subject you to punishment for contempt as provided in the Nevada Revised Statutes.

Dated this 28th day of September 2023.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: 
BRENT ECKERSLEY, ESQ., Chair

Exhibit 2

Exhibit 2



**CLARK COUNTY
SCHOOL DISTRICT**

BOARD OF SCHOOL TRUSTEES

Evelyn Garcia Morales, President
Lola Brooks, Vice President
Irene Bustamante Adams, Clark
Linda P. Cavazos, Member
Lisa Guzman, Member
Katie Williams, Member
Brenda Zamora, Member

Jesus F. Jara Ed.D., Superintendent

OFFICE OF THE GENERAL COUNSEL

5100 West Sahara Avenue * Las Vegas, Nevada 89146 * Telephone (702) 799-5373 * Fax (702) 799-5505

October 9, 2023

VIA EMAIL

Steve Sorensen
General Counsel
Clark County Education Association
ssorensen@ccea-nv.org

**Re: EMRB Case No. 2023-009
Subpoena Duces Tecum**

Dear Mr. Sorensen:

Please accept this correspondence as a formal objection to the subpoena duces tecum issued to Dr. Jesus Jara. The subpoena improperly requests the following records be produced by Dr. Jara:

All written communications, including emails, texts, and memorandums, to, from, or copied to Teamster Local 14 including Fred Horvath, Johnny Ortega, Mark Peter, Grant Davis, Eymhy Gateley, Travis Nelson, Jay Randazzo, Jason Gateley, Carolina Ospina, Debra Ledon, Christi Springer and Val Thomason from Superintendent Jesus Jara and from January 1, 2023 to the present.

The records sought are within the custody and control of the Clark County School District, not Dr. Jara. Accordingly, no documents will be produced in response to the subpoena.

Notwithstanding the above, it is my understanding that CCEA has submitted a public records request to CCSD for the same records and that records will be produced in response to said request.

Should you wish to discuss this matter, you may contact me at (702) 799-5373.

Sincerely,

A handwritten signature in blue ink that reads "Crystal Herrera". The signature is fluid and cursive.

Crystal Herrera
Senior Assistant General Counsel

Exhibit 3

Exhibit 3

Steve Sorensen

From: Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>
Sent: Monday, October 09, 2023 7:04 PM
To: Steve Sorensen
Cc: Elsa Pena [Office of the General Counsel]
Subject: Re: FW: Subpoenas for Case 2023-009

The request does not ask for personal text messages, but rather communications from/to **Superintendent** Jesus Jara. To the extent you are reading the request to include personal text messages from Dr. Jara from his personal cell phone, the request is still objectionable as overbroad and not relevant to CCEA's claims or proportional to the needs of the case.

Crystal Herrera

Senior Assistant General Counsel
Office of the General Counsel
Clark County School District
5100 West Sahara Avenue
Las Vegas, Nevada 89146
Ph: (702) 799-5373
Fax: (702) 799-5505
Email: herrec4@nv.ccsd.net

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On Mon, Oct 9, 2023 at 4:46 PM Steve Sorensen <ssorensen@ccea-nv.org> wrote:

Crystal,

Please clarify whether CCSD is claiming that texts from Dr. Jara's personal phone which would be responsive to this subpoena are not within Dr. Jara's custody and control.

Thank you,

Steve Sorensen

General Counsel

CCEA

From: Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>
Sent: Monday, October 09, 2023 1:35 PM
To: Steve Sorensen <ssorensen@ccea-nv.org>
Cc: Elsa Pena [Office of the General Counsel] <penaec@nv.ccsd.net>
Subject: Re: FW: Subpoenas for Case 2023-009

Hi Steve-

Please see attached.

Crystal Herrera

Senior Assistant General Counsel

Office of the General Counsel

Clark County School District

5100 West Sahara Avenue

Las Vegas, Nevada 89146

Ph: (702) 799-5373

Fax: (702) 799-5505

Email: herrec4@nv.ccsd.net

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On Mon, Oct 2, 2023 at 11:07 AM Steve Sorensen <ssorensen@ccea-nv.org> wrote:

Please see the attached subpoena for Dr. Jara.

Thanks,

Steve Sorensen

General Counsel

CCEA

Exhibit 4

Exhibit 4

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STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CLARK COUNTY EDUCATION ASSOCIATION,
Complainant,
v.
CLARK COUNTY SCHOOL DISTRICT,
Respondent.
and
EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,
Intervenor.

Case No. 2023-009

SUBPOENA DUCES TECUM

THE STATE OF NEVADA SENDS GREETINGS TO:

**Custodian of Records for Clark County School District
Or Person Most Knowledgeable
5100 W. Sahara Ave
Las Vegas, NV 89146**

WE COMMAND YOU to set aside all business and personal excuses in order to attend and appear before the Government Employee-Management Relations Board on the **17th day of October 2023, at the hour of 8:15 a.m.** at the Tahoe Conference Room, Fourth Floor, Nevada State Business Center, 3300 W. Sahara Avenue, Las Vegas, NV 89102 to then and there testify in the above captioned matter. This subpoena shall continue in full force and effect until such time as your appearance is no longer required.

YOU ARE FURTHER ORDERED to produce and deliver to CCEA, 4230 McLeod Drive, Las Vegas, NV 89121, by **Tuesday, October 10, 2023**, the following books, documents, or tangible things set forth below that are in your possession, custody, or control. All documents shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories listed:

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All written communications, including emails, texts, and memorandums to, from, or copied to Teamsters Local 14 including Fred Horvath, Johnny Ortega, Mark Peter, Grant Davis, Eymhy Gateley, Travis Nelson, Jay Randazzo, Jason Gateley, Carolina Ospina, Debra Ledon, Christi Springer, and Val Thomason from Superintendent Jesus Jara and from January 1, 2023 to the present.

Failure to comply and/or attend shall subject you to punishment for contempt as provided in the Nevada Revised Statutes.

Dated this 10th day of October 2023.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: 
BRENT ECKERSLEY, ESQ., Chair

Exhibit 5

Exhibit 5

From: Jesus Jara [Superintendent] <jarajf@nv.ccsd.net>
Sent: Wednesday, March 1, 2023 1:30 PM
To: Fred Horvath; Jason Gateley; Jason Goudie [Business and Finance]
Subject: Fwd: Join us as we Tee Up for Education!

----- Forwarded message -----

From: **Public Education Foundation** <info@thepef.org>
Date: Wed, Mar 1, 2023 at 11:04 AM
Subject: Join us as we Tee Up for Education!
To: <jarajf@nv.ccsd.net>

[View this email in your browser](#)



Break out your golf clubs for a beautiful day on the course to support public school students, families, and educators! The Public Education Foundation and Tee Up For Education co-chairs Tony Chopp and Chad Harris invite you

to join us for the 23rd Annual Tee Up For Education Golf Tournament on **May 4, 2023** at **Bear's Best Las Vegas**.



Register today!



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--

Jesus F. Jara, Ed.D.
Superintendent of Schools
Clark County School District
5100 W. Sahara Avenue
Las Vegas, NV 89146
(702) 799-5310

From: Jesus Jara [Superintendent] <jarajf@nv.ccsd.net>
Sent: Thursday, April 20, 2023 6:01 PM
To: Fred Horvath; Jan Giles [Public Education Foundation]
Subject: Fwd: Evening of Excellence_Starlight Awards_Update

Please accept this as my formal invitation to our celebration in honor of our hard working support staff!

Jesus Jara

----- Forwarded message -----

From: **Announcements [Clark County School District]** <ccsd-announcements@nv.ccsd.net>
Date: Thu, Apr 20, 2023 at 8:18 PM
Subject: Evening of Excellence_Starlight Awards_Update
To: G-0001-All-Principal <g-0001-all-principal@nv.ccsd.net>
CC: Brenda Larsen-Mitchell [Deputy Superintendent] <larsebk@nv.ccsd.net>, Dustin Mancl [Instructional Services] <mancldb@nv.ccsd.net>, Kellie Ballard [Office of the Deputy Superintendent] <ballak@nv.ccsd.net>, Mike Barton [College, Career, and Equity Unit] <bartowr@nv.ccsd.net>, Monica Cortez [SSD] <cortemj@nv.ccsd.net>, RoAnn Triana [Region 1] <trianrd@nv.ccsd.net>, Alaina Marie Criner-Wilson [Region 1] <crineam@nv.ccsd.net>, Scarlett Perryman [Region 1] <perrysh@nv.ccsd.net>, Sonya Holdsworth [Region 1] <holdssg@nv.ccsd.net>, Lindsay Tomlinson [Region 1] <ozmunlm@nv.ccsd.net>, Melissa Gutierrez [Region 2] <gutiem2@nv.ccsd.net>, Barry Bosacker [Region 2] <bosacbc@nv.ccsd.net>, Monica Lang [Region 2] <mcdowmm@nv.ccsd.net>, Joseph Petrie [Region 2] <petrijr@nv.ccsd.net>, Rebecca Lucero [Region 2] <lucerrm@nv.ccsd.net>, Deanna Jaskolski [Region 3] <kowaldj@nv.ccsd.net>, Mikie Young [Region 3] <youngm@nv.ccsd.net>, Reece Oswalt [Region 3] <oswalre@nv.ccsd.net>, Celese Rayford [Region 3] <rayfoer@nv.ccsd.net>, Mike Casey [Operational Services] <caseym@nv.ccsd.net>, Luke Puschnig [Office of the General Counsel] <puschpl@nv.ccsd.net>, Mary Mazur [VegasPBS] <mazurmf@nv.ccsd.net>, Henry Blackeye [Police Services] <blackhm@nv.ccsd.net>, Jason Allen Goudie [Business and Finance] <goudij@nv.ccsd.net>, Tod Story [Communications Unit] <storytj@nv.ccsd.net>, Carol Tolx [Human Resources] <tolxca@nv.ccsd.net>, Shana Rafalski [Office of the Superintendent] <rafalsh@nv.ccsd.net>, Robert Solomon [Lamping ES] <solomrw@nv.ccsd.net>, Andrea Womack [Brinley MS] <womacac@nv.ccsd.net>, Ronnie Guerzon [Region 3] <guerzra@nv.ccsd.net>, Shawn Halland [Region 2] <hallasl@nv.ccsd.net>

Principals,

We want to make you aware that the the following message and an RSVP link is being sent from CCSD's Team Engagement Department to all honorees for the Evening of Excellence, Starlight Awards:

Honorees,

We are excited to share some great news! Due to the generosity of our sponsors, as well as the host venue, we are now able to expand the Evening of Excellence, Starlight Awards celebration to include you and one guest.

Please fill out the RSVP form no later than 5 p.m. on Tuesday, April 25, 2023. Even if you have RSVP'd through your administrator, we kindly request that you fill out the form so we have an accurate count of all attendees.

--

Jesus F. Jara, Ed.D.
Superintendent of Schools
Clark County School District
5100 W. Sahara Avenue
Las Vegas, NV 89146
(702) 799-5310

From: Jesus Jara [Superintendent] <jarajf@nv.ccsd.net>
Sent: Tuesday, June 6, 2023 1:21 PM
To: Fred Horvath
Subject: Fwd: Custodial Staff

Here is the latest version after the reclassification of CMS

----- Forwarded message -----

From: Carol Tolx [Human Resources] <tolxca@nv.ccsd.net>
Date: Tue, Jun 6, 2023 at 3:05 PM
Subject: Fwd: Custodial Staff
To: Jesus Jara [Superintendent] <jarajf@nv.ccsd.net>

Per your request...

Carol A. Tolx, Ed.D.
Chief Human Resources Officer
Clark County School District
2832 E. Flamingo Road
Las Vegas, NV 89121

----- Forwarded message -----

From: Jason Allen Goudie [Business and Finance] <goudij@nv.ccsd.net>
Date: Wed, May 31, 2023 at 8:44 AM
Subject: Re: Custodial Staff
To: Carol Tolx [Human Resources] <tolxca@nv.ccsd.net>, David Hall [Office of the General Counsel] <halldr@nv.ccsd.net>

Here is my quick estimate of the impact of teh Custodial reclassification.

Custodial Staff Reclassification Estimate

	#	Avg Annual Hours	Est Pay Increase	Avg Pay Increase W/ Benefits	Est Im
Custodian	1150	2080 \$	0.98 \$	1.33 \$	3,188,
Custodial Leader	54	2088 \$	1.14 \$	1.55 \$	174,
Special School Head Custodian	4	2088 \$	1.20 \$	1.63 \$	13,
Head Custodian 1	224	2088 \$	1.20 \$	1.63 \$	763,
Head Custodian 2	57	2088 \$	1.25 \$	1.70 \$	202,
Head Custodian 3	8	2088 \$	1.49 \$	2.03 \$	33,
Asst Custodial Sup	0	2088 \$	1.61 \$	2.19 \$	
Custodial Sup	6	2088 \$	1.67 \$	2.27 \$	28,

Jason A. Goudie
 Chief Financial Officer
 Clark County School District
 5100 West Sahara Avenue
 Las Vegas, NV 89146
 Phone: 702-799-5445, Extension 5350
 Fax: 702-855-3114
 E-mail: goudij@nv.ccsd.net

On Tue, May 23, 2023 at 2:49 PM Carol Tolx [Human Resources] <tolxca@nv.ccsd.net> wrote:
 FYI

Carol A. Tolx, Ed.D.
 Chief Human Resources Officer
 Clark County School District
 2832 E. Flamingo Road
 Las Vegas, NV 89121

----- Forwarded message -----

From: **Sonja Middleton [Human Resources]** <middlsr@nv.ccsd.net>
 Date: Fri, May 19, 2023 at 9:59 AM
 Subject: Re: Custodial Staff
 To: Carol Tolx [Human Resources] <tolxca@nv.ccsd.net>
 Cc: Marynet Bernazar [Human Resources] <bernarn9@nv.ccsd.net>

Good morning Carol,

Please see the updated hours worked for each category.

<i>Class Code</i>	<i>Position</i>	<i>Current Pay Grade</i>	<i>Current Hourly Pay</i>	<i>Reclassified Pay Grade</i>	<i>Reclassified Hourly Pay</i>	<i>Number of Employees</i>	<i>Num</i>
4170	Campus Security Monitor	44	\$14.66 - \$20.63	52	\$21.67 - \$30.51	404	155 1455 136 194; 116.4 = 97; = 62.

8040	Custodian	43	\$13.97 - \$19.65	44	\$14.66 - \$20.63	1,150	208 1827 1566 1435 = 130 = 10 1 783; = 52;
8100	Custodial Leader	46	\$16.18 - \$22.74	47	\$16.98 - \$23.88	54	
8115	Special School Head Custodian	47	\$16.98 - \$23.88	48	\$17.84 - \$25.08	4	
8110	Head Custodian I	47	\$16.98 - \$23.88	48	\$17.84 - \$25.08	224	
8120	Head Custodian II	48	\$17.84 - \$25.08	49	\$18.72 - \$26.33	57	
8130	Head Custodian II	52	\$21.67 - \$30.51	53	\$22.74 - \$32.00	8	
8170	Assistant Custodial Supervisor	53	\$22.74 - \$32.00	54	\$23.88 - \$33.61	0	
8160	Custodial Supervisor	54	\$23.88 - \$33.61	55	\$25.08 - \$35.28	6	

Thank you.

Sonja R. Middleton, Director II
 Support and Substitute Compensation
 Human Resources Division
 702-799-2812 (phone) / 702-799-5378 (fax)
 WAN (0099-5802)
middlsr@nv.ccsd.net



<https://teachvegas.ccsd.net/>

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On Thu, May 18, 2023 at 3:34 PM Carol Tolx [Human Resources] <tolxca@nv.ccsd.net> wrote:
Can we get how many are 9 month and how many hours that is and also 10, 11 and 12 month. He's going to do a final estimation from these numbers.

Thanks!

----- Forwarded message -----

From: **Jason Allen Goudie [Business and Finance]** <goudij@nv.ccsd.net>
Date: Thu, May 18, 2023 at 2:54 PM
Subject: Re: Custodial Staff
To: Carol Tolx [Human Resources] <tolxca@nv.ccsd.net>

Need to know how many hours in a year they work or how many days and how many hours per day.

Jason A. Goudie
Chief Financial Officer
Clark County School District
5100 West Sahara Avenue
Las Vegas, NV 89146
Phone: 702-799-5445, Extension 5350
Fax: 702-855-3114
E-mail: goudij@nv.ccsd.net

On Thu, May 18, 2023 at 2:06 PM Carol Tolx [Human Resources] <tolxca@nv.ccsd.net> wrote:
Is this enough information to get you an estimate?

Carol A. Tolx, Ed.D.
Chief Human Resources Officer
Clark County School District
2832 E. Flamingo Road
Las Vegas, NV 89121

----- Forwarded message -----

From: **Sonja Middleton [Human Resources]** <middlsr@nv.ccsd.net>
Date: Thu, May 18, 2023 at 8:43 AM
Subject: Re: Custodial Staff
To: Carol Tolx [Human Resources] <tolxca@nv.ccsd.net>
Cc: Tamicka Corbin [Human Resources] <corbit1@nv.ccsd.net>, Marynet Bernazar [Human Resources] <bernam9@nv.ccsd.net>

Good morning Carol,

Please see the breakdown below:

Class Code	Position	Current Pay Grade	Current Hourly Pay	Reclassified Pay Grade	Reclassified Hourly Pay	Number of Employees
4170	Campus Security Monitor	44	\$14.66 - \$20.63	52	\$21.67 - \$30.51	404
8040	Custodian	43	\$13.97 - \$19.65	44	\$14.66 - \$20.63	1,150
8100	Custodial Leader	46	\$16.18 - \$22.74	47	\$16.98 - \$23.88	54
8115	Special School Head Custodian	47	\$16.98 - \$23.88	48	\$17.84 - \$25.08	4
8110	Head Custodian I	47	\$16.98 - \$23.88	48	\$17.84 - \$25.08	224
8120	Head Custodian II	48	\$17.84 - \$25.08	49	\$18.72 - \$26.33	57
8130	Head Custodian II	52	\$21.67 - \$30.51	53	\$22.74 - \$32.00	8
8170	Assistant Custodial Supervisor	53	\$22.74 - \$32.00	54	\$23.88 - \$33.61	0
8160	Custodial Supervisor	54	\$23.88 - \$33.61	55	\$25.08 - \$35.28	6

Thank you.

Sonja R. Middleton, Director II
 Support and Substitute Compensation
 Human Resources Division
 702-799-2812 (phone) / 702-799-5378 (fax)
 WAN (0099-5802)
middlsr@nv.ccsd.net



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On Wed, May 17, 2023 at 1:39 PM Carol Tolx [Human Resources] <tolxca@nv.ccsd.net> wrote:

Jesus F. Jara, Ed.D.
Superintendent of Schools
Clark County School District
5100 W. Sahara Avenue
Las Vegas, NV 89146
(702) 799-5310

Exhibit 6

Exhibit 6

Messages [redacted] &more



[redacted];

[redacted];

Fred Horvath [redacted]);

2023/06/27 08:28

Fred Horvath

We are good at 2 today at our office. Jan is in Florida and Andrew will be there

2023/06/27 08:49

Ok

2023/06/27 09:00

Ok.

Conversation With

Fred Horvath [REDACTED];

2023/05/04 12:01

Sorry I couldn't make it Tuesday. We are bringing an Article 20 proposal and are committed to try to agree on Article 20 today so open enrollment prep can move forward.

2023/05/09 11:28

GM Jason. What loadings are using in getting to \$61 million? PERS plus??

2023/05/09 11:38

Not sure what you are asking?

2023/05/09 11:40

What percentage are you using to add to the base hourly increase expense to reflect PERS Medicare etc. 40? 45%??

2023/05/09 11:41

I can't recall exactly but I think the new rate after PERs increase is 43.5. Away from office in a meeting.

2023/05/09 11:42

No worries. I would have expected something in that range. Sorry to bother you.

2023/05/09 11:46

No problem just didn't have exact information on me. I think that is the new number after PERs increase.

2023/06/02 05:44

SB340 and the \$60,000,000 unfunded mandate

Messages Fred Horvath

vetoed by Gov

2023/06/02 07:31

Override still possible as not enough republicans to ensure no override, I believe. Hopefully not but who knows

2023/06/23 15:09

Wow Jason. Good luck with the hip challenge. Please take care of yourself

2023/06/23 15:46

Hopefully not infected but something is wrong as I can barely touch the hip bone without pain. Doctor on phone says lumbar back pain and I kept saying no...

2023/06/23 17:48

Hey Jason. I'm tied up until 8. Can I reach out in the morning?

2023/06/23 17:51

Yes

2023/06/23 18:14

Thank you. Sorry

2023/06/23 18:15

You better not be at cigar bar with my boss while I am working... 😊

2023/06/23 18:39

Teaching a class and we are way over due for a return visit to our lounge. What would you think of having a negotiating session here and then having a little social interaction with our committees and the boss in the lounge. Bring in some food etc

2023/06/23 19:17

Have fun teaching. Can discuss next session tomorrow. Thank and have a good night

2023/06/26 07:15

Good Morning Jason. I completely spaced calling you. My apologies. Call me at your convenience sir.

2023/06/26 17:22

Open from 2-4. Let me know if you can meet tomorrow. Not sure where yet as I doubt I will have an office tomorrow. Flooding at Sahara from hvac.

2023/06/27 08:18

I would need to have Jan and Andrew present. Will that work for you Jason? We can always meet down the street at our place.

2023/06/27 08:19

Yes

2023/06/27 08:20

Won't be negotiation session but informal discussion on interpretation of sb 231. I will let David know as well. Thanks

2023/06/27 08:22

As soon as I hear from Jan I will let you know.

2023/06/27 13:54

Going to be few minutes late as just leaving a meeting

2023/06/27 13:54

Only about 10 min away though

Messages Fred Horvath

2023/06/27 13:57

Take your time and be careful

2023/06/27 18:20

Really was my bad about not reaching out to you guys before the email from Dr Jara went out. I didn't think about it as not negotiation and was multi-tasking, not effectively. I asked them to work with your team on a joint announcement about the grand opening ribbon cutting. Sorry

2023/06/27 19:41

No worries and appreciate the time today Jason

2023/07/31 12:01

On a call for another 30 mins

2023/07/31 12:03

Ok - just give me a call when ready please

2023/07/31 14:16

Will be in 3rd floor in the legal conference room. Ask for shanisha Doyle when you get here - thanks

2023/07/31 14:19

👉

2023/08/02 14:48

I sent David everything except 8 and 19. Let me know if we need to go to your offices.

2023/08/02 14:50

We are tied up in closed session for right now. As soon as done there is work session but I don't need to be in that meeting so will start going through changes and have David help determine

Messages Fred Horvath

what we need to do to get it done. Will reach out as soon as possible. Thanks

2023/08/02 16:14

I will be sending back comments to shortly. Will we be able to meet at 8am tomorrow to go through these final changes and be done? David and I can meet so just let me know your teams availability. Not much left which you will see from my comments.

2023/08/02 16:29

Comments sent. Thanks

2023/08/02 16:47

Working on a response. I have to Chair our medical trust meeting starting at 8:00am tomorrow and it will run to at least 2pm

2023/08/02 16:50

Ok. Let's get done what we can via email and I will figure it out. Thanks

2023/08/02 17:12

I have a dinner meeting with a Teamster International VP and leaving in 5 mins. I will finish this when it's over. I'm officially concerned about the magnitude of "we will talk about it later," response on some innocuous proposed language. The memo we distributed yesterday needs to be executed or this whole exercise implode. I have brought these people along to get this done for Dr Jara and the Board and am losing them quickly.

2023/08/02 20:17

I get it. I will resolve and get done. I don't have problem with memo with the proposed changes we have discussed.

2023/08/02 20:54

Messages Fred Horvath

Just getting done here. I will get everything to you by 7:00am tomorrow and if I need to recess the Trust meeting a couple times to get this done, so be it. Thx for your efforts on behalf of these employees Jason.

2023/08/02 21:26

Ok - I apologize for all of the late stuff. I am just trying to get this done. I know you are frustrated and I can assure you my level is high. Just let me know and I will get it done.

2023/08/03 08:28

Just text me if we need to talk I recess the Trust meeting to manage anything. Took a shot at a "clean Article 19" let me know if it's close to working for you and whatever you need for the Trustees.

2023/08/03 08:29

I am close on most of what you sent this morning. I am cleaning up some typos and a couple of clarification points based on input from HR. I will let you know when I get through this and set up a time for a quick chat. Thanks

2023/08/03 08:32

Got it. I will have a draft letter to you today. Do you feel you need to include it for the Board? What time is the Board meeting tomorrow?

2023/08/03 08:34

Is the draft letter the one we saw about the remaining articles we intend in addressing? If so, yes we need to brief the board. Meeting is at 4

2023/08/03 08:35

Whose signature should be on it? Jara?

Messages Fred Horvath

2023/08/03 09:13

I think it is jara, president and clerk but will need David to address. I am just waiting on any additional comments from the team and will let you know when I have all so we can have a quick chat. Thanks

2023/08/03 09:24

K

2023/08/03 11:20

Sent over a couple items. I'm sure you're ready like I am to wrap this up.

2023/08/03 11:52

More than you know. Would 1 pm work to chat before i send back our comments? I have a meeting at 12 for about 45 min

2023/08/03 11:53

Perfect!!

2023/08/03 13:25

We are at David's office he's not here

2023/08/03 13:28

Come down hall to conference room

2023/08/04 08:48

Find anything out on the \$2500 lump-sum being PERS eligible?

2023/08/04 09:13

They said it is which is why I changed to title of it in the docs I sent yesterday to longevity as PERS knows that term and is eligible.

Messages Fred Horvath

2023/08/04 09:32

Thx

2023/08/04 10:19

Can you have someone scan and send me the Article you had yesterday with your notes so I can see where we are. ESEA is still worked up about this one on Andrew's leave.

2023/08/04 11:04

I didn't have that article as that is 8. There is no need to change the agreement for this instance and they are asking for something that is not ok nor been practice. I know there was brief time for Jan while interim but not same thing and I would not have approved that small time, if I had known.

2023/08/04 11:29

Got it. ESEA doesn't. I told them they have 15 mins to decide if this is a go or no go.

2023/08/04 17:32

Thx again for leading this. We had a great meeting with Denise and her team. Sonya has a very different few of getting everyone to \$15 than we discussed and it will have \$\$ impacts.

2023/08/07 09:07

Just sent the 2024 and 2025ayscale drafts

2023/08/11 10:13

Good Morning Sir! Sounds like you have quite the night last night! Can I tell the custodians their reclassification will occur in the 1st check in October?

2023/08/11 19:02

I will check. I know all the other stuff will happen

Messages Fred Horvath

then. I don't think that has been approved by board yet but I don't know

2023/08/11 21:38

It hasn't been approved in a separate MOA yet. Hoping for the 2nd meeting in September and 1st check in October. I need to say something tomorrow at the ratification meeting

2023/09/02 09:13

GM Jason. I wanted to let you know that Andrew lost his wife without warning late Tuesday night from a blood clot that traveled to her lungs. She didn't make it through emergency surgery.

2023/09/02 10:57

Oh no - I am so sorry. Please pass along our condolences and let me know if there is anything we can do.

2023/09/02 12:56

Yes sir

2023/09/15 12:12

Just called back. Try me again please.

2023/09/15 12:14

Just tried back.

Conversation With

Jesus Jara [redacted]);
Fred Horvath [redacted]);

2022/06/09 21:50

Fred Horvath

Gentlemen: Thank you for supporting the addition
\$\$ for medical and the 2nd retention bonus for
Support Staff.

2023/01/11 12:30

Fred Horvath

Good Afternoon Gentlemen. Any chance you
would be available and interested in watching the
49er/Seattle game Saturday at our lounge and
enjoy a cigar and an adult beverage. It would be
Jason Gateley and myself.

2023/01/11 15:52

Let me know time of game. I need to check
calendar as I think my daughter has dance
competition this weekend. Thanks for invite.

2023/01/11 16:48

Fred Horvath

Game starts at 1:30.

2023/01/11 19:05

Fred Horvath

There is an evening game if that works better.

2023/01/11 20:24

I think afternoon might work but confirming the
dance schedule. Might not be able to be ther the
whole game but let me confirm as full schedule not
done yet. Thanks

2023/01/11 20:29

Fred Horvath

Great. We hope we can put this together.

2023/01/12 15:49

I can be there from about 130pm- 3pm if that work.
Talked to dr jara and he can do the same.

2023/01/12 15:51

Fred Horvath

Fantastic. Looking forward to it. 8951 W Sahara
Suite 100 89117. Your preference for adult
beverage?

2023/01/12 17:44

I am not picky.

2023/01/12 18:14

Fred Horvath

We will have numerous options.

2023/01/12 18:15

Jesus Jara

I will bring the cigars

2023/01/12 18:19

Fred Horvath

👉

2023/08/12 16:00

Fred Horvath

We will have a vote count in 20 mins on the
contract

Messages Jesus Jara & [REDACTED] & more

Conversation With

Jesus Jara [REDACTED] [REDACTED]);

[REDACTED];
[REDACTED];

Fred Horvath [REDACTED]);

[REDACTED];

2023/08/12 16:21

Fred Horvath

570 yes 22 no. Please extend our appreciation to the entire Board of Trustees and thank you gentlemen.

Conversation With



Tod Story

Fred Horvath

2023/08/23 09:28

Fred - Tod will be sending you a communication we want to send out in SB231 and it referenced ESEA due to our mutual understanding of the sunset clause so we wanted your team to review. We will need a quick turnaround to meet news cycle since we just got the memo from LCB yesterday. Thanks

2023/08/23 09:53

Fred Horvath

I'm in contract ratification meetings all day in North Las Vegas. My next ass chewing starts in 8 mins and I will respond immediately after (11:00). Will that work for you Tod.

2023/08/23 10:02

Tod Story

Was hoping to get it out sooner. I'll send it over now.

2023/08/23 11:42

Fred Horvath

Please send it over now

2023/08/23 11:54

Tod Story

It was sent around 10 am.

2023/08/23 11:56

Tod Story

Just need agreement on where we stand on the future negotiations of sb 231 funds.

2023/08/23 11:57

Messages Tod Story&Fred Horvath

Fred Horvath

I would support referencing that ESEA and Teamsters Local 14 are currently negotiating an MOA for 231 and it will contain clear sunset language

2023/08/23 11:59

Tod Story

This is, what it says:
CCSD, the Education Support Employees Association (ESEA, and Teamsters Local 14) agreed to negotiate the SB 231 funds once the NDE, LCB, and IFC provide clarity related to the bill. CCSD and ESEA understand the funding sunsets and have agreed to have a sunset clause in the agreement as of June 30, 2025.

2023/08/23 12:00

Fred Horvath

Great

2023/08/23 12:00

Tod Story

Thanks.

Exhibit 7

Exhibit 7

Steve Sorensen

From: Cindy Smith-Johnson (Clark County School District, NV)
<ClarkCountySDNV@request.justfoia.com>
Sent: Monday, November 06, 2023 11:16 AM
To: Steve Sorensen
Subject: Re: RE: PRR-2023-174-Emails

Mr. Sorensen,

Dr. Jara's business and personal cell phones were searched. There were no responsive texts.

Thank you.

On Wed, Oct 25, 2023 at 2:48 pm, Steve Sorensen wrote:

I received the response to my request today. I want to make sure that CCSD checked Dr. Jara's personal phone for responsive texts. Since Dr. Jara is included in a group text message with Fred Horvath on Jason Goudie's phone that is responsive and there is no separate file for Dr. Jara's texts, it looks like Dr. Jara's messages were not reviewed or sent pursuant to this request.

Please let me know what steps were taken to gather responsive information from Dr. Jara's personal phone.

Thank you,

Steve Sorensen

From: Cindy Smith-Johnson (Clark County School District, NV)

Mr. Sorensen,

Pursuant to NRS 239.0107, additional time is needed to complete this request. I anticipate a further response by October 31, 2023, if not before.

Thank you,

BEFORE THE GOVERNMENT
EMPLOYEE-MANAGEMENT RELATIONS BOARD

FILED December 5, 2023 State of Nevada E.M.R.B. 3:03 p.m.

CLARK COUNTY EDUCATION
ASSOCIATION,

Complainant,

CASE NO. 2023-009

vs.

CLARK COUNTY SCHOOL DISTRICT,

**ESEA’S OPPOSITION TO CCEA’S
MOTION FOR SANCTIONS**

Respondent

and

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,

Intervenor.

COMES NOW, Intervenor, the EDUCATION SUPPORT EMPLOYEES ASSOCIATION (“ESEA”), by and through its Counsel, and pursuant to NAC 288.240, submits the following Opposition to the Motion for Sanctions filed by Complainant, Clark County Education Association (“CCEA”) against the Clark County School District (“CCSD” or “District”). CCEA’s motion is hereinafter referred to as the “CCEA Motion.”

I.

INTRODUCTION

On or about April 20, 2023, CCEA filed a complaint against the District (“Complaint”) in this action before the Employee Management Relations Board (“Board” or “EMRB”). ESEA petitioned to intervene in this matter, and the Board granted ESEA’s petition to do so in an order dated June 23, 2023. The Board held a hearing in this matter on October 17, 2023. During the hearing, CCEA made a motion to compel CCSD to produce documents it had requested pursuant to duplicative subpoenas, but the Board denied the motion, finding that the alleged documents CCEA sought were not relevant to the issues in this case. At the conclusion of the October 17th hearing, the parties made oral closing arguments and the case was submitted to the Board for decision. Remarkably, CCEA now, *after the close of evidence and submission of the case to*

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Carson City, Nevada 89703
(775) 885-1896

1 *the Board on oral argument*, asks this Board to impose a rebuttable presumption on or adverse
2 inference against CCSD based on the alleged withholding or destruction of alleged documents
3 that the Board found not relevant to the issues in this case, if indeed such documents even exist.

4 **II.**

5 **ARGUMENT**

6 **A. It Would be Inappropriate to Impose a Rebuttable Presumption or Draw an**
7 **Adverse Inference Because Such Action would Harm Intervenor ESEA.**

8 In its motion for sanctions, CCEA relies primarily on *Bass-Davis v. Davis*, 122 Nev. 442,
9 134 P.3d 103 (2006). Assuming *arguendo* that this Board concludes that CCSD either willfully
10 suppressed evidence with intent to harm CCEA (*id.* at 448,134 P.3d at 106-07), or that CCSD
11 negligently lost or destroyed evidence without intent to harm (*id.* at 449,134 P.3d at 107), the
12 Board should *not* impose a rebuttable presumption *nor* draw an adverse inference in this matter.
13 Although superficially it appears that CCEA seeks imposition of a rebuttable presumption on or
14 the drawing of an adverse inference against CCSD only, the actual effect of such action by the
15 Board would harm ESEA and the support staff employees of CCSD. This is so because at the
16 hearing of this matter, ESEA presented un rebutted evidence demonstrating that the ESEA-Local
17 14 Agreement is “important for the effective union representation of CCSD support staff
18 employees . . . ensur[ing] that -- that the most number of members have the ability to join a
19 union. It also ensures that we are able to concentrate on the [core] functions of a union,
20 negotiating good contracts and in representing our members.” Reporter’s Transcript (“RT”) at
21 199:24 - 200:7. Yet, in its Complaint in this matter, CCEA essentially asks this Board to order
22 that CCSD stop speaking with Local 14 personnel, despite the fact those Local 14 personnel are
23 explicitly acting as authorized agents of ESEA.¹ CCEA Complaint at 3:15-21.

24 In *Nowlin v. Miller Electric Manufacturing Co.*, the United States District Court for the
25 Eastern District of Louisiana declined allowance of an adverse inference, finding that “[s]imply
26 because the plaintiffs and the intervenor may be aligned in some way does not suggest that the

27 _____
28 ¹ RT at 189:7-16, at 198:9-17 (Brian Lee Testimony); *id.* at 94:2 - 95:5 (Fred Horvath Testimony);
Joint Exhibit (“JX”) 10.

1 actions of the intervenor should so prejudice the plaintiffs' case particularly when no showing of
2 bad faith has been made." 2003 U.S. Dist. LEXIS 12407, *6-7, 2003 WL 25665328 (citing *Toste*
3 *v. Lewis Controls, Inc.*, 1996 U.S. Dist. LEXIS 2359, 1996 WL 101189 [*7] (N.D. Cal. Feb. 27,
4 1996) (holding that an adverse inference instruction was inappropriate despite
5 employer/intervenor's destruction of evidence where plaintiff/employer was blameless and would
6 have been prejudiced by inclusion of adverse inference instruction). Both the *Nowlin* and *Toste*
7 cases involved situations where federal courts found an adverse inference inappropriate because
8 it would be punishing a party for the conduct of an intervenor, but the inescapable corollary to
9 those findings is that an intervenor should not be punished for the alleged misconduct of a party.
10 And the corollary certainly applies with equal if not greater force to imposition of a presumption.

11 **B. CCEA's Motion Should be Denied because the Request for Relief is**
12 **Untimely, Nonsensical and Highly Prejudicial to ESEA and CCSD.**

13 As stated, CCEA relies on *Bass-Davis*, and to a lesser extent on *Reingold v. Wet'n Wild*
14 *Nevada, Inc.*, 113 Nev. 967, 944 P.2d 800 (1997), but that reliance is misplaced because both of
15 those cases concerned disputes at the trial court regarding whether rebuttable presumptions or
16 adverse inferences were required or appropriate *for jury instructions*. *Bass-Davis*, 122 Nev. at
17 444-45, 134 P.3d at 105; *Wet'n Wild*, 113 Nev. at 970, 944 P.2d at 802. As this Board probably
18 understands, jury instructions are resolved among the attorneys and the trial court judge at or
19 before the close of evidence and before the parties make arguments to the jury. This common
20 sense approach is reflected and required in NRCP 51(a). Indeed, that rule only allows a party to
21 proffer a jury instruction after the close of evidence when granted leave to do so by the court
22 because the need for the proffered instruction "could not reasonably be anticipated by an earlier
23 time." Applying NRCP 51(a) to this case by analogy, that is plainly not the case here, given that
24 during the hearing of this matter, the Board denied CCEA's motion to compel the alleged
25 documents that form the basis for its request for imposition of a rebuttable presumption on or
26 drawing an adverse inference against CCSD. RT at 169:15 - 170:4. And in any event, *there is*
27 *no set of circumstances under which NRCP 51(a) authorizes new jury instructions after the*
28 *parties have made their closing arguments to the jury*. Indeed, the very notion of that is

1 nonsensical. Yet that is what CCEA seeks in its motion, in that this Board is both judge and jury
2 in this matter.

3 For this Board to impose a rebuttable presumption on or draw an adverse inference
4 against CCSD in this case after the advocates for CCSD and ESEA have argued the case to the
5 Board at the close of the hearing based on the evidence presented and the Board's ruling on
6 CCEA's motion to compel would be a gross abuse of discretion and extremely prejudicial to
7 ESEA and CCSD. Therefore, the Board may deny the CCEA Motion for that reason alone.

8 **C. CCEA's Motion Should be Denied because the Request for Relief is**
9 **Ambiguous.**

10 Early in the CCEA Motion, CCEA asks the Board for "an *adverse inference or*
11 *rebuttable presumption* finding that [Supt.] Jara's text messages would have shown direct
12 bargaining between CCSD and Teamsters 14 over conditions for employment *for Unit 2*
13 *employees in a separate agreement.*" CCEA Motion at 2:3-5 (emphasis added). Then, near the
14 conclusion of its motion, CCEA seeks "a *presumption or inference* be that, had they been
15 produced, Jara's text[s] would have shown that Teamsters 14 bargained directly with Jara over
16 conditions of work of Unit 2 employees separately from Unit 1 employees, thus demonstrating
17 *that Unit 2 was recognized as its own union.*" *Id.* at 10:4-7 (emphasis added).

18 Thus, it is unclear whether CCEA seeks a presumption or an inference and whether such
19 presumption or inference would be the existence of a "separate agreement" or that "Unit 2 was
20 recognized as its own union." That latter variation is especially challenging in that a
21 "[b]argaining unit" means a group of local government employees recognized by the local
22 government employer as having sufficient community of interest appropriate for representation
23 by an employee organization [(union)] for the purpose of collective bargaining." NRS 288.134.
24 An "employee organization," (NRS 288.040) or union, and the "bargaining unit" represented by
25 such an employee organization or union are separate and distinct, but CCEA has inexplicably
26 conflated the concepts and seeks a presumption or inference that a putative bargaining unit was
27 its own union or somehow represented itself. (1) The Board and (2) ESEA and CCSD are

28 \\\

1 respectively disadvantaged and prejudiced by the ambiguity in the CCEA Motion in terms of
2 analysis and opposition, and for that reason alone, the Board may summarily deny it.

3 **D. CCEA Failed to Carry its Burden of Proof to Impose a Rebuttable**
4 **Presumption.**

5 “[B]efore a rebuttable presumption that willfully suppressed evidence was adverse to the
6 destroying party applies, the party seeking the presumption’s benefit has the burden of
7 demonstrating that the evidence was destroyed with intent to harm.” *Bass-Davis*, 122 Nev. at
8 448, 134 P.3d at 106-07. In this case, CCEA has failed to offer any substantial, probative or
9 reliable evidence that any evidence was destroyed, let alone that CCSD destroyed evidence with
10 intent to harm CCEA.

11 CCEA claimed that it had “a witness . . . that [could] attest” that Supt. Jara “uses
12 his personal device to discuss matters of bargaining of CCSD business with -- with various
13 bargaining units and entities.” RT at 14:19-23. That witness turned out to be CCEA Executive
14 Director John Vellardita, but the only thing that he could competently testify to was that he had
15 extensive communications with Supt. Jara, including text communications, *regarding CCEA*
16 *business*, and he simply did not have any knowledge of if or to what extent Supt. Jara conducted
17 business with ESEA, including Local 14 personnel, via text. RT at 145:4 - 146:9 (direct
18 examination - Vellardita had hundreds of communications with Jara re: CCEA business); at
19 157:20 - 158:10 (on cross-examination: “the only knowledge I have is my personal knowledge”);
20 *see also* RT at 103:13 - 105:5 (Supt. Jara testimony re: text communications with CCEA re:
21 bargaining issues).

22 In its motion, CCEA asserts in somewhat dramatic fashion, that in “striking
23 contradiction” to CCSD’s claim that requested text messages did not exist, it has “*obtained* . . .
24 allegedly non-existent text messages.” CCEA Motion at 1:21-24 (emphasis added). In reality,
25 on October 25, 2023, CCSD *provided* text messages from the phone of CCSD Chief Financial
26 Officer Jason Goudie in response to a request CCEA made to CCSD pursuant to NRS Chapter
27 239–Nevada’s Public Records Act. CCEA Hearing Exhibit (“CHX”) 3 at 1, 3; CCEA Motion at
28 3:23-24 and CCEA Motion Exhibit (“CMX”) 6.

1 A comparison of CCEA's EMRB subpoenas (CHX 1 and CMX 4) and its Public Records
2 Act request (CHX 3 at 3) reveals a "striking" and important difference. In both CHX 1 and
3 CMX 4—the subpoenas—CCEA specifically limited its requests to communications between
4 "Superintendent Jesus Jara" and Local 14 personnel. CHX 1 at 2; CMX 4 at 2. In contrast, in its
5 Public Records Act request, CCEA requested communications between "Superintendent Jesus
6 Jara *and Jason Goudie*" and Local 14 personnel. CHX 3 at 3 (emphasis added). Thus, there is
7 certainly nothing shocking, surprising or incriminating about the volume of CCSD's response to
8 the Public Records Act request as compared to its response to the subpoenas, because as it turns
9 out, there were far more text communications between Fred Horvath and Jason Goudie than there
10 were between Mr. Horvath and Supt. Jara.

11 Notably, in the entirety of the 15 pages of text messages from Jason Goudie's phone that
12 the District provided in response to CCEA's Public Records Act request (CMX 6), Supt. Jara is
13 only on a text thread with Messrs. Horvath and Goudie on three of those pages (CMX 6 at 11-
14 13), and the only thing he says is, "I will bring cigars." CMX 6 at 12. Although the particular
15 text exchange starts with Mr. Horvath thanking the Superintendent and Mr. Goudie for
16 supporting additional dollars for CCSD support staff medical premiums and retention bonuses,
17 and ends with an update regarding ESEA's ratification vote for the new collective bargaining
18 agreement,² the vast bulk of the exchange merely concerns Mr. Horvath inviting Supt. Jara and
19 Mr. Goudie to watch a football game together. In fact, this lone exchange of text messages
20 involving both Fred Horvath and Supt. Jara is entirely consistent with the testimony of both of
21 those gentlemen that their text exchanges mostly concerned personal matters. RT at 87:13 - 88:9
22 (Horvath); RT at 103:13-22 (Jara).

23 **E. CCEA Failed to Justify this Board Drawing an Adverse Inference.**

24 Unlike the rebuttable presumption established by the Nevada Legislature in NRS
25 47.250(3), "an inference is permissible, not required, and it does not shift the burden of proof,"
26

27 ² There is no indication that Mr. Horvath's expression of appreciation or update regarding the ESEA
28 ratification vote was somehow limited to the employees in Unit 2, for whom ESEA has enlisted the
assistance of Local 14 in representation.

1 and the decision to draw an inference or not lies within the broad discretion of the Board. *Bass-*
2 *Davis*, 122 Nev. at 447-48, 134 P.3d at 106, *Wet'n Wild*, 113 Nev. at 971, 944 P.2d at 802.

3 CCEA has provided no evidence to the Board that supports its request for the sweeping inference
4 it seeks. As discussed in Section II(D) above, CCEA has not presented any probative, substantial
5 or reliable evidence that CCSD refused to provide documents responsive to the subpoenas it
6 issued. And the documents CCSD provided to CCEA in response to CCEA's Public Records
7 Act request after the October 17th hearing of this matter do not alter that simple fact.

8 There is nothing in CMX 6 to support CCEA's assertion that Fred Horvath's text
9 message exchanges with Jason Goudie and other CCSD officials were somehow limited to, or
10 exclusive to the Unit 2 employees represented by ESEA with the assistance of Local 14. In fact,
11 there are several instances wherein Mr. Horvath mentions the involvement of "Jan and Andrew"
12 in discussions. *E.g.*, CMX 6 at 1, 4. Jan Giles is the President of ESEA, and Andrew Risheg is
13 ESEA's Operations Manager.³ On the last pages of CMX 6, in a text exchange between Fred
14 Horvath and CCSD Chief Communications Officer, Tod Story, Mr. Horvath answers a question
15 from Mr. Story regarding a press release regarding SB 231 from the recent legislative session.
16 Mr. Horvath states, "I would support referencing that *ESEA and Teamsters Local 14* are
17 currently negotiating an MOA for 231 and it will contain clear sunset language." CMX 6 at 14-
18 15 (emphasis added).

19 CCEA's motion is its latest failed attempt at producing documents it claims support its
20 allegations, but actually prove the contrary. By way of example, at the October 17th hearing,
21 CCEA introduced CHX 4 in support of its allegations. But the first three pages of CHX 4 are
22 simply an email that Supt. Jara forwarded, without comment, to Local 14 personnel regarding a
23 charity golf event. Pages 4-5 of CHX 4 are an email Supt. Jara forwarded with a short message
24 to Fred Horvath *and ESEA President Jan Giles* inviting them both to "the Evening of
25 Excellence Starlight Awards." Thus, the first five pages of CHX 4 have nothing to do with
26 bargaining.

27 _____
28 ³ RT at 181:21-22; <https://www.facebook.com/ESEACC/>

1 Although the remaining six pages of CHX 4 do concern terms and conditions of ESEA
2 Bargaining Unit employees: (1) they consist of an internal CCSD email thread that Supt. Jara
3 forwarded to Fred Horvath, and the only thing Supt. Jara says on the first page of the entire six
4 pages is, “Here is the latest version after the reclassification of [CSMs]”; and, (2) the
5 communication is not limited to terms and conditions of employment for Unit 2 employees
6 represented by ESEA with the assistance of Local 14. The communications include information
7 regarding the reclassification of various custodial positions (Unit 2), but they also include
8 information regarding the reclassification of Campus Security Monitors, or “CSM”s. CHX 4 at
9 5, 9. As explained by Supt. Jara, CSMs are Unit 1 employees. RT at 18:2-19. Thus, CHX 4 is
10 evidence of Mr. Horvath communicating with CCSD, as a designated agent of ESEA, regarding
11 terms and conditions of employment for both Unit 1 and Unit 2 employees, *i.e.*, **all** ESEA
12 Bargaining Unit employees.

13 Thus, in its motion and at the hearing of this matter, CCEA repeatedly asks this Board to
14 draw adverse inferences against CCSD, and by extension against ESEA, without any anchoring
15 facts. CCEA makes bald assertions that Local 14, really just Fred Horvath, was negotiating
16 separately with CCSD on behalf of Unit 2 employees, but CCEA never produced a separate
17 collective bargaining agreement nor any documents or competent testimony that support those
18 bald assertions. Therefore, it would be inappropriate and prejudicial to ESEA and CCSD for the
19 Board to grant CCEA’s request that the Board draw such “untethered” inferences. This is
20 especially so when at the hearing of this matter, the Board already denied CCEA’s motion to
21 compel production of the alleged documents it sought on the ground that they were not relevant
22 to the issues in the case. RT at 169:15 - 170:4.

23 III.

24 CONCLUSION

25 Having failed to carry its burden of proof at the hearing of this matter, CCEA now makes
26 a desperate, untimely and inappropriate request that this Board impose a rebuttable presumption
27 upon or draw an adverse inference against CCSD. CCEA likely believes that this cheap shot
28 after the bell will resurrect its case from the ashes. Assuming only for the sake of argument that

1 the Board did believe CCSD willfully or negligently destroyed or withheld evidence in this
2 matter, it would be inappropriate to impose a rebuttable presumption or draw an adverse
3 inference against CCSD because doing so would be highly prejudicial to ESEA. This is so
4 because at the hearing of this matter, the evidence demonstrated the importance of the ESEA-
5 Local 14 Agreement to the effective and efficient union representation of CCSD support staff
6 employees, and the object of CCEA's Complaint in this matter is to disrupt that important
7 agreement in some sort of "spoiler" fashion.

8 But the Board has ample grounds to deny CCEA's motion on the merits, or lack thereof.
9 First and foremost, CCEA's motion is untimely and nonsensical. CCEA essentially asks the
10 Board to change the facts of the case after the advocates for ESEA and CCSD have already
11 submitted the case to the Board on oral argument at the close of the October 17th hearing. If there
12 was a rebuttable presumption or adverse inference to deal with in oral argument, counsel for
13 ESEA and CCSD would need to have known that before they made their closing arguments so
14 that they could adjust their arguments accordingly.

15 Beyond that, the CCEA Motion is also fatally ambiguous in that it is not at all clear
16 whether CCEA seeks a rebuttable presumption or an adverse inference and how exactly that
17 presumption or adverse inference would be stated. The CCEA Motion should also be denied
18 because CCEA failed to carry its burden of proof to demonstrate that CCSD destroyed evidence
19 with intent to harm CCEA, nor did CCEA provide any evidence to the Board that would just an
20 adverse inference. Indeed, the reliable, probative and substantial evidence presented to the Board
21 at the hearing of this matter, and even in CCEA's Motion itself, establishes that agents of Local
22 14 interacted with CCSD as agents of ESEA on behalf of the entire ESEA Bargaining Unit and
23 not just what ESEA and Local 14 refer to as "Unit 2" employees.

24 \\\

25 \\\

26 \\\

27 \\\


28 \\\

CERTIFICATE OF SERVICE

Pursuant to NAC 288.200(2), I certify that I am an employee of Dyer Lawrence, LLP, and that on the 5th day of December 2023, I sent via email, a true and correct copy of the within ESEA’S OPPOSITION TO CCEA’S MOTION FOR SANCTIONS addressed to the following:

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Crystal J. Herrera, Esq.
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1 OFFICE OF THE GENERAL COUNSEL
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3 CRYSTAL J. HERRERA, ESQ. (NV Bar No. 12396)
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9 *Clark County School District*

FILED
December 11, 2023
State of Nevada
E.M.R.B.
5:00 p.m.

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

10 CLARK COUNTY EDUCATION
11 ASSOCIATION,

12 Complainant,

13 v.

14 CLARK COUNTY SCHOOL DISTRICT,

15 Respondent,

16 and

17 EDUCATION SUPPORT EMPLOYEES
18 ASSOCIATION,

19 Intervenor.

CASE NO.: 2023-009

**RESPONDENT CLARK COUNTY
SCHOOL DISTRICT'S OPPOSITION
TO MOTION FOR SANCTIONS AND
JOINER TO ESEA'S OPPOSITION
TO CCEA'S MOTION FOR
SANCTIONS**

20 COMES NOW, Respondent Clark County School District ("CCSD" / "District"), by and
21 through its attorneys, and pursuant to NAC 288.240 submits the following Opposition to Clark
22 County Education Association ("CCEA") in this action before the Local Government Employee-
23 Management Relations Board ("Board" or "EMR"). This Opposition is based upon papers and
24 pleadings on file herein, the attached Memorandum of Points and Authorities, and any oral
25 argument permitted at the time of the hearing on this matter. CCSD also fully joins ESEA's
26 Opposition to CCEA's Motion for Sanctions.

27 ...

28 ...

I.

MEMORANDUM OF POINTS AND AUTHORITIES

A. INTRODUCTION

In its latest attempt to find some form of wrongdoing by the District, CCEA has filed a Motion for Sanctions seeking a rebuttable presumption or adverse inference claiming, in insincere fashion, that the District did not comply with subpoenas in this matter. CCEA initiated this action based on a misguided assumption that Teamsters Local 14 (“Teamsters”) was directly negotiating with CCSD separate and apart from the Education Support Employees Association (“ESEA”), who is the recognized employee organization for the District’s support staff employees. Prior to the hearing on this matter, CCEA served two subpoenas: one to Dr. Jesus Jara, individually, and one on the District’s Custodian of Records, both requesting communications to and from Dr. Jara to a variety of individuals associated with Teamsters, including but not limited to Teamster’s officer/secretary/treasurer Fred Horvath. The District objected to the first subpoena and produced available, responsive communications in compliance with the second subpoena.

During the hearing in this matter, CCEA made an oral motion to compel Dr. Jara’s text messages. The Board heard argument from counsel and deferred a ruling on the matter until the conclusion of the hearing and after hearing testimony from Dr. Jara and Mr. Horvath regarding the nature of their text messages. The Board then denied CCEA’s motion to compel finding that the requested information was irrelevant.

CCEA’s present filing is nothing but a desperate and improper attempt to obtain an adverse inference or rebuttable presumption and seemingly have the Board ignore the overwhelming evidence presented at the hearing that showed Teamsters is an ESEA-designated representative and is bargaining as a partner with ESEA on behalf of the entire support staff employee bargaining unit. The Board should not condone the revisionist representations and arguments made by CCEA and summarily deny the Motion.

B. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

CCSD has formally recognized ESEA as the exclusive representative for the bargaining unit comprised of non-licensed support staff employees. Prior to 2019, there was a 19 year-long

1 attempt by Teamsters to gain recognition of the non-licensed support staff within CCSD, which
2 “contest” effectively ended when ESEA and Teamsters agreed to work cooperatively.

3 In October 2019, ESEA entered into an agreement with Teamsters, wherein Teamsters
4 would assist ESEA in the representation and servicing of the bargaining unit. Specifically, it was
5 agreed between ESEA and Teamsters that “ESEA will administratively bifurcate the Bargaining
6 Unit into two sub-units;” “ESEA will remain the Bargaining Agent for both sub-units;” “Local 14
7 will be assisting ESEA in the representation and servicing of the bargaining unit;” and ESEA
8 would appoint four employees of Unit 2 designated by Local 14 to the ESEA Bargaining Team.

9 Since the Agreement took effect in 2019, CCSD has not formally recognized any additional
10 employee organizations to represent non-licensed support staff employees. At no point has CCSD
11 recognized Teamsters as the exclusive representative for any bargaining unit. Further, CCSD has
12 not made any determinations to divide a group of those support staff employees into a separate
13 bargaining unit. ESEA remains the only recognized representative and bargaining agent of the
14 CCSD support professionals. Since 2021, Teamsters’ secretary Mr. Horvath, along with other
15 Teamsters staff, attended the negotiations between ESEA and CCSD as partners alongside Jan
16 Jiles, the lead for ESEA.¹

17 Prior to the hearing in this matter, on October 2, 2023, CCEA served a subpoena duces
18 tecum on Dr. Jara personally for communications with several individuals associated with
19 Teamsters.² CCSD responded on October 9, 2023, stating that the requested records were within
20 the custody and control of CCSD, so there would be no personal response from Dr. Jara.³ CCSD
21 also objected to the request for “all written communications” as overbroad and not relevant or
22 proportional with the needs of the case.⁴ On October 10, 2023, CCEA served a subsequent
23 subpoena duces tecum on the Custodian of Records for the District requesting all communications,
24 including texts, between Dr. Jara and individuals associated with Teamsters from January 1, 2023

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26 ¹ Transcript of October 17, 2023 Hearing at 85:15-86:10; 86:21-24

27 ² CCEA’s Motion for Sanctions, Exhibit 1

28 ³ CCEA’s Motion for Sanctions, Exhibit 2

⁴ CCEA’s Motion for Sanctions, Exhibit 3

1 to the present.⁵ On October 16, 2023, CCSD sent CCEA available responsive documents to the
2 second subpoena regarding Dr. Jara’s communications with individuals from Teamsters related to
3 the issues in CCEA’s complaint.⁶

4 At the beginning of the hearing on this matter on October 17, 2023, CCEA made an oral
5 motion to compel text messages “related to bargaining” based on the subpoena that was issued to
6 Dr. Jara personally and the subpoena to the Custodian of Records for the School District.⁷ CCSD
7 responded by stating, “Any text messages with respect to business-related activity have been
8 produced in response, that are available have been produced in response to duces tecum issued to
9 the Clark County School District... Mr. Urban: So are you saying that anything that was on his
10 personal devise that was relevant to or related to Teamsters or this particular proceeding have been
11 produced? Ms. Herrera: Correct.”⁸ Counsel for CCSD also argued that CCEA’s two subpoenas
12 duces tecum were procedurally deficient under NRCP 45.⁹ The motion to compel was tabled to
13 allow testimony from the witnesses regarding their communications to determine if there were
14 additional documents that needed to be requested and whether further compelling of records would
15 be required.¹⁰

16 During the October 17, 2023 hearing, Mr. Horvath was asked whether he engaged with
17 Dr. Jara and District Chief Financial Officer Jason Goudie about subjects related to working
18 conditions of the bargaining units, to which he responded that his texts “have been almost
19 exclusively personal in nature;” “I believe there were text messages asking specific questions
20 about bargaining discussions the following day with mostly Mr. Goudie;” and when asked
21 specifically about texts with Dr. Jara, responded, “I don’t recall exactly what they – what the
22 contents of any text message that really wasn’t involved in bargaining. He’s [Jara] not at the
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25 ⁵ CCEA’s Motion for Sanctions, Exhibit 4

26 ⁶ CCEA’s Motion for Sanctions, Exhibit 5

27 ⁷ Transcript at 9:12-10:4; 12:14-13:7

28 ⁸ *Id.* at 14:2-15

⁹ *Id.* at 11:3-25

¹⁰ *Id.* at 21:2-16

1 table.”¹¹ Dr. Jara was asked whether he ever communicated with Mr. Horvath via text regarding
2 working conditions of support staff members, to which Dr. Jara responded, “I think they’re mostly
3 personal;” and “to the best of my knowledge, I think this, you know, mostly personal or let’s have
4 a conversation, but.”¹² During the hearing, counsel for CCEA did not ask Dr. Jara about whether
5 he keeps or deletes his text messages, nor did CCEA subpoena or seek to subpoena Mr. Horvath’s
6 text messages with Dr. Jara and Mr. Goudie. CCEA did not call the District’s Custodian of
7 Records to testify to the extent they had questions about the veracity of the documentation
8 produced or the manner by which the documentation was searched for, obtained, and produced in
9 response to the subpoena duces tecum. Executive Director of CCEA John Vellardita could only
10 testify that his knowledge of Dr. Jara’s communication methods (verbal, phone, text messages,
11 emails) was based on his personal communications with Dr. Jara.¹³

12 Following the testimony of Dr. Jara, Mr. Horvath, and Mr. Vellardita, CCEA’s counsel re-
13 raised the oral motion to compel text messages to and from Dr. Jara with Teamsters pursuant to the
14 subpoena duces tecum.¹⁴ At the time, CCEA’s counsel did not specify which subpoena duces
15 tecum he was referring to. The Board went into closed session and decided to deny CCEA’s
16 motion to compel, “on the grounds that it’s not relevant based on the issues of the complaint.”¹⁵

17 CCEA now brings a Motion for Sanctions, after the close of the hearing and closing
18 arguments, based on two text communications from Mr. Goudie’s phone that were produced as a
19 result of a public records request, separate from the subpoena duces tecum to the Custodian of
20 Records of the District in this case. The text messages from Mr. Goudie’s phone that Dr. Jara was
21 copied on do not show any kind of bargaining by Mr. Horvath let alone on behalf of Teamsters to
22 the exclusion of ESEA. In fact, the sole text thread starts with Mr. Horvath thanking Mr. Goudie
23 and Dr. Jara for supporting additional money for all support staff, which was sent on June 9,
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26 ¹¹ *Id.* at 87:13-88:19

27 ¹² *Id.* at 103:13-22

28 ¹³ *Id.* at 158:1-16

¹⁴ *Id.* at 165:6-23.

¹⁵ *Id.* at 169:5-19

1 2022.¹⁶ This text message is dated beyond the parameters that were included in both the first and
2 second subpoena duces tecum – CCEA sought communications dated from January 1, 2023
3 through the date of the subpoena. The communications then pertain to meeting to watch a football
4 game and Mr. Horvath ultimate communicating a vote count and extending appreciation to the
5 Board of Trustees. Dr. Jara’s sole text message was in response to meeting to watch a football
6 game and stated, “I will bring the cigars.”¹⁷

7 CCEA cannot now, more than a month after its oral motion was denied and the parties
8 presented their cases at the hearing, support a claim that the District either willfully suppressed or
9 negligently destroyed any relevant text messages from Dr. Jara in violation of the subpoena, and
10 that it is entitled to any sanction in the form of an adverse inference or rebuttable presumption. As
11 before, CCEA’s speculation that relevant text messages have been willfully suppressed is incorrect
12 and premised on hyperbolic, bald conclusions. CCEA’s fishing attempts for any trivial
13 communication between Teamsters and Dr. Jara has yielded nothing to support their claims that
14 Teamsters was bargaining on its own behalf, and not, as had been clearly testified to, as a
15 representative of ESEA on behalf of the support staff bargaining unit.

16 **C. ARGUMENT**

17 CCEA’s Motion for Sanctions following a denied motion to compel completely lacks
18 legal and factual support, and must be denied as well. CCEA’s Motion for Sanctions does not
19 illustrate that the District failed to produce any relevant communications between Dr. Jara and
20 individuals at Teamsters. Additionally, there has been no violation of any order or subpoena that
21 would warrant sanctions or a rebuttable presumption or adverse inference in this matter. CCEA’s
22 motion is clearly a last-ditch effort to create some doubt before the Board issues its decision,
23 despite the overwhelming evidence that Teamsters individuals were negotiating on behalf of the
24 entire support staff bargaining unit in partnership with ESEA.

25 ...

26 ...

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28 ¹⁶ CCEA’s Motion for Sanctions, Exhibit 6 at 11-13.

¹⁷ CCEA’s Motion for Sanctions, Exhibit 6 at 12.

1 **1. CCEA Did Not Meet Its Burden of Proof That Any Documents Were**
2 **Willfully Suppressed Or Negligently Destroyed.**

3 CCEA appears to have moved for a rebuttable presumption, or an adverse inference, based
4 on its speculation that there were relevant text message that the District did not produce or
5 intentionally destroyed. CCEA’s request for a rebuttable presumption fails because CCEA has not
6 met its burden of demonstrating evidence was willfully suppressed or destroyed with intent to
7 harm.

8 Thus, before a rebuttable presumption that willfully suppressed evidence was
9 adverse to the destroying party applies, the party seeking the presumption's
10 benefit has the burden of demonstrating that the evidence was destroyed with
11 intent to harm. When such evidence is produced, the presumption that the
12 evidence was adverse applies, and the burden of proof shifts to the party who
13 destroyed the evidence. To rebut the presumption, the destroying party must then
14 prove, by a preponderance of the evidence, that the destroyed evidence was not
15 unfavorable. If not rebutted, the fact-finder then presumes that the evidence was
16 adverse to the destroying party.

17 *Bass-Davis v. Davis*, 122 Nev. 442, 448, 134 P.3d 103, 107 (2006)

18 In its Motion, CCEA argues that is more likely the District willfully withheld evidence
19 and misrepresented its existence while proclaiming “CCSD did not ever state that Jara had deleted
20 messages on his phone.”¹⁸ Preliminarily, there was no misrepresentation made to the Board and to
21 try to concoct such a conclusion to request an adverse inference or rebuttable presumption is
22 irresponsible and telling. At no point did the District represent that text messages between Dr.
23 Jara and member of Teamsters management did not exist as claimed by CCEA; to the contrary,
24 Dr. Jara and Mr. Horvath themselves acknowledged and testified that messages existed between
25 them. The District produced to CCEA available, responsive documents in accordance with the
26 subpoena, as represented at the hearing and the public records request, and CCEA has been
27 expressly informed that Dr. Jara’s business and personal cell phones were searched and there

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¹⁸ CCEA’s Motion, p. 7:15-21.

1 were no responsive texts.¹⁹ Claiming that the District is hiding Dr. Jara’s text messages is plainly
2 insincere.

3 Markedly, CCEA subpoenaed Dr. Jara and the District’s Custodian of Records for the
4 hearing in this case. CCEA did not ask Dr. Jara any questions about how he maintains text
5 messages or whether he deleted any messages between himself or Teamsters or regarding support
6 staff working conditions. CCEA did not call the District’s Custodian of Records to ask how the
7 search of records was conducted, how they were obtained, or how that pertained to text messages.
8 Nor did CCEA subpoena Mr. Horvath’s phone records in an effort to prove what they so
9 desperately desire to be true— that Teamsters is negotiating with the District separate and apart
10 from ESEA. CCEA’s “evidence” of willful suppression is nothing but an admission of a failure to
11 properly examine Dr. Jara, Mr. Horvath, and the District’s Custodian of Records about the
12 existence of text messages and search for such messages in response to the subpoena duces
13 tecum. That failure also means that CCEA has no evidence that Dr. Jara *intentionally* deleted
14 harmful text messages from his phone; rather CCEA speculates that Dr. Jara must have done so
15 because he did not offer up any testimony to a question CCEA did not ask (whether he deletes his
16 text messages) and because a singular text thread was obtained from Mr. Goudie’s phone wherein
17 Dr. Jara’s sole communication concerned a personal outing and cigars.

18 What is more, CCEA avers that the text thread from Mr. Goudie’s phone is relevant to the
19 present case, but makes the conclusion without any semblance as to how that message is relevant
20 to anything.²⁰ Indeed, it is uncontroverted that District personnel communicate with Teamsters as
21 ESEA-designated representative. CCEA has not come close to satisfying its burden for a
22 rebuttable presumption against the District, and by extension ESEA, in this case.²¹

23 CCEA also posits that if Dr. Jara did delete his text messages negligently, then his actions
24 warrant an adverse inference, because he was on notice of the pending litigation. Nevada courts

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26 ¹⁹ CCEA’s Motion, Exhibit 7 at 1 (response to the analogous public records request by CCEA)

27 ²⁰ CCEA’s Motion, p. 6:22-24.

28 ²¹ Any presumption or adverse inference would inevitably impact ESEA because it is ESEA that has designated Teamsters as its representative and the cornerstone for the District communicating with Teamsters at all.

1 adhere to a common-law duty to “preserve documents, tangible items, and information relevant to
2 litigation that are reasonably calculated to lead to the discovery of admissible evidence.” *Bass-*
3 *Davis v. Davis*, 122 Nev. 442, 4501 (2006). “Generally, in cases based on negligently lost or
4 destroyed evidence, an adverse inference instruction is tied to a showing that the party controlling
5 the evidence had notice that it was relevant at the time when the evidence was lost or destroyed.¹⁵
6 In other words, when presented with a spoliation allegation, the threshold question should be
7 whether the alleged spoliator was under any obligation to preserve the missing or destroyed
8 evidence.” *Bass-Davis v. Davis*, 122 Nev. 442, 449–50, 134 P.3d 103, 108 (2006).

9 Not every single text message between Dr. Jara and individuals associated with Teamsters
10 since January 2023 is relevant to CCEA’s claims that Teamsters was bargaining separate and apart
11 from ESEA. As demonstrated through the testimony from Mr. Horvath and Dr. Jara at the hearing,
12 and in fact confirmed by the text thread attached to CCEA’s Motion for Sanctions as Exhibit 6, the
13 texts between Dr. Jara and Mr. Horvath were largely personal, and therefore it would not be clear
14 that Dr. Jara knew or reasonably should have known the texts at issue to be relevant; it cannot be
15 said there was a common-law duty to preserve or produce those texts for use in litigation. Further,
16 one text message from Mr. Horvath to both Mr. Goudie and Dr. Jara about a vote taking place is
17 not evidence that Dr. Jara negligently destroyed relevant text messages; that text was an update
18 about a vote, not any bargaining by Mr. Horvath for Teamsters to the exclusion of ESEA, which is
19 the issue of CCEA’s complaint. Therefore, CCEA has not met its burden to show that Dr. Jara has
20 negligently destroyed any relevant evidence, and no adverse inference is warranted.

21 **2. CCEA incorrectly asserts that a duty to preserve and produce under NRS 239**
22 **is the same obligation to preserve evidence under *Bass-Davis v. Bass*.**

23 CCEA argues that, in addition to the obligation to preserve potentially relevant evidence
24 under *Bass-Davis v. Bass*, Dr. Jara had a duty to preserve his text messages with individuals from
25 Teamsters “regarding contract ratification” under public records retention statutes.²² However,
26 CCEA is incorrect in conflating the obligation to preserve documents under public records
27

28 ²² CCEA’s Motion, p. 8:23-9:4

1 retention statutes with the pending litigation notice element that is applicable in this case. Public
2 records requests are covered by NRS 239, and the EMRB does not have the jurisdiction under
3 NRS 288 to enforce any duty to preserve or produce under NRS 239. Even if it could, there is no
4 evidence that Dr. Jara violated any duty to preserve under NRS 239.

5 CCEA's improperly contends that the overbroad category of "texts to or from him [Jara]
6 related to ESEA contract ratification" fall under the definition of "Executive Correspondence."
7 CCEA cites to the Local Government Records Retention Schedules definition of "Correspondence:
8 Executive" and "Correspondence: Routine Business" to argue that Dr. Jara was under a duty to
9 preserve his texts with Mr. Horvath for at least six years, if not permanently. However,
10 determining whether a communication fits a certain definition is obviously content driven, and not
11 every text sent by Dr. Jara must be preserved. The definition that more closely relates to the text
12 messages at issue in CCEA's Motion for Sanctions is "Correspondence: Transitory" which is
13 described as:

14 "This series consists of correspondence (emails, social media, letters, memos,
15 Etc.) that do not document core functions or activities of an agency or department
16 and do not require an official action. Examples may include but are not limited to
17 general announcements including meeting reminders, notices of upcoming events,
18 informational copies (cc or bcc) of correspondence which do not [sic] document
19 administrative action, follow-up or suspense (tickler), transmittal letters that do
20 not add information to the transmitted material or attachments, request for routine
21 information or publications provided to the public by the agency which are
22 answered by standard form letters, spam, junk mail, unsolicited vendor mail, and
23 personal/non-work related mail."²³

24 Transitory Correspondence is required to be maintained "only as long as the record holds value to
25 the agency," and "It is recommended this type of correspondence be retained for no longer than
26 thirty (30) days."²⁴ Indeed, as illustrated by the records produced from Mr. Goudie's phone, the
27 text messages from Fred Horvath concerning a vote did not require any action by the District, and
28 were not of such value that they had to be maintained longer than 30 days, if that long at all. So, if
this text message was deleted from Dr. Jara's phone, it would not run afoul of NRS 239 and there

²³ https://nsla.nv.gov/ld.php?content_id=60238524, p. 10.

²⁴ *Id.*

1 is no basis to argue that doing so was negligent. Nevertheless, as provided above the text's
2 production cannot not be enforced by the Board under NRS 239, even if the messages were
3 deemed relevant, which they are not as the Board previously ruled.

4 Records produced by the District pursuant to the subpoena duces tecum in this case were
5 appropriately responsive to the subpoena, and records produced pursuant to the public records
6 request were an entirely different matter. Again, the subpoenas duces tecum issued to both Dr. Jara
7 personally and the Custodian of Records for the District requested "all written communications,
8 including emails, texts, and memorandums to, from, or copied to Dr. Jara to Teamsters Local
9 14...". Obviously, and as indicated in the District's objection,²⁵ the request for all communication
10 is overbroad, and CCEA is not entitled to communication by District employees that is not relevant
11 to the issues in its complaint in this matter. The District's response to the request for public records
12 pertaining to Mr. Goudie's communications involved a completely different request under a
13 separate authority, so comparing the response to the public records request to the response to the
14 subpoenas in this case is inappropriate and does not support any of CCEA's claims that CCSD
15 disregarded the subpoena.

16 **3. Sanctions Are Inappropriate Pursuant to the Statutes.**

17 CCEA argues that the subpoenas issued by the Board in this case are an "order" that the
18 Board may enforce through its subpoena powers outlined in NRS 288.120 and impose sanctions
19 under NAC 288.373.²⁶ However, the statute clearly delegates the power to issue and enforce
20 subpoenas between the Board and the district court. NRS 288.120(1) states that the "Board *may*
21 *issue* subpoenas requiring the attendance of witnesses before it, together with all books,
22 memoranda, papers and other documents relative to the matters under investigation." NRS
23 288.120(2) states, "The district court in and for the county in which any hearing is being conducted
24 by the Board *may compel* the attendance of witnesses, the giving of testimony and the production
25 of books and papers as required by subpoena." In order to compel the production of documents or
26 a witness pursuant to a subpoena, the Board may petition the district court for an order compelling

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28 ²⁵ CCEA's Motion for Sanctions, Exhibit 3.

²⁶ CCEA's Motion, p. 6

1 production or appearance. NRS 288.120(3) CCEA cited to the Board's subpoena powers in NRS
2 288.120(1) but omitted the remaining subsections outlining the power to compel.

3 Contrary to CCEA's assertion, CCSD has not failed to comply with an order of the Board.
4 The statute clearly states that the remedy for noncompliance with a subpoena issued by the Board
5 is that the Board may apply to the district court for an order directing production of documents or
6 witnesses. This did not occur after CCEA's oral motion to compel, because as CCEA is aware, the
7 Board declined to compel any further records, finding that they were irrelevant based on the
8 testimony presented at the hearing, and denied CCEA's oral motion. Therefore, it cannot be said
9 that CCSD violated any order by the Board such that sanctions are appropriate.

10 Further, CCSD adequately complied with the second subpoena issued to the Custodian of
11 Records for the District and produced responsive communications to and from Superintendent Jara
12 that were available. The text messages attached to CCEA's Motion for Sanctions in Exhibit 6 do
13 not reveal anything more than Mr. Horvath copying Dr. Jara on a text thread that was largely
14 personal, as stated during the hearing by both Mr. Horvath and Dr. Jara. Certainly, two texts
15 updating both Goudie and Jara that there was a vote occurring and the result of the vote do not
16 establish that the District failed to produce relevant communications in violation of the subpoenas
17 issued in this matter. As there was no violation of the subpoena, and no subsequent order by the
18 Board or the district court to compel production of additional documents, sanctions in any form
19 under NAC 288.373 for violation of an order would be inappropriate.

20 **4. CCSD Joins ESEA's Opposition to CCEA's Motion for Sanctions**

21 CCSD joins ESEA's Opposition to CCEA's Motion for Sanction in full. In the interest of
22 efficiency, this Opposition will not restate the arguments made in ESEA's Motion, and
23 incorporates them as though there were fully set forth herein.

24 ...

25 ...

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1 **D. CONCLUSION**

2 CCEA has failed to meet its burden of proof to show it is entitled to an adverse inference or
3 a rebuttable presumption. The documents produced by the District and the overwhelming
4 testimony presented at the hearing on this matter clearly demonstrate that the District has not
5 recognized Teamsters as a separate union. CCEA's Motion for Sanctions is clearly a desperate
6 final attempt to sow doubt in this Board's deliberation of the issues, and must be denied.

7 DATED this 8th day of December, 2023.

8 CLARK COUNTY SCHOOL DISTRICT
9 OFFICE OF THE GENERAL COUNSEL

10 By: /s/ Crystal J. Herrera
11 CRYSTAL J. HERRERA, ESQ.
12 Nevada Bar No. 12396
13 5100 West Sahara Avenue
14 Las Vegas, Nevada 89146
15 *Attorney for Respondent,*
16 *Clark County School District*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 8th day of December, 2023, I deposited a true and correct copy
3 of the foregoing **RESPONDENT CLARK COUNTY SCHOOL DISTRICT'S OPPOSITION**
4 **TO MOTION FOR SANCTIONS AND JOINDER TO ESEA'S OPPOSITION TO CCEA'S**
5 **MOTION FOR SANCTIONS** in the United States Mail, postage prepaid thereon, addressed as
6 follows:

7 Steven Sorensen
8 General Counsel
9 Clark County Education Association
10 4230 McLeod Drive
11 Las Vegas, NV 89121
12 *Attorneys for Complainant, CCEA*

13 Francis C. Flaherty, Esq.
14 Sue S. Matuska, Esq.
15 Dyer Lawrence, LLP
16 2805 Mountain Street
17 Carson City, NV 89703
18 *Attorneys for Intervenor, ESEA*

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28
/s/ Elsa C. Peña
An employee of the Office of the General Counsel,
Clark County School District

FILED
December 19, 2023
State of Nevada
E.M.R.B.
1:14 p.m.

1 Steven Sorensen
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2 Clark County Education Association
4230 McLeod Drive
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4 *Attorney for Complainant*

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

8 CLARK COUNTY EDUCATION ASSOCIATION,

9 Complainant,

10 vs.

11 CLARK COUNTY SCHOOL DISTRICT,

12 Respondent, and

13 EDUCATION SUPPORT EMPLOYEES
14 ASSOCIATION

15 Intervenor.

Case No.: 2023-009

**CCEA’S REPLY TO ESEA’S OPPOSITION TO
CCEA’S MOTION FOR SANCTIONS**

AND

**CCEA’S REPLY TO CLARK COUNTY SCHOOL
DISTRICT’S OPPOSITION TO MOTION FOR
SANCTIONS**

16
17 COMES NOW Complainant, CCEA doing business as Clark County **Education Association (“CCEA”)**, and,
18 pursuant to NAC 288.240, submits the following Reply to Education Support Employees Association’s (“ESEA”) **Opposition to CCEA’s Motion for Sanctions and Reply to Clark County School District’s (“CCSD”) Opposition to**
19 **Motion for Sanctions. This Reply is based on the papers and pleadings on file herein, the attached Memorandum of**
20 **Points and Authorities, and any oral arguments permitted at the time of hearing on this matter.**

21
22 **I. ARGUMENT**

23 **A. The Requested Sanctions Do Not Harm ESEA**

24 ESEA claims that they would be harmed if the requested sanctions were granted because it could result in
25 CCSD being prohibited from negotiating with Teamsters 14 and that somehow CCSD being able to negotiate with
26 the Teamsters 14 is “important for the effective union representation of CCSD support staff employees...ensur[ing]
27 that –that the most number of members have the ability to join a union. It also ensures that we are able to focus on

1 the [core] functions of a union, negotiating good contracts and representing our members.” ESEA Opposition 2:15-
2 23

3 This argument ignores the fact that the Agreement between ESEA and Teamsters 14 actually does not allow
4 ESEA to represent support staff in Unit 2 (Joint Exhibit 5, paragraph 6) and does not allow support staff in Unit 2 to
5 join ESEA (Joint Exhibit 5, paragraph 9) It is difficult to see how it would harm support staff in Unit 2 to be
6 permitted, once again, to join the union which is their recognized bargaining agent or to be represented by their
7 recognized bargaining agent in grievances and investigatory meetings. It is also unclear how ESEA is harmed by
8 having to represent all of the members of their bargaining unit or how they would be harmed by having to allow the
9 members of their bargaining unit to join their union. If anything, this should be a positive for ESEA as they would
10 have access to a greater number of possible members.

11 Further, CCEA’s complaint does not ask that CCSD be prohibited from talking with Teamsters 14 as ESEA
12 alleges. CCEA’s complaint asks for a finding that CCSD de facto recognized Teamsters 14 as the bargaining agent
13 for Unit 2. This is not inherently harmful to ESEA and would not necessarily mean that Unit 2 could no longer be
14 represented by Teamsters 14. If representation by Teamsters 14 is the ideal for Unit 2 employees and ESEA, then
15 CCSD could recognize Teamsters 14 in order to resolve the issue. This would bring CCSD into compliance with
16 NRS 288 and leave the current representation model undisturbed.¹

17 **B. ESEA Knew or Should Have Known That CCSD Was Failing To Disclose Superintendent Jara’s**
18 **Text Messages with Fred Horvath**

19 During the hearing ESEA produced text messages from Teamsters 14 Secretary/Treasurer Fred Horvath’s
20 (“Horvath”) phone. (see ESEA Exhibit 20 and Recorder’s Transcripts (“RT”) 231:11 This demonstrates that ESEA
21 had access to the messages on Horvath’s phone. ESEA was aware that CCEA had subpoenaed Superintendent Jesus
22 Jara’s (“Jara”) communications with Horvath and other individuals in Teamsters 14 as the subpoena was sent as an
23 exhibit to ESEA’s counsel prior to the hearing.

24 Because ESEA clearly had access to Horvath’s texts and would have wanted to see what would have turned up
25 pursuant to the subpoena, ESEA likely would have reviewed Horvath’s communications with Jara and CCSD’s

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28 ¹ Assuming that the breaking up of the bargaining unit met the requirements of NRS 288.

1 bargaining team members prior to the hearing in the course of its own due diligence. If ESEA did in fact review the
2 texts and knew that CCSD was not producing texts which were responsive to the subpoena, then ESEA cannot now
3 argue that they are being unjustly harmed by an inference or a presumption. ESEA had the opportunity to correct the
4 record and chose not to. If ESEA did review Horvath's texts with regards to bargaining, then ESEA allowed
5 Horvath to misrepresent the contents of his communications with Jara and CFO Jason Goudie ("Goudie") when
6 Horvath stated that "...ESEA is included in most of those, if not all of those text messages." (see RT 94:2-8) A
7 quick review of the texts attached to CCEA's Motion for Sanctions as Exhibit 6 shows that no one from ESEA is
8 included in the vast majority of the texts between Horvath and CCSD.

9 On the other hand, if ESEA did not conduct its due diligence and review these text messages, ESEA's failure
10 should not be permitted by this Board to be used as a reason for denying the sanctions requested by CCEA. Nothing
11 prevented ESEA from reviewing these texts prior to the hearing and nothing prevented Horvath, ESEA's purported
12 agent, from being truthful about the contents of those communications. ESEA should not be able to use its lack of
13 due diligence to absolve CCSD from sanctions related to its failure to disclose evidence pursuant to a valid
14 subpoena.

15 **C. The EMRB is not Powerless When a Party's Wrongdoing is Discovered After a Hearing**

16 ESEA seems to argue that because *Bass-Davis v. Davis*, 122 Nev. Adv. Op. 39 (2006) was in relation to a jury
17 instruction, that this Board would be precluded from utilizing its standards in applying a sanction. Nowhere in *Bass-*
18 *Davis* does it state that it's application of NRS 47.250(3) may only be used with relation to jury instructions and
19 nowhere in NRS 47.250(3) does it state that a rebuttable presumption may only be applied to jury instructions. This
20 would be non-sensical as it would prevent any judicial body which does not utilize a jury from imposing this
21 sanction. ESEA notably does not produce any citation that *Bass-Davis* is only applicable to jury instructions.

22 ESEA also does not cite any authority which would prevent the EMRB from imposing sanctions after closing
23 arguments and NAC 288.373 does not contain any language placing such a restriction on the Board. Because the
24 Board, as a trier of fact, would be better equipped than a jury to apply an inference to the evidentiary record after a
25 hearing has taken place, there is no reason that the Board should not have the authority to order such a sanction after
26 closing arguments.

27 ESEA's argument that the timing of the sanction request should prevent the imposition of a sanction is also
28 without merit. If the Board were to accept this argument then it would reward CCSD for its delay tactics in

1 producing records pursuant to the Public Records Request and for failing to produce the records pursuant to the
2 EMRB's subpoena. This type of behavior should not be encouraged and the Board does not have to permit it to go
3 unsanctioned as there is nothing in the NAC regarding the timing of a sanction.

4 **D. CCEA's Request is not Ambiguous**

5 ESEA argues that CCEA's requested sanctions are ambiguous. While this is irrelevant because this Board may
6 impose whatever sanctions it deems appropriate, it is also not accurate. CCEA's requested sanctions are perfectly
7 clear. To the extent that this Board finds the request to be ambiguous, CCEA requests that it be given leave to
8 provide that clarification. Denial of the Motion for Sanctions would not be appropriate when a clarification could be
9 provided.

10 **E. CCEA Carried its Burden of Proof and Justified the EMRB drawing an Adverse Inference**

11 ESEA makes the odd argument that because CCEA only produced the records from Goudie's phone to the
12 EMRB and that the messages on Goudie's phone show far more conversations between Goudie and Horvath than
13 between Jara and Horvath, that CCEA has failed to show that CCSD withheld Jara's texts. What ESEA cannot
14 explain is why CCSD only produced records from Goudie's phone when the Public Records Request made it clear
15 that the communications on Jara's phone were also being requested, or why nothing was produced from Jara's
16 phone pursuant to the EMRB subpoena, despite there clearly being texts between Jara and Horvath with Goudie.

17 CCEA does not have access to Jara's phone to see if there were texts between him and Teamsters 14 that did
18 not involve Goudie. This is the reason for the subpoena and for the public records request. To date CCSD has not
19 produced a single message from Jara's phone, despite it being shown that responsive texts existed, and has provided
20 no explanation for why it did not produce these records pursuant to two subpoenas and a public records request.
21 Because CCSD is still withholding this information, the inference is appropriate.

22 The fact that the wording on the subpoena and the public records request is identical except that the records
23 request included Goudie explains why the records from Goudie's phone were produced for the records request and
24 not for the subpoena. It does not explain why no text messages were produced in response to the subpoena. If a text
25 with Jara, Goudie, and Horvath was responsive to a records request for texts that included Jara on Goudie's phone,
26 then a subpoena with identical language should have produced the same text from Jara's phone.

27 Further, as stated in CCEA's Motion for Sanctions, the messages between Goudie and Horvath show bargaining
28 and in some cases bargaining that is only for the benefit of employees in Unit 2. (see Motion for Sanctions Exhibit 6

1 pages 9 and 10 – discussing a separate MOA for custodian reclassification) It is logical to presume that there are
2 similar messages on Jara’s phone that do not include Goudie which is why CCEA is asking for an inference or a
3 presumption.

4 **F. CCSD Has Provided No Valid Explanation As To Why Jara’s Texts Were Not Available**

5 CCSD goes on at length in their opposition as to all of the reasons that CCEA should have asked more pointed
6 questions regarding record retention practices and how it has not proven that Jara destroyed his text messages. What
7 CCSD does not ever state and still has not stated is the reason that CCSD did not produce any text messages from
8 Jara’s phone despite there being text messages that included Jara that were responsive to the subpoena.

9 CCSD reiterates the argument it made in front of the EMRB that not every text message is relevant however, as
10 stated in CCEA’s Motion for Sanctions, when pressed by Michael Urban as to whether “anything that was on his
11 **(Jara’s) personal device that was relevant or related to Teamsters or this particular proceeding have been produced”**
12 CCSD responded “Correct” (RT page 14) The question was not whether everything relevant had been produced, it
13 was whether anything related to the Teamsters **OR** relevant had been produced. CCSD has still not given any
14 explanation as to why it told the EMRB that anything related to the Teamsters had been produced when there were
15 in fact text messages related to the Teamsters that were sent between Jara, Horvath, and Goudie. CCSD has provided
16 no explanation for this inconsistent statement despite having had ample opportunity to do so.

17 If CCSD truly felt a text about contract ratification was not relevant it should have presented that text to the
18 EMRB who could have then made the determination as to relevance. Here CCSD took it upon themselves to make
19 that determination and then misrepresented to the EMRB what texts existed. This begs the question, what else is
20 CCSD considering to not be relevant.

21 **G. Jara Had a Duty to Preserve the Text Message and CCSD has Not Actually Stated That He
22 Destroyed It.**

23 CCSD states that CCEA has been informed that all Jara’s phones have been searched and that there were no
24 responsive texts, but never states why Jara’s texts, which clearly existed, were not found. (see CCSD Opposition
25 7:24) CCSD makes multiple arguments about why Jara may not have needed to preserve the text without stating that
26 he destroyed it. If the texts were deleted why doesn’t CCSD just say so and let the EMRB determine whether the
27 destruction was appropriate? Instead CCSD dances around the issue and gives all sorts of half answers. It is almost
28 as if CCSD is trying to hide something.

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3 As to the merit of CCSD’s preservation argument, there is none. The texts regarding ratification were clearly
4 not personal and were sent on August 12, 2023. Even if Jara only had a duty to preserve these texts for 30 days they
5 would have existed on August 28, 2023 when CCEA sent its Public Records Request. (see CCEA Exhibit 3 pages 3-
6 4)

7 CCSD’s argument that the duty to preserve as stated by *Bass-Davis* is not the same duty argued by CCEA is
8 also not persuasive. *Bass-Davis* does not state that any particular duty must be shown, just that the party had a duty
9 to maintain the record. Because there was a public records request made and the record was in regards to CCSD
10 business, Jara had a duty to preserve it for at least 30 days. If CCSD actually searched Jara’s phone and it did not
11 exist then Jara destroyed the record in violation of that duty. It is now impossible to say what else Jara destroyed,
12 hence the need for the presumption or inference.

13 **H. CCSD Misstates the Board’s Authority**

14 NAC 288.373 clearly states that the Board may impose sanctions against a party who fails to comply with an
15 order of the Board or to comply with any applicable provision of NAC 288 or NRS 288. Both subpoenas contained
16 orders that CCSD produce text communications between Jara and Teamsters 14. (see CCEA page 1:22 of exhibits 1
17 and 4 of CCEA’s Motion for Sanctions “YOU ARE FURTHER ORDERED....”)

18 CCSD relies on NRS 288.120 which states that the EMRB may ask the District Court to compel production of
19 papers pursuant to a subpoena. NRS 288.120 does not state that this is the exclusive remedy available to the EMRB
20 and CCEA is not asking the EMRB to compel production in its motion. With a clear order in the subpoenas which
21 was violated by CCSD, sanctions are permissible and appropriate.

22 23 **II. CONCLUSION**

24 Neither ESEA nor CCSD can show a valid reason why CCSD failed to produce text messages responsive to a
25 valid subpoena when those messages clearly existed. Neither has shown, or notably even claimed, that there are not
26 more messages that CCSD has failed to produce. CCSD has not even attempted to explain what happened that led to
27 its failure to comply with the subpoena.

28 For the reasons stated above, the requested sanctions should be imposed on CCSD.

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Dated this 19th day of December, 2023

CCEA

/s/ Steve Sorensen
Steve Sorensen, Nevada Bar No. 15472
General Counsel
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CERTIFICATE OF MAILING

I hereby certify that on the 19th day of December, 2023, I deposited a electronically sent and correct copy of the forgoing **PREHEARING STATEMENT** via email, addressed as follows:

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