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8 *Attorneys for Plaintiff*
9 *Washoe County School District*

10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE**

11 WASHOE COUNTY SCHOOL DISTRICT, a
12 political sub-division of the State of Nevada;

Case No.:

13 Plaintiff,

VERIFIED COMPLAINT

14 vs.

15 ASSOCIATION OF PROFESSIONAL &
16 TECHNICAL ADMINISTRATORS, a Nevada
nonprofit corporation.

17 Defendant.

18 **VERIFIED COMPLAINT**

19
20 Plaintiff, Washoe County School District (“Plaintiff” or “WCSD”), by and through its
21 attorneys of record, Simons Hall Johnston PC, herby files this Complaint against Defendant
22 ASSOCIATION OF PROFESSIONAL & TECHNICAL ADMINISTRATORS (“APTA”) above
23 captioned, and alleges the following:

24 **PARTIES TO THE ACTION**

25 1. Washoe County School District is a political subdivision of the State of Nevada.

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SIMONS HALL JOHNSTON PC
690 Sierra Rose Dr.,
Reno, NV 89511
Phone: (775) 785-0088

1 b. Also relevant to this Complaint, APTA repeatedly engaged in surface level
2 bargaining and failing to engage substantively with WCSD regarding WCSD’s
3 proposals. In fact, APTA repeatedly represented they were only there to discuss
4 their own proposals or that they would only discuss the proposals that APTA
5 wanted to discuss. APTA also stated they refused to renegotiate a master
6 contract and that they would not renegotiate the entire agreement. Despite the
7 fact that the entire contract opens upon expiration. Additionally, some of the
8 topics WCSD sought to negotiate were mandatory topics of bargaining contained
9 with NRS 288.150(2).

10 16. Furthermore, during the September 14, 2023, negotiation session, WCSD repeatedly
11 tried to communicate that it had a proposal to present, but APTA did not permit WCSD to present
12 the offer. Instead, APTA improperly declared impasse, despite the fact that WCSD had an offer it
13 was trying to present, and the Parties had a plethora of issues they could have continued to negotiate.

14 17. On September 15, 2023, APTA declared impasse pursuant to NRS 288.217(2).
15 a. APTA’s collective bargaining agreement with WCSD specified that “[i]f the
16 District and APTA are unable to reach agreement as a result of negotiations,
17 impasse proceedings may be invoked by either party in accordance with the
18 provisions of NRS 288.”

19 18. On November 9, 2023, the Parties entered a Stipulation to Resolve Outstanding
20 Motions (“Stipulation”), which effectively consolidated the complaints filed by WCSD and APTA
21 into one (1) proceeding.

22 19. The Stipulation explicitly stated that “[t]he parties agree to work with the Board in
23 the scheduling of a hearing on the case **so that a decision could be rendered by the Board in time**
24 **for the pending impasse arbitration** between the parties currently scheduled for February 20–21,
25 2024.”

26 20. The Stipulation also specified “[t]he parties agree that the following additional
27 question shall be decided by the Board at the hearing, namely **whether NRS 288.200 or NRS**
28 **288.217** apply to impasse proceedings between the parties.” The determination of which NRS

1 provision applies is crucial here because it sets the number of negotiation sessions APTA was
2 required to attend with WCS D before it could declare impasse. If NRS 288.217 applies, APTA was
3 required to engage in four (4) sessions of negotiation, which WCS D argues they did not do in good
4 faith. If NRS 288.200 applies, APTA was required to attend six (6) meetings of negotiations—
5 which both parties agree they did not do.

6 21. The Parties dispute which statute applies to the declaration of impasse, they also
7 dispute whether APTA has met the requirements for either statute.

8 22. This Stipulation was suggested by the Commissioner of the EMRB, Bruce Snyder.

9 23. The Parties had agreed the hearing before the EMRB should be conducted, and a
10 decision on the merits rendered prior to the arbitration. Indeed, the expectation from everyone was
11 that the Parties would have a decision from the EMRB on the merits of the complaints.

12 **ADDITIONAL PROCEDURAL HISTORY REGARDING VOLUNTARY WITHDRAW**

13 24. As alleged in Paragraph 9, the Board approved the voluntary withdrawal on January
14 9, 2024. The very next day on January 10, 2024, WCS D filed a motion with the EMRB to vacate
15 the January 30, 2024, and January 31, 2024, hearing dates due to the change in circumstances as a
16 result of APTA’s voluntary withdrawal pursuant to NAC 288.145.

17 25. The EMRB filed its Notice to Vacate the hearing twelve (12) days later on January
18 22, 2024, that vacated the hearings set for January 30, 2024, and January 31, 2024.

19 26. Technically, the EMRB has taken the motion to vacate under submission. At the
20 time of this filing, the EMRB has not rendered a decision on WCS D’s motion to vacate, despite the
21 fact that the EMRB issued a Notice to Vacate that vacated the January 30, 2024, and January 31,
22 2024, hearings.

23 27. On January 23, 2024, Judge Jones in the federal district court set a hearing on a
24 motion for summary judgment in 3:21-cv-00495-RCJ-CSD. The motion for summary judgment
25 had been pending since October 2023.

26 28. APTA is under the mistaken belief that it can continue to interest arbitration against
27 WCS D. APTA maintains this position despite the fact that APTA has voluntarily withdrawn as the
28 bargaining representative and the Board has approved that withdrawal; that the EMRB has not even

1 held a hearing, much less rendered a decision on whether APTA is even permitted to declare
2 impasse pursuant to NRS 288.217, and the fact that the bargaining unit as it existed at the time of
3 the declaration of impasse has lost eighty percent (80%) of its membership to WPTA.

4 29. Due to APTA’s position, WCSD was forced to file a motion to vacate the arbitration
5 with Arbitrator Bonnie Castrey (“Arbitrator”). WCSD filed its motion to vacate the arbitration with
6 the Arbitrator on January 30, 2024, seeking to vacate the arbitration scheduled for February 20–21,
7 2024.

8 30. As relevant, the Motion alerted the Arbitrator to the fact that APTA had voluntarily
9 withdrawn pursuant to NAC 288.145, which deprived the arbitrator of jurisdiction. It also explained
10 that the issue of whether to invalidate the notice of voluntary withdrawal was not an issue the
11 arbitrator could decide as it was an intra-corporate dispute. WCSD also argued the importance of
12 obtaining a ruling from the EMRB on the issue of whether APTA was even permitted to declare
13 impasse pursuant to NRS 288.217, and thus proceed to interest arbitration. The motion also alerted
14 the Arbitrator to the fact that a federal district court had scheduled a ruling on the first day of the
15 arbitration, thus creating a conflict for WCSD’s counsel. Lastly, the motion explained the other
16 factors that weighed in favor of vacating the arbitration, including the conservation of resources as
17 well as the capacity for the EMRB’s decision to moot the arbitration.

18 31. During a conference call on Thursday, February 1, 2024, the Arbitrator denied the
19 motion. When asked for a basis for her ruling, the Arbitrator stated that there was an FMCS letter
20 appointing her as the arbitrator and dates had been set for the arbitration. The Arbitrator failed to
21 respond to any of the points made by WCSD either in its motion or the arguments WCSD advanced
22 during the conference call. At the conclusion of the call, the Arbitrator confirmed that she would
23 be traveling to Reno on February 19, 2024, for the arbitration.

24 32. The arbitration is currently set to occur on February 20–21, 2024.

25 **FIRST CAUSE OF ACTION**

26 **Declaratory Relief- Pursuant to NRS 30.040**

27 33. WCSD repeats and realleges the allegations contained in the preceding paragraphs
28 as though fully set forth herein.

1 34. WCSD’s interests are adverse to APTA’s interests regarding this dispute.

2 35. A justiciable controversy exists between WCSD and APTA regarding whether
3 WCSD continues to be bound by NRS 288.200 or NRS 288.217 where WCSD has voluntarily
4 withdrawn recognition of APTA as the bargaining representative pursuant to NAC 288.145.

5 36. A justiciable controversy exists between WCSD and APTA regarding whether
6 APTA’s declaration of impasse survives where WCSD has voluntarily withdrawn recognition of
7 APTA as the bargaining representative pursuant to NAC 288.145.

8 37. A justiciable controversy also exists between WCSD and APTA regarding whether
9 APTA can proceed to interest arbitration under either NRS 288.200 or NRS 288.217 where, as here,
10 WCSD has voluntarily withdrawn recognition of APTA as the bargaining representative pursuant
11 to NAC 288.145.

12 38. A justiciable controversy also exists between WCSD and APTA regarding whether
13 APTA has complied with the requirements to declare impasse under either NRS 288.200 or NRS
14 288.217.

15 39. WCSD has a legally protectable interest in having a declaration made that it cannot
16 be forced to go to interest arbitration with APTA where, as here, WCSD has voluntarily withdrawn
17 recognition of APTA as the bargaining representative pursuant to NAC 288.145.

18 40. WCSD has a legally protectable interest in having a declaration made that APTA’s
19 declaration of impasse does not survive a notice of voluntary withdrawal and the Board’s
20 acceptance of that voluntary withdrawal as the bargaining representative pursuant to NAC 288.145.

21 41. WCSD has a legally protectable interest in having a declaration made that APTA
22 cannot proceed to interest arbitration under either NRS 288.200 or NRS 288.217.

23 42. WCSD has a legally protectable interest in having a declaration made as to its rights
24 under either NRS 288.200 or NRS 288.217.

25 43. All parties having an interest in, or would be adversely affected by, the legal issues
26 presented by the instant case, are parties to this dispute.

27 44. WCSD seeks a declaration of rights relating to and/or arising out of NRS Chapter
28 288 and NAC Chapter 288 as follows:

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- a. That the arbitration scheduled for February 20, 2024, and February 21, 2024, be vacated pending the resolution of this litigation.
- b. That when the Board approved APTA’s voluntary withdrawal pursuant to NAC 288.145, APTA was no longer the bargaining representative of the professional-technical and school psychologist employees.
- c. That when APTA was no longer the bargaining representative for the professional-technical and school psychologist employees, it was deprived of standing to proceed to interest arbitration on their behalf under either NRS 288.200 or NRS 288.217.
- d. That when the Board approved APTA’s voluntary withdrawal pursuant to NAC 288.145, it eliminated the arbitrator’s subject matter jurisdiction over this dispute pursuant to NRS 288.200 or NRS 288.217.
- e. That before arbitration can occur, the Parties must receive a ruling from either the EMRB or this Court regarding whether APTA complied with the conditions precedent to declaring impasse pursuant to NRS 288.200 or NRS 288.217.
- f. That either the EMRB or this Court² should issue a ruling that finds:
 - i. That NRS 288.217 does not apply to APTA’s declaration of impasse.
 - ii. That APTA declared impasse prior to engaging in “six meetings of negotiations” as required by NRS 288.200(1)(a).
 - iii. That APTA declared impasse prior to having “participated in mediation” as required by NRS 288.200(1)(b).
 - iv. That either NRS 288.200 or NRS 288.217 required the parties to be at “impasse” prior to proceeding to arbitration.

² WCSD recognizes that this Court may want to allow the EMRB to rule on these issues as the parties have fully briefed them before the EMRB. However, these are questions of statutory construction and/or validity that this Court may reach pursuant to a claim for declaratory relief, if it should so choose. *See Nuleaf CLV Dispensary, LLC v. State Dep’t of Health & Hum. Servs., Div. of Pub. & Behav. Health*, 134 Nev. 129, 132, 414 P.3d 305, 308 (2018). Furthermore, in the event the EMRB agrees with WCSD that the hearing in that matter should be vacated, these legal issues may escape legal review by the EMRB.

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v. That APTA lacked a sufficient basis to declare impasse under either NRS 288.200 or NRS 288.217 because the parties had not yet reached impasse.

vi. That the meetings where surface bargaining occurred do not count towards the minimum number of negotiation sessions required by either NRS 288.200 or NRS 288.217 and/or that bad faith bargaining occurred.

vii. That APTA must comply with NRS 288.200 prior to any future declaration of impasse.

45. WCSD seeks a declaration of rights and obligations contained within NRS Chapter 288 and the NAC Chapter 288 as it pertains to this dispute.

46. The dispute is ripe for judicial determination because the EMRB has failed to act, the EMRB has claimed it has no authority to stay and/or vacate a pending arbitration, the arbitrator is proceeding without jurisdiction or authority over the matter, and the arbitration is set to occur in fourteen (14) days on February 20, 2024.

47. WCSD seeks declaratory relief as outlined above, as well as compensatory damages and incurred attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, WCSD prays for relief against APTA as follows:

1. For an injunction, restraining the arbitration currently set to occur on February 20, 2024, and February 21, 2024.

2. For an injunction, prohibiting APTA from proceeding to arbitration against WCSD at least until this litigation has been resolved.

3. For an injunction, prohibiting APTA from declaring impasse until the requirements of NRS 288.200 have been met.

4. In the event such an injunction would be moot, for equitable and declaratory relief vacating any finding of the arbitrator that occurs prior to a decision from this Court on the merits.

5. An award to WCSD for declaratory relief as outlined above.

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6. For such other relief as the Court deems just and proper.

Affirmation

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: February 6, 2024

BY: /s/ Anthony L. Hall, Esq.
ANTHONY L. HALL, ESQ.
Nevada Bar No. 5977
AHall@SHJNevada.com
JONATHAN A. MCGUIRE, ESQ.
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Attorneys for Respondent

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VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

Neil Rombardo, Esq., being first duly sworn, deposes and says under penalty of perjury:

That he is Chief General Counsel for the Plaintiff named herein in the foregoing Verified Complaint; that he has read the same and knows the contents thereof and that the same is true of his own knowledge, except as to the matters stated therein on information and belief, and as to those matters, he believes them to be true.

Neil Rombardo
Neil Rombardo, Esq.

Subscribed and Sworn to Before
me this 6 day of February 2024.

Breanne Read
Notary Public



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CERTIFICATE OF SERVICE

I, Terri Tribble declare:

I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of Simons Hall Johnston PC. My business address is 690 Sierra Rose Dr., Reno, NV 89511. I am over the age of 18 years and not a party to this action.

On the below date, I served the foregoing **VERIFIED COMPLAINT** by causing the document to be served via email, addressed as follows:

Ronald J. Dreher
P.O. Box 6494
Reno, NV 89513
ron@dreherlaw.net

Attorney for Defendant
ASSOCIATION OF PROFESSIONAL-
TECHNICAL ADMINISTRATORS

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed on February 6, 2024.

/s/ Terri Tribble
Employee of Simons Hall Johnston

1 ANTHONY L. HALL, ESQ.
Nevada Bar No. 5977
2 AHall@SHJNevada.com
JONATHAN A. MCGUIRE, ESQ.
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6 *Attorneys for Plaintiff*
7 *Washoe County School District*

8
9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE**
10 **STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE**

11 WASHOE COUNTY SCHOOL DISTRICT, a
political sub-division of the State of Nevada;

12 Plaintiff,

13 vs.

14 ASSOCIATION OF PROFESSIONAL &
15 TECHNICAL ADMINISTRATORS, a Nevada
nonprofit corporation.

16 Defendant.

Case No.:

**EX PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

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18 **EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND**
19 **PRELIMINARY INJUNCTION**

20 Plaintiff, Washoe County School District (“Plaintiff” or “WCSD”), by and through its
21 attorneys of record, Simons Hall Johnston PC, hereby moves for an order of this Court issuing a
22 temporary restraining order and preliminary injunction enjoining Defendant Association of
23 Professional & Technical Administrators (“APTA”) from proceeding with the arbitration currently
24 scheduled for February 20, 2024 and February 21, 2024.¹ This Motion is based upon the following

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28 ¹ A proposed order is attached hereto as **Exhibit 1**.

SIMONS HALL JOHNSTON PC
690 Sierra Rose Dr.,
Reno, NV 89511
Phone: (775) 785-0088

1 memorandum of points and authorities below, the Complaint on file herein, as well as any other
2 information the Court wishes to consider.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION**

5 WCS D respectfully requests this Court issue an injunction prohibiting APTA from
6 proceeding to interest arbitration² that is currently scheduled for February 20, 2024, and February
7 21, 2024. Arbitrator Bonnie Castrey (“Arbitrator”) and APTA are attempting to force WCS D to
8 attend an interest arbitration, despite the fact that WCS D has approved APTA’s voluntary
9 withdrawal as the bargaining representative pursuant to NAC 288.145 thus depriving the Arbitrator
10 of subject matter jurisdiction and depriving APTA of standing, the EMRB has not yet resolved
11 issues of statutory interpretation regarding which statute applies to APTA’s declaration of impasse
12 and whether APTA complied with the conditions precedent to be permitted to proceed to arbitration
13 under either of those statutes, and WCS D’s counsel has a motion for summary judgment hearing
14 scheduled in district court on the same day the arbitration is set to begin (February 20, 2024). APTA
15 is ignoring the voluntary withdrawal and attempting to exploit the fact that the EMRB has not yet
16 ruled on the question of whether the declaration of impasse was proper or not to force WCS D to
17 attend an interest arbitration it maintains is invalid and unlawful. Accordingly, extraordinary relief
18 is warranted to protect WCS D from irreparable harm.

19 **II. RELEVANT FACTS**

20 **A. RELEVANT FACTUAL BACKGROUND**

21 1. Prior to January 9, 2024, APTA was a recognized employee organization as defined
22 by NRS 288.040.

23 2. APTA was previously a mixed-unit organization, that was made up in part of
24 Professional-Technical employees and in part school psychologists. WCS D’s understanding is that
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27 ² An interest arbitrator’s authority is extremely limited to deciding the disputes between the parties
28 surrounding the terms of the collective bargaining agreement. *See* NRS 288.200(11); *see also* NRS
288.217(8) (citing NRS 288.200).

1 as of January 3, 2024, the organization was comprised of 183 Professional-Technical employees
2 comprising approximately eighty (80%) of APTA, and 45 school psychologists comprising
3 approximately twenty (20%) of APTA.

4 3. On December 27, 2023, APTA, by and through a majority of its Officers and
5 Executive Board Members, sent a voluntary withdrawal notice to WCSD. The Officers and
6 Executive Board Members signing the voluntary withdrawal notice included: Adriana Publico,
7 Tony McMillen, Lisa McNeill, and Naveed Frank.

8 4. On January 8, 2024, APTA confirmed in writing that the four (4) above-mentioned
9 individuals as a majority of the APTA Executive Board, requested voluntary withdrawal of APTA
10 as the bargaining representative pursuant to NAC 288.145. The email confirmation of this from
11 the four (4) Officers and APTA Executive Board members is attached hereto as **Exhibit 2**.

12 5. Additionally, APTA Officer and Executive Board Member, Ms. Publico, provided
13 WCSD with the results of a ballot the employees of APTA had taken that showed, of those who
14 voted, 94.8% of the employees voted in favor of forming their own employee organization, which
15 comprised 64.04% of the total number of employees represented by APTA. *See* Ballot and Results
16 dated January 3, 2024, attached hereto as **Exhibit 3**.

17 6. On January 9, 2024, the Washoe County School District Board of Trustees
18 (“Board”) accepted the voluntary withdrawal of APTA pursuant to NAC 288.145.

19 7. More specifically, the Board voted unanimously to recognize that a majority of
20 employees and the executive board in the Association of Professional and Technical Administrators
21 bargaining unit voted to voluntarily withdraw APTA as the exclusive bargaining representative and
22 therefore, the Board withdrew recognition of the Association of Professional and Technical
23 Administrators as the bargaining representative for its employees per NAC 288.145.

24 8. On January 9, 2024, the Board also voted to recognize the Washoe Professional
25 Technical Association (“WPTA”) as the exclusive bargaining representative for the professional-
26 technical employees that were previously were members of APTA consistent with NRS 288.160.
27 WPTA has retained separate counsel and is in the process of negotiating a collective bargaining
28 agreement with the District.

1 9. Accordingly, APTA is no longer a recognized employee organization pursuant to
2 NRS Chapter 288.

3 **B. Relevant Administrative Proceedings**

4 10. Prior to APTA’s voluntary withdrawal pursuant to NAC 288.145, and the Board’s
5 subsequent approval of that withdrawal, the Parties had been conducting negotiations surrounding
6 the CBA over the course of the last year.

7 11. On June 20, 2023, APTA filed an unfair labor practice complaint³ with the
8 Employee Management Relations Board (“EMRB”). APTA’s unfair labor practice allegations are
9 not relevant to this Complaint.

10 12. On August 17, 2023, WCSD filed its own complaint with the EMRB alleging unfair
11 labor practices of failure to bargain in good faith and surface level bargaining.

12 a. As relevant to this Complaint, one of the arguments advanced by WCSD was
13 that APTA prematurely declared impasse pursuant to either NRS 288.200, NRS
14 288.217, and/or the CBA.

15 b. Also relevant to this Complaint, APTA repeatedly engaged in surface level
16 bargaining and failing to engage substantively with WCSD regarding WCSD’s
17 proposals. In fact, APTA repeatedly represented they were only there to discuss
18 their own proposals or that they would only discuss the proposals that APTA
19 wanted to discuss. APTA also stated they refused to renegotiate a master
20 contract and that they would not renegotiate the entire agreement. Despite the
21 fact that the entire contract opens upon expiration. Additionally, some of the
22 topics WCSD sought to negotiate were mandatory topics of bargaining contained
23 with NRS 288.150(2).

24 13. Furthermore, during the September 14, 2023, negotiation session, WCSD repeatedly
25 tried to communicate that it had a proposal to present, but APTA did not permit WCSD to present
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27 _____
28 ³ The operative complaint at the time of this filing is the second amended complaint.

1 the offer. Instead, APTA improperly declared impasse, despite the fact that WCSD had an offer it
2 was trying to present and the Parties had a plethora of issues they could have continued to negotiate.

3 14. On September 15, 2023, APTA declared impasse pursuant to NRS 288.217(2).

4 a. APTA’s collective bargaining agreement with WCSD specified that “[i]f the
5 District and APTA are unable to reach agreement as a result of negotiations,
6 impasse proceedings may be invoked by either party in accordance with the
7 provisions of NRS 288.”

8 15. On November 9, 2023, the Parties entered a Stipulation to Resolve Outstanding
9 Motions (“Stipulation”), which effectively consolidated the complaints filed by WCSD and APTA
10 into one (1) proceeding. *See* Stipulation to Resolve Outstanding Motions filed October 24, 2023
11 attached hereto as **Exhibit 4**.

12 16. The Stipulation explicitly stated that “[t]he parties agree to work with the Board in
13 the scheduling of a hearing on the case **so that a decision could be rendered by the Board in time**
14 **for the pending impasse arbitration** between the parties currently scheduled for February 20–21,
15 2024.”

16 17. The Stipulation also specified “[t]he parties agree that the following additional
17 question shall be decided by the Board at the hearing, namely **whether NRS 288.200 or NRS**
18 **288.217** apply to impasse proceedings between the parties.” The determination of which NRS
19 provision applies is crucial here because it sets the number of negotiation sessions APTA was
20 required to attend with WCSD before it could declare impasse. If NRS 288.217 applies, APTA was
21 required to engage in four (4) sessions of negotiation, which WCSD argues they did not do in good
22 faith. If NRS 288.200 applies, APTA was required to attend six (6) meetings of negotiations—
23 which both parties agree they did not do.

24 18. The Parties dispute which statute applies to the declaration of impasse, they also
25 dispute whether APTA has met the requirements for either statute.

26 19. This Stipulation was suggested by the Commissioner of the EMRB, Bruce Snyder.

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1 20. The Parties had agreed the hearing before the EMRB should be conducted, and a
2 decision on the merits rendered prior to the arbitration. Indeed, the expectation from everyone was
3 that the Parties would have a decision from the EMRB on the merits of the complaints.

4 **C. Additional Procedural History Regarding Voluntary Withdrawal**

5 21. As alleged in Paragraph 9, the Board approved the voluntary withdrawal on January
6 9, 2024. The very next day on January 10, 2024, WCSD filed a motion with the EMRB to vacate
7 the January 30, 2024, and January 31, 2024, hearing dates due to the change in circumstances as a
8 result of APTA’s voluntary withdrawal pursuant to NAC 288.145.

9 22. The EMRB filed its Notice to Vacate the hearing twelve (12) days later on January
10 22, 2024, that vacated the hearings set for January 30, 2024, and January 31, 2024. *See* Notice to
11 Vacate Hearing dated January 22, 2024, attached hereto as **Exhibit 5**.

12 23. Technically, the EMRB has taken the motion to vacate under submission. At the
13 time of this filing, the EMRB has not rendered a decision on WCSD’s motion to vacate, despite the
14 fact that the EMRB issued a Notice to Vacate that vacated the January 30, 2024, and January 31,
15 2024, hearings.

16 24. On January 23, 2024, Judge Jones in the federal district court set a hearing on a
17 motion for summary judgment in 3:21-cv-00495-RCJ-CSD. The motion for summary judgment
18 had been pending since October 2023. *See* Minute Order dated January 23, 2024, attached hereto
19 as **Exhibit 6**.

20 25. APTA is under the mistaken belief that it can continue to interest arbitration against
21 WCSD. APTA maintains this position despite the fact that APTA has voluntarily withdrawn as the
22 bargaining representative and the Board has approved that withdrawal; that the EMRB has not even
23 held a hearing, much less rendered a decision on whether APTA is even permitted to declare
24 impasse pursuant to NRS 288.217, and the fact that the bargaining unit as it existed at the time of
25 the declaration of impasse has lost eighty percent (80%) of its membership to WPTA.

26 26. Due to APTA’s position, WCSD was forced to file a motion to vacate the arbitration
27 with Arbitrator Bonnie Castrey (“Arbitrator”). WCSD filed its motion to vacate the arbitration with
28 the Arbitrator on January 30, 2024, seeking to vacate the arbitration scheduled for February 20–21,

1 2024. See Washoe County School District’s Motion to Vacate Arbitration attached hereto as
2 **Exhibit 7.**

3 27. As relevant, the Motion alerted the Arbitrator to the fact that APTA had voluntarily
4 withdrawn pursuant to NAC 288.145, which deprived the arbitrator of jurisdiction. It also explained
5 that the issue of whether to invalidate the notice of voluntary withdrawal was not an issue the
6 arbitrator could decide as it was an intra-corporate dispute. WCSD also argued the importance of
7 obtaining a ruling from the EMRB on the issue of whether APTA was even permitted to declare
8 impasse pursuant to NRS 288.217, and thus proceed to interest arbitration. The Motion also alerted
9 the Arbitrator to the fact that a federal district court had scheduled a ruling on the first day of the
10 arbitration, thus creating a conflict for WCSD’s counsel. Lastly, the Motion explained the other
11 factors that weighed in favor of vacating the arbitration, including the conservation of resources as
12 well as the capacity for the EMRB’s decision to moot the arbitration.

13 28. During a conference call on Thursday, February 1, 2024, the Arbitrator denied the
14 motion. When asked for a basis for her ruling, the Arbitrator stated that there was an FMCS letter
15 appointing her as the arbitrator and dates had been set for the arbitration. The Arbitrator failed to
16 respond to any of the points made by WCSD either in its motion or the arguments WCSD advanced
17 during the conference call. At the conclusion of the call, the Arbitrator confirmed that she would
18 be traveling to Reno on February 19, 2024, for the arbitration.

19 29. The arbitration is currently set to occur on February 20–21, 2024.

20 **III. GROUNDS FOR INJUNCTIVE RELIEF**

21 Injunctive relief is exclusively an equitable remedy. *Aronoff v. Katleman*, 75 Nev. 424, 429,
22 345 P.2d 221, 224 (1959). The district courts of the State of Nevada are vested with the authority to
23 determine whether a preliminary injunction shall issue, and such discretion will not be overturned
24 by a higher court absent a showing of abuse. *S.O.C., Inc. v. The Mirage Casino-Hotel*, 117 Nev.
25 403, 407, 23 P.3d 243, 246 (2001). “A party seeking the issuance of a preliminary injunction bears
26 the burden of establishing (1) a likelihood of success on the merits; and (2) a reasonable probability
27 that the non-moving party’s conduct, if allowed to continue, will cause irreparable harm for which
28 compensatory damage is an inadequate remedy.” *Id.*; see also NRS 33.010.

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NRS 33.010 provides that this Court should grant injunctive relief in the following situations:

- (1) When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.
- (2) When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff.
- (3) When it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

Additionally, NRCP 65(b) provides that a temporary restraining order may issue where:

- (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
- (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

NRCP 65(b).

The party seeking relief must show they have a "reasonable likelihood of success on the merits," and they will be subjected to irreparable harm for which no adequate remedy at law exists should the relief not be granted. NRCP 65(b); *Excellence Com. Mgmt., LLC, v. Gilmore*, 131 Nev. 347, 350, 351 P.3d 720, 722, (2015); *Pickett v. Comanche Construction, Inc.*, 108 Nev. 422, 426, 836 P.2d 42 (1992); *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987).

As explained below, WCSD has more than a reasonable likelihood of success on the merits and will sustain irreparable harm if the relief requested is not granted. WCSD respectfully requests any bond be waived in this instance because of the nature of the relief sought by WCSD. However, in the event the Court denies this request, WCSD intends to post a bond as set by this Court to cover any damages which may occur to APTA as a result of this temporary restraining order and preliminary injunction being issued.

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1 **IV. THIS COURT SHOULD GRANT A TEMPORARY RESTRAINING ORDER**

2 **A. WCSD IS ENTITLED TO INJUNCTIVE RELIEF AGAINST APTA**

3 WCSD’s sole claim, as explained in the Complaint, is a claim for declaratory relief that
4 arises out of the voluntary withdrawal of NAC 288.145 and APTA’s improper and premature
5 declaration of impasse pursuant to NRS 288.217. The Arbitrator and APTA are attempting to force
6 WCSD to attend an interest arbitration for an employee organization (APTA) that as of January 9,
7 2024, WCSD no longer recognizes as the bargaining representative for the employees. This is
8 especially problematic where, as here, eighty-percent (80%) of the membership of APTA is now
9 recognized as being represented by a different bargaining representative— Washoe Professional
10 Technical Association (“WPTA”). Furthermore, the Arbitrator seems to be under the impression
11 that the federal district court hearing scheduled for the same day (February 20, 2024) as the
12 arbitration, needs to be rescheduled to accommodate this improper arbitration. Additionally, APTA
13 is seeking to declare impasse and receive a ruling from the arbitrator before the EMRB has
14 considered or rendered a decision. In the event this Court denies the Motion, WCSD will be
15 compelled to attend an interest arbitration, without counsel (until WCSD’s counsel completes the
16 motion for summary judgment hearing), and forced to arbitrate issues pertaining to an employee
17 organization that is no longer recognized by WCSD, and that should not have been permitted to
18 declare impasse in the first place. This would indisputably result in irreparable harm.

19 The issue of whether the arbitration can proceed in light of the Board’s approval of APTA’s
20 notice of voluntary withdrawal is an issue that falls squarely within this Court’s jurisdiction. *See*
21 *BG Grp., PLC v. Republic of Argentina*, 572 U.S. 25, 33–35, 134 S. Ct. 1198, 1206–07, 188 L. Ed.
22 2d 220 (2014) (explaining “courts, not arbitrators . . . decide what we have called disputes about
23 ‘arbitrability.’”); *see also Principal Invs. v. Harrison*, 132 Nev. 9, 16, 366 P.3d 688, 693 (2016)
24 (observing the court decides issues of whether the parties are bound by a given arbitration clause
25 and whether an arbitration clause applies to a particular type of controversy). However, there are
26 additional questions regarding whether NRS 288.200 or NRS 288.217 applies, and if so, whether
27 APTA has met the conditions precedent for declaring impasse under either statute. WCSD
28 recognizes that this Court may want to allow the EMRB to rule on these secondary issues as the

1 parties have fully briefed them before the EMRB. However, these are questions of statutory
2 construction and/or validity that this Court may reach pursuant to a claim for declaratory relief, if
3 it should so choose. *See Nuleaf CLV Dispensary, LLC v. State Dep't of Health & Hum. Servs., Div.*
4 *of Pub. & Behav. Health*, 134 Nev. 129, 132, 414 P.3d 305, 308 (2018). Furthermore, in the event
5 the EMRB agrees with WCSD that the hearing in that matter should be vacated, these legal issues
6 may escape legal review by the EMRB.

7 **B. WCSD POSSESSES A REASONABLE LIKELIHOOD OF SUCCESS ON**
8 **THE MERITS**

9 WCSD's claim for injunctive relief seeks a determination from this Court as to a declaration
10 of its rights pursuant to NRS 288 and NAC 288 regarding its interactions with APTA. Specifically,
11 WCSD will be able to demonstrate that after APTA was voluntarily withdrawn as the bargaining
12 representative pursuant to NAC 288.145, APTA lacked standing to proceed to interest arbitration
13 on behalf of the professional-technical and school psychologist employees. WCSD will also be
14 able to demonstrate that after APTA was voluntarily withdrawn as the bargaining representative
15 pursuant to NAC 288.145, the arbitrator lacked subject matter jurisdiction over the dispute pursuant
16 to either NRS 288.200 or NRS 288.217.

17 The EMRB has issued a decision that is directly on point with this issue. *See Deborah*
18 *Boland, M. D., A Local Government Employee and Member of the Umc Physicians' Bargaining*
19 *Unit of Nevada Service Employees Union, Seiu Local 1107, AFL-CIO, Clc Et. Al., Complainants*
20 *Nevada Service Employees Union*, Item No. 802, 2015 WL 1324423, at *6–8 (March 23, 2015).
21 In *Boland* the EMRB reasoned that “[u]pon UMC's acceptance of Local 1107's withdrawal, Local
22 1107 ceased to be the recognized bargaining agent. Thereafter UMC **was not obligated or**
23 **permitted under the Act to continue negotiations** with Local 1107.” *Id.* (emphasis added).
24 WCSD accepted APTA's notice of voluntary withdrawal on January 9, 2024. At that time, APTA
25 ceased to be the recognized bargaining agent and WCSD is not obligated, nor even *permitted* to
26 continue negotiations with APTA. This would indisputably include attending an interest arbitration
27 at which the terms of the collective bargaining agreement for APTA, an employee organization that
28 is no longer recognized by WCSD, will allegedly be decided by a third-party arbitrator.

1 Separate and apart from the voluntary withdrawal issue, is the fact that WCSD will be able
2 to demonstrate that NRS 288.200 and not NRS 288.217 applies to APTA’s declaration of impasse.
3 WCSD will also be able to demonstrate that APTA prematurely declared impasse under NRS
4 288.200 because APTA failed to engage in “six meetings of negotiations” and failed to
5 “participate[] in mediation” as required by NRS 288.200(1). Furthermore, the Parties were not
6 actually at impasse as required by NRS Chapter 288 as a precondition to APTA declaring impasse,
7 regardless of which statute applies. Additionally, where surface bargaining occurred those
8 meetings do not count towards the minimum number of negotiation sessions required by either NRS
9 288.200 or NRS 288.217 and/or that bad faith bargaining occurred. As explained above, these
10 issues are conditions precedent to the arbitration and the EMRB and/or this Court should rule on
11 these issues before the arbitration is authorized pursuant to either NRS 288.200 and/or NRS
12 288.217.

13 1. The Voluntary Withdrawal Eliminates the Arbitrator’s Jurisdiction

14 NAC 288.145(1) expressly authorizes a local government employer like WCSD to
15 “withdraw recognition of an employee organization if the employee organization: (a) Voluntarily
16 withdraws in writing as the bargaining representative. . . .” On December 27, 2023, APTA sent a
17 voluntary withdrawal notice to WCSD. WCSD followed up with APTA seeking confirmation of
18 the voluntary withdrawal on January 8, 2024. *See* Ex. 2. The request sought confirmation as to
19 whether “the four of you, as the majority of the APTA Executive Board, requested voluntary
20 withdrawal of APTA as the bargaining representative pursuant to NAC 288.145.” *Id.* All four (4)
21 of the members of APTA’s executive board (Adriana Publico, Tony McMillen, Naveed Frank, and
22 Lisa McNeill) all responded affirmatively to that email. *Id.* Accordingly, WCSD had more than
23 enough basis to believe the voluntary withdrawal was legitimate and proceeded to accept that
24 voluntary withdrawal on January 9, 2024.

25 APTA has attempted to argue to the EMRB and the Arbitrator that the notice of voluntary
26 withdrawal was improper and should be invalidated. However, whether a majority of the members
27 of the APTA Executive Board had authority to take a particular act is an intra-corporate dispute
28 governed by state law. Indeed, Nevada’s statutes governing nonprofit corporations contain an

1 express provision allowing a lawsuit to be filed where there is a dispute over the authority of
2 representatives of the nonprofit corporation or for acting beyond their authority. *See* NRS
3 82.216(1). Accordingly, if APTA wants to have any such action declared invalid, it may file its
4 own action in district court seeking such a determination. However, at this time, WCSD is not
5 seeking judicial review of whether the notice of voluntary withdrawal was within the powers of the
6 APTA Officers and Executive Board Members as it has already occurred and been approved by the
7 Board on January 9, 2024. Unless and until APTA obtains such an order from a district court, the
8 notice of voluntary withdrawal and WCSD's acceptance and approval pursuant to NAC 288.145 is
9 valid and WCSD is permitted and obligated to act in accordance with the withdrawal of recognition.
10 As explained in the *Boland* case, this means WCSD is not obligated or permitted to continue
11 negotiations with APTA over the terms and conditions of employment of the professional-technical
12 and school psychologist employees it is no longer the designated bargaining representative for. *See*
13 *Boland*, Item No. 802, 2015 WL 1324423 at *6–8. Indeed, this is especially true where, as here,
14 WCSD has recognized WPTA as the employee organization that represents the professional-
15 technical members formerly represented by APTA and WCSD is engaged in negotiations with
16 WPTA for a new collective bargaining agreement.

17 The EMRB has provided explicit instructions that once an employer accepts a voluntary
18 withdrawal of recognition it is not obligated or *permitted* to continue negotiating with the formerly
19 recognized employee organization—in this case APTA. This would indisputably include an interest
20 arbitration the Parties are attending under either NRS 288.200 or NRS 288.217 which only occurs
21 when parties are unable to reach a collective bargaining agreement. Furthermore, this is common
22 sense. It would be preposterous for WCSD to be forced to attend an arbitration to negotiate with
23 APTA over the terms and conditions of employment for employees APTA is no longer the
24 recognized employee organization for. It was clear error for the Arbitrator to deny WCSD's motion
25 to vacate the arbitration, and this Court should enter an injunction restraining the arbitrator from
26 exceeding her authority and hearing the dispute.

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2. The Voluntary Withdrawal Prevents APTA from Having Standing

As discussed below, the Parties dispute whether NRS 288.200 or NRS 288.217 applies to APTA's declaration of impasse. What is not disputed is that in order to proceed to interest arbitration under either statute, APTA must be a recognized employee organization of the WCSD—which it is not.

NRS 288.200 and NRS 288.217 both expressly contemplate that the parties cannot declare for interest arbitration in the absence of the entity being a recognized employee organization. Indeed, NRS 288.160 expressly contemplates the first step for an employee organization that wishes to negotiate on behalf of a bargaining unit must gain recognition. Then, if the recognized unit is unable to reach a collective bargaining agreement NRS 288.200 contemplates the parties having conducted six (6) meetings of negotiations, have participated in a mediation, and participated in a fact-finding all prior to engaging in arbitration. *See* NRS 288.200(1)–(6). NRS 288.217 is similar and even states it governs “negotiations between school districts and employee organizations representing teachers and educational support personnel.” NRS 288.217(1). At this time, APTA is not recognized as representing any teachers or education support personnel. Consequently, NRS 288.217 is inapplicable.

APTA cannot invoke interest arbitration under either NRS 288.200 or NRS 288.217, because it plainly lacks standing to proceed under either statute. It is comparable to a party who is not a party to a contract, attempting to force an entity to arbitrate disputes over the contract. In the same way that is not permissible, APTA cannot force WCSD to attend an arbitration to negotiate disputes on behalf of employees it no longer recognizes APTA as representing.

It is worth noting, that even if APTA could convince a district court to invalidate the notice of voluntary withdrawal, WCSD has already voted to recognize a new employee organization the Washoe Professional Technical Association (“WPTA”) as the exclusive bargaining representative for the professional-technical employees that were previously members of APTA. Accordingly, there is no way to proceed to interest arbitration with an employee organization that has lost approximately 80% of its members, and no negotiation meetings whatsoever have occurred with solely the school psychologists in the form of any employee organization.

1 **3. Even if this Court Evaluated the Voluntary Withdrawal, it was Valid**

2 WCSD is not seeking this Court’s determination of whether the notice of voluntary
3 withdrawal submitted by the four (4) APTA Officers and Executive Board members or WCSD’s
4 approval of that withdrawal pursuant to NAC 288.145 was authorized or valid. However, because
5 virtually all of APTA’s arguments against the motion to vacate the EMRB hearing, and the motion
6 to vacate the arbitration focused on that point, WCSD believes it would be beneficial for the Court
7 to understand WCSD’s position on the issue. As stated above, whether those four (4) Officers and
8 Executive Board Members acted within their powers is an intra-corporate dispute between the
9 departing employees who left APTA, and the school psychologists who are currently unrepresented.
10 Indisputably, if APTA contests that withdrawal, they should be permitted to do so. However,
11 WCSD should not be placed in the middle of that fight and forced to attend an arbitration with an
12 employee organization it has withdrawn recognition from before a determination is made regarding
13 that legal issue.

14 The following are a series of issues that APTA’s position will run into in the event this Court
15 elects to reach the issue of determining whether or not APTA’s notice of voluntary withdrawal and
16 WCSD’s subsequent approval were valid. APTA has repeatedly asserted that APTA’s executive
17 board is made up of eight (8) members. This is a misrepresentation. APTA’s Bylaws regarding
18 the Executive Board expressly provide that “[t]he Executive Board shall consist of the five elected
19 officers, and one elected Representative from each: the Pro-Techs and the School Psychologists.”
20 *See* APTA’s Bylaws attached hereto as **Exhibit 8**. Reading that description in its totality
21 unambiguously indicates APTA’s executive board contains five (5) elected officers, (1) Pro-Tech
22 representative, and (1) School Psychologist representative, totaling seven (7) board members. The
23 section then goes on to describe Ron P. Dreher (APTA’s counsel’s father) as a “board member ex-
24 officio” but expressly states that he “**is not a regular sitting member of the board.**” *Id.* at Section
25 1a (emphasis added). Accordingly, the express language of the Bylaws and the past practice of
26 APTA demonstrate that the APTA Executive Board only has seven (7) members, and a majority of
27 those members submitted a notice of voluntary withdrawal.

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1 This is indisputably an intra-corporate that must be resolved under state law. At this time,
2 it is unclear how Ron P. Dreher came to be involved with APTA's leadership in his capacity as
3 board member ex-officio. However, regardless of what process was used, APTA may have violated
4 its own bylaws by placing him in that position. Article V of APTA's Bylaws that governs elections
5 establishes that "[o]nly active members shall be entitled to vote and hold elective office in the
6 Association." *See id.* at Article V, Section 1, Sub-Section C. Article II, Section 2 specifies that
7 "[a]ctive membership is open to all Pro-Techs and School Psychologists employed by the Washoe
8 County School Board of Trustees, except for those Pro-Techs and School Psychologists who are
9 excluded. . . ." by Nevada law. *Id.* at Article II, Section 2. It is undisputed that Ron P. Dreher is
10 not an employee of WCSD at all, much less a Pro-Tech or School Psychologist. There is no
11 provision in the Bylaws that would permit the officers or the Executive Board members to appoint
12 another member of the Board. Accordingly, there is a dispute of whether it is even possible under
13 APTA's Bylaws for Ron P. Dreher to be considered an ex-officio member of the Executive Board
14 at all.

15 Again, this is an intra-corporate dispute that APTA is permitted to seek judicial review of if
16 it so chooses. However, any district court would have to resolve this issue in a minority of the
17 Executive Board's favor, then take steps with the EMRB to determine if it is appropriate for WCSD
18 to re-recognize APTA as the bargaining representative, all before interest arbitration concerning a
19 contract for a presently non-recognized employee organization can occur.

20 Additionally, while APTA's counsel argues that the Executive Board did not authorize the
21 voluntary withdrawal, which he claims includes his father (Ron P. Dreher), this also does not appear
22 to be correct. Specifically, pursuant to Article III of APTA's bylaws, such a decision would be
23 delegated to the Officers (not the Executive Board) pursuant to Article III. *See id.* at Article III. If
24 this is the case, since Ron P. Dreher does not serve as an officer, his vote would be irrelevant.
25 Again, WCSD is not a party to this intra-corporate dispute. However, it is clear that conducting the
26 interest arbitration before this critical issue is decided under state law would be improper and
27 interest arbitration could not possibly proceed in an absence of a determination of these issues.

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1 To be transparent with the Court, regardless of Ron P. Dreher’s alleged involvement with
2 the Executive Board, his participation in discussions surrounding a notice of voluntary withdrawal
3 would have, in and of itself, been entirely inappropriate. Ron P. Dreher is a self-interested party as
4 he has put himself out as a member of the negotiating team for APTA. This, despite the fact that
5 he is not an employee of WCSD and has no commonality of interest with WCSD’s employees that
6 also served as members of the APTA Executive Board. It is entirely inappropriate for Ron P. Dreher
7 to attempt to insert himself to block an act of self-determination by WCSD’s employees that
8 formerly served on the APTA Executive Board, when he is self-interested in that transaction. In
9 fact, it is WCSD’s understanding that until the issue of the voluntary withdrawal arose, Ron P.
10 Dreher has not voted on any business coming before APTA’s Executive Board. Furthermore, it is
11 WCSD’s understanding that the new employee organization formed by the Professional-Technical
12 employees has retained new counsel, which only further confirms the conflict of interest described
13 above. Additionally, WCSD understands that the professional-technical employees that were
14 previously represented by APTA, that are now recognized as being represented by WPTA, have
15 been frozen out of the operations of APTA. These are not the actions of employee organization
16 that truly believes it represents all of these employees for the purposes of conducting an interest
17 arbitration on their behalf.

18 4. The EMRB Must Rule Before Arbitration can Occur

19 In the EMRB proceedings, the parties entered into a stipulation to resolve outstanding
20 motions back on October 24, 2023. At that time, the Parties agreed to “work with the Board in the
21 scheduling of a hearing on the case so that a decision could be rendered by the Board **in time for**
22 **the pending impasse arbitration** between the parties currently scheduled for February 20-21,
23 2024.” *See* Ex. 4 (emphasis added). Accordingly, it was the intention and the understanding of the
24 Parties that we would not only have the EMRB hearing before the impasse arbitration would occur,
25 but that a decision would be rendered by the EMRB prior to an interest arbitration being held.

26 On January 22, 2024, the EMRB issued a Notice to Vacate Hearing, vacating the hearing
27 that had been scheduled for January 30, 2024, and January 31, 2024. *See* Ex. 5. Requiring WCSD
28 to proceed to an arbitration would be senseless, not only because it would frustrate the intention of

1 the parties to proceed before the EMRB first, but also because even if APTA were to succeed in
2 obtaining a judgment from a district court invalidating the notice of voluntary withdrawal, there are
3 still unfair labor practice allegations by both parties that need to be resolved by the EMRB before
4 an interest arbitration can occur.

5 5. WCSD Needs Declaratory Relief Prior to the Arbitration Occurring

6 At least three (3) of WCSD’s allegations against APTA—if upheld by the EMRB and/or
7 this Court—would invalidate any interest arbitration award because such findings would eliminate
8 the conditions precedent to conducting interest arbitration in the first place. Specifically: (1)
9 whether APTA has met the requirements for declaring arbitration pursuant to NRS 288.217 or NRS
10 288.200; (2) whether the parties have reached “impasse” as contemplated by NRS 288.217 or NRS
11 288.200; and (3) whether APTA participated in the negotiations in good faith and whether they
12 engaged in surface level bargaining. This Court should stay the arbitration until the EMRB and/or
13 this Court issues its findings on each of these issues.

14 As it pertains to whether APTA has met the requirements for declaring impasse pursuant to
15 NRS 288.217, they have not. APTA’s membership includes individuals who fall outside the
16 coverage of NRS 288.217 because they are neither teachers nor education support personnel. *See*
17 NRS 288.217(12)(a)–(b). They are not teachers, and at least some of the employee’s covered by
18 APTA are not “classified employees” to qualify as education support personnel. *Id.* Consequently,
19 NRS 288.200 should apply to APTA’s declaration of impasse. APTA attempted to improperly
20 declare impasse under NRS 288.217 to avoid having to comply with the requirements of NRS
21 288.200. Indeed, if APTA had proceeded properly under NRS 288.200, it would have been required
22 to engage in “six meetings of negotiations” prior to proceeding to arbitration. NRS 288.200(1)(a).
23 APTA admits it has not conducted six meetings of negotiations. Furthermore, NRS 288.200(1)(b)
24 requires that the parties participate in a mediation prior to proceeding to arbitration as well.
25 However, the parties have not completed any such mediation.

26 Regardless of whether NRS 288.217 or NRS 288.200 applies, WCSD intends to present
27 evidence that APTA repeatedly failed to engage with WCSD’s proposals, and informed WCSD
28 they only wanted to discuss its own proposals and refused to negotiate mandatory subject of

1 bargaining. WCS D expects the EMRB and/or this Court will find that where a party engages in
2 this sort of bad faith conduct, the meeting should not count towards the minimum number of
3 negotiation sessions. Accordingly, WCS D anticipates that the EMRB and/or this Court will also
4 find, when viewed in the totality, that APTA has engaged in surface bargaining.

5 **6. Regardless, the Parties have not Reached Impasse**

6 Additionally, APTA and WCS D have not reached “impasse” and an interest arbitration is
7 therefore not appropriate. Even if NRS 288.217(2) applies, it requires the negotiations to be at
8 “impasse.” It cannot be fairly stated that one (1) party is permitted to unilaterally declare impasse,
9 despite the other party’s continuing good faith efforts to negotiate an agreement and make additional
10 proposals. The Nevada Supreme Court instructs that “[t]his court has a duty to construe statutes as
11 a whole, so that all provisions are considered together . . . the court will not render any part of the
12 statute meaningless and will not read the statute’s language so as to produce absurd or unreasonable
13 results.” *Orion Portfolio Servs. 2 LLC v. Cnty. of Clark ex rel. Univ. Med. Ctr. of S. Nevada*, 126
14 Nev. 397, 403, 245 P.3d 527, 531 (2010) (citations omitted).

15 NRS 288.217(2)’s use of the word “impasse” was clearly deliberate as that word has a
16 specific meaning in union negotiations. In short, “the Board defined an impasse as a situation where
17 ‘good-faith negotiations have exhausted the prospects of concluding an agreement.’” *Taft*
18 *Broadcasting*, 163 NLRB 475, 478 (1967), *enfd. sub nom. Television Artists, AFTRA v. NLRB*, 395
19 F.2d 622 (D.C. Cir. 1968). The NLRB has explained “[a] genuine impasse in negotiations is
20 synonymous with a deadlock: the parties have discussed a subject or subjects in good faith, and,
21 despite their best efforts to achieve agreement with respect to such, neither party is willing to move
22 from its respective position.” *Hi-Way Bill-boards*, 206 NLRB 22, 23 (1973). Here, at the conclusion
23 of the last meeting, APTA refused to permit WCS D to present their further proposals and staged a
24 walk-out of the negotiations. WCS D expects that the EMRB will not permit APTA to declare
25 impasse and submit the disputes to arbitration under these circumstances. Indeed, permitting this
26 conduct is counter to the purposes of NRS 288 and would disincentivize parties from engaging in
27 good faith substantive negotiations. Thus, an injunction from this Court is appropriate until either
28 the EMRB and/or this Court can address whether NRS 288.200 or NRS 288.217 applies and whether

1 the conditions precedent for either statute have been met in this case such that proceeding to
2 arbitration is even permitted.

3 If APTA has not even declared impasse under the proper statute, or if APTA has not engaged
4 in the requisite number of negotiation sessions prior to declaring impasse, it would be manifestly
5 unjust to require WCSD to attend an arbitration, that should not have occurred in the first place, with
6 an employee organization that it has withdrawn recognition from, only to later have a decision by
7 this Court or the EMRB invalidate the entire arbitration.

8 APTA prematurely declared impasse pursuant to NRS 288.217. Neither the EMRB or this
9 Court should find that based on the conduct of the parties they have conducted “at least four sessions
10 of negotiation” as required by NRS 288.217(1). It is difficult, if not impossible, to refer to a meeting
11 as a “session[] of negotiation” if APTA fails to substantively engage in the discussions, respond to
12 WCSD’s proposals, or otherwise seek to reach an agreement. During several of the negotiation
13 sessions, APTA only wanted to discuss its own proposals, not WCSD’s. Accordingly, even if NRS
14 288.217 is found to apply to this dispute, when viewed in totality, any reasonable fact-finder would
15 find that APTA has not engaged in the requisite number of negotiation sessions, but instead has
16 engaged in surface level bargaining.

17 **C. WCSD CAN ESTABLISH IRREPARABLE INJURY WILL OCCUR IF**
18 **INJUNCTIVE RELIEF IS DENIED**

19 In the event this Court fails to grant the Motion, WCSD will be irreparably harmed. Indeed,
20 if the Motion is not granted, WCSD could be forced to commit an unfair labor practice by
21 negotiating with APTA, despite having voluntarily withdrawn recognition from APTA.
22 Additionally, WCSD could be held to a decision reached by an arbitrator between WCSD and an
23 employee organization it no longer recognizes. This is especially problematic where, as here, the
24 Arbitrator is insisting on proceeding, despite the fact that WCSD’s counsel is required to be in a
25 hearing for a motion for summary judgment on that day. Ex. 6.

26 Further, if WCSD is correct that NRS 288.200 applies, rather than NRS 288.217, and this
27 Court denies the Motion, WCSD will be forced to arbitrate a dispute both in violation of its statutory
28 rights as contemplated by NRS 288.200 as well as in violation of NAC 288.145. It is well

1 established that forcing a party to participate in an arbitration that it did not agree to is irreparable
2 harm. *MIRAE ASSET SECURITIES CO. LTD., Plaintiff v. RYZE RENEWABLES HOLDINGS, LLC*
3 & *RYZE RENEWABLES NEVADA, LLC, Defendants*, No. 223CV01492APGNJK, 2023 WL
4 9119848, at *1 (D. Nev. Dec. 20, 2023) (citing *UBS Sec., LLC v. Voegeli*, 405 F. App'x 550, 552
5 (2d Cir. 2011) (“Being forced to arbitrate a claim one did not agree to arbitrate constitutes an
6 irreparable harm for which there is no adequate remedy at law.”); *Forge Underwriting Ltd. v.*
7 *AmTrust Fin. Servs., Inc.*, No. 1:23-CV-06201 (JLR), 2023 WL 6890844, at *8 (S.D.N.Y. Oct. 19,
8 2023).

9 Furthermore, this is consistent with the overriding maxim that the purpose of temporary
10 restraining orders and preliminary injunctions is to preserve the status quo. *Dixon v. Thatcher*, 103
11 Nev. 414, 415, 742 P.2d 1029, 1029 (1987). In this case, the Parties have pending allegations before
12 the EMRB, WCSD is proceeding with negotiations with the professional-technical employees
13 under their recognized employee organization WPTA. The only action that could frustrate or upset
14 the status quo is if the arbitrator exceeds her authority and attempts to render a decision that will
15 bind the District moving forward regarding what the terms of the CBA with an employee
16 organization WCSD has withdrawn recognition from should be. This is plainly inconsistent with
17 well established precedent, and should be avoided by granting this Motion.

18 **V. BASIS FOR EX PARTE RELIEF**

19 This Motion is seeking ex parte relief but is not being filed without notice to the other party.
20 See NRCF 65(b). WCSD knows that APTA is represented by counsel and intends to provide
21 APTA’s counsel with a copy of the Complaint filed in this action as well as this Motion via email
22 as soon as it is filed. However, given there are only fourteen (14) days between the filing of this
23 Motion and the date the arbitration is set to occur, WCSD is requesting the initial relief granted by
24 this Court be granted ex parte to avoid the irreparable harm that will result to WCSD if the
25 arbitration is allowed to proceed. Indeed, because the arbitration will likely involve a substantial
26 amount of preparation and resources that will not be recoverable in the event this Court grants this
27 temporary restraining order, WCSD is requesting a temporary restraining order be issued as
28 expeditiously as possible. In the event this Court denies the preliminary injunction, there is no

1 prejudice to any party as a result of a continuance of the arbitration. The only prejudice that would
2 occur is in the event WCSD is forced to attend and participate in the unlawful and improper
3 arbitration scheduled for February 20, 2024, and February 21, 2024.

4 However, WCSD recognizes that any such relief will expire by rule, fourteen (14) days after
5 it is issued. NRCP 65(b)(2). Consequently, WCSD is requesting the Court hold a hearing on
6 granting an injunction on this matter on an expedited basis.

7 **VI. CONCLUSION**

8 For the foregoing reasons, WCSD respectfully requests this Court grant this Motion and
9 temporarily restrain APTA from proceeding to arbitration against WCSD. Alternatively, WCSD
10 respectfully requests this Court stay any pending decision from the arbitrator pending resolution of
11 the legal issues raised in this Motion.

12 **Affirmation**

13 The undersigned does hereby affirm that the preceding document does not contain the social
14 security number of any person.

15
16 DATED: February 6, 2024

17
18 BY: /s/Anthony L. Hall
19 ANTHONY L. HALL, ESQ.
20 Nevada Bar No. 5977
AHall@SHJNevada.com
21 JONATHAN A. MCGUIRE, ESQ.
22 Nevada Bar No. 15280
JMcGuire@SHJNevada.com
23 SIMONS HALL JOHNSTON PC
24 690 Sierra Rose Dr.
25 Reno, Nevada 89511
26 Telephone: (775) 785-0088
27 *Attorneys for Respondent*
28

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CERTIFICATE OF SERVICE

I, Terri Tribble declare:

I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of Simons Hall Johnston PC. My business address is 690 Sierra Rose Dr., Reno, NV 89511. I am over the age of 18 years and not a party to this action.

On the below date, I served the foregoing **EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** by causing the document to be served via email, addressed as follows:

Ronald J. Dreher
P.O. Box 6494
Reno, NV 89513
ron@dreherlaw.net

Attorney for Defendant
ASSOCIATION OF PROFESSIONAL-
TECHNICAL ADMINISTRATORS

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed on February 6, 2024.

/s/ Terri Tribble
Employee of Simons Hall Johnston

EXHIBIT 1

EXHIBIT 1

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

1 ANTHONY L. HALL, ESQ.
Nevada Bar No. 5977
2 AHall@SHJNevada.com
3 JONATHAN A. MCGUIRE, ESQ.
Nevada Bar No. 15280
4 JMcGuire@SHJNevada.com
SIMONS HALL JOHNSTON PC
690 Sierra Rose Dr.
5 Reno, NV 89511
Telephone: (775) 785-0088
6 Facsimile: (775) 785-0087
7 *Attorneys for Washoe County School District*

8
9
10
11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
12
13 **IN AND FOR THE COUNTY OF DOUGLAS**

14
15 WASHOE COUNTY SCHOOL DISTRICT
16
17 Plaintiff,
18
19 v.
20 ASSOCIATION OF PROFESSIONAL-
TECHNICAL ADMINISTRATORS
21
22 Defendants.

CASE NO.:
DEPT. NO.:

23 **[PROPOSED] ORDER GRANTING PLAINTIFF’S MOTION FOR TEMPORARY**
24 **RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

25 Currently before the Court is Plaintiff Washoe County School District’s (“WCSD” of
26 “Plaintiff”) Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction
27 (“Motion”) against Defendant Association of Professional-Technical Administrators (“APTA” or
28 “Defendant”) filed on February 5, 2024.

1 **I. Background**

2 APTA is a formerly recognized employee organization of WCSD. Compl. at ¶5. On January
3 9, 2024, WCSD approved a notice of voluntary withdrawal from APTA pursuant to NAC 288.145.
4 *Id.* at ¶¶7–10. The Parties are currently scheduled to attend an interest arbitration pursuant to NRS
5 288.217 on February 20, 2024, and February 21, 2024 before Arbitrator Bonnie Castrey
6 (“Arbitrator”). *Id.* at ¶32. WCSD disputes whether any interest arbitration can proceed pursuant to
7 NRS Chapter 288 in light of its approval of APTA’s notice of voluntary withdrawal pursuant to
8 NAC 288.145. *Id.* at ¶44.

9 **II. Relevant Legal Authority**

10 Under Nevada law, the standard for granting a temporary restraining order is the same
11 standard for determining whether to issue a preliminary injunction. The party seeking relief must
12 show they have a “reasonable likelihood of success on the merits,” and they will be subjected to
13 irreparable harm for which no adequate remedy at law exists should the relief not be granted. NRCP
14 65(b); *Excellence Com. Mgmt., LLC, v. Gilmore*, 131 Nev. 347, 350, 351 P.3d 720, 722, (2015);
15 *Pickett v. Comanche Construction, Inc.* 108 Nev. 422, 426, 836 P.2d 42 (1992); *Dixon v. Thatcher*,
16 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987).

17 A temporary restraining order may be granted without written or oral notice to the adverse
18 party or that party’s attorney only if:

- 19 (1) it clearly appears from specific facts shown by the affidavit or by the verified
20 complaint that immediate and irreparable injury, loss, or damage will result to
21 the applicant before the adverse party or that party’s attorney can be heard in
22 opposition, and (2) the applicant’s attorney certifies to the court in writing the
23 efforts, if any, which have been made to give the notice and the reasons
24 supporting the claim that notice should not be required.

25 NRCP 65(b). Further, a temporary restraining order may only be issued where the applicant has
26 given security, a sum in which the court deems proper, for the costs and damages that may be suffered
27 by any party found to have been wrongfully enjoined or restrained. NRCP 65(c). Where a temporary
28 restraining order has been entered without notice, it expires no later than fourteen days after it is
entered. NRCP 65(b)(2).

1 **III. Analysis**

2 Having reviewed the Motion and having considered the facts and legal support set forth
3 therein, this Court finds good cause to grant the Motion, issue a temporary restraining order, and
4 schedule a hearing on a preliminary injunction. As an initial matter, this Court accepts Plaintiff's
5 counsel's representation and finds that APTA's counsel has bene provided notice of the Complaint
6 and the Motion as required pursuant to NRCP 65(b)(2).

7 This Court finds that Plaintiff has a reasonable likelihood of success on the merits and that
8 Plaintiff will suffer irreparable harm absent an order issuing a temporary restraining order. Based
9 upon the allegation set forth in the Complaint, and Plaintiff's arguments in the Motion, this Court
10 finds that Plaintiffs have met their burden. This Court finds WCSD has met its burden to
11 demonstrate that it is reasonably likely that it will prevail on its claim for declaratory relief. *See*
12 *generally* Compl.

13 Additionally, this Court also finds that issuance of a temporary restraining order is proper in
14 light of the irreparable harm that will occur to WCSD in the event the arbitration currently scheduled
15 for February 20, 2024, and February 21, 2024, is permitted to proceed prior to these claims being
16 resolved. *See MIRAE ASSET SECURITIES CO. LTD., Plaintiff v. RYZE RENEWABLES*
17 *HOLDINGS, LLC & RYZE RENEWABLES NEVADA, LLC, Defendants*, No.
18 223CV01492APGNJK, 2023 WL 9119848, at *1 (D. Nev. Dec. 20, 2023) (citing *UBS Sec., LLC v.*
19 *Voegeli*, 405 F. App'x 550, 552 (2d Cir. 2011) ("Being forced to arbitrate a claim one did not agree
20 to arbitrate constitutes an irreparable harm for which there is no adequate remedy at law."); *Forge*
21 *Underwriting Ltd. v. AmTrust Fin. Servs., Inc.*, No. 1:23-CV-06201 (JLR), 2023 WL 6890844, at
22 *8 (S.D.N.Y. Oct. 19, 2023). This Court also finds, based on the allegations contained in the
23 Complaint and in the Motion, that no adequate remedy at law exists for WCSD. This is especially
24 true where, as here, WCSD already sought to file a motion to vacate the arbitration with the
25 Arbitrator. Consequently, issuance of this temporary restraining order is proper.

26 Finally, this Court agrees with Plaintiff that a minimal bond is appropriate pursuant to NRCP
27 65(c), as APTA is unlikely to suffer substantial economic injury during the pendency of this
28 temporary restraining order. Comparatively, the Court finds that WCSD will suffer irreparable harm

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

1 should APTA be permitted to continue with the arbitration as it is presently scheduled. Accordingly,
2 Plaintiff shall post a bond in the amount of \$500.00.

3 Based upon the foregoing and good cause appearing,

4 IT IS HEREBY ORDERED that a Temporary Restraining Order be entered enjoining and
5 restraining APTA from proceeding to arbitration against WCSD on February 20, 2024, and/or
6 February 21, 2024.

7 IT IS HEREBY FURTHER ORDERED that a hearing regarding Plaintiff's Motion for
8 Preliminary Injunction be set for _____, 2024, at ____ am/pm.

9
10
11 IT IS SO ORDERED.

12 DATED this ____ day of February 2024.

13
14 **IT IS SO ORDERED.**

15
16 _____
17 DISTRICT COURT JUDGE

18
19
20
21
22
23 Respectfully Submitted By:

24 _____
25 ANTHONY L. HALL, ESQ.
26 Nevada Bar No. 5977
27 JONATHAN A. MCGUIRE, ESQ.
28 Nevada Bar No. 15280
SIMONS HALL JOHNSTON PC
Attorneys for Washoe County School District.

EXHIBIT 2

EXHIBIT 2

From: Frank, Naveed <Naveed.Frank@WashoeSchools.net>

Sent: Monday, January 8, 2024 12:03 PM

To: Spotts, Anthony <ASpotts@WashoeSchools.net>; Publico, Adriana <APublico@WashoeSchools.net>; McMillen, Tony <TMcMillen@washoeschools.net>; McNeill, Lisa <LMcNeill@WashoeSchools.net>

Subject: RE: WPTA

Yes!

Thank you so much.

Naveed Frank

Accountant, Capital Project
14101 Old Virginia Road
Reno, NV 89521

From: Spotts, Anthony <ASpotts@WashoeSchools.net>
Sent: Monday, January 8, 2024 11:51 AM
To: Publico, Adriana <APublico@WashoeSchools.net>; McMillen, Tony <TMcMillen@washoeschools.net>; Frank, Naveed <Naveed.Frank@WashoeSchools.net>; McNeill, Lisa <LMcNeill@WashoeSchools.net>
Subject: WPTA
Importance: High

Good afternoon,

The Board of Trustees received a letter from Dr. Shannon Colon, APTA President, on January 7, 2024, challenging the Agenda Item for the Board Meeting on January 9, 2024 where the Board is to vote on the voluntary withdrawal of APTA as the bargaining representative for Professional-Technical (Pro-Tech) employees. Dr. Colon asserts that the notice provided by the four of you to voluntarily withdraw APTA as the bargaining representative was not approved by a majority of the APTA Executive Board. Her assertions appear to be incorrect since the written withdrawal that we received from the 4 of you, on its face, seems to confirm that a majority of the APTA Executive Board took this action.

As a result, the District would like confirmation that the four of you, as the majority of the APTA Executive Board, requested voluntary withdrawal of APTA as the bargaining representative pursuant to NAC 288.145. If this is correct, a simple yes or confirmed is all that we need at this time.

We would like to have this confirmation by the end of the day today, if possible.

Anthony Spotts (he/him)
Interim Director of Labor Relations
Labor Relations Division
425 E. 9th Street, Building A-120
(775) 348-3843 (office)
ASpotts@Washoeschools.net



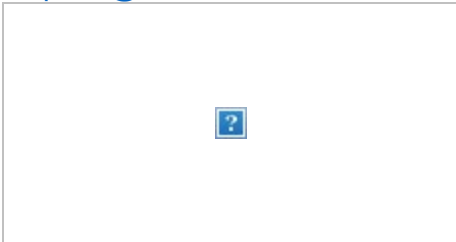
*Department of Talent &
Professional Growth Systems*

"The game begins in the spring, when everything else begins again, and it blossoms in the summer, filling the afternoons and evenings, and then as soon as the chill rains come, it stops and leaves you to face the fall alone." – A. Bartlett Giamatti

From: aspotts@washoeschools.net
To: [McNeill, Lisa](#); [Publico, Adriana](#); [McMillen, Tony](#); [Frank, Naveed](#)
Subject: RE: WPTA
Attachments: [image001.png](#)
[image002.png](#)

Thank you.

Anthony Spotts (he/him)
Interim Director of Labor Relations
Labor Relations Division
425 E. 9th Street, Building A-120
(775) 348-3843 (office)
ASpotts@Washoeschools.net



“The game begins in the spring, when everything else begins again, and it blossoms in the summer, filling the afternoons and evenings, and then as soon as the chill rains come, it stops and leaves you to face the fall alone.” – A. Bartlett Giamatti

From: McNeill, Lisa <LMcNeill@WashoeSchools.net>
Sent: Monday, January 8, 2024 12:36 PM
To: Spotts, Anthony <ASpotts@WashoeSchools.net>; Publico, Adriana <APublico@WashoeSchools.net>; McMillen, Tony <TMcMillen@washoeschools.net>; Frank, Naveed <Naveed.Frank@WashoeSchools.net>
Subject: RE: WPTA

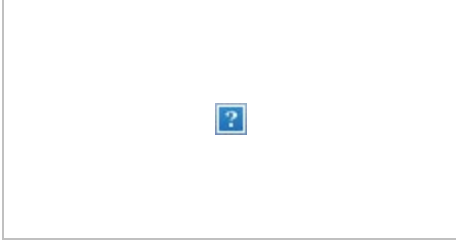
Hi Anthony, Yes. Thanks, Lisa

From: Spotts, Anthony <ASpotts@WashoeSchools.net>
Sent: Monday, January 8, 2024 12:13 PM
To: Publico, Adriana <APublico@WashoeSchools.net>; McMillen, Tony <TMcMillen@washoeschools.net>; Frank, Naveed <Naveed.Frank@WashoeSchools.net>; McNeill, Lisa <LMcNeill@WashoeSchools.net>
Subject: RE: WPTA

Thank you.

Anthony Spotts (he/him)
Interim Director of Labor Relations
Labor Relations Division
425 E. 9th Street, Building A-120

(775) 348-3843 (office)
ASpotts@Washoeschools.net



“The game begins in the spring, when everything else begins again, and it blossoms in the summer, filling the afternoons and evenings, and then as soon as the chill rains come, it stops and leaves you to face the fall alone.” – A. Bartlett Giamatti

From: Publico, Adriana <APublico@WashoeSchools.net>
Sent: Monday, January 8, 2024 12:12 PM
To: McMillen, Tony <TMcMillen@washoeschools.net>; Spotts, Anthony <ASpotts@WashoeSchools.net>; Frank, Naveed <Naveed.Frank@WashoeSchools.net>; McNeill, Lisa <LMcNeill@WashoeSchools.net>
Subject: Re: WPTA

Yes

Get [Outlook for iOS](#)

From: McMillen, Tony <TMcMillen@washoeschools.net>
Sent: Monday, January 8, 2024 12:08:24 PM
To: Spotts, Anthony <ASpotts@WashoeSchools.net>; Publico, Adriana <APublico@WashoeSchools.net>; Frank, Naveed <Naveed.Frank@WashoeSchools.net>; McNeill, Lisa <LMcNeill@WashoeSchools.net>
Subject: RE: WPTA

Yes

Thanks,

Tony McMillen, P.E., CCM

Director Construction and Project Management
Washoe County School District Facilities
775-742-4908

From: Spotts, Anthony <ASpotts@WashoeSchools.net>
Sent: Monday, January 8, 2024 11:51 AM
To: Publico, Adriana <APublico@WashoeSchools.net>; McMillen, Tony <TMcMillen@washoeschools.net>; Frank, Naveed <Naveed.Frank@WashoeSchools.net>; McNeill, Lisa <LMcNeill@WashoeSchools.net>
Subject: WPTA
Importance: High

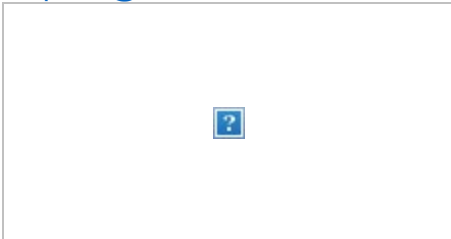
Good afternoon,

The Board of Trustees received a letter from Dr. Shannon Colon, APTA President, on January 7, 2024, challenging the Agenda Item for the Board Meeting on January 9, 2024 where the Board is to vote on the voluntary withdrawal of APTA as the bargaining representative for Professional-Technical (Pro-Tech) employees. Dr. Colon asserts that the notice provided by the four of you to voluntarily withdraw APTA as the bargaining representative was not approved by a majority of the APTA Executive Board. Her assertions appear to be incorrect since the written withdrawal that we received from the 4 of you, on its face, seems to confirm that a majority of the APTA Executive Board took this action.

As a result, the District would like confirmation that the four of you, as the majority of the APTA Executive Board, requested voluntary withdrawal of APTA as the bargaining representative pursuant to NAC 288.145. If this is correct, a simple yes or confirmed is all that we need at this time.

We would like to have this confirmation by the end of the day today, if possible.

Anthony Spotts (he/him)
Interim Director of Labor Relations
Labor Relations Division
425 E. 9th Street, Building A-120
(775) 348-3843 (office)
ASpotts@Washoeschools.net



“The game begins in the spring, when everything else begins again, and it blossoms in the summer, filling the afternoons and evenings, and then as soon as the chill rains come, it stops and leaves you to face the fall alone.” – A. Bartlett Giamatti

EXHIBIT 3

EXHIBIT 3

Washoe Professional Technical Association

Ballot and Results

Beginning December 19, 2023, Professional-Technical Employees were asked to vote on the following question:

1. Are you in favor of Pro-Techs leaving APTA and forming their own employee organization (association)? *

Yes

No

As of January 3, at the close of voting, of 183 non-confidential Professional-Technical Employees, 146 (80%) voted Yes and 5 (3%) voted No.

All APTA-Eligible Employees	Total #	# Yes Votes	# No Votes	% Yes Vote
Non-Confidential ProTechs	183	146	5	79.78%
School Psychologists	45	0	3	0.00%
Combined Total	228	146	8	64.04%

Dues-paying APTA Members	Total #	# Yes Votes	# No Votes	% Yes Vote
Non-Confidential ProTechs	119	103	4	86.55%
School Psychologists	44	0	2	0.00%
Combined Total	163	103	6	63.19%

EXHIBIT 4

EXHIBIT 4

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STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

ASSOCIATION OF PROFESSIONAL-
TECHNICAL ADMINISTRATORS,

Complainant,
v.
WASHOE COUNTY SCHOOL DISTRICT,

Respondent;

Case No. 2023-015

WASHOE COUNTY SCHOOL DISTRICT,

Complainant,
v.
ASSOCIATION OF PROFESSIONAL-
TECHNICAL ADMINISTRATORS,

Respondent;

Case No. 2023-023

WASHOE COUNTY SCHOOL DISTRICT,

Complainant,
v.
WASHOE SCHOOL PRINCIPALS'
ASSOCIATION,

Respondent;

Case No. 2023-024

WASHOE SCHOOL PRINCIPALS'
ASSOCIATION,

Complainant,
v.
WASHOE COUNTY SCHOOL DISTRICT

Respondent.

Case No. 2023-031

**STIPULATION TO RESOLVE
OUTSTANDING MOTIONS**

1 IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto, by and
2 through their representatives of record, RONALD J. DREHER of ASSOCIATION OF
3 PROFESSIONAL-TECHINCAL ADMINSTRATORS (APTA) and WASHOE SCHOOL
4 PRINCIPALS' ASSOCIATION (WSPA) and ANTHONY L. HALL of WASHOE COUNTY
5 SCHOOL DISTRICT (WCSD) that outstanding issues on the above-entitled cases shall be resolved as
6 follows:

7 **With respect to Case 2023-015; APTA v. WCSD**

- 8 1. WCSD shall file its answer to the Second Amended Complaint no later than November 8, 2023,
9 if it has not done so already.
- 10 2. WCSD agrees not to file a motion to dismiss to the Second Amended Complaint, and if it has
11 done so already, agrees that EMRB staff shall have the authority to rescind that motion to
12 dismiss.
- 13 3. APTA and WCSD agree to consolidate this case with case 2023-023, which shall be known as
14 Consolidated Case 2023-015.
- 15 4. WCSD agrees to rescind the pending motion to expedite the hearing or stay the arbitration.
16

17 **With respect to Case 2023-023; WCSD v. APTA**

- 18 1. APTA shall rescind the pending motion to dismiss.
- 19 2. The parties agree that rescinding the pending motion to dismiss will make moot WCSD's
20 pending motion to extend time to file its opposition to that motion to dismiss.
- 21 3. APTA agrees to allow WCSD to file a First Amended Complaint, which has been attached to
22 WCSD's pending motion to amend its complaint and both parties further agree to allow EMRB
23 staff to administratively file the proposed amended complaint forthwith.
- 24 4. APTA shall file its answer within twenty (20) days of the filing of the First Amended Complaint
25 and further agrees not to file a motion to dismiss the First Amended Complaint.
- 26 5. APTA and WCSD agree to consolidate this case with 2023-015, which shall be known as
27 Consolidated Case 2023-015.

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With respect to Consolidated Case 2023-015; APTA v. WCSD

1. In lieu of separate prehearing statements for the two individual cases, prehearing statements shall be filed for this consolidated case by both parties no later than 21 days from the date of the answer to the Second Amended Complaint referenced under case 2023-015 or the First Amended Complaint under case 2023-023, whichever is later.
2. The parties agree to work with the Board in the scheduling of a hearing on the case so that a decision could be rendered by the Board in time for the pending impasse arbitration between the parties currently scheduled for February 20-21, 2024.
3. The parties agree that the following additional question shall be decided by the Board at the hearing, namely whether NRS 288.200 or NRS 288.217 apply to impasse proceedings between the parties.
4. The parties agree to waive the right to file closing briefs at the afore-mentioned hearing and instead shall give oral closing arguments.

With respect to Case 2023-024; WCS D v. WSPA

1. WSPA shall rescind the pending motion to dismiss.
2. The parties agree that rescinding the pending motion to dismiss will make moot WCS D's pending motion to extend time to file its opposition to that motion to dismiss.
3. WSPA agrees to allow WCS D to file a First Amended Complaint, which will be provided to the EMRB by October 25, 2023, and both parties further agree to allow EMRB staff to administratively file the proposed amended complaint forthwith.
4. WSPA shall file its answer within twenty (20) days of the filing of the First Amended Complaint and further agrees not to file a motion to dismiss the First Amended Complaint.
5. WSPA and WCS D agree to consolidate this case with 2023-031, which shall be known as Consolidated Case 2023-024.
6. WCS D agrees to rescind the pending motion to expedite the hearing or stay the arbitration.

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With respect to Case 2023-031; WSPA v. WCSD

1. WSPA and WCSD agree to consolidate this case with 2023-024, which shall be known as Consolidated Case 2023-024.

With respect to Consolidated Case 2023-024; WCS D v. WSPA

1. In lieu of separate prehearing statements for the two individual cases, prehearing statements shall be filed for this consolidated case by both parties no later than 21 days from the date of the answer to the First Amended Complaint under case 2023-024.
2. The parties agree to work with the Board in the scheduling of a hearing on the case so that a decision could be rendered by the Board in time for the pending impasse arbitration between the parties currently scheduled for January 17-18, 2024.
3. The parties agree to waive the right to file closing briefs at the afore-mentioned hearing and instead shall give oral closing arguments.

DATED this 24th day of October 24, 2023.

By /s/Ronald J. Dreher

Representative for APTA and WSPA

By  _____

Representative for WCSD

ORDER

UPON CONSIDERING the Stipulation to Resolve Outstanding Motions, said stipulation is hereby granted.

Dated this 8th day of November 2023.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: _____
BRENT C. ECKERSLEY, Chair

EXHIBIT 5

EXHIBIT 5

1 STATE OF NEVADA
2 GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD

4 ASSOCIATION OF PROFESSIONAL-
5 TECHNICAL ADMINSTRATORS,

6 Complainant,

7 v.

8 WASHOE COUNTY SCHOOL DISTRICT,

9 Respondent.

Case No. 2023-015
(CONSOLIDATED WITH 2023-023)

NOTICE TO VACATE HEARING

10 WASHOE COUNTY SCHOOL DISTRICT,

11 Complainant,

12 v.

13 ASSOCIATION OF PROFESSIONAL-
14 TECHNICAL ADMINISTRATORS,

15 Respondent.

16 TO: Complainant¹ and its attorney, Ronald J. Dreher, Esq.; and

17 TO: Respondent² and its attorney, Anthony L. Hall, Esq. and Jonathan A. McGuire, Esq. of Simons
18 Hall Johnston PC;

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the hearing previously
20 scheduled for January 30, 2024 and January 31, 2024, if necessary, has been vacated. The hearing will
21 be reset after the Board has ruled on respondent's pending motion.
22

23 DATED this 22nd day of January 2024.

24 GOVERNMENT EMPLOYEE-
25 MANAGEMENT RELATIONS BOARD

26 BY 
27 BRUCE K. SNYDER, Commissioner

28 ¹ The use of the term Complainant is based on case 2023-015.

² The use of the term Respondent is based on case 2023-015.

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Government Employee-Management Relations
3 Board, and that on the 22nd day of January 2024, I served a copy of the foregoing **NOTICE TO**
4 **VACATE HEARING** by mailing a copy thereof, postage prepaid to:

5 Anthony L. Hall, Esq.
6 Jonathan A. McGuire, Esq.
7 Simons Hall Johnston PC
8 690 Sierra Rose Dr.,
9 Reno, Nevada 89511

10 Ronald J. Dreher, Esq.
11 P.O. Box 6494
12 Reno, Nevada 89513

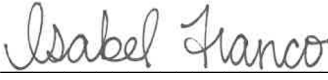
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14 _____
15 ISABEL FRANCO
16 Administrative Assistant II
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EXHIBIT 6

EXHIBIT 6

Terri Tribble

From: cmecf@nvd.uscourts.gov
Sent: Tuesday, January 23, 2024 8:40 AM
To: cmecfhelpdesk@nvd.uscourts.gov
Subject: Activity in Case 3:21-cv-00495-RCJ-CSD Ulloa v. Nevada Gold Mines LLC Minute Order Setting Hearing on Motion

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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United States District Court

District of Nevada

Notice of Electronic Filing

The following transaction was entered on 1/23/2024 at 8:39 AM PST and filed on 1/23/2024

Case Name: Ulloa v. Nevada Gold Mines LLC

Case Number: [3:21-cv-00495-RCJ-CSD](#)

Filer:

Document Number: 112(No document attached)

Docket Text:

MINUTE ORDER IN CHAMBERS of the Honorable Judge Robert C. Jones on 1/23/2024. By Deputy Clerk: AB.

The Court is in receipt of the Defendant's Motion for Summary Judgment (ECF No. [97]/[102]) and Plaintiff's Motion to Strike (ECF No. [101]).

It is therefore ordered that a Motions Hearing is set for Tuesday, February 20, 2024, at 10:30 a.m. in Reno Courtroom 3 before Judge Robert C. Jones.

It is further ordered that counsel shall be prepared to discuss the Motion for Summary Judgment (ECF No. [97]/[102]), the Motion to Strike (ECF No. [101]), and any related briefing.

IT IS SO ORDERED.

(no image attached) (Copies have been distributed pursuant to the NEF - AB)

3:21-cv-00495-RCJ-CSD Notice has been electronically mailed to:

Anthony L. Hall ahall@shjnevada.com, Filings@SHJNevada.com, Navila@shjnevada.com, jmcguire@shjnevada.com,

ttribble@SHJnevada.com

James P. Kemp jp@kemp-attorneys.com, bvaldez@kemp-attorneys.com, jpkempesq@aol.com

Jonathan A McGuire jmcguire@shjnevada.com, Filings@SHJNevada.com, klee@SHJNevada.com

3:21-cv-00495-RCJ-CSD Notice has been delivered by other means to:

EXHIBIT 7

EXHIBIT 7

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Telephone: (775) 785-0088

6 *Attorneys for Respondent*
7 *Washoe County School District*

8
9 **IN THE ARBITRATION BETWEEN WASHOE COUNTY SCHOOL DISTRICT**
10 **AND ASSOCIATION OF PROFESSIONAL-TECHNICAL ADMINISTRATORS**

11 ASSOCIATION OF PROFESSIONAL-
12 TECHNICAL ADMINISTRATORS,

Case No.: 230920-09489

13 vs.

WASHOE COUNTY SCHOOL DISTRICT'S
MOTION TO VACATE ARBITRATION

14 WASHOE COUNTY SCHOOL DISTRICT,
15
16
17
18

19 **WASHOE COUNTY SCHOOL DISTRICT'S MOTION TO VACATE ARBITRATION**

20 Washoe County School District ("WCSD") by and through their counsel of record,
21 SIMONS HALL JOHNSTON PC, hereby submit this Motion to Vacate Arbitration ("Motion").

22 **I. INTRODUCTION**

23 Given the difficulty the parties have had in getting Mr. Dreher to participate in coordinating
24 a time for a status call, WCSD determined this Motion was necessary. It is likely that APTA's
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1 representative will attempt to encourage you not to read this Motion.¹ However, given the limited
2 time period before the arbitration is set to occur, and the change in circumstances since the
3 arbitration was scheduled, presenting these facts in written form was required. Furthermore, WCSD
4 is requesting a prompt determination and briefing schedule from the Arbitrator so that the Parties
5 can obtain some certainty surrounding these issues.

6 Vacating the arbitration is appropriate because the Association of Professional-Technical
7 Administrators (“APTA”) submitted a notice of voluntary withdrawal pursuant to NAC 288.145 to
8 WCSD, and WCSD accepted the voluntary withdrawal as of January 9, 2024. Accordingly, there is
9 no recognized employee organization that can proceed to interest arbitration.

10 Even if a district court found the notice of voluntary withdrawal was invalid, APTA and
11 WCSD still have a consolidated hearing with allegations of unfair labor practices against one
12 another before interest arbitration would be appropriate. This is especially true where one of
13 WCSD’s chief claims is that APTA failed to engage in the requisite number of negotiation sessions,
14 impermissibly declared impasse, and failed to engage in good faith negotiation.

15 Perhaps most importantly, one of Mr. Hall’s litigation cases has had oral arguments set for
16 a motion for summary judgment on February 20, 2024, in federal court. Thus, at a minimum, a
17 continuation of the arbitration is required.

18 **II. THERE IS NO RECOGNIZED EMPLOYEE ORGANIZATION TO PROCEED**

19 NAC 288.145(1) expressly authorizes a local government employer like WCSD to
20 “withdraw recognition of an employee organization if the employee organization: (a) Voluntarily
21 withdraws in writing as the bargaining representative. . . .” On December 27, 2023, APTA sent a
22 voluntary withdrawal notice to WCSD. WCSD followed up with APTA seeking confirmation of
23 the voluntary withdrawal on January 8, 2024. *See* January 8, 2024, email thread attached hereto as
24

25 ¹ WCSD was similarly forced to file a motion to stay an arbitration involving a different entity, also
26 represented by Mr. Dreher. Mr. Dreher repeatedly requested the arbitrator not review our motion
27 and wait until the morning of the arbitration to address these issues. However, given the cost
28 involved in preparing for an arbitration, WCSD is requesting you rule on this matter in advance of
the scheduled arbitration.

1 **Exhibit 1.** The request sought confirmation as to whether “the four of you, as the majority of the
2 APTA Executive Board, requested voluntary withdrawal of APTA as the bargaining representative
3 pursuant to NAC 288.145.” *Id.* All four (4) of the members of APTA’s executive board (Adriana
4 Publico, Tony McMillen, Naveed Frank, and Lisa McNeill) all responded affirmatively to that
5 email. *Id.* Accordingly, WCSD had more than enough basis to believe the voluntary withdrawal
6 was legitimate and proceeded accordingly.

7 APTA has attempted to argue to the EMRB that the notice of voluntary withdrawal was
8 improper and should be invalidated. However, whether a majority of the members of the APTA
9 Executive Board had authority to take a particular act is an intra-corporate dispute governed by
10 state law. Indeed, Nevada’s statutes governing nonprofit corporations contain an express provision
11 allowing a lawsuit to be filed where there is a dispute over the authority of representatives of the
12 nonprofit corporation or for acting beyond their authority. *See* NRS 82.216(1). Accordingly, any
13 such dispute regarding the potential propriety of the action of submitting the notice of voluntary
14 withdrawal notice is a dispute between the members of the executive board of APTA and needs to
15 be filed in state court and cannot be decided by the Arbitrator. Further, unless and until APTA
16 obtains a court order finding the actions of the 4 officers/board members to be invalid, their action
17 stands and as of today, APTA is not a recognized bargaining unit. Thus, there is no jurisdiction to
18 proceed to interest arbitration.

19 It is worth noting, that even if a district court were to invalidate the notice of voluntary
20 withdrawal, WCSD has already voted to recognize a new employee organization the Washoe
21 Professional Technical Association (“WPTA”) as the exclusive bargaining representative for the
22 professional-technical employees that were previously members of APTA. Accordingly, there is
23 no way to proceed to interest arbitration with an employee organization that has lost approximately
24 80% of its members and no negotiations whatsoever have occurred with solely those remaining in
25 APTA.

26 **III. EVEN IF THE ARBITRATOR REACHED THE ISSUE, APTA IS INCORRECT**

27 To be unmistakably clear, whether those four (4) members of APTA’s Executive Board
28 were authorized or permitted to issue a notice of voluntary withdrawal pursuant to NAC 288.145 is

1 not a dispute between WCSD and APTA, it is an intra-corporate dispute between the Executive
2 Board members and Officers of APTA. Clearly, this intra-corporate dispute must be resolved
3 before interest arbitration concerning a contract with APTA can occur.

4 The following are a series of issues that APTA's position will run into in the event the
5 Arbitrator improperly proceeds. Before the EMRB, APTA has asserted that APTA's executive
6 board is made up of eight (8) members. This is a misrepresentation. APTA's Bylaws regarding
7 the Executive Board expressly provide that "[t]he Executive Board shall consist of the five elected
8 officers, and one elected Representative from each: the Pro-Techs and the School Psychologists."
9 See APTA's Bylaws attached hereto as **Exhibit 2**. Reading that description in its totality
10 unambiguously indicates APTA's executive board contains five (5) elected officers, (1) Pro-Tech
11 representative, and (1) School Psychologist representative, totaling seven (7) board members. The
12 section then goes on to describe Ron P. Dreher (APTA's counsel's father) as a "board member ex-
13 officio" but expressly states that he "**is not a regular sitting member of the board.**" *Id.* at Section
14 1a (emphasis added). Accordingly, the express language of the Bylaws and the past practice of
15 APTA demonstrate that the APTA Executive Board only has seven (7) members, and a majority of
16 those members submitted a notice of voluntary withdrawal.

17 This is indisputably an intra-corporate dispute beyond the interest arbitrator's authority and
18 must be resolved under state law. At this time, it is unclear how Ron P. Dreher came to be involved
19 with APTA's leadership in his capacity as board member ex-officio. However, regardless of what
20 process was used, APTA may have violated its own bylaws by placing him in that position. Article
21 V of APTA's Bylaws that governs elections establishes that "[o]nly active members shall be entitled
22 to vote and hold elective office in the Association." See *id.* at Article V, Section 1, Sub-Section C.
23 Article II, Section 2 specifies that "[a]ctive membership is open to all Pro-Techs and School
24 Psychologists employed by the Washoe County School Board of Trustees, except for those Pro-
25 Techs and School Psychologists who are excluded. . . ." by Nevada law. *Id.* at Article II, Section
26 2. It is undisputed that Ron P. Dreher is not an employee of WCSD at all, much less a Pro-Tech or
27 School Psychologist. There is no provision in the Bylaws that would permit the officers or the
28 Executive Board members to appoint another member of the Board. Accordingly, there is a dispute

1 of whether it is even possible under APTA's Bylaws for Ron P. Dreher to be considered an ex-
2 officio member of the Executive Board at all.

3 Again, this is an intra-corporate dispute that must be resolved in a minority of the Executive
4 Board's favor by a district court and then steps taken to determine if it is appropriate to re-recognize
5 APTA as the bargaining representative, all before interest arbitration concerning a contract for a
6 presently non-recognized employee organization can occur.

7 Additionally, while APTA's counsel argues that the Executive Board did not authorize the
8 voluntary withdrawal, which he claims includes his father (Ron P. Dreher), this also does not appear
9 to be correct. Specifically, pursuant to Article III of APTA's bylaws, such a decision would be
10 delegated to the Officers (not the Executive Board) pursuant to Article III. *See id.* at Article III. If
11 this is the case, since Ron P. Dreher does not serve as an officer, his vote would be irrelevant.
12 Again, WCSD is not a party to this intra-corporate dispute. However, it is clear that conducting the
13 interest arbitration before this critical issue is decided under state law would be improper and
14 interest arbitration could not possibly proceed in an absence of a determination of these issues.

15 To be transparent with the Arbitrator, regardless of Ron P. Dreher's alleged involvement
16 with the Executive Board, his participation in discussions surrounding a notice of voluntary
17 withdrawal would have, in and of itself, been entirely inappropriate. Ron P. Dreher is a self-
18 interested party as he has put himself out as a member of the negotiating team for APTA. This,
19 despite the fact that he is not an employee of WCSD and has no commonality of interest with
20 WCSD's employees that also served as members of the APTA Executive Board. It is entirely
21 inappropriate for Ron P. Dreher to attempt to insert himself to block an act of self-determination by
22 WCSD's employees that formerly served on the APTA Executive Board, when he is self-interested
23 in that transaction. In fact, it is WCSD's understanding that until the issue of the voluntary
24 withdrawal arose, Ron P. Dreher has not voted on any business coming before APTA's Executive
25 Board. For Ron P. Dreher to claim he has retained this authority to vote this entire time but waits
26 until his son is going to lose a client to exert that authority is unethical and improper in the truest
27 sense. Furthermore, it is WCSD's understanding that the new employee organization formed by
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1 the Professional-Technical employees has retained different counsel from Ronald J. Dreher, which
2 only further confirms the conflict of interest described above. This has bearing on this interest
3 arbitration proceeding because, again, the state courts of Nevada have authority over the
4 determination of Ron P. Dreher's standing to even be on the APTA Executive Board. Clearly, if
5 he lacks such standing, then the voluntary withdrawal by a majority of the Board and Officers is
6 valid and there is no recognized employee organization whose contract could even be determined
7 by the Arbitrator.

8 **IV. THE EMRB HEARING, IF ANY, MUST OCCUR BEFORE THE ARBITRATION**

9 In the EMRB proceedings, the parties entered into a stipulation to resolve outstanding
10 motions back on October 24, 2023. At that time, the Parties agreed to "work with the Board in the
11 scheduling of a hearing on the case so that a decision could be rendered by the Board **in time for**
12 **the pending impasse arbitration** between the parties currently scheduled for February 20-21,
13 2024." *See* Stipulation to Resolve Outstanding Motions attached hereto as **Exhibit 3** (emphasis
14 added). Accordingly, it was the intention and the understanding of the Parties that we would not
15 only have the EMRB hearing before the impasse arbitration would occur, but that a decision would
16 be rendered by the EMRB prior to this interest arbitration being held.

17 On January 22, 2024, the EMRB issued a Notice to Vacate Hearing, vacating the hearing
18 that had been scheduled for January 30, 2024, and January 31, 2024. *See* Notice to Vacate Hearing
19 attached hereto as **Exhibit 4**. This notice was in response to the motion that WCSD previously sent
20 to the Arbitrator that sought to vacate the EMRB hearing based on the voluntary withdrawal of
21 APTA and the subsequent approval by WCSD. Proceeding with an arbitration would be senseless,
22 not only because it would frustrate the intention of the parties to proceed before the EMRB first,
23 but also because even if APTA were to succeed in obtaining a judgment from a district court
24 invalidating the notice of voluntary withdrawal, there are still unfair labor practice allegations by
25 both parties that need to be resolved by the EMRB before an interest arbitration can occur.

26 Consistent with the stipulation of the parties (Ex. 4), it is of paramount importance that the
27 EMRB hearing occurs prior to any arbitration.
28

1 To begin, at least three (3) of WCSD’s allegations against APTA—if upheld by the
2 EMRB—would invalidate any interest arbitration award because such findings would eliminate the
3 conditions precedent to conducting interest arbitration in the first place. Specifically: (1) whether
4 APTA has met the requirements for declaring arbitration pursuant to NRS 288.217; (2) whether the
5 parties have reached “impasse” as contemplated by NRS 288.217 or NRS 288.200; and (3) whether
6 APTA participated in the negotiations in good faith and whether they engaged in surface level
7 bargaining. These issues are ultimately for the EMRB to determine.

8 As it pertains to whether APTA has met the requirements for declaring impasse pursuant to
9 NRS 288.217, they have not. APTA’s membership includes individuals who fall outside the
10 coverage of NRS 288.217 because they are neither teachers nor education support personnel. *See*
11 NRS 288.217(12)(a)–(b). Consequently, NRS 288.200 should apply to APTA’s declaration of
12 impasse. NRS 288.200(1)(a) requires “six meetings of negotiations” and both parties agree six
13 meetings did not occur. WCSD expects that the EMRB will rule in favor of WCSD on this question.
14 Alternatively, if the EMRB rules against WCSD on this issue, then WCSD will have a decision on
15 the merits, and it can determine whether to seek judicial review of that decision.

16 Regardless of whether NRS 288.217 or NRS 288.200 applies, WCSD believes the EMRB
17 will find that at least two (2) and more likely all of those meetings should not count as sessions of
18 negotiations. Indeed, if the EMRB hearing is rescheduled WCSD intends to present evidence to
19 the EMRB that APTA repeatedly failed to engage with WCSD’s proposals, and informed WCSD
20 they only wanted to discuss its own proposals and refused to negotiate mandatory subject of
21 bargaining. WCSD expects the EMRB will find that where a party engages in this sort of bad faith
22 conduct, the meeting should not count towards the minimum number of negotiation sessions.
23 Accordingly, we anticipate that the EMRB will also find, when viewed in the totality, that APTA
24 has engaged in surface bargaining.

25 Additionally, the EMRB should find that APTA and WCSD have not reached “impasse”
26 such that interest arbitration is appropriate. Even if NRS 288.217(2) applies, it requires the
27 negotiations to be at “impasse.” It cannot be fairly stated that one (1) party is permitted to
28 unilaterally declare impasse, despite the other party’s continuing good faith efforts to negotiate an

1 agreement and make additional proposals. The Nevada Supreme Court instructs that “[t]his court
2 has a duty to construe statutes as a whole, so that all provisions are considered together . . . the court
3 will not render any part of the statute meaningless and will not read the statute’s language so as to
4 produce absurd or unreasonable results.” *Orion Portfolio Servs. 2 LLC v. Cnty. of Clark ex rel. Univ.*
5 *Med. Ctr. of S. Nevada*, 126 Nev. 397, 403, 245 P.3d 527, 531 (2010) (citations omitted).

6 NRS 288.217(2)’s use of the word “impasse” was clearly deliberate as that word has a
7 specific meaning in union negotiations. In short, “the Board defined an impasse as a situation where
8 ‘good-faith negotiations have exhausted the prospects of concluding an agreement.’” *Taft*
9 *Broadcasting*, 163 NLRB 475, 478 (1967), *enfd. sub nom. Television Artists, AFTRA v. NLRB*, 395
10 F.2d 622 (D.C. Cir. 1968). The NLRB has explained “[a] genuine impasse in negotiations is
11 synonymous with a deadlock: the parties have discussed a subject or subjects in good faith, and,
12 despite their best efforts to achieve agreement with respect to such, neither party is willing to move
13 from its respective position.” *Hi-Way Bill-boards*, 206 NLRB 22, 23 (1973). Here, at the conclusion
14 of the last meeting, APTA refused to permit WCSD to present their further proposals and staged a
15 walk-out of the negotiations. WCSD expects that the EMRB will not permit APTA to declare
16 impasse and submit the disputes to arbitration under these circumstances. Indeed, permitting this
17 conduct is counter to the purposes of NRS 288 and would disincentivize parties from engaging in
18 good faith substantive negotiations. If the EMRB were to adopt this interpretation, then such a
19 construction would ignore the usage of “impasse” in the statute and effectively render it meaningless.
20 It would be an absurd and unreasonable result indeed for the EMRB to find that where the
21 negotiations were proceeding smoothly and the parties were working their way towards a negotiated
22 agreement, if one (1) party could unilaterally declare impasse and halt the negotiations. This is an
23 implausible interpretation of NRS 288.217 and WCSD anticipates the EMRB will reject it.

24 As explained above, the Arbitrator does not have jurisdiction to determine these issues.
25 Indeed, WCSD recently presented very similar arguments to another arbitrator regarding very
26 similar allegations of unfair labor practices engaged in by Mr. Dreher for another association. That
27 arbitrator agreed with WCSD and found that the arbitration should not proceed. It is possible that if
28 APTA can obtain a district court judgment invalidating the notice of voluntary withdrawal, and if

1 APTA can successfully defend itself against WCSD’s allegations of unfair labor practices before the
2 EMRB, that APTA and WCSD may end up before an arbitrator at a later date. However, these
3 jurisdictional questions and conditions precedent must be decided by a district court and the EMRB
4 before this Arbitration proceeds. Thus, the only decision that prejudices anyone is a denial of this
5 Motion.

6 **V. WCSD’S COUNSEL HAS A SCHEDULING CONFLICT REGARDLESS**

7 Even if there was not a change in circumstances surrounding the recognition of APTA, and
8 even if the EMRB had rendered a ruling, it would be irrelevant because counsel for WCSD is not
9 available on the first day the arbitration is scheduled. *See* Minute Order in 3:21-cv-00495-RCJ-
10 CSD attached hereto as **Exhibit 5**. On January 23, 2024, Judge Jones set a hearing for February
11 20, 2024 regarding a motion for summary judgment that has been pending since October, 2024 in
12 federal district court. *Id.* Accordingly, counsel for WCSD is not available on the first day of the
13 arbitration.

14 **VI. OTHER FACTORS WEIGH IN FAVOR OF VACATING THE ARBITRATION**

15 The Arbitrator has the authority to vacate this arbitration in light of the change in
16 circumstances surrounding the recognition of APTA as well as the pending unfair labor practice
17 charges before the EMRB. There are numerous justifications for the Arbitrator to exercise her
18 discretion in this way in this case.

19 The most prominent is that proceeding with the arbitration creates a situation where an
20 EMRB decision is likely to moot the Arbitrator’s decision in this dispute because if any of the three
21 (3) issues is resolved in WCSD’s favor, it will eliminate the Arbitrator’s jurisdiction and the need
22 to conduct an interest arbitration in the first place. For example, one of the complaints has to do
23 with WCSD’s allegations of failure to bargain and failure to engage in good faith bargaining. Those
24 allegations are not before the Arbitrator and clearly would eliminate a condition precedent to any
25 interest arbitration if resolved in WCSD’s favor.

26 The Arbitrator’s jurisdiction is limited to resolving the financial terms and contractual
27 disputes between the parties, and any allegations of prior misconduct is not be placed before the
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1 Arbitrator. These determinations are more properly reached once the EMRB has made the
2 jurisdictional finding of whether the declaration of impasse was proper.

3 Similarly, for efficiency and conservation of the resources of the parties, vacating of the
4 arbitration is the most appropriate remedy. The time and money that would go into an arbitration
5 will be entirely wasted if a district court rules against APTA’s efforts to invalidate the notice of
6 voluntary withdrawal, or if the EMRB rules in favor of WCSD regarding the arguments outlined
7 above. This would be a tremendous waste of resources that could be entirely avoided with the
8 arbitration being vacated as being in the best interest of all involved parties.

9 Lastly, if the Arbitrator does deny this Motion and attempt to proceed, WCSD intends to
10 file a Complaint in district court to include relief requesting the court vacate the arbitration and any
11 determination resulting therefrom. Accordingly, it is in the best interest of all parties involved to
12 vacate this arbitration.

13 **VII. CONCLUSION**

14 It is clear that APTA as it was recognized at the time this arbitration was scheduled, is no
15 longer a recognized employee organization pursuant to NRS 288. It is not possible for the Parties
16 to proceed to arbitration under the circumstances the Parties find themselves in. Until a district
17 court resolves APTA’s dispute regarding the sufficiency of the notice of voluntary withdrawal, and
18 if that occurs, the EMRB resolves both parties unfair labor practice complaints, no arbitration
19 should occur. Consequently, the arbitration should be vacated. Should the Arbitrator have any
20 questions, WCSD will make itself available at the arbitrator’s earliest convenience for a conference
21 call to discuss this motion.

22
23 DATED: January 30, 2024
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SIMONS HALL JOHNSTON PC

690 Sierra Rose Dr.,
Reno, NV 89511
Phone: (775) 785-0088

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BY: /s/ Anthony L. Hall, Esq.
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CERTIFICATE OF SERVICE

I, Terri Tribble, declare:

I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of Simons Hall Johnston PC. My business address is 690 Sierra Rose Dr., Reno, NV 89511. I am over the age of 18 years and not a party to this action.

On the below date, I served the foregoing **WASHOE COUNTY SCHOOL DISTRICT'S MOTION TO VACATE ARBITRATION** by causing the document to be served via email, addressed as follows:

Ronald J. Dreher
P.O. Box 6494
Reno, NV 89513
ron@dreherlaw.net
nrs289@aol.com

Attorney for Respondent
WASHOE SCHOOL PRINCIPALS' ASSOCIATION

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed on January 30, 2024.

/s/ Terri Tribble
Employee of Simons Hall Johnston

EXHIBIT 8

EXHIBIT 8

ASSOCIATION of PROFESSIONAL & TECHNICAL ADMINISTRATORS
CONSTITUTION AND BY-LAWS

(8/23- Revision)

ARTICLE I

Name and Purpose

Section 1. The name of this Association shall be the Association of Professional & Technical Administrators

Section 2. The purposes of the Association are as follows:

- A. To promote and improve the educational welfare of the children of Washoe County.
- B. To improve the image of and increase the public understanding of the roles of Pro-Techs and School Psychologists.
- C. To encourage professional activity, growth, cooperation and study among Pro-Techs and School Psychologists.
- D. To assure the equal, fair, and just treatment of all Pro-Techs and School Psychologists as they perform their duties.
- E. To serve as the collective negotiations' representative of its members for purposes of improving terms and conditions of employment in consonance with the principles of the laws of the State of Nevada.
- F. To work in cooperation with other districts, state, and national Professional and Technical organizations.
- G. To ensure representation to the Washoe County School District Insurance Committee.

ARTICLE II

Membership

Section 1. Membership in the Association shall be two classes:

- A. Active
- B. Associate

Section 2. Active membership is open to all Pro-Techs and School Psychologists employed by the Washoe County School Board of Trustees, except for those Pro-Techs and School Psychologists who are excluded by the laws of the State of Nevada for collective bargaining.

Section 3. Associate membership is open to Pro-Techs and School Psychologists who are designated as confidential employees by the Washoe County School District.

Section 4. Membership in this Association is dependent upon the payment of membership dues. Dues are set by the Executive Board with the approval of the membership demonstrated by a secret ballot with a simple majority. Dues money is to be used for the following expenditures: Professional Development, Public Relations, Advocate, Collective Bargaining and Miscellaneous. One dollar (\$1.00) per month per member is allocated for the Association's student scholarship program. An additional one dollar (\$1.00) per member per month is allocated for the Association's member scholarship program.

Section 5. The Association shall operate on a fiscal year basis, from July 1 to June 30 of the succeeding year.

ARTICLE III

Officers and Their Duties

Section 1. The officers of this organization shall be the President, Vice-President / President Elect, Secretary, Treasurer, Immediate Past President, Pro-Tech Representative, Psychologist Representative, and Insurance Committee Representative.

Section 2. The duties of the officers shall be generally defined as and may also be distributed at the discretion of the Board:

- A. The President shall preside at all meetings and be the official representative of the organization, for all leadership, central office, or otherwise undefined district or state level committees or meetings.
- B. The Vice-President/President Elect shall perform the duties of the President during the absence of the President. The Vice-President/President Elect shall coordinate and be the liaison to all Association committees, at the discretion of the President, maintain and develop the organization's website, and provide at minimum quarterly newsletters (digitally or otherwise) to all members regarding non-confidential association activities and events. The Vice President/President Elect shall serve as President the immediate following year(s).
- C. The Secretary shall develop formal meeting agendas, coordinate meetings, keep the minutes of the meetings, maintain all correspondence, be responsible for updating the website with general membership meeting notes, preserving closed meeting session notes to a designated private server/location to be determined by the Executive Board, and organizing social events at least twice annually.
- D. The Treasurer will prepare an annual budget, and collect, record, and disburse all monies of the Association. The Treasurer shall keep an accurate record of all financial transactions. A financial report shall be provided at each Executive Board and general membership meeting. The treasurer shall coordinate all financial obligations, tax filings, liability insurance, be responsible for investigating researching CD updates, developing/submitting scholarship nominations and leading the scholarship committee, and along with the president coordinate when change of officers take place, at the designated financial institution.
- E. The Immediate Past-President shall assist with the organization as the President directs, advise the President on past practices, and participate in all Executive Board meetings.
- F. The Pro-Tech Representative will act as the first point of contact and liaison for all ProTech members of the Association, including being the first point of contact for grievances,

and to present any such concerns to the Executive Board, outlining which parts of the contract may

have been violated and/or to help pro-tech members navigate the Problem-Solving process outlined in the current bargaining agreement.

G. The Psychologist Representative will act as liaison for all Psychologist members of the Association, including being the first point of contact for grievances, and to present any such concerns to the Executive Board, outlining which parts of the contract may have been violated and/or to help psychologist members navigate the Problem-Solving process outlined in the current bargaining agreement.

H. The Insurance Committee Representative shall give voice and keep records for the APTA Executive Board in all matters pertaining to the Washoe County School District Insurance Committee.

I. Officers will support unity and solidarity in the Association's endeavors.

ARTICLE IV

Executive Board.

Section 1. The Executive Board shall consist of the five elected officers, and one elected Representative from each: the Pro-Techs and the School Psychologists.

1a. Ron P. Dreher was appointed board member ex-officio in July 2022. As board member ex-officio he retains voting rights and the ability to represent the board on matters as deemed relevant by the board, but is not a regular sitting member of the board.

Section 2. All matters of policy shall be decided by the Executive Board.

Section 3. The Executive Board shall have the power to approve those members appointed by the President to fill vacancies.

Section 4. The Executive Board shall establish a calendar of monthly meetings, except for the month of July.

Section 5. The Executive board shall determine the time and place of all general membership meetings. There shall be a minimum of one general membership meeting per year. Any other general membership meetings shall be held at the discretion of the Executive Board or at the request of a minimum of 25% of the general membership.

A. Agenda items will be accepted from the general membership or the Executive Board.

Section 6. The Executive Board may establish committees as may be necessary to accomplish the purposes of the Association. No committee, standing or otherwise, shall have the authority to bind or obligate this Association.

Section 7. The Executive Board shall be responsible for preparing and approving a budget to be distributed by school mail, email or at a general membership meeting.

Section 8. The Executive Board shall be responsible for appointing an APTA member as the Insurance Committee Representative.

ARTICLE V

Elections & Negotiations

Section 1. Elections A. Term of Office:

- I. The President, Vice President/President-Elect, and Immediate Past President shall serve for a one (1) year term. The member filling the role of Vice President/President-Elect should rotate from year to year from Pro-Tech to School Psychologist ensuring a balance between the groups.
 - II. The Secretary and the Treasurer shall serve two (2) year terms and be elected in even numbered fiscal years. To provide a balance of representation, the position shall come one from each group.
 - III. The representatives shall serve two (2) year terms and be elected in odd-numbered fiscal years.
 - IV. The Insurance Committee Representative shall serve a three (3) year term at the onset of the appointment by the Executive Board, not to serve more than one term consecutively.
 - V. All other terms of office shall begin on July 1st and end on June 30th of the following year.
- B. All active members seeking nomination for office shall be elected by individual ballot returned by mail, email, or during a general membership meeting, with the Executive Board soliciting nominations for upcoming elections at least 30 days in advance of the end of the fiscal year, barring unforeseen circumstances.
- C. Each active member shall have one (1) vote in membership meetings and elections. Only active members shall be entitled to vote and hold elective office in the Association. D. Late ballots will not be accepted after the deadline.
- E. The election process shall be completed by May 30th-of each year-to comply with the annual Nevada Secretary of State-filing.-In the event of an emergency that prevents the elections to occur by May 30th, the Executive Board may extend the deadline for elections to be held.
- F. Each member of the Executive Board, and/or any other Committee working on behalf of the Board, must disclose any potential conflicts of interest acting as a member of APTA, including, but not limited to, any close familial or relationship within three degrees, and/or in any other scenario where they may appear to be a conflict of interest. Each member of the Executive Board will maintain confidentiality to the highest degree of any information shared at/around Committee discussions, emails, or conversations.

Section 2. Negotiation Committee

For each year where a bargaining session is scheduled to commence, the Executive Board shall solicit member priorities and concerns for the Negotiation Committee to consider for the following bargaining session.

A. The Negotiation Committee shall consist of equal representation of both Pro-Techs and School Psychologists with members nominated informally by the Executive Board, then formally voted on by a majority vote of the President and the Executive Board. Of the members of the Negotiation Committee, no more than one shall be from the Executive Board. The Negotiation Committee will be responsible for appointing or electing a lead negotiator, typically union counsel, to act as lead negotiator in all bargaining sessions.

B. The Negotiation Committee shall have sole authority to bargain in good faith and negotiate with the district, with any tentative agreement initially presented to the board, then sent to the general membership for approval by a simple majority vote. In the event of a tie on the Negotiation Committee, whether to accept/deny a proposed tentative agreement to present to the Executive Board and the general membership, the lead negotiator, who is not a Pro-Tech or psychologist, will act as the tiebreaker.

C. To ensure continuity and equal representation of Pro-Techs and Psychologists on the Negotiation Committee, at least one reserve member of each group shall have access to all bargaining documentation and automatically fill in/substitute another member who has fallen ill, resigned, and either temporarily or permanently, for any other reason, can no longer serve on the Negotiation Committee, and have one vote on the committee.

D. The Negotiation Committee shall meet with the district negotiation team a minimum of four times, as defined by state and/or federal regulations to bargain in good faith to come up with a resolution. After four sessions, the Negotiation Committee maintains the ability to declare impasse and present the information to the board.

Section 3. Removal and Resignation of Officers

A. Any officer may be removed with cause by a vote of the general membership with cause such as but not limited to:

- 1) Non-attendance of meetings,
- 2) Not performing the duties of the office

B. An officer may resign by giving written notice to the President or Secretary of the Executive Board. Such resignation shall take effect on the date of receipt of such notice or date specified therein.

Vacancies

A. A vacancy of any office shall be filled temporarily by appointment of the President with a ratifying vote of the Executive Board until the next scheduled election for that office.

ARTICLE VI AMENDMENTS

Section 1.

Amendments to this constitution may be proposed in writing by The Executive Board or any member of the Association.

Section 2. The Secretary shall submit proposed amendments to the active members at least three days before amendments are presented for a vote.

Section 3. Adoption of proposed amendments shall be by written ballot and shall require a two-thirds ($2/3$) affirmative vote of those members voting, with a minimum 50% of the membership voting on each amendment question.

Section 4. Amendments shall become effective immediately upon adoption.

POLICY AND PROCEDURES

Section 1. Active members -The amount of the monthly deduction is determined by voting members. Members on a Sabbatical shall pay 50% of this rate.

Section 2. Associate members - The amount of the monthly deduction is determined by voting members.

Section 3. Dues may be paid in one of the following ways:

- A. Monthly payroll deduction, per the current negotiated agreement.
- B. One annual payment, payable to the treasurer of APTA.

Section 4. Members who wish to withdraw from the Association must submit a written request to the President at least ninety days in advance before their dues will be stopped.

Section 5. Any Pro-Tech or Psychologist who wishes to join the Association must be a full dues paying member in good standing for six months before they can request the use of the Association's legal representative for consultation, representation, or as a representative in personal disciplinary or grievance issues. The Association will provide association representation during this six-month period.

Code 3790
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

WASHOE COUNTY SCHOOL DISTRICT,
a political sub-division of the State of Nevada;

Case No.: CV24-00282

Plaintiff,

Dept. No.: 15

vs.

ASSOCIATION OF PROFESSIONAL
& TECHNICAL ADMINISTRATORS,
a Nevada nonprofit corporation;

Defendant.

**REPLY IN OPPOSITION TO EX PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

COMES NOW, Defendant Association of Professional & Technical Administrators, (“APTA”), hereby files its Reply in Opposition to the Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction filed by Plaintiff Washoe County School District, (“District”), on February 6, 2024, and moves the Court to deny this Motion in its entirety.

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE PARTIES

The APTA is an employee organization as defined in NRS 288.040. It is the recognized bargaining unit for the school psychologists and technical administrators at the District.

1 The District is a local government employer under NRS 288.060, a political subdivision
2 of the State of Nevada which oversees and supervises Washoe County School psychologists
3 and technical administrators and is the regulating authority with regard to policy.

4 The parties entered into contract negotiations in January 2023 in an attempt to reach a
5 successor agreement. After having met and negotiated during four (4) sessions, APTA declared
6 impasse as is its right under NRS 288.217. The District and APTA then met and jointly chose
7 an arbitrator to hear the interest arbitration as prescribed in NRS 288.200 and NRS 288.217.
8 (Ex. 1.) Following this joint selection, the parties agreed to hold the interest arbitration on
9 February 20-21, 2024. (Ex. 2.)

10 The parties had previously filed competing complaints with the State of Nevada
11 Employee-Relations Board, (“EMRB”), alleging multiple prohibited practices had been
12 committed by the opposing party. The EMRB and the parties entered into a joint stipulation to
13 attempt to hold a hearing and have the EMRB rule on these allegations prior to the scheduled
14 interest arbitration. (Ex. Parte Motion Ex. 4.) The hearing in front of the EMRB was scheduled
15 to be heard on January 30-31, 2024.
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19 On January 9, 2024, the District unilaterally, and without APTA’s authorization,
20 withdrew recognition of APTA as the recognized bargaining unit for all APTA members.
21 Subsequent to this, the District recognized a rival employee organization, Washoe Professional-
22 Technical Administrators as the recognized bargaining unit for professional-technical
23 employees, a portion of APTA membership, and withdrew all labor organization recognition for
24 the remaining APTA members, the school psychologists.
25

26 On January 10, 2024, the District filed a motion with the EMRB to vacate the hearing
27 scheduled for January 30-31, 2024. (Ex. 3.) On January 24, 2024, the EMRB vacated the January
28 30-31, 2024, and placed the pending motion filed by the District on January 10, 2024, on the

1 February 22, 2024, agenda so that it could be decided prior to another hearing being scheduled.

2 (Ex Parte Motion Ex. 5.)

3 The actions taken by the District on and after January 9, 2024, violated multiple statutes
4 under NRS Chapter 288, the NRS Chapter that regulates the interactions between government
5 and public employees and over which the EMRB has exclusive jurisdiction. *See Umc*
6 *Physicians' Bargaining v. Nev. Serv. Emples. Union, Seiu Local 1107*, 494 P.3d 903 (Nev. 2021)
7 (Unpublished); *City of Mesquite v. Eighth Judicial Dist. Court of Nev.*, 135 Nev. 240, 244
8 (2019). In response to these violations, APTA filed a prohibited practice complaint with the
9 EMRB on January 24, 2024, and an amended complaint and motion to expedite hearing on
10 January 25, 2024. (Ex. 4.) Additionally, APTA has filed an open meetings law violation
11 complaint against the District with the Nevada Attorney General's Office and filed Nevada
12 Rules of Professional Conduct complaints against Mr. Hall, District Chief General Counsel Neil
13 Rombardo, and District General Counsel Kevin Pick for their actions taken before, on, and after
14 January 9, 2024. (Exs. 5-6.)

15 On January 30, 2024, the District filed a motion to vacate the interest arbitration with
16 the chosen arbitrator, Bonnie Castrey. (Ex Parte Motion Ex. 7.) Subsequently, the parties held a
17 conference call on this motion with Arbitrator Castrey on February 1, 2024. After hearing
18 arguments from both parties, Arbitrator Castrey ruled that she did not have jurisdiction over the
19 District's NRS 288 claims involving prohibited practices and that she was chosen only to hear
20 the interest arbitration. Arbitrator Castrey denied the District's motion to vacate in its entirety
21 and ordered the parties to maintain the scheduled February 20-21, 2024, interest arbitration. This
22 Ex Parte Motion followed Arbitrator Castrey's ruling against the District.

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1 **II. Legal Authority**

2 **a. Exhaustion Doctrine**

3 Before availing oneself of district court relief one must first exhaust available
4 administrative remedies.” *Malecon Tobacco, LLC v. State ex rel. Dep’t of Taxation*, 118 Nev.
5 837, 839, 59 P.3d 474, 475–76 (2002); see also NRS 612.525(1) (stating “judicial review...is
6 permitted only after any party claiming to be aggrieved thereby has exhausted administrative
7 remedies as provided by this chapter.”) (emphasis added). “The exhaustion doctrine gives
8 administrative agencies an opportunity to correct mistakes and conserves judicial resources, so
9 its purpose is valuable; requiring exhaustion of administrative remedies often resolves disputes
10 without the need for judicial involvement.” *Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 571–72,
11 170 P.3d 989, 993–94 (2007).

12 **b. Exclusive Jurisdiction**

13 The Nevada Supreme Court has established that the “EMRB has exclusive original
14 jurisdiction over any unfair labor practice arising under [NRS Chapter 288].” *City of Mesquite*,
15 135 Nev. at 244, 445 P.3d at 1248. This includes “exclusive original jurisdiction over any unfair
16 labor practice arising under the [Employee Management Relations Act].” *Id*; see *Rosequist v.*
17 *Int’l Ass’n of Firefighters Local 1908*, 118 Nev. 444, 447-49, 49 P.3d 651, 653-54 (2002). A
18 party “must exhaust the administrative remedies set forth in the EMRA before seeking relief in
19 the district court. *Rosequist*, 118 Nev. at 447-49, 49 P.3d at 653-54 (2002). See also *City of*
20 *Henderson v. Kilgore*, 122 Nev. 331, 336-37, 131 P.3d 11, 14-15 & n.10 (2006). If a party is
21 aggrieved by the EMRB’s decision, they may then seek judicial review and the “district court
22 only has jurisdiction to judicially review the EMRB's decisions.” *UMC Physicians' Bargaining*,
23 494 P.3d 903; *Kilgore*, 122 Nev. at 336-37, 131 P.3d at 14-15 & n.10.
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1 **c. Preliminary Injunction**

2 “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed
3 on the merits” and “that he is likely to suffer irreparable harm in the absence of preliminary
4 relief.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008) (citing *Munaf v. Geren*, 553 U.S. 674, 689-
5 690 (2008); *Amoco Production Co. v. Gambell*, 480 U.S. 531, 542
6 (1987); *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311-312 (1982)). “A preliminary
7 injunction is an extraordinary remedy never awarded as of right.” *Munaf*, 553 U.S., at 689-690.
8

9 The United States Supreme Court standard for injunction relief does not allow for the
10 simple possibility of irreparable injury, but rather,

11 “requires plaintiffs seeking preliminary relief to demonstrate that
12 irreparable injury is *likely* in the absence of an injunction.” *Los*
13 *Angeles v. Lyons*, 461 U.S. 95, 103 (1983) (emphasis in
14 original); *Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 441
15 (1974); *O’Shea v. Littleton*, 414 U.S. 488, 502 (1974); *see also* 11A C.
16 Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2948.1,
17 p. 139 (2d ed. 1995) (applicant must demonstrate that in the absence of
18 a preliminary injunction, ‘the applicant is likely to suffer irreparable
harm before a decision on the merits can be rendered’); *id.*, at 154-155.
(‘A preliminary injunction will not be issued simply to prevent the
possibility of some remote future injury’).”

19 *Id.* A preliminary injunction that is issued “based only on a possibility of irreparable harm” is
20 not consistent with the “characterization of injunctive relief as an extraordinary remedy that may
21 only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Id.*

22 An injunction is authorized under NRS 33.010(1) when it appears from the complaint
23 that the plaintiff *is entitled to the relief requested* and at least part of the relief consists of
24 restraining the challenged act. *Univ. & Cmty. College Sys. of Nev. v. Nevadans for Sound Gov’t*,
25 120 Nev. 712, 721, 100 P.3d 179, 187 (2004) (emphasis added.) An applicant must show, prior
26 to a preliminary injunction issuing, that they have "(1) a likelihood of success on the merits; and
27 (2) a reasonable probability that the non-moving party's conduct, if allowed to continue, will
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1 cause irreparable harm for which compensatory damage is an inadequate remedy." *Id.*

2 **III. Argument**

3 **a. Exhaustion Doctrine**

4 As stated above, "before availing oneself of district court relief from an agency decision,
5 one must first exhaust available administrative remedies." *Malecon Tobacco, LLC*, 118 Nev. at
6 839, 59 P.3d at 475–76 (2002).

7
8 Clearly, the District has not exhausted its administrative remedies in this case as there
9 are several outstanding pleadings in front of the EMRB, the agency that has exclusive
10 jurisdiction over the District's claims. The District willingly admits that its sole claim is for
11 "declaratory relief" that arises out of NAC 288 and NRS 288. (Ex Parte Motion at p. 9:3-5.) It
12 is obvious that the District is aware this Court does not have jurisdiction to decide on these
13 matters and it attempts to bring two arguments to explain its failure to exhaust its administrative
14 remedies.

15
16 The first argument the District attempts is that the question in front of the Court is one
17 of statutory construction and/or validity over which this Court would have jurisdiction. *Id.* at p.
18 10:1-6. However, the *Nuleaf CLV Dispensary* case cited to by the District only addresses a
19 courts ability to review an administrative agency's decision, not put itself in the place of the
20 administrative agency and render a decision in the first instance. *Nuleaf CLV Dispensary, LLC*
21 *v. State Dep't of Health & Human Servs.*, 134 Nev. 129, 133, 414 P.3d 305, 308 (2018)
22 (explaining that the Nevada Supreme Court's "role in reviewing an administrative agency's
23 decision is identical to that of the district court. Although [it] defer[s] to an agency's findings of
24 fact, [it] review[s] legal issues de novo, including matters of statutory interpretation.") (citing
25 *Poremba v. S. Nev. Paving*, 133 Nev., Adv. Op. 2, 388 P.3d 232, 235 (2017)). Therefore, this
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1 argument fails, and does not support that the Court may render a decision on these matters prior
2 to the District having exhausted its administrative remedies.

3 Next, the District attempts to claim that the issues in front of the Court may escape
4 judicial review if the EMRB grants its motion that is currently in front of that Board. This
5 argument is not supported by any jurisprudence and is only an additional attempt by the District
6 to save its Motion that it knows is improperly before this Court due to the District's failure to
7 exhaust its administrative remedies. Thus, this second arguments fails as well.

8
9 The law is clear and unambiguous surrounding the requirement of a party to seek
10 administrative relief before bringing its claims to the courts. *Malecon Tobacco, LLC*, 118 Nev.
11 at 839, 59 P.3d at 475–76 (2002). The District's attempt to skirt the EMRB flies directly in the
12 face of the established jurisprudence and the exclusive jurisdiction given to the EMRB.
13 Therefore, the Court must deny the Motion in its entirety based on the District's failure to
14 exhaust its administrative remedies, the lack of showing that its attempts to exhaust these
15 remedies would be vain or futile, or that the EMRB lacks jurisdiction over these claims. *See*
16 *Benson v. State Engineer*, 131 Nev. 772, 777, 358 P.3d 221, 224 (2015).

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19 **b. Exclusive Remedy**

20 The relief requested by the District in its Motion clearly and unequivocally falls within
21 the original, exclusive jurisdiction of the EMRB and cannot be brought in the first instance to
22 this Court. *Rosequist*, 118 Nev. at 447-49; *City of Mesquite*, 135 Nev. at 244; *Kilgore*, 122 Nev.
23 336-37; *UMC Physicians' Bargaining*, 494 P.3d 903. The District plainly states that it is seeking
24 injunctive relief from this Court “as to a declaration of its rights pursuant to NRS 288 and NAC
25 288.” (Ex Parte Motion at p. 10:9-10.) This is reiterated throughout the Motion and it is clear
26 that the District is requesting this Court rule on NRS Chapter 288 and prohibited practices
27 brought under the EMRA. (Ex Parte Motion at pp. 9-20.) There is no doubt that these claims are
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1 within the exclusive jurisdiction of the EMRB, and this Court cannot decide them in this
2 instance. *Rosequist*, 118 Nev. at 447-49; *City of Mesquite*, 135 Nev. at 244; *Kilgore*, 122 Nev.
3 336-37; *UMC Physicians' Bargaining*, 494 P.3d 903. The District, after having failed to prevail
4 in its argument in front of Arbitrator Castrey is now attempting to use this Court to bypass the
5 EMRB and gain a ruling in its favor. These actions violate the exclusive jurisdiction the EMRB
6 possesses over these claims, and this Court is the improper venue to hear this matter. *Id.*

8 While this Court does not have jurisdiction over the matters in that complaint, or any
9 other issue involving NRS Chapter 288 or NAC 288 until after the EMRB has ruled on the
10 matter, the District spent multiple pages in its Motion attempting to confuse and cloud the issues
11 with its arguments it has already brought to the EMRB. (Ex Parte Motion at pp. 9-20.) It is
12 apparent APTA did not voluntarily remove its recognition as the exclusive bargaining unit as
13 the District attempts to argue. (Ex. 4.) If it had, then it would be non-sensical for APTA to
14 voluntarily withdraw its recognition, ask the District to take action on this voluntary withdraw,
15 then prior to and after the action is taken, file a complaint alleging the District violated APTA's
16 rights when it claims it did exactly what APTA asked it to do. The District's argument in its
17 Motion is meant only to waste this Court's time and try to utilize this Court to avoid having to
18 exhaust its administrative remedies as required because it is not satisfied with the EMRB's
19 timeframes. This Motion is dilatory, and sanctions should be brought for the District's actions.
20 Moreover, the first amended complaint filed by APTA on January 31, 2024, details the fact that
21 APTA has not voluntarily withdrawn recognition of any of its members. *Id.*

22 Furthermore, the parties have agreed to arbitrate and the jurisdiction to postpone this
23 arbitration lies with the arbitrator not the Court. (Exs. 1-2.) Arbitrator Castrey, not this Court,
24 has jurisdiction over the arbitration and whether or not the condition precedents leading to
25 arbitration were met. *See Unif. Arbitration Act (2000) § 6 cmt. 2, 7 U.L.A. (Part 1A) 26 (2009)*

1 ("issues of procedural arbitrability, i.e., whether prerequisites such as time limits, notice, laches,
2 estoppel, and other conditions precedent to an obligation to arbitrate have been met are for the
3 arbitrators to decide"). See *Dozier v. State*, 124 Nev. 125, 129, 178 P.3d 149, 152 (2008);
4 *Washoe Cnty. v. Second Judicial Dist. Court of Nev.*, 131 Nev. 1362 (Nev. App. 2015)
5 (Unpublished.) This is understood by the EMRB as its Commissioner advised the District that
6 it had no jurisdiction over the arbitration as this lies within the control of the arbitrator.
7

8 If this Court were to decide it has jurisdiction over the arbitrability of the mater, it is
9 clear that it should rule in favor of holding the arbitration. The Nevada Supreme Court has held
10 that, "[d]isputes are presumptively arbitrable, and courts should order arbitration . . . unless it
11 may be said with positive assurance that the arbitration clause is not susceptible of and
12 interpretation that covers the asserted dispute. *Clark County Pub. Employees Ass'n v. Pearson*,
13 106 Nev. 587, 591, 798 P.2d 136, 138 (1990). (Internal citations omitted.) Furthermore, the U.S.
14 Supreme Court has held that "[in] the absence of any express provision excluding a particular
15 [dispute] from arbitration, we think only the most forceful evidence of a purpose to exclude the
16 claim from arbitration can prevail." *AT&T Techs. v. Communs. Workers of Am.*, 475 U.S. 643,
17 650, 106 S. Ct. 1415, 1419, (1986) (citing *Steelworkers v. Warrior & Gulf Navigation Co.*, 363
18 U.S. 574 (1960)).
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21 As demonstrated above, the EMRB, not this Court is the proper venue for the claims
22 brought by the District in its Motion. *Rosequist*, 118 Nev. at 447-49; *City of Mesquite*, 135 Nev.
23 at 244; *Kilgore*, 122 Nev. at 336-37; *UMC Physicians' Bargaining*, 494 P.3d 903. The failure of
24 the District to exhaust its administrative remedies in the venue that holds the exclusive jurisdiction
25 over the claims does not give this Court jurisdiction over its claims in the first instance, and
26 jurisprudence and statute forbid the exact actions the District is asking the Court to take. Therefore,
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1 the Court must deny the Motion in its entirety and order the District to exhaust all administrative
2 remedies before bringing these claims to the Court.

3 **c. Preliminary Injunction**

4 In Nevada, as noted previously, prior to a preliminary injunction issuing and applicant
5 must demonstrate that they have "(1) a likelihood of success on the merits; and (2) a reasonable
6 probability that the non-moving party's conduct, if allowed to continue, will cause irreparable
7 harm for which compensatory damage is an inadequate remedy." *Univ. & Cmty. College Sys. of*
8 *Nev.*, 120 Nev. at 721, 100 P.3d at 187.

9
10 In addressing the first prong, the District has failed to demonstrate that it has a likelihood to
11 succeed on the merits in this case. First, the APTA bylaws in place at the time the District claims it
12 had authorization to voluntary withdraw APTA as the exclusive bargaining unit unequivocally
13 provide that Ronald P. Dreher was "appointed board member ex-officio (sic) in July 2022. As board
14 member ex-officio (sic) he retains voting rights and the ability to represent the board on matters as
15 deemed relevant by the board, but is not a regular sitting member of the board." (Ex Parte Motion
16 Ex. 8.) Therefore, if APTA had voted on removing recognition, it would have needed at least five
17 (5) of its board members to have voted in support of doing so. The District's predicates its entire
18 argument on APTA no longer being a recognized bargaining unit, and thus unable to proceed to
19 interest arbitration under NRS 288.217, on the "voluntary" withdraw of recognition it received from
20 four (4) of the eight (8) APTA executive board members. *Id.* at p. 3 ¶¶ 3-4. This math clearly
21 makes no sense in that four out of eight is not a majority, and it also assumes that a vote was
22 held as some point to remove recognition. However, this vote never happened, and the District
23 cannot provide even one shred of evidence that the executive board members of APTA ever
24 voted to remove recognition of APTA as the recognized bargaining unit for its members. The
25 only evidence the District provides that it had APTA's approval to withdraw recognition are
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1 email responses from these four members to the District's question on their authority. *Id.* at Ex.
2 2. This authority was in question as the APTA president informed the District, prior to January
3 9, 2024, that APTA had not voted to voluntary withdraw as the exclusive bargaining
4 representative for its members. Additionally, the language in this email string directly
5 contradicts the vote question that the District claims supports its acceptance of "voluntary"
6 withdrawal of recognition by APTA. *Id.* at Ex. 3. The District did not, and cannot, produce any
7 APTA executive board meeting notes that authorized these members to withdraw recognition
8 of APTA for any of its members, and the actions taken by these four members is equivalent to
9 a *coup d'état* that the District saw as an opportunity to remove recognition from all APTA's
10 members.
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12
13 Knowing the argument that these four members had authorization to remove APTA's
14 recognition was not a strong one, the District then attempts to argue that APTA's members voted
15 to remove recognition of APTA as the recognized bargaining unit for all its members. (Ex Parte
16 Motion at p. 3 ¶ 5.) The question in Ex Parte Motion Exhibit 3 clearly asks if the members
17 support a portion of the group being "carved out" to create a new association. *Id.* There is no
18 reference to the voluntary withdrawal of APTA as the recognized bargaining unit for these
19 members, much less all its members. *Id.* The District intentionally misrepresented the language
20 of this vote to illegally withdraw recognition of APTA as the bargaining unit for its members,
21 and it has not provided any support of its claims that APTA voluntarily withdrew recognition
22 as a bargaining unit.
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25 In addition, the parties have always agreed APTA has the right to proceed to impasse
26 arbitration under NRS 288.217. In fact, in 2021, when the parties were negotiating the previous
27 collective bargaining agreement, APTA declared impasse under NRS 288.217, and the parties
28 jointly completed the process to proceed to arbitration. (Ex. 7.) The District never disputed

1 APTA's ability to proceed to arbitration under NRS 288.217, and this was even reflected in the
2 ground rules agreed to by the parties. (Ex. 8.) Thus, there is no doubt APTA is covered under
3 NRS 288.217, which the District has always agreed to, and the District has no chance of
4 succeeding on the merits of this argument.

5
6 Therefore, the District has not met its burden to show that it is likely to succeed on the
7 merits in this claim and it has failed to meet the first prong of the preliminary injunction
8 standard.

9
10 The next prong in this analysis requires the District to provide that it is likely to suffer
11 irreparable harm if the preliminary injunction is not granted. *Winter*, 555 U.S. 7 at 20; *Univ. &*
12 *Cmty. College Sys. of Nev.*, 120 Nev. at 721, 100 P.3d at 187. "Generally, harm is "irreparable"
13 if it cannot adequately be remedied by compensatory damages." *Hamm v. Arrowcreek*
14 *Homeowners' Ass'n*, 124 Nev. 290, 297, 183 P.3d 895, 901 (2008). In analyzing the District's
15 claims of how without injunction relief it will be irreparably harmed, we clearly see that it has
16 failed to meet this standard.

17
18 The first claim of irreparable harm the District attempts to make is that it may, possibly,
19 at some unknown future date face allegations of having committed an unfair labor practice by
20 being required to arbitrate with APTA as it had agreed to do. "A preliminary injunction will not
21 be issued simply to prevent the possibility of some remote future injury." *Winter*, 555 U.S. 7 at
22 20. The District does not provide how this claim would lead to irreparable harm, it just makes a
23 statement that it is so, and provides no support to its claim. Thus, the District has clearly failed
24 under this argument to demonstrate irreparable harm.

25
26 As a part of this first claim of irreparable harm, the District includes a statement that it
27 will be harmed due to one of its attorneys having to attend a hearing in federal court on the same
28 day as the arbitration. The District fails to mention that it is not a party to the other case, and

1 that this hearing was scheduled three months after it agreed to, and set the dates for, the interest
2 arbitration. Further, the District has provided no proof that its attorney has attempted to
3 reschedule this other hearing, or that it would be irreparably harmed by having one of the two
4 attorneys who have appeared in both of these cases handling one or the other separately. It is
5 common practice for courts to reschedule hearings when counsel has already committed to
6 another hearing, and there is no evidence here that the District is unable to reschedule this other
7 hearing or that it would irreparably harmed by doing so, especially since it is not a party to the
8 federal court matter.
9

10 Next, the District argues that it will irreparably harmed by being forced to arbitrate with
11 APTA. The basis for this harm is based in NRS Chapter 288, which this Court does not have
12 jurisdiction over, and that the District did not agree to this arbitration. However, as demonstrated
13 above, the District agreed to arbitrate, jointly chose the arbitrator, and jointly agreed to the dates
14 for the arbitration. (Exs. 1-2.) Undoubtedly, the District agreed to arbitrate this matter.
15 Moreover, the District's argument fails to provide how being compelled to arbitrate will cause
16 it irreparable harm. The *Mirae* case it cites in support of its position is not persuasive as the
17 defendant did not appear in that case and the moving party was awarded essentially a summary
18 judgement without the court ruling on the merits. In this matter, evidence has been provided
19 showing the District agreed to participate in the interest arbitration with APTA which
20 distinguishes the present case from the District's case it provided in support. Thus, the District
21 has again failed to demonstrate that it is likely to be irreparably harmed by continuing to the
22 February 20-21, 2024, arbitration it agreed to.
23
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25

26 The fact that compensatory damages may occur is not a basis for irreparable harm. *Univ.*
27 *& Cmty. College Sys. of Nev.*, 120 Nev. at 721, 100 P.3d at 187. Despite this, the District claims
28 it will suffer irreparable harm if it is forced to spend time and resources on preparing for this

1 arbitration. Given that compensatory damages could remedy these costs, this does not qualify
2 as irreparable harm, and cannot be a basis for issuing a preliminary injunction. *Id.*; *Excellence*
3 *Cmty. Mgmt., LLC v. Gilmore*, 131 Nev. 347, 353, 351 P.3d 720, 723-724 (2015); *Dixon v.*
4 *Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987).

5 Finally, the District insinuates the EMRB must rule on the matter before an arbitration
6 can occur, and if this does not occur, the District will somehow be harmed. However, as noted
7 above, the EMRB has no jurisdiction over the arbitration and its decision will not affect whether
8 or not the parties proceed to arbitration, but only if the manner in which the parties have arrived
9 at arbitration is proper. This is again an issue in the exclusive jurisdiction of the EMRB, that
10 would have been addressed on January 30-31, 2024, had the District not filed a motion to vacate
11 this hearing. (Ex. 3.) Again, the District fails to demonstrate the likelihood of irreparable harm
12 that would support the issuance of a preliminary injunction.

13
14
15 The District has failed to meet the two prongs of the preliminary injunction standard. It
16 has failed to demonstrate that it is likely succeed on the merits of the case or that is likely to
17 suffer irreparable harm if an injunction is not issued. Therefore, the Court must not grant the
18 District's Motion and must instead deny it in its entirety.

19 20 **IV. Conclusion**

21 The exhaustion doctrine and the EMRB's exclusive jurisdiction over the claims herein
22 require the District to bring these claims to the EMRB before bringing them to this Court. As such,
23 the Court does not have jurisdiction on these claims and cannot order an injunction for the District
24 as the District is not entitled to this relief. The District has failed to meet its burden to obtain a
25 preliminary injunction in that it has not demonstrated it is likely to succeed on the merits or that it
26 is likely to suffer irreparable harm if a preliminary injunction is not issued. Therefore, based on the
27
28

1 foregoing, APTA respectfully request the Court deny the Ex Parte Motion for Temporary
2 Restraining Order and Preliminary Injunction in its entirety.

3 **AFFIRMATION**

4 The undersigned affirms that this document does not contain the personal information
5 of any person.
6

7 Dated this 12th day of February, 2024.
8

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1 **CERTIFICATE OF SERVICE**

2
3 Pursuant to NRCP 5(b), I certify that on this date I served the foregoing document as
4 follows:

5 _____ Deposited for mailing, certified/registered;

6 _____ Personal delivery to office;

7
8 X _____ EFlex electronic service

9 _____ E-mail

10
11 addressed as follows:

12 Anthony Hall, Esq.
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23 Dated this 12th day of February, 2024.

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INDEX OF EXHIBITS

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Exhibit No.	Description	No. of Page
1	September 9, 2023, joint arbitrator selection.	2
2	Joint arbitration scheduling emails between APTA and District.	7
3	January 10, 2024, District Motion to Vacate filed with EMRB.	5
4	January 31, 2024, APTA's First Amended Complaint and Motion to Expedite filed with EMRB	24
5	February 5, 2024, open meeting law complaint filed with the Nevada Attorney General's Office.	5
6	February 4, 2024, Nevada Bar complaints filed against Neil Rombardo, Anthony Hall and Kevin Pick.	7
7	November 11, 2021, joint arbitrator selection.	2
8	2021 negotiation ground rules between APTA and District	3

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**IN THE SECOND JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE**

WASHOE COUNTY SCHOOL DISTRICT, a
political sub-division of the State of Nevada;

Plaintiff,

vs.

ASSOCIATION OF PROFESSIONAL &
TECHNICAL ADMINISTRATORS, a Nevada
nonprofit corporation.

Defendant.

Case No.: CV24-00282

Dept. No.: 15

ORDER GRANTING TEMPORARY RESTRAINING ORDER¹

Currently before this Court is Plaintiff, Washoe County School District's ("Plaintiff" or "WCSD") Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction ("Motion") against Defendant Association of Professional-Technical Administrators ("APTA" or "Defendant") filed on February 5, 2024. Defendant APTA filed a Reply in Opposition to Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction ("Opposition") on February 12, 2024. The Parties came before the Court on February 14, 2024 to present oral arguments. At the conclusion of the hearing, the Court took the matter under submission.

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¹ Plaintiff submitted a proposed order, which Defendant challenged by several requested edits. This Court approved the suggested edits because the timing of the pleading and moving papers does not allow a thorough examination of the issues, and this Court is reluctant to include any findings or conclusions that may establish precedential value in the ultimate resolution of this dispute.

1 **I. Background**

2 Defendant APTA disputes the validity of the voluntary withdrawal, and maintains that
3 APTA continues to serve as the bargaining unit for the school psychologists and the technical
4 administrators. *See Opp.* at 1:25–27. The Parties are currently scheduled to attend an interest
5 arbitration on February 20, 2024, and February 21, 2024 before Arbitrator Bonnie Castrey
6 (“Arbitrator”). *Compl.* at ¶32.

7 In addition to the February 20, 2024 arbitration, at the hearing, APTA outlined two separate
8 grievances, one currently proceeding to a hearing and one that is still within the grievance process.
9 APTA also indicated there was a pending open public meeting law complaint. *See Opp.* at Ex. 5.
10 APTA also mentioned a consolidated case involving unfair labor practice complaints that were filed
11 by APTA in June 2023, and by WCSD in August 2023 currently pending before the EMRB. APTA
12 also mentioned it had filed a First Amended Complaint in a new action before the EMRB filed in
13 January 2024. APTA further mentioned two (2) district court cases that were or are pending before
14 the Second Judicial District Court.

15 At oral argument, WCSD made the Court aware of the fact that the newly formed Washoe
16 Professional Technical Association (“WPTA”) has ratified a collective bargaining agreement with
17 WCSD, and the WCSD Board of Trustees has since approved that agreement. Thus, the interests
18 of the members of WPTA may be affected by the interest arbitration currently scheduled for
19 February 20, 2024 and February 21, 2024.

20 **II. Relevant Legal Authority**

21 Under Nevada law, the standard for granting a temporary restraining order is the same
22 standard for determining whether to issue a preliminary injunction. The party seeking relief must
23 show they have a “reasonable likelihood of success on the merits,” and they will be subjected to
24 irreparable harm for which no adequate remedy at law exists should the relief not be granted. *NRCP*
25 *65(b); Excellence Com. Mgmt., LLC, v. Gilmore*, 131 Nev. 347, 350, 351 P.3d 720, 722, (2015);
26 *Pickett v. Comanche Construction, Inc.* 108 Nev. 422, 426, 836 P.2d 42 (1992); *Dixon v. Thatcher*,
27 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987).

28 ///

1 An injunction may be granted when it shall appear, “during the litigation, that the defendant
2 is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation
3 of the plaintiff’s rights respecting the subject of the action, and tending to render the judgment
4 ineffectual.” NRS 33.010(3). “In considering preliminary injunctions, courts also weigh the
5 potential hardships to the relative parties and others, and the public interest.” *Univ. & Cmty. Coll.*
6 *Sys. of Nevada v. Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004).

7 Further, a temporary restraining order may only be issued where the applicant has given
8 security, a sum in which the court deems proper, for the costs and damages that may be suffered by
9 any party found to have been wrongfully enjoined or restrained. NRCP 65(c). Where a temporary
10 restraining order has been entered without notice, it expires no later than fourteen days after it is
11 entered. NRCP 65(b)(2).

12 **III. Analysis**

13 Having reviewed the pleadings on file and having reviewed the facts and legal support set
14 forth therein, this Court finds good cause to grant the Motion, issue a temporary restraining order,
15 and order the Parties to schedule a hearing on a preliminary injunction.

16 Because of the unusual procedural and party posture, the arbitrator’s decision will be
17 challenged. The process of challenging the arbitrator’s decision will likely take several months,
18 and this will frustrate the parties ability to advance their common goal of resolution. Accordingly,
19 any potential arbitration award would be only a temporary and pyrrhic victory until all of the
20 predicate issues are resolved. This Court finds that a temporary restraining order preventing the
21 February 20, 2024 and February 21, 2024 interest arbitration from proceeding is proper because it
22 will prevent the potential violation of WCSD’s rights, as well as the rights of WPTA members. *See*
23 NRS 33.010(3). Additionally, this Court also finds that the absence of a temporary restraining
24 order would render any potential judgment ineffectual.

25 Furthermore, this Court is persuaded that WCSD possesses reasonable likelihood of success
26 on the merits. This Court recognizes that this finding is made on an expedited and emergency basis.
27 For that reason, this Court reserves the right to revisit the merits of the underlying dispute
28 subsequent to the preliminary injunction hearing. None of the findings regarding likelihood of

1 success on the merits should be interpreted by either Party as creating the law of the case or giving
2 preclusive effect to arguments that will be raised at the preliminary injunction hearing. However,
3 at this stage, the Court is persuaded that WCSD has made a sufficient showing of likelihood of
4 success on the merits for the purposes of issuing a fourteen (14) day temporary restraining order.

5 This Court recognizes APTA is presenting this dispute to the EMRB. Without making any
6 findings regarding the propriety of that proceeding, this Court recognizes this dispute will need to
7 be resolved, in one forum or another, for any interest arbitration to be fruitful.

8 It would be inconsistent with judicial economy and the conservation of resources for the
9 Parties to permit the interest arbitration to proceed, only to later have the EMRB or a district court
10 determine that impasse was improperly declared in the first place. This reasoning also applies to
11 the pending disputes before the EMRB concerning whether impasse was reached and regarding
12 allegations of surface bargaining or bad faith bargaining.

13 Because of this, the Court finds it is likely that WCSD will succeed on the merits of its
14 declaratory relief claim. However, the Court notes that these findings are subject to change
15 depending on the evidence and/or arguments presented at the hearing scheduled for the preliminary
16 injunction.

17 This Court finds that WCSD has demonstrated irreparable harm sufficient for the issuance
18 of a fourteen (14) day temporary restraining order. This Court is persuaded that forcing the WCSD
19 to participate in an interest arbitration will cause irreparable harm. *MIRAE ASSET SECURITIES*
20 *CO. LTD., Plaintiff v. RYZE RENEWABLES HOLDINGS, LLC & RYZE RENEWABLES NEVADA,*
21 *LLC, Defendants*, No. 223CV01492APGNJK, 2023 WL 9119848, at *1 (D. Nev. Dec. 20, 2023)
22 (citing *UBS Sec., LLC v. Voegeli*, 405 F. App'x 550, 552 (2d Cir. 2011) (“Being forced to arbitrate
23 a claim one did not agree to arbitrate constitutes an irreparable harm for which there is no adequate
24 remedy at law.”); *Forge Underwriting Ltd. v. AmTrust Fin. Servs., Inc.*, No. 1:23-CV-06201 (JLR),
25 2023 WL 6890844, at *8 (S.D.N.Y. Oct. 19, 2023). Permitting an interest arbitration to occur
26 before these gateway issues have been determined would cause irreparable harm to WCSD.

27 It is important to note that the interest arbitration that will be held pursuant to NRS Chapter
28 288 is a unique type of arbitration that, as the Court understands, will result in the arbitrator making

1 a finding as to the terms of a collective bargaining agreement for a class of employees. The interest
2 arbitrator has the ability to bind WCSD to grievance procedures that cannot be undone. WCSD
3 could be bound to certain timelines for arbitration or have other obligations imposed upon it
4 regarding procedures that have to be followed in any number of issues pertaining to the terms and
5 conditions of employment and benefits of the APTA members, which could cause irreparable harm.

6 APTA posits that compensatory damages would be sufficient to remedy any prejudice
7 WCSD may suffer from the interest arbitration.

8 This Court is also persuaded that a temporary restraining order is necessary to preserve the
9 status quo between the Parties. This Court is concerned that a failure to issue a preliminary
10 injunction could result in prejudice to WCSD. For this reason, until the numerous disputes
11 regarding the status of APTA, the validity of the voluntary withdrawal, and the related disputes
12 pending before the EMRB have been resolved, proceeding to interest arbitration at this time is
13 improper.

14 Based upon the foregoing and good cause appearing,

15 IT IS HEREBY ORDERED that a Temporary Restraining Order be entered enjoining and
16 restraining APTA from proceeding to arbitration against WCSD on February 20, 2024, and/or
17 February 21, 2024.

18 IT IS HEREBY FURTHER ORDERED that this Temporary Restraining Order shall
19 continue until February 28, 2024.

20 IT IS HEREBY FURTHER ORDERED that Defendant may schedule the arbitration at the
21 conclusion of the fourteen (14) day restraint.

22 IT IS HEREBY FURTHER ORDERED that the Parties shall immediately set this matter
23 for an evidentiary hearing on the motion for preliminary injunction.

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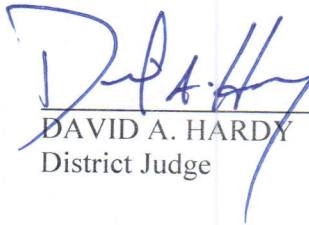
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1 IT IS HEREBY FURTHER ORDERED that the Parties shall file simultaneous status
2 reports every twenty-one (21) days between the date this order is entered and the date set for
3 evidence on the injunction.

4 IT IS HEREBY FURTHER ORDERED that Plaintiff shall post a bond in the amount of
5 \$5,000.

6 **IT IS SO ORDERED.**

7 DATED: February 20, 2024.


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11 DAVID A. HARDY
12 District Judge
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CERTIFICATE OF ELECTRONIC SERVICE

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe that on the 20th of February 2024, I electronically filed the foregoing with the Second Judicial District Court's electronic filing system which will send a notice of electronic filing to the following:

- JONATHAN MCGUIRE, ESQ.
- RONALD DREHER, ESQ.
- ANTHONY HALL, ESQ.


CARRIE LIPPARELLI
Judicial Assistant