STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

JUVENILE JUSTICE SUPERVISORS ASSOCIATION, JUVENILE PROBATION OFFICERS ASSOCIATION, Complainants, v. COUNTY OF CLARK, NEVADA; et al., Respondents.	CASE NO. 2017-020 (Consolidated with Case No. 2017-019) **NOTICE OF ENTRY OF ORDER**

To: Complainants, Juvenile Justice Supervisors Association and the Juvenile Justice Probation Officers Association by and through their attorneys Nicholas M. Wieczorek, Esq. and Clark Hill LLP and Richard McCann, J.D.;

To: Respondent County of Clark, Nevada by and through its attorneys Allison L. Kheel, Esq. and Fisher & Phillips LLP.

PLEASE TAKE NOTICE that the **ORDER** was entered in the above-entitled matter on December 13, 2018.

A copy of said order is attached hereto.

DATED this 13th day of December 2018.

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

BY _____
MARISU ROMUALDEZ ABELLAR
Executive Assistant

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 13 day of December, 2018, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

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STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

JUVENILE JUSTICE SUPERVISORS ASSOCIATION and JUVENILE JUSTICE PROBATION OFFICERS ASSOCIATION Complainants, v. COUNTY OF CLARK, NEVADA, Respondent.	Case No. 2017-020 (consolidated with 2017-019) **ORDER** **PANEL A** **ITEM NO. 834**

On December 11, 2018, this consolidated matter came before Panel A of the State of Nevada, Local Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Local Government-Management Relations Act (the "Act"), NAC Chapter 288 and NRS Chapter 233B. The Board held an administrative hearing on this matter on May 22-23, 2018 in Las Vegas, Nevada. The Board accepted post-hearing briefs in this matter as well.

On September 13, 2017, the Board ordered these cases were consolidated. Neither party filed an objection thereto. In November 2017, the Board granted the County's Motion to Convert Petition to Prohibited Practices Complaint pursuant to NAC 288.400.

JJPOA generally alleges the County failed to negotiate in good faith regarding mandatory subjects of bargaining as well as interfering, restraining or coercing the members of JJPOA in the exercise of their rights guaranteed under NRS 288 (specifically to discourage membership in JJPOA and to "union bust" JJPOA by rejecting and denying bargaining rights without due consideration). JJPOA alleges that "[a]s a result [of negotiations in 2011], specifically in exchange for longevity and other concessions made by JJPOA, the COUNTY agreed to provide JJPOA representatives Union leave time to conduct Association business...." JJPOA asserts that "the COUNTY conceding the aforementioned Union leave time, were all made within days of each other, demonstrating the specific

value-for-value exchange between the parties over these articles." JJPOA alleges that it "clearly provided specifically identifiable concessions to the COUNTY during the negotiation of its 2011-2013 agreement ...." JJSA generally alleges roughly the same in its Petition.

JJSA's Complaint against the County was heard on day two of this hearing with the union arguing roughly the same as well. The County noted that, unlike the JJPOA, JJSA actually negotiated, signed and ratified a CBA in which they specifically agreed to repay Clark County for the cost of union leave per SB 241 using a vacation leave donation bank for that purpose. The parties agree that that agreement permits JJSA to ask this Board whether that repayment mechanism is legal.[1] However, the County asserts that it does not allow JJSA to challenge its general obligation to reimburse the County for the full cost of that leave as required by SB 241. Regardless, the evidence demonstrated that JJSA contractually agreed to reimburse the County for the cost of union leave, and JJSA has been reimbursing the County since ratifying the operative agreement.

JJPOA was formed in 2011, and the parties began negotiating their first contract in 2011 (as a brand-new contract for JJPOA). As JJPOA was formed from a break away from SEIU, testimony indicated that an objective of the inaugural contract was to adopt several articles within the SEIU contract. It is undisputed that when negotiations began, the County was in the depths of the Great Recession and had already laid off nearly 20% of its workforce. The County approached all bargaining units for concessions to avoid further layoffs. The first negotiations between these parties occurred April 13, 2011. The County's dire economic condition and imperatives were made clear from the outset. Specifically, the County sought a 2% wage reduction and a one-year freeze on longevity and merit increases from existing employees, and proposed to eliminate longevity benefits for new hires.

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[1] The Board notes that its authority is limited to matters arising out of the interpretation of, or performance under, the provisions of the Employee-Management Relations Act. NRS 288.110(2); *City of Reno v. Reno Police Protective Ass'n*, 98 Nev. 472, 474–75, 653 P.2d 156, 158 (1982); *UMC Physicians Bargaining Unit v. Nevada Serv. Employees Union*, 124 Nev. 84, 89-90, 178 P.3d 709, 713 (2008); *City of Henderson v. Kilgore*, 122 Nev. 331, 333, 131 P.3d 11, 12 (2006); *Int'l Ass'n of Fire Fighters, Local 1908 v. County of Clark*, Case No. A1-046120, Item No. 811 (2015); *Simo v. City of Henderson*, Case No. A1-04611, Item No. 796 (2014); *see e.g., Flores v. Clark Cty.*, Case No. A1-045990, Item No. 737 (2010); *Bonner v. City of N. Las Vegas*, Case No. 2015-027 (2017). While the Board finds that the repayment mechanism appears proper, it notes that it may not have had jurisdiction in this regard.

JJPOA and the County met 7-10 times before concluding their first agreement. JJPOA admitted that throughout those negotiations it understood that eliminating longevity benefits for new hires was the County's "hill to die for" and that all other County bargaining units had been asked to give up the same benefit. JJPOA further admitted that it clearly understood the County needed to save money to avoid further cuts and layoffs. Ultimately, JJPOA agreed to a 1.5% wage reduction while the rest of the County took a full 2% reduction. County Chief Administrator Les Lee Shell, who was on the bargaining team, testified that JJPOA held onto its economic demands until well after all other articles had been resolved, including union leave in Article 8.

During the hearing, the County produced its official Status Sheet from the 2011 negotiations showing that TA's (i.e., Tentative Agreement) on those economic articles were signed October 25, 2011. The Articles that the JJPOA now claim constitutes concessions during those negotiations were signed that day. The County also produced contemporaneous notes for every bargaining session, including the bargaining session on October 25, 2011, where the economic package was signed. Those bargaining notes indicate that "avoiding further layoffs" was the only stated basis for any JJPOA concessions.

Interestingly, Article 8, union leave, had been negotiated and agreed to a month before the economic articles were signed on October 25, 2011, clearly pre-dating any concession (and in contrast to JJPOA's allegations). Nonetheless, JJPOA argues that Article 8 was their "hill to die for" and the concessions they gave a month later somehow were intended as the *quid pro quo* for the Union Leave rights they had already secured a month earlier. The Board does not find the testimony related thereto by Kendrick credible. The County denied this and, as the County bargaining representative Shell explained, the County took copious notes during negotiations, particularly for important points and "especially if we're creating a new contract, we would want to make sure we keep a good record of what's passed and when it passed on which version we are on." Shell had no recollection of any *quid pro quo* discussions relating to union leave to any economic concession and none of the County's contemporaneous notes reflect any such discussion, let alone reference to those rights as a "hill to die for", in words or substance.

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In contrast, JJPOA produced *no contemporaneous notes* or evidence to support its allegation that union leave rights were its "hill to die for." They produced no other credible evidence to show the value of concessions made in exchange for union leave time as required by NRS 288.225. Indeed, the evidence presented showed that the concessions given were to avoid further layoffs and for any of the numerous other wages and benefits contained in the inaugural agreement. JJPOA stated it took notes during negotiations yet failed to present this evidence, ultimately attempting to predominately rely on those produced by the County. While JJPOA relies on Union Exhibit 1, the document makes no reference to any *quid pro quo* between union leave rights and any concession related thereto. The Board does not find Ruiz's testimony credible in this regard. The Board also notes, in regards to the actual 2011 proposals and counter proposals on Article 8, that JJPOA initially proposed they receive 1,000 union leave hours for teaching purposes, which is contained in the bargaining notes (unlike the alleged economic concessions). JJPOA initially could not explain any *quid pro quo* discussions related to these proposals, but Ruiz later testified this was when Hoskins allegedly made a "side deal", which is not reflected in any contemporaneous notes, and, again, the Board does not find credible.

The parties admit that during the 2011 negotiations neither contemplated that the Legislature would later enact SB 241. Indeed, union leave was common, had been covered by the SEIU contract and was provided for in the ground rules at the outset of the 2011 negotiations. The issue was not whether JJPOA would get union leave at all, but rather how much leave was reasonable for a unit of that size.

JJPOA and the County's inaugural agreement was ratified in December 2011. As part of that process, the County calculated and reported to the Board of County Commissioners, savings negotiated with JJPOA. Of those saving, roughly $300,000 represented the agreed 1.5% wage reduction, $470,603 represented the one-year merit/step freeze (which was restored the following year), and $58,267 represented the one-year freeze on Longevity benefits (also restored the following year). JJPOA argues that all those savings constituted concessions given to obtain their union leave time. However, there was no evidence supporting the notion that concessions for union leave were ever discussed during negotiations, but, in contrast, there was significant evidence presented that the concessions were intended to avoid layoffs during the Great Recession. The Board further finds the testimony presented

by JJPOA in regards to union leave bought in perpetuity not credible. Neither Ruiz nor Kendrick provided consistent testimony in this regard. No credible evidence was presented regarding the cost of union leave or the extent to which any concession would pay for union leave. No credible testimony was presented showing the value of concessions made in exchange for union leave time as required by NRS 288.225.

In anticipation of the expiration of the parties' 2014-16 contract, the parties began renegotiating in early 2016. The County proposed language requiring JJPOA to comply with SB 241. At that time, the County and SEIU were still litigating the proper interpretation of SB 241. Because SB 241 would preclude the County from giving any increases after the 2014-16 agreement expired and until a new agreement was reached, the parties agreed to sign a new three year agreement in which they further agreed to reopen Article 8 once the proper interpretation of SB 241 was resolved.[2] At the time the agreement was signed, the only litigation regarding SB 241 discussed was the matter pending before Judge Bell. The day after the parties signed that agreement, Judge Bell issued her decision remanding the matter back to the Board for resolution consistent with her ruling. However, the parties settled the matter before the Board heard it on remand.

On November 24, 2014, this Board issued said order in the matter of *Serv. Employees of Int'l Union, Local 1107 v. Clark County*, Case No. 2015-011, Item No. 810 (2015). This order was subsequently appealed to the district court as a petition for judicial review. As indicated, on June 22, 2016, the Eighth Judicial District issued its decision and reversed Item 810, in part, while upholding other portions of that decision. *See generally Clark County v. Nevada Local Gov't Employee-Mgmt. Relations Bd.*, Case No. A-15-728412-J (2016). Thereafter, the Board issued its decision in a new matter, *Police Officers Ass'n of the Clark County Sch. Dist. v. Clark County Sch. Dist.*, Case No. 2015-031, Item No. 816 (2016) in which it adopted and found persuasive certain portions the district court order that reversed Item No. 810. These orders are incorporated herein by reference.

Pursuant to the agreement, the County requested to reopen Article 8 to negotiate compliance with SB 241. Specifically, the County proposed that JJPOA comply with SB 241, agreeing JJPOA

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[2] "In the event of the final disposition or legislative change, both parties agree to immediately reconvene in order to renegotiate this article to comply with NRS."

could keep all negotiated union leave, but asking JJPOA to reimburse the full cost of that leave directly or through offsetting concessions. In this regard, the parties met four times to negotiate that issue between December 2016 and April 2017. During the hearing, JJPOA could not credibly explain why, if it truly believed it had secured union leave rights in perpetuity via 2011 concession, it agreed to that reopener language or why it engaged in 4 bargaining sessions before taking that position. The evidence revealed that JJPOA was actively lobbying the 2017 Legislature to repeal or modify SB 241 while negotiating Article 8 pursuant to the reopener with the County. However, the law remains unchanged. JJPOA eventually declared impasse after completing some negotiation sessions. The County tried to schedule additional sessions but JJPOA refused. JJPOA argues that Judge Bell's decision did not trigger its obligation to reopen Article 8 and took the position that as long as there is any challenged remaining to SB 241, JJPOA's duty to reopen Article 8 and comply with SB 241 will never be triggered. The Board does not find this compelling given the foregoing.[3]

As with the case of JJPOA, this was the first contract between JJSA and the County. By that time, the County had already cut 1,400 positions and wanted to avoid further layoffs. JJSA admitted that it understood the economic difficulties and the necessity of helping the County realize savings to avoid further layoffs. The parties began exchanging proposals for union leave on May 18, 2011 and signed a TA on August 16, 2011. The final agreement provided 400 union leave hours and 94 additional hours for the union president to attend business functions.

DISCUSSION

The Unions claim the County acted in bad faith in violation of its duty to bargain in good faith per NRS 288.270(1). It is a prohibited practice for a local government employer willfully to refuse to bargain collectively in good faith with the exclusive representative as required in NRS 288.150. NRS 288.270(1)(e). The Act imposes a reciprocal duty on employers and bargaining agents to negotiate in

[3] It is well established that the Board may construe the parties' CBA and resolve ambiguities as necessary to determine whether a prohibited practice has been committed. *Boykin v. City of N. Las Vegas Police Dept.*, Item No. 674E, Case No. A1-045921 (2010), *citing NLRB v. Strong Roofing & Ins. Co.*, 393 U.S. 357 (1969), *NLRB v. C&C Plywood Corp.*, 385 U.S. 421 (1967), *Jim Walter Resources*, 289 NLRB 1441, 1449 (1988); *Kerns v. LVMPD*, Case No. 2017-010 (2018); *Yu v. LVMPD*, Case No. 2017-025, Item No. 829 (2018); *Yu v. LVMPD*, Case No. 2017-025, Item No. 829 (2018).

good faith concerning the mandatory subjects of bargaining listed in NRS 288.150. *Ed. Support Employees Ass'n v. Clark County Sch. Dist.*, Case No. A1-046113, Item No. 809, 4 (2015). The duty to bargain in good faith does not require that the parties actually reach an agreement, but does require that the parties approach negotiations with a sincere effort to do so. *Id.* Adamant insistence on a bargaining position or "hard bargaining" is not enough to show bad faith bargaining. *Reno Municipal Employees Ass'n v. City of Reno*, Item No. 93 (1980). "In order to show 'bad faith', a complainant must present 'substantial evidence of fraud, deceitful action or dishonest conduct.'" *Boland v. Nevada Serv. Employees Union*, Item No. 802, at 5 (2015), *quoting Amalgamated Ass'n of St., Elec. Ry. And Motor Coach Emp. of America v. Lockridge*, 403 U.S. 274, 301 (1971). "A party's conduct at the bargaining table must evidence a sincere desire to come to an agreement. The determination of whether there has been such sincerity is made by drawing inferences from conduct of the parties as a whole." *City of Reno v. Int'l Ass'n of Firefighters, Local 731*, Item No. 253-A (1991), *quoting NLRB v. Ins. Agent's Int'l Union*, 361 U.S. 488 (1970). NRS 288.270(1)(e) deems it a prohibited labor practice for a local government employer to bargain in bad faith with a recognized employee organization and a unilateral change to the bargained for terms of employment is regarded as a per se violation of this statute. A unilateral change also violates NRS 288.270(1)(a). *O'Leary v. Las Vegas Metropolitan Police Dep't*, Item No. 803, EMRB Case No. A1-046116 (2015). Under the unilateral change theory, an employer commits a prohibited labor practice when its changes the terms and conditions of employment without first bargaining in good faith with the recognized bargaining agent. *Boykin v. City of N. Las Vegas Police Dep't*, Case No. A1-045921, Item No. 674E (2010); *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 59 P.3d 1212 (2002).

Moreover, pursuant to NRS 288.270(1)(a), "[t]he test is whether the employer engaged in conduct, which may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." *Clark Cty. Classroom Teachers Ass'n v. Clark County Sch. Dist.*, Item 237 (1989). There are three elements to a claim of interference with a protected right: "(1) the employer's action can be reasonably viewed as tending to interfere with, coerce, or deter; (2) the exercise of protected activity [by NRS Chapter 288]; and (3) the employer fails to justify the action with a substantial and legitimate business reason." *Billings and Brown v. Clark County*, Item No. 751 (2012); *citing Medeco Sec. Locks,*

Inc. v. NLRB, 142 F.3d 733, 745 (4th Cir. 1988).

SB 241 went into effect upon passage on June 1, 2015 and precludes government employers from providing leave for employees to work on union business unless the union agrees to reimburse the employer the full cost of that leave, either directly or through an offsetting concession. Under SB 241, a collective bargaining agreement expires "at the end of the term stated in the agreement, notwithstanding any provisions of the agreement that it remain in effect, in whole or in part, after the end of that term, until a successor agreement become effective." SB 241, Sec. 1.3(1)(b).

SB 241 was codified, in part, in NRS 288.225. NRS 288.225 provides:

> A local government employer may agree to provide leave to any of its employees for time spent by the employee in performing duties or providing services for an employee organization if the full cost of such leave is paid or reimbursed by the employee organization or is offset by the value of concessions made by the employee organization in the negotiation of an agreement with the local government employer pursuant to this chapter.

JJPOA implies that the County's request to negotiate constitutes bad faith. Complaint, at ¶ 26. In any event, it was undisputed that Clark County's first proposal to negotiate Article 8 and JJPOA's compliance with SB 241 related thereto was made in 2016, after SB 241 was enacted and during the renegotiation of the parties' successor agreement. The County's only other request to negotiate was made pursuant to a specific written agreement between these parties re-open Article 8. There was no evidence that Clark County ever proposed to reduce or limit the number of JJPOA's union leave hours or the purposes for which those hours may be used. During the hearing, the parties conceded that the County proposed only that JJPOA negotiate to exercise its existing union leave rights in compliance with SB 241. While a legal conclusion based on the facts, Kendrick admitted that he did not believe this constituted bad faith.

As indicated, "In order to show 'bad faith', a complainant must present 'substantial evidence of fraud, deceitful action or dishonest conduct.'" *Boland v*, Item No. 802, at 5, *quoting Amalgamated Ass'n of St., Elec. Ry. and Motor Coach Emp. of America*, 403 U.S. at 301. Based on the conduct of the parties as a whole, JJPOA's argument is not well taken.

While JJPOA alleged that the County sought to "unilaterally eliminate" union leave, the Board finds credible that the purpose was to comply with SB 241 as a part of lawful contract negotiations

regarding a mandatory subject of bargaining. Moreover, JJPOA specifically agreed during the 2016 negotiations to reopen Article 8 to negotiate compliance with SB 241. *See also Ed. Support Employees Ass'n v. CCSD*, Item No. 809, 4 (2015). The County proposed contract language mirroring the requirements of SB 241. At that time, the parties were still litigating the County's appeal of this Board's first ruling regarding SB 241. Once Judge Bell issued her decision, which this Board adopted, the County thereafter requested to reopen Article 8 to negotiate how JJPOA would comply. As indicated, and importantly, the parties actually met five times in this regard until JJPOA refused to continue bargaining and declared impasse.

As indicated, the Board heard evidence in this matter as to what concessions were made, if any, in exchange for union leave time. No testimony was presented showing the value of concessions made in exchange for union leave time as required by NRS 288.225. Complainant failed to show that the full cost of union leave time was paid for by JJPOA or was offset by the value of concessions made by JJPOA in the negotiation of an agreement with the County. NRS 288.225 is plain, unambiguous, and unmistakable in its requirement that an employer may agree to provide leave for time spent for an employee organization if "the full cost of such leave is … offset by the value of concessions made by the employee organization".[4] There is nothing in Article 8 itself indicating this was met. Further, JJPOA failed to offer any contemporaneous notes, correspondence or other documents to support its position. The County, on the other hand, produced notes for every bargaining session, none of which make any reference to union leave rights being granted for any concession. As indicated, based in connection with the evidence presented by the County, the Board does not find JJPOA's witnesses

[4] As Judge Bell held: "the EMRB fail[ed] to adequately address the difference between the consideration bargained for by the parties in 2012 and the required consideration under the 2015 amendment to the law." The District Court explained that "both EMRB and SEIU discuss evidence presented at the EMRB hearing regarding SEIU and Clark County's prior negotiations for concessions fully offsetting the cost of paid leave. Unfortunately, EMRB does not reply on this specific evidence in its decision. EMRB relied on an overly broad presumption." *Id.* at 12. As such, the District Court reversed the "EMRB's decision on this issue and remand[ed] this portion of the case to the EMRB for further fact-finding and a determination of what amount of union leave was bargaining for under the 2012 agreement. This amount shall determine to what extent, if any, the County was able to preserve the status quo while also complying with SB 241." The Board does so in this matter and again notes it finds Judge Bell's decision persuasive and instructive in this matter comporting with the plain language of the statute, legislative history, and Act as a whole including reason and public policy.

credible in this regard. The Board finds credible that the concessions given were due to the recession, to restoring financial stability and to avoid further cuts and layoffs.

Therefore, in regard to the prohibited practices alleged and from the conduct of the parties as a whole, JJPOA failed to show bad faith and "present 'substantial evidence of fraud, deceitful action or dishonest conduct.'" Moreover, the Board does not find that the County's actions as detailed herein can be reasonably viewed as tending to interfere with, coerce, or deter the exercise of protected activity by the EMRA, and the County justified its action with a substantial and legitimate business reason.

In the same vein, JJSA produced no credible evidence of any discussion or agreement showing that the full cost of union leave was offset by the value of concessions made by it in the negotiation of an agreement with the County pursuant to the EMRA. The County argues that there can be no failure to bargain in good faith when there is a negotiated agreement, signed and ratified by both parties.[5] Neither is it a prohibited practice to negotiate a mechanism for complying with SB 241.

As with JJPOA, there was not sufficient evidence presented to support JJSA's claim that union leave rights were its "hill to die for." The only contemporaneous union document was a "contract article matrix" created by the union president on August 16, which was the day he became chief negotiator and the same day Article 8 was signed. This document makes no reference to Article 8, let alone related to any concession. Indeed, the County produced a JJSA authored document dated the same day which identified several economic Articles TA'd that day and which specifically states: "These concessions are being made in good faith due to the current economic climate in Southern Nevada." The document makes no reference to Article 8. As with JJPOA, JJSA claimed there was an informal "side bar" discussion between the chief negotiators where the union expressly conditioned the

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[5] The Board has repeatedly emphasized that the preferred method for resolving disputes is through the bargained-for processes, and the Board applies NAC 288.375(2) liberally to effectuate that purpose. *Id.*; *see also* NAC 288.040; *see also, e.g., Ed. Support Employees Ass'n v. Clark Cty. School Dist.*, Case No. A1-045509, Item No. 288 (1992); *Nevada Serv. Employees Union v. Clark Cty.*, Case No. A1-045759, Item No. 540 (2003); *Carpenter vs. Vassiliadis*, Case No. A1-045773, Item No. 562E (2005); *Las Vegas Police Protective Ass'n Metro, Inc. v. Las Vegas Metropolitan Police Dep't*, Case No. A1-045783, Item No. 578 (2004); *Saavedra v. City of Las Vegas*, Case No. A1-045911, Item No. 664 (2007); *Las Vegas City Employees' Ass'n v. City of Las Vegas*, Case No. A1-045940, Item No. 691 (2008); *Jessie Gray Jr. v. Clark County School Dist.*, Case No. A1-046015, Item No. 758 (2011); *Las Vegas Metropolitan Police Dep't v. Las Vegas Police Protective Ass'n, Inc.*, Case No. 2018-017 (2018).

County "getting what it wanted" on the union receiving its union leave rights. As before, the Board does not find this credible. In contrast, the County provided a full set of bargaining proposals with corresponding notes from each session. Shell recalled that JJSA was most focused during the 2011 negotiations on new job titles to differentiate itself from the JJPOA and obtaining a significantly higher pay scale. Shell testified that she "absolutely would not" characterize union leave as JJSA's "hill to die for" in 2011 and rejected the notion that union leave rights were a significant bargaining chip for any concessions. The Board finds this testimony credible.

When SB 241 was enacted, the parties were still under contract through June 30, 2017. At the outset of negotiations to renew that contract, the County stated that one of its primary objectives was to negotiate a mechanism to comply with SB 241. The County never proposed to eliminate or reduce the number of union hours previously negotiated but did propose a repayment mechanism for the full cost of those hours. In similar negotiations, other bargaining units had requested to repay the full cost of their union leave using a voluntary bank of donated vacation hours. Consequently, the County proposed the same funding mechanism to JJSA during the parties' 2017 negotiations.

During negotiations, JJSA proposed "kick the can" language that would leave Article 8 as is until after the next legislative session. On June 23, 2017, the parties signed Article 8. The contract was ratified by both parties and became binding as of July 5, 2017. JJSA acknowledges that Section 2 related thereto obligates JJSA to repay the full cost of union leave. JJSA further agreed that Section 5 proscribes the mechanism (the Association Leave Program) by which those repayments will be made. The plain language of Section 5 states that JJSA may file a complaint challenging the legality of the repayment mechanism specified in Section 5, only, making no reference to Section 2 or JJSA's general promise to reimburse the full cost of union leave. Since ratified, JJSA has been reimbursing the County for its union leave as agreed. There was no evidence presented that the vacation bank funding mechanism is illegal.

The Board finds that proposing that both parties comply with that law and negotiating various mechanisms to repay the County for union leave does not amount to a prohibited practice based on the facts of this case. *See, e.g., Kerns v. Las Vegas Metropolitan Police Dep't*, Item No. 827 (2018). While the JJSA may disagree with the County's interpretation of SB 241, such does not mean the County

negotiated that issue in bad faith given the conduct of the parties on the whole. While JJSA argued that it intended to reserve the right to challenge any request that it comply with SB 241, the plain language does not support this broad interpretation. Indeed, JJSA admitted that the basis of its "bad faith" claim is that it simply disagreed with the County's interpretation of SB 241. There was no credible evidence presented that the County's interpretation is incorrect, let alone made in bad faith.

Regardless, as indicated, JJSA failed to show that the full cost of union leave time was paid for by JJSA or was offset by the value of concessions made by JJSA in the negotiation of an agreement with the County. The evidence was clear that the primary motivation for any concessions was to avoid further cuts and layoffs. Such is reflected in the JJSA summary document. Ruiz admitted that most economic articles were settled before the union leave article. JJSA further admitted that before it gave any concession, the County had already offered 340 union leave hours.

Therefore, in regards to the prohibited practices alleged and from the conduct of the parties as a whole, JJSA failed to show bad faith and "present 'substantial evidence of fraud, deceitful action or dishonest conduct.'" Moreover, as with the JJPOA, the Board does not find that the County's actions as detailed herein cannot be reasonably viewed as tending to interfere with, coerce, or deter the exercise of protected activity by the EMRA, and the County justified its action with a substantial and legitimate business reason.

Finally, based on the facts in this case and the issues presented, the Board declines to award cost and fees in this matter.

FINDINGS OF FACT

1. JJPOA was formed in 2011, and the parties began negotiating their first contract in 2011 (as a brand-new contract for JJPOA).

2. As JJPOA was formed from a break away from SEIU, an objective of the inaugural contract was to adopt several articles within the SEIU contract.

3. When negotiations began, the County was in the depths of the Great Recession and had already laid off nearly 20% of its workforce.

4. The County approached all bargaining units for concessions to avoid further layoffs.

5. The first negotiations between these parties occurred April 13, 2011.

6. JJPOA and the County's inaugural agreement was ratified in December 2011.

7. The County's dire economic condition and imperatives were made clear from the outset.

8. JJPOA and the County met 7-10 times before concluding their first agreement.

9. JJPOA understood that eliminating longevity benefits for new hires was the County's "hill to die for" and that all other County bargaining units had been asked to give up the same benefit.

10. JJPOA understood the County needed to save money to avoid further cuts and layoffs.

11. JJPOA agreed to a 1.5% wage reduction while the rest of the County took a full 2% reduction.

12. JJPOA held onto its economic demands until well after all other articles had been resolved, including union leave in Article 8.

13. The Articles that the JJPOA now claim constitutes concessions during those negotiations were signed that day.

14. The County's notes bargaining notes indicate that "avoiding further layoffs" was the only stated basis for any JJPOA concessions.

15. Article 8, union leave, had been negotiated and agreed to a month before the economic article were signed on October 25, 2011.

16. JJPOA argues that Article 8 was their "hill to die for" and the concessions they gave a month later somehow were intended as the *quid pro quo* for the Union Leave rights they had already secured a month earlier. The Board does not find the testimony related thereto by Kendrick credible.

17. Shell had no recollection of any *quid pro quo* discussions relating to union leave to any economic concession and none of the County's contemporaneous notes reflect any such discussion, let alone reference to those rights as a "hill to die for", in words or substance.

18. JJPOA produced *no contemporaneous notes* or evidence to support its allegation that union leave rights were its "hill to die for".

19. The concessions given were to avoid further layoffs and for any of the numerous other wages and benefits contained in the inaugural agreement.

20. JJPOA stated it took notes during negotiations yet failed to present this evidence, ultimately attempting to predominately rely on those produced by the County.

21. While JJPOA relies on Union Exhibit 1, the document makes no reference to any *quid pro quo* between union leave rights and any concession related thereto. The Board does not find Ruiz's testimony credible in this regard.

22. JJPOA initially could not explain any *quid pro quo* discussions related to these proposals, but Ruiz later testified this was when Hoskins allegedly made a "side deal", which is not reflected in any contemporaneous notes, and, the Board does not find credible.

23. During the 2011 negotiations neither parties contemplated that the Legislature would later enact SB 241.

24. Union leave was common, had been covered by the SEIU contract and was provided for in the ground rules at the outset of the 2011 negotiations.

25. The issue was not whether JJPOA would get union leave at all, but rather how much leave was reasonable for a unit of that size.

26. There was no evidence supporting the notion that concessions for union leave were ever discussed during negotiations, but, in contrast, there was significant evidence presented that the concessions were intended to avoid layoffs during the Great Recession.

27. JJSA actually negotiated, signed and ratified a CBA in which they specifically agreed to repay Clark County for the cost of union leave per SB 241 using a vacation leave donation bank for that purpose.

28. JJSA contractually agreed to reimburse the County for the cost of union leave, and JJSA has been reimbursing the County since ratifying the operative agreement.

29. No credible evidence was presented regarding the cost of union leave or the extent to which any concession would pay for union leave.

30. No credible testimony was presented showing the value of concessions made in exchange for union leave time as required by NRS 288.225.

31. The County proposed that JJPOA comply with SB 241, agreeing JJPOA could keep all negotiated union leave, but asking JJPOA to reimburse the full cost of that leave directly or through offsetting concessions.

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32. The parties met four times to negotiate that issue between December 2016 and April 2017.

33. JJPOA eventually declared impasse after completing some negotiations sessions.

34. The County tried to schedule additional sessions but the JJPOA refused.

35. There was no evidence that Clark County ever proposed to reduce or limit the number of JJPOA's union leave hours or the purposes for which those hours may be used.

36. JJPOA specifically agreed during the 2016 negotiations to reopen Article 8 to negotiate compliance with SB 241.

37. The County proposed contract language mirroring the requirements of SB 241.

38. Once Judge Bell issued her decision, which this Board adopted, the County thereafter requested to reopen Article 8 to negotiate how JJPOA would comply.

39. The parties actually met 5 times in this regard until JJPOA refused to continue bargaining and declared impasse.

40. JJPOA failed to offer any contemporaneous notes, correspondence or other documents to support its position.

41. The County, on the other hand, produced notes for every bargaining session, none of which make any reference to union leave rights being granted for any concession.

42. The Board finds credible that the concessions given were due to the recession to restoring financial stability and to avoid further cuts and layoffs.

43. JJSA produced no credible evidence of any discussion or agreement showing that the full cost of union leave was offset by the value of concessions made by it in the negotiation of an agreement with the County pursuant to the EMRA.

44. There was not sufficient evidence presented to support JJSA's claim that union leave rights were its "hill to die for".

45. The only contemporaneous union document was a "contract article matrix" created by the union president on August 16, which was the day he became chief negotiator and the same day Article 8 was signed. This document makes no reference to Article 8, let alone related to any concession.

46. The County produced a JJSA authored document dated the same day which identified several economic Articles TA'd that day and which specifically states: "These concessions are being made in good faith due to the current economic climate in Southern Nevada."

47. As with JJPOA, JJSA claimed there was an informal "side bar" discussion between the chief negotiators where the union expressly conditioned the County "getting what it wanted" on the union receiving its union leave rights. As before, the Board does not find this credible.

48. The County provided a full set of bargaining proposals with corresponding notes from each session.

49. Shell testified that she "absolutely would not" characterize union leave as JJSA's "hill to die for" in 2011 and rejected the notion that union leave rights were a significant bargaining chip for any concessions. The Board finds this testimony credible.

50. The County stated that one of its primary objectives was to negotiate a mechanism to comply with SB 241. The County never proposed to eliminate or reduce the number of union hours previously negotiated, but did propose a repayment mechanism for the full cost of those hours.

51. In similar negotiations, other bargaining units had requested to repay the full cost of their union leave using a voluntary bank of donated vacation hours.

52. Consequently, the County proposed the same funding mechanism to JJSA during the parties' 2017 negotiations.

53. During negotiations, JJSA proposed "kick the can" language that would leave Article 8 in *status quo* until after the next legislative session. On June 23, 2017, the parties signed Article 8.

54. JJSA acknowledge that Section 2 related thereto obligates JJSA to repay the full cost of union leave. JJSA further agreed that Section 5 described the mechanism (the Association Leave Program) by which those repayments will be made.

55. JJPOA argues that Judge Bell's decision did not trigger its obligation to reopen Article 8 and took the position that as long as there is any challenged remaining to SB 241, JJPOA's duty to reopen Article 8 and comply with SB 241 will never be triggered. The Board does not find this compelling given the foregoing.

56. Since ratified, JJSA has been reimbursing the County for its union leave as agreed.

57. JJSA failed to show that the full cost of union leave time was paid for by JJSA or was offset by the value of concessions made by JJSA in the negotiation of an agreement with the County.

58. The evidence was clear that the primary motivation for any concessions was to avoid further cuts and layoffs. Such is specifically reflected in the JJSA summary document.

59. Ruiz admitted that most economic articles were settled before the union leave article.

60. If any of the foregoing findings is more appropriately construed as a conclusion of law, it may be so construed.

CONCLUSIONS OF LAW

1. The Board is authorized to hear and determine complaints arising under the Local Government Employee-Management Relations Act.

2. The Board has exclusive jurisdiction over the parties and the subject matters of the Complaint on file herein pursuant to the provisions of NRS Chapter 288.

3. NRS 288.270(1)(e) states that it is a prohibited practice for a local government employer willfully to refuse to bargain collectively in good faith with the exclusive representative as required in NRS 288.150.

4. "A party's conduct at the bargaining table must evidence a sincere desire to come to an agreement. The determination of whether there has been such sincerity is made by drawing inferences from conduct of the parties as a whole." *City of Reno v. Int'l Ass'n of Firefighters, Local 731*, Item No. 253-A (1991), *quoting NLRB v. Ins. Agent's Int'l Union*, 361 U.S. 488 (1970).

5. The Act imposed a reciprocal duty on employers and bargaining agents to negotiate in good faith concerning the mandatory subjects of bargaining listed in NRS 288.150.

6. The duty to bargain in good faith does not require that the parties actually reach an agreement, but does require that the parties approach negotiations with a sincere effort to do so.

7. Adamant insistence on a bargaining position or "hard bargaining" is not enough to show bad faith bargaining. *Reno Municipal Employees Ass'n v. City of Reno*, Item No. 93 (1980).

8. In order to show 'bad faith', a complainant must present 'substantial evidence of fraud, deceitful action or dishonest conduct.'" *Boland v*, Item No. 802, at 5, *quoting Amalgamated Ass'n of St., Elec. Ry. and Motor Coach Emp. of America*, 403 U.S. at 301.

9. NRS 288.225 is plain, unambiguous, and unmistakable in its requirement that while an employer may agree to provide leave for time spent for an employee organization, "the full cost of such leave is … offset by the value of concessions made by the employee organization".

10. There are three elements to a claim of interference with a protected right: "(1) the employer's action can be reasonably viewed as tending to interfere with, coerce, or deter; (2) the exercise of protected activity [by NRS Chapter 288]; and (3) the employer fails to justify the action with a substantial and legitimate business reason."

11. Complainant failed to show that the full cost of union leave time was paid for by JJPOA or was offset by the value of concessions made by JJPOA in the negotiation of an agreement with the County.

12. From the conduct of the parties as a whole, JJPOA failed to show bad faith and "present 'substantial evidence of fraud, deceitful action or dishonest conduct.'"

13. The Board finds that proposing that both parties comply with that law and negotiating various mechanisms to repay the County for union leave does not amount to a prohibited practice based on the facts of this case.

14. While JJSA argued that it intended to reserve the right to challenge any request that it comply with SB 241, the plain language does not support this broad interpretation.

15. From the conduct of the parties as a whole, JJSA failed to show bad faith and "present 'substantial evidence of fraud, deceitful action or dishonest conduct.'"

16. The County's actions as detailed herein cannot be reasonably viewed as tending to interfere with, coerce, or deter the exercise of protected activity by the EMRA, and the County justified its action with a substantial and legitimate business reason.

17. If any of the foregoing conclusions is more appropriately construed as a finding of fact, it may be so construed.

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ORDER

Based on the foregoing, it is hereby ordered that the Board finds in favor of Respondent County of Clark as set forth above. Complainants shall take nothing by way of their Complaints.

DATED this 13th day of December, 2018.

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

By: _____
BRENT ECKERSLEY, ESQ., Chair

By: _____
SANDRA MASTERS, Vice-Chair

By: _____
PHILIP LARSON, Board Member