

STATE OF NEVADA  
GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

WASHOE COUNTY SCHOOL DISTRICT,

Complainant,

v.

WASHOE SCHOOL PRINCIPALS'  
ASSOCIATION,

Respondent.

Consolidated Case No.  
2023-024 and 2023-031

**NOTICE OF ENTRY OF ORDER**

**EN BANC**

**ITEM NO. 895**

WASHOE SCHOOL PRINCIPALS'  
ASSOCIATION,

Complainant,

v.

WASHOE COUNTY SCHOOL DISTRICT,

Respondent.

TO: WASHOE COUNTY SCHOOL DISTRICT, by and through its attorney of record,  
Anthony L. Hall, Esq. and Simons Hall Johnston PC;

TO: WASHOE SCHOOL PRINCIPALS' ASSOCIATION, by and through its attorney of  
record, Ronald J. Dreher, Jr.

PLEASE TAKE NOTICE that the **DECISION, FINDINGS OF FACT AND  
CONCLUSIONS OF LAW** was entered in the above-entitled matter on March 29, 2024.

A copy of said order is attached hereto.

DATED this 29 day of March 2024.

GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

BY   
MARISU ROMUALDEZ ABELLAR

Executive Assistant

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Government Employee-Management Relations Board, and that on the 29 day of March 2024, I served a copy of the foregoing NOTICE OF ENTRY OF ORDER by mailing a copy thereof, postage prepaid to:

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

Anthony L. Hall, Esq.  
Simons Hall Johnston PC  
690 Sierra Rose Dr.,  
Reno, Nevada 89511

  
MARISU ROMUALDEZ ABELLAR  
Executive Assistant

STATE OF NEVADA  
GOVERNMENT EMPLOYEE-MANAGEMENT  
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**ITEM NO. 895**

On January 11–12, 2024, this matter came before the State of Nevada, Government Employee-Management Relations Board (“Board”) for a hearing pursuant to the provision of the Government Employee-Management Relations Act (“EMRA”), NRS Chapter 288, and NAC Chapter 288. The Board deliberated on the matter on February 27, 2024.

**I. BACKGROUND**

Washoe County School District (hereafter “WCSD”) filed an Amended Complaint alleging that the Washoe School Principals’ Association (hereafter “WSPA”) did the following: (1) engaged in conduct that constituted prohibited practices that include bad faith bargaining such as failing to negotiate mandatory subjects of bargaining, surface bargaining, failure to initiate and schedule bargaining sessions, failure to agree to ground rules and failure to provide requested documents; and (2) WSPA improperly declared an impasse under NRS 288.217(2).

1 WSPA also filed a Complaint alleging that WCSD did the following: (1) engaged in  
2 conduct that constituted prohibited practices that include bad faith bargaining such as the failure  
3 to meet in a timely manner, failure to discuss ground rules, engaging in end-run bargaining and  
4 direct dealing, discriminating against WSPA for political and/or personal reasons, and by failing  
5 to produce requested documents; and (2) WCSD failed to communicate with WSPA's designated  
6 representatives. The prohibited practice claims of both parties have been placed together in  
7 Section A for efficiency.

## 8 II. DISCUSSION

### 9 A. Prohibited Practice Claims.

10 Both parties raised several prohibited practice claims against each other. NRS 288.270, which  
11 governs prohibited practices, states:

12 **288.270. Employer or representative; employee or employee  
13 organization.**

14 1. It is a prohibited practice for a local government employer or its  
15 designated representative willfully to

16 (a) Interfere, restrain or coerce any employee in the exercise  
17 of any right guaranteed under this chapter.

18 (b) Dominate, interfere or assist in the formation or  
19 administration of any employee organization.

20 (c) Discriminate in regard to hiring, tenure or any term or  
21 condition of employment to encourage or discourage  
22 membership in any employee organization.

23 (d) Discharge or otherwise discriminate against any  
24 employee because the employee has signed or filed an  
25 affidavit, petition or complaint or given any information  
26 or testimony under this chapter, or because the employee  
27 has formed, joined or chosen to be represented by any  
28 employee organization.

(e) Refuse to bargain collectively in good faith with the  
exclusive representative as required in NRS 288.150.  
Bargaining collectively includes the entire bargaining  
process, including mediation and fact-finding, provided  
for in this chapter.

(f) Discriminate because of race, color, religion, sex, sexual  
orientation, gender identity or expression, age, physical  
or visual handicap, national origin or because of political  
or personal reasons or affiliations.

(g) Fail to provide the information required by NRS 288.180.

(h) Fail to comply with the requirements of NRS 281.755.

2. It is a prohibited practice for a local government employee or for an  
employee organization or its designated agent willfully to:

(a) Interfere with, restrain or coerce any employee in the

exercise of any right guaranteed under this chapter.

1 (b) Refuse to bargain collectively in good faith with the local  
2 government employer, if it is an exclusive  
3 representative, as required in NRS 288.150. Bargaining  
4 collectively includes the entire bargaining process,  
including mediation and fact-finding, provided for in this  
chapter.

5 (c) Discriminate because of race, color, religion, sex, sexual  
6 orientation, gender identity or expression, age, physical  
or visual handicap, national origin or because of political  
or personal reasons or affiliations.

7 (d) Fail to provide the information required by NRS  
8 288.180.

9 3. As used in this section:

10 (a) “Protective hairstyle” includes, without limitation,  
hairstyles such as natural hairstyles, afros, bantu knots,  
11 curls, braids, locks and twists.

(b) “Race” includes traits associated with race, including,  
without limitation, hair texture and protective hairstyles.

12 The prohibited practice claims for each party are discussed below.

13 **1. WCSD’s Prohibited Practice Claims.**

14 a. Bad Faith Bargaining.

15 It is a prohibited practice for an employee organization to willfully refuse to bargain in  
16 good faith with an exclusive representative of a local government employer under NRS  
17 288.270(2)(b). *O’Leary v. Las Vegas Metropolitan Police Dep’t*, Case No. A1-046116, Item No.  
18 803 (EMRB, May 15, 2015); *see also Serv. Employees Int’l Union, Local 1107 v. Clark County*,  
19 Case No. A1-045965, Item No. 713A (EMRB, Oct. 5, 2010). The EMRA imposes a reciprocal  
20 duty on employers and bargaining agents to negotiate in good faith concerning the mandatory  
21 subjects of bargaining listed in NRS 288.150. *Juvenile Justice Supr. Ass’n v. County of Clark*,  
22 Case No. 2017-20, Item No. 834 (EMRB, Dec. 13, 2018); *Nevada Classified Sch. Employees Ass’n*  
23 *Ch. 5, Nevada AFT v. Churchill County Sch. Dist.*, Case No. 2020-008, Item No. 863 (EMRB,  
24 May 20, 2020). Moreover, a party’s conduct at the bargaining table must evidence a sincere desire  
25 to come to an agreement. The determination of whether there has been such sincerity is made by  
26 “drawing inferences from the conduct of the parties as a whole.” *City of Reno v. Int’l Ass’n of*  
27 *Firefighters, Local 731*, Item No. 253-A (EMRB, Feb. 8, 1991), *quoting NLRB v. Ins. Agent’s Int’l*  
28 *Union*, 361 U.S. 488 (1970).

1 “In order to show ‘bad faith,’ a complainant must present ‘substantial evidence of fraud,  
2 deceitful action or dishonest conduct.’” *Juvenile Justice Supr. Ass'n v. County of Clark*, p.5, Case  
3 No. 2017-20, Item No. 834 (EMRB, Dec 13, 2018) (Citations omitted). Adamant insistence on  
4 a bargaining position or “hard bargaining” is not enough to show bad faith bargaining. *Reno*  
5 *Municipal Employees Ass'n v. City of Reno*, Item No. 93 (EMRB, Jan. 11, 1980); *City of Reno v.*  
6 *Reno Police Protective Ass'n*, Case No. A1-046096, Item No. 790 (EMRB, Nov. 27, 2013)  
7 (bad faith bargaining “does not turn on a single isolated incident; but rather the Board looks at the  
8 totality of conduct throughout negotiations to determine ‘whether a party's conduct at the  
9 bargaining table evidences a real desire to come into agreement.’”), *citing Int'l Brotherhood of*  
10 *Electrical Workers, Local 1245 v. City of Fallon*, Case No. A1-045485, Item No. 269 (EMRB,  
11 July 25, 1991).

12 Signs of bad faith bargaining may include:<sup>1</sup>

- 13 • Refusing to bargain on mandatory subjects of bargaining;
- 14 • Cancellation of bargaining sessions;
- 15 • Delays/Extended periods of unavailability for bargaining;
- 16 • Imposing conditions on bargaining;
- 17 • Insufficient authority to bargain;
- 18 • Refusal to provide information;
- 19 • Refusal to meet and unreasonable meeting times and sites;
- 20 • Boulwarism (take it or leave it type offers);
- 21 • Surface bargaining;
- 22 • Direct dealing;
- 23 • Regressive bargaining;
- 24 • Unilateral changes;
- 25 • Withdrawal of accepted offers; and
- 26 • Refusal to sign a written agreement.

22 In this case WCSD alleged that WSPA engaged in bad faith bargaining by failing to bargain over  
23 mandatory subjects of bargaining set out under NRS 288.150 and by engaging in surface  
24 bargaining.

25 i. Mandatory Subjects of Bargaining.

26 WCSD maintains that WSPA refused to negotiate mandatory subjects of bargaining under

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27 <sup>1</sup> Source is from an NLRB related conference sponsored by the United Steel Workers. The  
28 Board finds this listing useful for this matter and hereby adopts the language as set forth herein.  
This list is not exhaustive.

1 NRS 288.150(2) which are as follows:

- 2 2. The scope of mandatory bargaining is limited to:
  - 3 a. Salary or wage rates or other forms of direct monetary
  - 4 compensation.
  - 5 b. Sick leave.
  - 6 c. Vacation leave.
  - 7 d. Holidays.
  - 8 e. Other paid or nonpaid leaves of absence.
  - 9 f. Insurance benefits.
  - 10 g. Total hours of work required of an employee on each workday
  - 11 or workweek.
  - 12 h. Total number of days' work required of an employee in a work
  - 13 year.
  - 14 i. Except as otherwise provided in subsections 8 and 11, discharge
  - 15 and
  - 16 disciplinary procedures.
  - 17 j. Recognition clause.
  - 18 k. The method used to classify employees in the bargaining unit.
  - 19 l. Deduction of dues for the recognized employee organization.
  - 20 m. Protection of employees in the bargaining unit from
  - 21 discrimination because of participation in recognized employee
  - 22 organizations consistent with the provisions of this chapter.
  - 23 n. No-strike provisions consistent with the provisions of this
  - 24 chapter.
  - 25 o. Grievance and arbitration procedures for resolution of disputes
  - 26 relating to interpretation or application of collective bargaining
  - 27 agreements.
  - 28 p. General savings clauses.
  - q. Duration of collective bargaining agreements.
  - r. Safety of the employee.
  - s. Teacher preparation time.
  - t. Materials and supplies for classrooms.
  - u. Except as otherwise provided in subsections 9 and 11, the
  - v. policies for the transfer and reassignment of teachers.
  - w. Procedures for reduction in workforce consistent with the
  - provisions of this chapter.
  - Procedures consistent with the provisions of subsection 6 for the
  - reopening of collective bargaining agreements for additional,
  - further, new or supplementary negotiations during periods of
  - fiscal emergency.

22 There was ample evidence presented indicating that WCSD attempted to negotiate over  
23 topics such as modifying site factors, instituting a new system using funding, leave and the length  
24 of time an employee would be required to work as well as grievance procedures. These topics are  
25 clearly covered under NRS 288.150 and therefore constitute mandatory subjects of bargaining.  
26 However, it was apparent to the Board that WSPA's negotiating team was very reluctant to  
27 negotiate any topics other than pay. The Chief Negotiator for WSPA and others on the WSPA  
28 negotiating team made it very clear that WSPA was not interested in changing the existing contract

1 aside from pay and benefits. *See e.g.*, WSPA Exhibit 6 at 0142 (“not interested in opening up and  
2 rewriting the entire contract” and “we do not have to negotiate if you put it on the table.”)<sup>2</sup>  
3 Ultimately, the only WCSD proposals that seemed to have been given serious consideration by  
4 WSPA were modifying the titles for HR and changing the definition of an “employee” to “unit  
5 member.”

6 Given the evidence presented, and based upon the totality of WSPA’s conduct, the Board  
7 finds there is substantial evidence that WSPA engaged in bad faith negotiations with WCSD given  
8 WSPA’s failure to negotiate with WCSD over mandatory subjects of bargaining and by brushing  
9 aside other proposals regarding permissive subjects.

10 ii. Surface Bargaining.

11 Surface bargaining is a strategy by which one of the parties merely goes through the  
12 motions, with no intention of reaching an agreement. In this regard, it is a form of bad faith  
13 bargaining. *City of Reno v. Int'l Ass'n of Firefighters, Local 731, Item No. 253-A (EMRB, Feb. 8,*  
14 *1991)*. Distinguishing surface bargaining from good faith bargaining depends on the facts  
15 supporting the claim. As described in the proceeding section, the facts show that WCSD presented  
16 WSPA with proposals that contained many subjects of mandatory bargaining. WCSD also  
17 presented proposals related to permissive bargaining. The Board finds that WSPA was quite  
18 dismissive about most of the proposals submitted by WCSD. As a result, the Board finds that  
19 there is substantial evidence of surface bargaining employed by WSPA given the totality of  
20 WSPA’s conduct.

21 iii. Whether WSPA Failed to Initiate and Schedule Bargaining Sessions.

22 The relevant portions of NRS 288.180 are set forth below:

23 1. Whenever an employee organization desires to negotiate  
24 concerning any matter which is subject to negotiation pursuant to this  
25 chapter, it shall give written notice of that desire to the local  
26 government employer. If the subject of negotiation requires the  
budgeting of money by the local government employer, the employee  
organization shall give notice on or before February 1.

27 \* \* \*

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28 <sup>2</sup> This citation is example of many regarding a lack of desire by WSPA to bargain over proposals submitted by WCSD, including examples provided in testimony.



1 3. The parties shall promptly commence negotiations. As the first  
2 step, the parties shall discuss the procedures to be followed if they  
are unable to agree on one or more issues.

3 4. This section does not preclude, but this chapter does not require,  
4 informal discussion between an employee organization and a  
5 local government employer of any matter which is not subject to  
6 negotiation or contract under this chapter. Any such informal  
discussion is exempt from all requirements of notice or time  
schedule.

7 The term “promptly commence negotiations” contained in NRS 288.180(3) is the key to  
8 the determination of WCSD’s claim. A timeline of the initial discussions follows:<sup>3</sup>

- 9 • January 10, 2023 – WSPA submitted its notice of intent to negotiate a  
10 subsequent labor agreement to WCSD.
- 11 • February 24, 2023 – WSPA followed up with WCSD and indicated a  
desire to initiate negotiations.
- 12 • February 24, 2023 – WCSD indicated that someone would be in touch  
next week.
- 13 • March 2, 2023 – WSPA followed with WCSD and proposed the week of  
April 10, 2023, to begin negotiations.
- 14 • March 2, 2023 – WCSD indicated that the lead negotiator would be Mr.  
Anothony Hall.
- 15 • March 8, 2023 – WCSD responds to WSPA’s follow-up e-mail and  
16 although they did not propose to begin negotiating in April, WCSD did  
indicate there should be an informal session to discuss ground rules.
- 17 • March 9, 2023 – WSPA responds and indicates that WSPA still does not  
have their negotiating team set yet.
- 18 • March 14, 2023 – WSPA reaches out to WCSD to see if they had received  
19 the March 9<sup>th</sup> e-mail. WSPA also indicated a desire to meet in the 2<sup>nd</sup>  
week of April to begin negotiations.
- 20 • March 15, 2023 – WCSD responds and indicates a desire to push the  
sessions into June due to legislative timing of a budget and the need to  
21 conduct a budget analysis.
- 22 • March 15, 2023 – WSPA responds stating they are not willing to wait  
until June because there were non-economic issues that the parties could  
23 discuss.
- 24 • March 22, 2023 – WCSD sent over proposed changes to ground rules and  
stated the first day they could negotiate was May 5<sup>th</sup>.
- 25 • March 22, 2023 – WSPA indicates that the May 3<sup>rd</sup> date will not work for  
them. WSPA points out they requested to meet quite a while prior to the  
26 22<sup>nd</sup>.
- 27 • On March 27, 2023 – WCSD responds and indicates that the proposed

28 <sup>3</sup> The dates were derived from WSPA and WCSD Exhibits and were taken from e-mails  
between the parties.

1 date was May 5<sup>th</sup> and not May 3<sup>rd</sup>. WCSD also points out that what WSPA  
2 was saying in their March 22, 2023, e-mail was not fairly stated.

- 3 • March 28, 2023 – WSPA indicates they can meet between 10 – 3 on May  
4 5<sup>th</sup>.
- 5 • May 5, 2023 – the parties met, it was agreed by both parties that ground  
6 rules were not necessary and WCSD presented its first draft proposal to  
7 WCSD.

8 Based upon the timelines set forth above, the Board finds that WSPA acted diligently  
9 relative to initiating negotiations and scheduling negotiations. At first blush it appeared that  
10 WCSD was a bit dilatory on some of the timelines and responses, although not unreasonably so  
11 given the personnel changes at WCSD, and given the fact that WCSD brought a complete proposal  
12 for WSPA to consider to the first meeting on May 5, 2023. Based on the discussion above, the  
13 Board finds that neither party engaged in bad faith negotiations regarding scheduling of negotiating  
14 sessions from January 2023 to May 5, 2023, when the first negotiating session occurred.

15 b. Failure to Discuss or Agree to Ground Rules.

16 The Board recognizes that most parties establish bargaining ground rules and that such  
17 guidelines serve as a helpful device to streamline the negotiations process and to avoid petty  
18 disputes and unfair surprises. *City of Reno v. International Ass'n of Firefighters, Local 731*, Case  
19 No. A1-045472, Item No. 253-A (EMRB, Feb. 8, 1991). However, disputes over the interpretation  
20 of these guidelines should not be allowed to interfere with negotiations regarding mandatory  
21 subjects of bargaining. *Id.* If negotiations were allowed to breakdown over mere threshold issues,  
22 those who wish to impede the collective bargaining process would have a “tool of avoidance” to  
23 wield at the expense of those willing to bargain in good faith. *Id.*, citing to *NLRB v. Bartlett-*  
24 *Collins Co.*, 639 F.2d 652 (10th Cir. 1981), *cert denied* 252 U.S. 961 (1981). Also, ground rules  
25 cannot be implemented except by mutual agreement. *Id.* A party cannot unilaterally impose a  
26 ground rule as a precondition to bargaining. *Id.* Most importantly, ground rules are not mandatory  
27 subjects of bargaining under NRS 288.150. However, the parties are required to at least broach  
28 the subject at their first meeting under NRS 288.180(3).

Evidence was presented showing that both parties broached the subject of ground rules and  
mutually decided that ground rules were not warranted. In this instance, the failure of the parties  
to agree on ground rules is not an indication of bad faith bargaining nor is there any evidence of a

1 prohibited practice. As noted above, ground rules merely help avoid disputes over process. Thus,  
2 if one of the parties refuses to negotiate or discuss ground rules, the failure to do so may not be  
3 used to hold up negotiations on important mandatory subjects. *City of Reno, supra*. In sum, the  
4 failure of the parties in this case to agree to ground rules during negotiations does not constitute a  
5 prohibited practice.

6 c. WSPA's Failure to Produce Documents Following Request.

7 Under NRS 288.270(2)(d), it is a prohibited practice for an employee organization to fail  
8 to provide documents related to mandatory subjects of bargaining as provided under NRS  
9 288.180(2) which states:

10 2. Following the notification provided for in subsection 1, the  
11 employee organization or the local government employer may  
12 request reasonable information concerning any subject matter  
13 included in the scope of mandatory bargaining which it deems  
14 necessary for and relevant to the negotiations. The information  
15 requested must be furnished without unnecessary delay. The  
16 information must be accurate, and must be presented in a form  
responsive to the request and in the format in which the records  
containing it are ordinarily kept. If the employee organization  
requests financial information concerning a metropolitan police  
department, the local government employers which form that  
department shall furnish the information to the employee  
organization.

17 It is clear from the language in NRS 288.180(2) that both parties can make requests for  
18 records and that the requests must be reasonable and related to mandatory subjects of bargaining.  
19 *Id.*, see also *International Association of Fire Fighters, Local 5046*, Case No. 2019-011, Item No.  
20 847-A (EMRB, July 8, 2020); *Law Vegas Fire Fighters Local 1285, International Association of*  
21 *Fire Fighters v. City of Las Vegas*, Case No. A1-046074, Item No. 786 (EMRB, May 21, 2013).  
22 Furthermore, once such a request is made, the information must be furnished without unnecessary  
23 delay. *Id.* Finally, the Board utilizes the “significant relationship” test when analyzing the  
24 negotiability of a topic. *Truckee Meadows v. International Association of Fire Fighters, Local*  
25 *2487*, Case No. A1-045400, Item No. 196 (EMRB, Sept. 21, 1987). The significant relationship  
26 test can be described as whether or not, from the facts presented, the subject matter involved is  
27 directly and significantly related to any one of the subjects specifically enumerated in NRS  
28 288.150(2). *Id.*

1           The evidence in this case shows that WCSD’s submitted a records request related to records  
2 kept by WSPA for non-contract days and hours worked by WSPA employees.<sup>4</sup> WCSD stated  
3 these records were necessary to budget and cost out the time worked by WSPA employees, and  
4 the information was especially pertinent to Article 16 of the Collective Bargaining Agreement.  
5 The Board finds that the request was reasonable and significantly related to a subject within the  
6 scope of mandatory bargaining under NRS 288.150(2). Furthermore, the information was not  
7 provided without unnecessary delay because not all of the requested information was provided  
8 even though WSPA stated that this information was available.

9           WCSD also made a request regarding amounts paid by WSPA to Mr. Ronald J. Dreher and  
10 for a copy of the contract between WSPA and Mr. Ronald Dreher, Esq. The request for a copy of  
11 the contract between Mr. Dreher, as well as the request for related payments, are far outside the  
12 scope of mandatory subjects of bargaining and are therefore deemed to be unreasonable under  
13 NRS 288.180(2).

14           Furthermore, WCSD also requested that WSPA provide the name, current position, hire  
15 date and current salary step and rate for all members or eligible members of WSPA. This  
16 information seems unreasonable to the Board because it is far more likely that WCSD would have  
17 this information than WSPA.

18           Many of the requests submitted by both parties would fall under the scope of the Nevada  
19 Public Records Act such as WSPA’s August 16, 2023, request. If a party is going to deny a request  
20 for information it would behoove that party to explain why the request is being denied, including  
21 the provision of legal authority for the denial. Also, for future requests, the Board would urge both  
22 parties to make sure all records requests are being made with the proper legal authority. The Board  
23 found that WCSD did a good job of explaining the basis for their denial of WSPA’s requests while  
24 WSPA failed to provide little to no explanation regarding their refusals to provide requested  
25 information.

26           Based on the evidence provided to the Board, WCSD provided substantial evidence of bad

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28           <sup>4</sup> This Decision does not include any documentary requests where the documents were provided as those issues are moot.

1 faith on the part of WSPA regarding its failure to provide information, and as such, the Board finds  
2 that WSPA did engage in prohibited practices and bad faith bargaining with respect to document  
3 production as discussed above.

4 **3. WSPA's Prohibited Practice Claims.**

5 a. Bad Faith Bargaining.

6 The legal standard for bad faith bargaining is set forth above in Section A(1)(a) with the  
7 notable exception that NRS 288.270(1)(e) applies to local government employers. Thus, this  
8 Board must determine based on the facts whether WCSD engaged in bad faith bargaining.

9 i. Failure of WCSD to Meet in a Timely Manner.

10 The issue here is whether WCSD failed to keep scheduled meetings and to meet at  
11 reasonable and regular intervals. Delaying negotiations is a prohibited practice under NRS  
12 288.270(1)(a) and (e). *Clark County Public Employees Association, SEIU Local 1107 v. Housing*  
13 *Authority of Las Vegas*, Case No. A1-045478, Item No. 270 (EMRB, July 25, 1991); *International*  
14 *Brotherhood of Electrical Workers, Local 1245 v. City of Fallon*, Case No. A1-045485, Item No.  
15 269 (EMRB, July 25, 1991). The Board will examine the totality of circumstances to determine  
16 whether any bad faith delay exists in this case. See legal standard for bad faith in Section A(1)(a)  
17 above.

18 As discussed in Section A(1)(a)(iii) above, the Board had found that both parties acted  
19 diligently with respect to scheduling negotiating sessions up to May 5, 2023. However, subsequent  
20 to the May 5, 2023, negotiating session, WCSD and WSPA only met to negotiate on the following  
21 dates: June 21, 2023, August 11, 2023, and September 14, 2023. This timeline indicates only four  
22 (4) negotiating sessions in a five (5) month period. The Board finds that this extended period of  
23 negotiations is unreasonable and unwarranted given the expiration date of the existing contract,  
24 there was testimony indicating WCSD's budget was known in late May / early June, the clear need  
25 to have a new contract in place by the beginning of the school year and other factors which should  
26 be apparent to both parties. The Board further finds that there was substantial evidence presented  
27 showing that the delay was primarily caused by the actions of WCSD. Thus, WSPA has shown  
28 that WCSD engaged in bad faith bargaining by refusing to diligently meet and otherwise

1 unreasonably delaying the negotiations.

2 ii. Failure of WCSD to Discuss Ground Rules.

3 Per the discussion in Section A(1)(b) above, the facts and legal issues regarding this issue  
4 are identical for both parties and as a result no prohibited practice was found by the Board with  
5 respect to this issue.

6 iii. End run Bargaining and Direct Communications by WCSD.

7 NRS 288.150(1) provides that negotiations be conducted in good faith through  
8 representatives of the recognized employee organization. The provision is designed to preclude  
9 the employer from engaging in such practices as “end run bargaining” and direct dealing with the  
10 employees. *See e.g., In the Matter of the Ormsby County Teachers Association vs. Carson City*  
11 *School District*, Case No. A1-045273, Item No. 28 (EMRB, Feb. 10, 1975). The EMRB has held  
12 that, in general, an employer’s communication with its employees is an exercise of the  
13 constitutional right of free speech. *In the Matter of the Ormsby County Teachers Association v.*  
14 *Carson City School District*, Case No. A1-045339, Item No. 114 (EMRB, April 22, 1981).  
15 Furthermore, an employer is free to communicate to its employees regarding any general or  
16 specific views about unions so long as such communications do not contain threat of reprisal or  
17 promise of benefit. *Id.* These types of communication do not violate the spirit of 288.150 unless  
18 they contain subjects of negotiations not previously presented to the union’s negotiating  
19 representative. *Id.* Reporting previously presented positions or responses to allegations by an  
20 opposite party does not in and of itself constitute a violation of good faith bargaining. *Id.*

21 In this matter, WSPA relies heavily on a September 14, 2023, e-mail from Dr. Enfield. The  
22 Board finds that this e-mail provides reporting on previously presented positions presented to  
23 WSPA by WCSD and there is nothing in the e-mail that relates to a threat of reprisal or a promise  
24 of a benefit. Moreover, the fact that the e-mail was written after WSPA had declared impasse  
25 bolsters this finding. In sum, WSPA failed to meet its burden of proof to establish that the district’s  
26 communications weakened its negotiating position or otherwise harmed WSPA in any way.

27 b. Whether WCSD Discriminated Against WSPA for Political and/or Personal  
28 Reasons.

1 It is impermissible for a local government employer to discriminate against a union under  
2 NRS 288.270(1)(f) which states: “(f) Discriminate because of race, color, religion, sex, sexual  
3 orientation, gender identity or expression, age, physical or visual handicap, national origin or  
4 because of political or personal reasons or affiliations.” See *Steven B. Kilgore v. City of*  
5 *Henderson*, Case No. A1-045763, Item No. 550H (EMRB, March 30, 2005). Whether WCSD  
6 discriminated against WSPA, or its designated representatives, is a question of fact.

7 WSPA references an August 17, 2023, e-mail from Dr. Enfield as the basis for the  
8 discrimination complaint. In that e-mail Dr. Enfield stated:

9 Dear colleagues,

10 Negotiations between WCSD and WSPA have been ongoing since  
11 May and the district continues to negotiate with all its bargaining  
12 teams in  
13 good faith.

14 Unfortunately, due to the actions of WSPA’s Chief Negotiator and  
15 his refusal to negotiate over mandatory and permissive subjects of  
16 bargaining, the district has made the difficult decision to file a  
17 complaint with the Government Employee-Management Relations  
18 Board (EMRB) regarding WSPA’s prohibited activities. Attached is  
19 the filing for those interested in reading the details.”

20 As the Board noted in Sections A(1)(a)(i) and (ii) above, the Board determined that WSPA  
21 did in fact engage in prohibited practices by failing to negotiate in good faith regarding mandatory  
22 subjects of bargaining and engaged in surface bargaining on mandatory subjects as well as  
23 permissive subjects of bargaining. Thus, the allegations set forth in the August 17, 2023 e-mail  
24 from Dr. Enfield are substantially true. There is also no indication of personal or political  
25 discrimination regarding either WSPA or WSPA’s Chief Negotiator in the August 17<sup>th</sup> e-mail.<sup>5</sup>  
26 Moreover, the Board found that a good deal of the reluctance of WSPA to negotiate with WCSD  
27 stemmed from the attitude of WSPA’s Chief Negotiator who seemed to only want to focus on the  
28 pay for WSPA members and not the topics proposed by WCSD. In sum, there is no evidence  
suggesting that WCSD engaged in any prohibited discrimination under NRS 288.270.

29 c. WCSD’s Failure to Produce Documentation.

30 <sup>5</sup> The Board notes that the Chief Negotiator, Mr. Rondald P. Dreher, is neither an employee  
nor an employee organization under the EMRA.



1 Under NRS 288.270(1)(g), it is a prohibited practice for a local government employer to  
2 fail to provide requested documents to an employee organization. As noted in Section A(1)(c)  
3 above, the language in NRS 288.180(2) clearly shows that both parties can make requests for  
4 records and that the requests must be reasonable and related to mandatory subjects of bargaining.  
5 *Id.* Furthermore, once such a request is made, the information must be furnished without  
6 unnecessary delay. *Id.* Also, the Board examines such requests under the substantial relationship  
7 test found in *Truckee Meadows, supra*.

8 The evidence shows that WSPA's documentary requests related to the following subjects:  
9 (1) the billings of law firms and lawyers who were ostensibly performing work on behalf of  
10 Washoe County; (2) the number of FTE positions that are currently unfilled in the Washoe County  
11 School District; (3) information related to an IDP that was issued to Melissa Thoroughman; (4) all  
12 written communications between Dr. Susan Enfield and Board of Trustees President Beth Smith;  
13 (5) how many principals and assistant principals have been involuntarily transferred since January  
14 2019; (6) all communications between Dr. Troy Parks and/or Katie Wier and/or all Associate  
15 Chiefs and/or Superintendent Enfield and Paul LaMarca regarding Christina Oronoz's duty  
16 assignments and job performance; (7) all data to support the number of underrepresented students  
17 at TMCC/Northstar; and (8) Notes and recordings of Christina Oronoz' grievance.

18 The Board finds, with the exception of the request related to the number of open FTE  
19 positions within WCSD, all the of the WSPA requests were not substantially related to mandatory  
20 subjects of bargaining set out in NRS 288.150(2) and accordingly are deemed to be unreasonable.  
21 However, the WSPA's request relating to the open FTE positions was substantially related to  
22 funding availability, salary and benefits. Thus, based on the substantial evidence presented,  
23 WCSD's decision to withhold the information for FTE request constitutes bad faith bargaining.  
24 Bottom line, if in doubt, provide the information.

25 **B. WCSD's Claim that WSPA Improperly Declared Impasse.**

26 The issues here are: (1) whether NRS 288.200 or NRS 288.217 applies to WSPA; and  
27 (2) whether impasse was properly declared by WSPA. WCSD argues that NRS 288.200 applies  
28 since the union is a mixed unit which is comprised of licensed teachers/principals. WSPA argues



1 that NRS 288.217 applies to everyone in their unit.

2 1. Applicability of NRS 288.200 versus 288.217.

3 **NRS 288.200 states in relevant part:**

4 Except in cases to which NRS 288.205 and 288.215, or NRS  
5 288.217 apply:

6 1. If:

7 (a) The parties have failed to reach an agreement after at least six  
8 meetings of negotiations; and

9 (b) The parties have participated in mediation and by April 1,  
10 have not reached agreement, either party to the dispute, at any  
11 time after April 1, may submit the dispute to an impartial fact  
finder for the findings and recommendations of the fact  
finder. The findings and recommendations of the fact finder  
are not binding on the parties except as provided in subsection  
5. The mediator of a dispute may also be chosen by the parties  
to serve as the fact finder.

12 (emphasis added). Thus, to use this provision the following applies: (1) at least 6 negotiations  
13 must occur and (2) the parties have not reached an agreement and are unlikely to. NRS 288.217  
14 states in relevant part:

15 **288.217. Submission of dispute between school district and**  
16 **employee organization to arbitrator: Selection of arbitrator;**  
17 **hearing; determination of financial ability of school district;**  
18 **negotiations and final offer; effect of decision of arbitrator;**  
19 **content of decision**

20 1. The provisions of this section govern negotiations between  
21 school districts and employee organizations representing  
22 teachers and educational support personnel.

23 2. If the parties to a negotiation pursuant to this section have  
24 failed to reach an agreement after at least four sessions of  
25 negotiation, either party may declare the negotiations to be at  
26 an impasse and, after 5 days' written notice is given to the  
27 other party, submit the issues remaining in dispute to an  
28 arbitrator. The arbitrator must be selected in the manner  
provided in subsection 2 of NRS 288.200 and has the powers  
provided for fact finders in NRS 288.210.

\* \* \*

12. As used in this section:

(a) "Educational support personnel" means all classified  
employees of a school district, other than teachers, who are  
represented by an employee organization.

(b) "Teacher" means an employee of a school district who is

1 licensed to teach in this State and who is represented by an  
employee organization.

2 (emphasis added). Thus, NRS 288.217 applies if: (1) there have been 4 negotiating sessions; and  
3 (2) the unit is comprised of teachers and educational support personnel as defined in the section.

4 The testimony showed that some WSPA members are licensed to teach in Nevada,  
5 although they are not teachers, principals or vice-principals. The Board has previously determined  
6 that a “teacher” as currently defined in NRS 288.217(12)(b) includes all employees of a school  
7 district who are licensed to teach and who are represented by an employee organization. *Clark*  
8 *County Association of School Administrators v. Clark County School District*, Case No. A1-  
9 045593, Item No. 395 (EMRB, October 24, 1996).<sup>6</sup> All principals and vice-principals are required  
10 to be licensed to teach in order to hold their positions, and these positions comprise most of the  
11 members of WSPA. The Board also finds that the definition under NRS 288.217(12) covers any  
12 individual licensed to teach who is employed by a school district and who is represented by an  
13 employee organization, in this case WSPA. It is obvious that NRS 288.217 is meant to cover  
14 support personnel employed by a school district.

15 It is also abundantly clear to the Board that the Legislature intended to provide the benefits  
16 found under NRS 288.217 to all teachers and school support personnel who are not otherwise  
17 exempted from being part of a bargaining unit under NRS 288.170 or other provisions of law. The  
18 Nevada Supreme Court has further made it clear that the procedures laid out in NRS 288.217 are  
19 meant to be a direct benefit to educational bargaining units. Specifically, the Nevada Supreme  
20 Court stated that “...school teacher unions, have received legislative authorization to employ a  
21 relatively speedy special impasse procedure known as the ‘last best offer.’” *See County of Clark*  
22 *v. Clark County Park Rangers Association*, 111 Nev. 1133, 1134 (1995). *Id.* The procedure laid  
23 out in NRS 288.217 decreases the ability of management to use “hardball negotiating tactics” with  
24 school personnel. *Id.* At 1135. In sum, the Nevada Supreme Court has already determined that  
25 NRS 288.217 applies to unions that represent school personnel. Furthermore, unlike the situation  
26 in *Clark County, supra*, there is no other statute that defines who should be in a school bargaining

27 \_\_\_\_\_  
28 <sup>6</sup> The Board examined NRS 288.217(10)(b) which contains the exact same language as  
NRS 288.217(12)(b).

1 unit other than those limitations set forth in NRS 288.170.

2 If WCSD disputes whether some Washoe County School District personnel properly  
3 belong in WSPA, they can file a petition to have this Board examine the issue. Regardless, the  
4 Board finds that the personnel WCSD claim subjects WSPA to the requirements of NRS 288.200  
5 would ultimately be covered under NRS 288.117 regardless of whether they fall under NRS  
6 288.117(a) or (b) unless such personnel are precluded as a matter of law from belonging to a  
7 bargaining unit in the first instance. The Board also notes that even if the non-licensed WSPA  
8 personnel were not deemed to be teachers for the purposes of NRS 288.217(12)(a), they would  
9 undoubtedly fall under the definition of support personnel given the community of interest found  
10 under NRS 288.170. Furthermore, since no objection has been raised by WCSD thus far to  
11 WSPA’s membership to date, the Board must assume that these employees are lawful members of  
12 WSPA who are entitled to the benefits provided under NRS 288.217.

13 In sum, the Board finds that NRS 288.217 is the correct statute to use when determining  
14 the minimum number of bargaining sessions required before WSPA could declare an impasse.

15 2. Whether WSPA Properly Declared Impasse.

16 As the Board noted in the preceding Section, WSPA only had to engage in four (4)  
17 meaningful negotiations in order to declare an impasse. However, whether the impasse was  
18 properly declared turns on whether the negotiating sessions were meaningful and also on whether  
19 the parties were truly at an impasse.

20 i. Whether 4 meaningful Negotiating Sessions Occurred.

21 The Board has found that bargaining sessions took place between the parties on May 5,  
22 2023, June 21, 2023, August 11, 2023, and September 14, 2023. Given the evidence presented,  
23 there is no doubt that these four (4) sessions were meaningful. Thus, the minimum number of  
24 sessions had been met.

25 ii. Whether the Parties Were Truly at an Impasse.

26 The term “impasse” is not defined anywhere in NRS Chapter 288. However, in examining  
27 the EMRB decisions, it is quite clear that impasse is a question of fact. National Labor Relations  
28 Board (“NLRB”) cases on the subject are informative and may be used by the Board when they

1 choose. See e.g., *Truckee Meadows v. Int'l Firefighters*, 109 Nev. 367, 375-76 (1993) (“we have  
2 held that it is proper to look toward the NLRB for guidance on issues involving the EMRB). The  
3 NLRB has defined “impasse” as “the point in which the parties are warranted in assuming that  
4 bargaining would be futile.” *Thrifty Payless, Inc. D/B.A Rite Aid and United Food and*  
5 *Commercial Workers Local 8-Golden State*, 371 NLRB 124, (2022) (citations omitted).  
6 Furthermore, both parties must believe they are “at the end of their rope.” *Id.* (citations omitted).  
7 “Impasse in negotiations is synonymous with a deadlock; the parties have discussed a subject or  
8 subjects in good faith, and, despite their best efforts to achieve agreement with respect to such,  
9 neither party is willing to move from its respective position.” *Id.* (citations omitted). “The  
10 bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the  
11 importance of the issue or issues as to which there is disagreement, the contemporaneous  
12 understanding of the parties as to the state of negotiations are all relevant factors [the trier of fact  
13 should consider] in deciding whether an impasse [existed.]” *Id.* In analyzing these factors, the  
14 Board looks at the totality of the circumstances and one or two factors alone, however, may be  
15 sufficient to demonstrate the absence of impasse.” *Id.* The Board agrees with the NLRB on these  
16 points and hereby adopts the above definition and analytical framework regarding whether an  
17 impasse has occurred.

18 In this case, it is obvious to the Board that both parties do not agree that an impasse has  
19 occurred. In fact, WCSD at the last meeting was still trying to present a new proposal to WSPA,  
20 but WSPA refused to even view it. An impasse, just like bargaining, cannot be a lopsided affair  
21 and both parties must approach the task in good faith and with the intent to reach an understanding.  
22 Clearly, this type of attitude was lacking in this case. The Board therefore finds that an impasse  
23 had not yet occurred between the parties.

24 Normally the Board would send the parties back to the table to continue to negotiate when  
25 there is a finding of bad faith when an impasse is declared such as the case here. *City of Reno v.*  
26 *International Association of Firefighters, Local 731*, Case No. A1-045472, Item No. 253-A  
27 (EMRB, Feb. 8, 1991). However, per a discussion between the Board’s Commissioner and the  
28 attorneys for the parties in this matter, it appears that the parties met with an arbitrator the week

1 after the hearing on this matter to instead engage in two days of mediation. This mediation effort  
2 was apparently unsuccessful. Thus, despite the Board's normal practice to direct the parties to  
3 engage in further negotiations, it appears that ordering further negotiations in this particular case  
4 would simply be futile. As such, the Board finds that the parties may proceed to arbitration.

5 **C. WSPA's Claim that WCSD Failed to Communicate Properly.**

6 WSPA alleges that it was a prohibited practice for WCSD to not communicate with all of  
7 WSPA's designated representatives. In this regard, WSPA has failed to cite to any pertinent legal  
8 authority showing how WCSD communicated during negotiations was a prohibited practice.  
9 There is no law requiring either party to communicate with specific persons during negotiations.  
10 Normally, if a party is represented by an attorney, communications regarding logistics would be  
11 communicated through the attorney who would then discuss scheduling with the clients. The  
12 evidence shows that this is exactly what occurred in this case. Furthermore, issues regarding  
13 communications are usually addressed in the ground rules, and there were no ground rules in this  
14 case. The Board finds that WCSD did not engage in a prohibited practice regarding its manner of  
15 communications in this case.

16 **III. FINDINGS OF FACT**

17 1. The Board has determined the following facts based on a preponderance of  
18 evidence.

19 2. Except as set forth below, the entirety of Section II, entitled "Discussion" relating  
20 to the discussion of facts shall be incorporated herein by reference to avoid having the need to  
21 simply restate them in their entirety below.

22 3. There was substantial evidence presented showing that WCSD attempted to  
23 negotiate on topics that include, but are not limited to, modifying site factors, instituting a new  
24 system using funding, leave related issues, the length of time an employee would be required to  
25 work as well as grievance procedures.

26 4. The Board found that WSPA's negotiating team was very reluctant to negotiate on  
27 any topics other than pay despite the numerous mandatory subjects of bargaining raised by WCSD.

28 5. Statements made by WSPA indicating a lack of desire to negotiate in good faith

1 with WCSD include, but are not limited to: “not interested in opening up and rewriting the entire  
2 contract” and “we do not have to negotiate if you put it on the table.” WSPA Exhibit 6 at 0142.

3 6. The only WCSD proposals that seemed to have been given serious consideration  
4 by WSPA were modifying the titles for HR and changing the definition of an “employee” to  
5 “unit member.”

6 7. Given the evidence presented, and based upon the totality of WSPA’s conduct, the  
7 Board finds there is substantial evidence that WSPA engaged in bad faith negotiations with WCSD  
8 given WSPA’s failure to negotiate with WCSD over mandatory subjects of bargaining and by  
9 brushing aside other proposals regarding permissive subjects.

10 8. The Board finds that WSPA was quite dismissive about most of the proposals  
11 submitted by WCSD.

12 9. Evidence was presented showing that both parties broached the subject of ground  
13 rules and mutually decided that ground rules were not warranted.

14 10. The evidence shows that WCSD’s submitted a records request related to records  
15 kept by WSPA for non-contract days and hours worked by WSPA employees. WCSD stated these  
16 records were necessary to budget and cost out the time worked by WSPA employees, and the  
17 information was especially pertinent to Article 16 of the Collective Bargaining Agreement. The  
18 Board finds that the request was reasonable and significantly related to a subject within the scope  
19 of mandatory bargaining under NRS 288.150(2).

20 11. The Board found that WCSD did a good job of explaining the basis for their denial  
21 of WSPA’s requests while WSPA failed to provide little to no explanation regarding their refusals  
22 to provide requested information.

23 12. Subsequent to the May 5, 2023, negotiating session, WCSD and WSPA only met  
24 to negotiate on the following dates: June 21, 2023, August 11, 2023, and September 14, 2023.  
25 This timeline indicates only four (4) negotiating sessions in a five (5) month period. The Board  
26 finds that this extended period of negotiations is unreasonable and unwarranted given the  
27 expiration date of the existing contract, there was testimony indicating WCSD’s budget was known  
28 in late May / early June, the clear need to have a new contract in place by the beginning of the

1 school year and other factors which should be apparent to both parties.

2 13. The Board finds, with the exception of the request related to the number of open  
3 FTE positions within WCSD, all of the WSPA documentary requests were not substantially related  
4 to mandatory subjects of bargaining set out in NRS 288.150(2) and accordingly are deemed to be  
5 unreasonable. However, the WSPA's request relating to the open FTE positions was substantially  
6 related to funding availability, salary and benefits.

7 14. There was insufficient evidence presented to support WSPA's "end-run" or "direct  
8 communications claims.

9 15. There was insufficient evidence presented to support WSPA's discrimination  
10 claim.

11 16. The Board finds that bargaining sessions took place between the parties on May 5,  
12 2023, June 21, 2023, August 11, 2023, and September 14, 2023. Given the evidence presented,  
13 there is no doubt that these four (4) sessions were meaningful. Thus, the minimum number of  
14 sessions had been met for the purposes of NRS 288.217.

15 17. WSPA failed to adequately support its claim that WCSD communicated in an  
16 improper manner with WSPA.

17 18. To the extent a conclusion of law may be deemed a conclusion of fact, it shall be  
18 considered as such.

19 **IV. CONCLUSIONS OF LAW**

20 1. The legal authority for the Board to hear this matter is found in the Government  
21 Employee-Management Relations Act ("EMRA"), NRS Chapter 288, as well as Chapter 288 of  
22 the NAC.

23 2. The entirety of Section II, entitled "Discussion" is incorporated by reference herein,  
24 and to the extent practicable, and except as set forth below, shall be deemed to constitute  
25 conclusions  
26 of law.

27 3. The legal standard for bad faith bargaining is set forth in the Discussion Section  
28 above, and in particular Section A(1)(a). The Board utilized the standards set forth above in



1 making its determinations.

2 4. Surface bargaining is a strategy by which one of the parties merely goes through  
3 the motions, with no intention of reaching an agreement. In this regard, it is a form of bad faith  
4 bargaining. *City of Reno v. Int'l Ass'n of Firefighters, Local 731, Item No. 253-A (EMRB, Feb. 8,*  
5 *1991).*

6 5. The Board finds that there is substantial evidence of surface bargaining employed  
7 by WSPA given the totality of WSPA's conduct.

8 6. Agreement on ground rules is not a mandatory subject of bargaining under NRS  
9 288.150. In this instance the failure of the parties to agree on ground rules is not an indication of  
10 bad faith bargaining nor is there any evidence of a prohibited practice by either party in this regard  
11 since both parties discussed ground rules and decided they were not necessary.

12 7. Based on the evidence provided to the Board WCSD provided substantial evidence  
13 of bad faith on the part of WSPA regarding its failure to provide information, and as such, the  
14 Board finds that WSPA did engage in prohibited practices and bad faith bargaining with respect to  
15 document production as discussed herein.

16 8. Delaying negotiations is a prohibited practice under NRS 288.270(1)(a) and (e).  
17 *Clark County Public Employees Association, SEIU Local 1107 v. Housing Authority of Las Vegas,*  
18 *Case No. A1-045478, Item No. 270 (EMRB, July 25, 1991); International Brotherhood of*  
19 *Electrical Workers, Local 1245 v. City of Fallon, Case No. A1-045485, Item No. 269 (EMRB,*  
20 *July 25, 1991).* The Board will examine the totality of circumstances to determine whether any  
21 bad faith delay exists in this case. *See* legal standard for bad faith in Section A(1)(a) above.

22 9. Given the timelines set forth in the Discussion Section above, the Board finds that  
23 WSPA acted diligently relative to initiating negotiations and scheduling negotiations.

24 10. The Board finds that there was substantial evidence presented showing that the  
25 delay in scheduling negotiations after May 5, 2023 was primarily caused by the actions of WCSD.  
26 Thus, WSPA has shown that WCSD engaged in bad faith bargaining by refusing to diligently meet  
27 and otherwise unreasonably delaying the negotiations.

28 . . .





