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STATE OF NEVADA

EMPLOYEE-MANAGEMENT RELATIONS BOARD

CLARK COUNTY,

Petitioner,

vs.

CLARK COUNTY DEFENDERS UNION; CLARK COUNTY PROSECUTORS ASSOCIATION; SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1107 (NON-SUPERVISORY); SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1107 (SUPERVISORY); INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1908 (NON-SUPERVISORY); INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1908 (SUPERVISORY); JUVENILE JUSTICE PROBATION OFFICERS ASSOCIATION; JUVENILE JUSTICE SUPERVISORS ASSOCIATION; CLARK COUNTY LAW ENFORCEMENT ASSOCIATION, FOP LODGE #11; DISTRICT ATTORNEY INVESTIGATORS ASSOCIATION

Respondent.

Case No.: 2025-015

CLARK COUNTY'S PETITION FOR A DECLARATORY ORDER CLARIFYING THAT PAY PARITY IS NOT A MANDATORY SUBJECT OF BARGAINING

Petitioner, Clark County ("County" or "Petitioner"), by and through its counsel of record, Fisher & Phillips, LLP, hereby files this Petition for a Declaratory Order to the Employee Management Relations Board ("Board" or "EMRB") requesting a finding that Pay Parity is not a mandatory subject of bargaining and finding that Pay Parity is a

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prohibited subject of bargaining or in the alternative a permissive subject of bargaining, and insistence upon taking such a non-mandatory subject of bargaining to Binding Fact-Finding is bad faith bargaining.

STATEMENT OF THE NATURE OF THE PETITIONER'S INTEREST

The crux of this matter is the Clark County Defenders Union's ("CCDU" or "Defenders" or the "Union") improper attempt to insist that the County subject itself to binding fact-finding over the Union's proposed Salary Schedule Parity ("Pay Parity") Clause. Pay Parity is a prohibited subject of bargaining, or in the alternative a permissive subject of bargaining, **not** a mandatory subject. The County cannot be compelled to negotiate over a non-mandatory subject and, therefore, should not be forced to risk the inclusion of such a proposal in the CBA by being forced to present the topic at Binding Fact-Finding.

FACTUAL BACKGROUND

The CCDU is a union representing the Deputy Public Defenders and the Chief Deputy Public Defenders employed by Clark County. The Clark County Prosecutors Association ("CCPA" or "Prosecutors") is a union representing the Deputy District Attorneys and Chief Deputy District Attorneys (prosecutors) employed by Clark County. The CCDU and the CCPA are separate and distinct unions each representing a separate and distinct group of employees. *Clark County v. Clark County Defenders Union,* Case No. A1-046058, EMRB Item No. 792 (EMRB, Dec. 11, 2014) (removing the public defender employees from the prosecutors bargaining unit).

The County and the CCDU were parties to a collective bargaining agreement ("CBA") with the term of July 1, 2023 through June 30, 2024.[1] (Excerpts attached as **Exhibit 1**). During the negotiations for the successor agreement for Fiscal Year 2025 ("FY 25") (July 1, 2024 – June 30, 2025), the Union proposed a Pay Parity Clause (often called a "Me Too" clause) which would include language requiring the CCDU to receive

[1] The Board may take official notice of the CBA, on file with the Board, pursuant to NAC § 288.332.

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the same increases[2] and/or decreases in wages that are received by the CCPA.[3] (Salary Schedule Parity Proposal attached as **Exhibit 2**). The CCDU and the County attended six bargaining sessions between February 27, 2024 and April 17, 2024. The CCDU declared impasse on April 17, 2024.[4]

Pursuant to NRS § 288.190 and NRS § 288.200, the CCDU and the County attended mediation on August 1, 2024, with Mediator Najeeb Khoury, however, no agreement was reached. On January 28, 2025, the CCDU and the County voluntarily agreed to present two issues to Non-Binding Fact-Finding: (1) Article 22 – Longevity; and (2) CCDU's Proposal for a new article titled "Salary Schedule Parity." (Agreement for Factfinding attached as **Exhibit 3).** A Non-Binding Fact-Finding Hearing was held before Fact Finder Robert Hirsch on January 30, 2025.[5]

Fact Finder Hirsch issued his written recommendations on April 16, 2025. (Hirsch Recommendations attached as **Exhibit 5**). On May 3, 2025, the CCDU proposed to resolve the FY 25 negotiations by adding the following Pay Parity Clause to the CBA:

> Anytime the Clark County Prosecutors Association receives any salary schedule increase(s) **or decrease(s)**, then the salary schedules for all employees covered by this Agreement shall be adjusted under the same terms and conditions. This is to ensure and maintain the longstanding historical parity between the Deputy District Attorneys and Deputy Public Defenders in Clark County and throughout Nevada.

(CCDU's Pay Parity Proposal attached as **Exhibit 6**).

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[2] The CCDU's original proposal read "Anytime the Clark County Prosecutors Association receives any salary schedule increase(s), then the salary schedules for all employees covered by this Agreement shall be adjusted under the same terms and conditions. This is to ensure and maintain the longstanding historical parity between the Deputy District Attorneys and Deputy Public Defenders in Clark County, and throughout Nevada." But, the Union added the "or decreases" language at the Non-Binding Fact-Finding.

[3] Pursuant to the language of Article 31 – Compensation, the Defenders received a 3% wage increase on July 1, 2024, under the assumption that the current language would continue in effect. The current language indexes the COLA wage increase to the Consumer Price Index ("CPI") West Size Class B/C, All Urban Consumers, Not Seasonally Adjusted (Series ID Cuurn400SA0).

[4] During the same timeframe, the CCPA was bargaining over the Prosecutors' FY 25 CBA. The CCPA had proposed changes to the Prosecutors' salary schedules in addition to the COLA increase to wages.

[5] On April 3, 2025, the CCPA reached agreement with the County on a FY 25 CBA. In relevant part, the CCPA received an 8% increase to the minimum and maximum salaries of the Deputy District Attorneys and a 6% increase to the minimum and maximum salaries of Chief Deputy District Attorneys. This is also referred to as an increase to the "top and bottom" of the wage range, and employees making the maximum salary for their position are often referred to as "topped out." Due to circumstances in prior years, the CCPA's FY 24 salaries were already 1% higher than the salaries of the CCDU's FY 24 salaries. (CCPA FY 25 Agreement attached as **Exhibit 4**).

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On May 9, 2025, the County responded with an offer to resolve the FY 25 negotiations by giving the CCDU the 3% COLA, plus a 1% wage increase, and giving an 8% increase to the minimum and maximum salaries of the Deputy Public Defenders and a 6% increase to the minimum and maximum salaries of Chief Deputy Public Defenders. (County's Proposal attached as **Exhibit 7**).[6] The CCDU rejected the County's Proposal and requested a panel of arbitrators for Binding Fact-Finding. Binding Fact-Finding is currently scheduled for September 8, 2025, before Fact Finder Brian Clauss.

The County sent correspondence to the CCDU on May 30, 2025, clarifying that the County viewed Pay Parity as a permissive subject of bargaining, and the County **did not** and **would not** agree to voluntarily present Pay Parity at Binding Fact-Finding. (May 30, 2025 Correspondence attached as **Exhibit 8**). Most recently, on June 4, 2025, the CCDU clarified that it would be insisting on presenting its Pay Parity proposal (*i.e.*, Ex. 6) at the Binding Fact-Finding.

Thus, under the authority of NRS § 288.110, and NRS § 233B.120, the County submits this Petition for a Declaratory Order. In particular, the County requests a Declaratory Order stating that Pay Parity is not a mandatory subject of bargaining and a finding that insistence upon taking the prohibited (or alternatively permissive) subject of Pay Parity to Binding Fact-Finding is bad faith bargaining and a prohibited practice under NRS § 288.270(2)(b) in violation of the Employee Management Relations Act. The County further moves for an expedited ruling in this matter as the resolution of the FY 25 CBA and participation in Binding Fact-Finding has an ongoing impact on the parties' ability to resolve the FY 26 negotiations.

The County does not believe that a hearing on this Petition is necessary because the matters alleged in the Petition, supporting affidavits, and other written evidence in the Memorandum of Legal Authorities permit the fair and expeditious disposition of the Petition. This matter involves the purely legal question of whether **Pay Parity language**

[6] Notably, the County's Proposal would result in the Defenders having the **exact same salaries** as the Prosecutors for FY 25 — thereby achieving parity with the Prosecutors.

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(rather than the wages themselves) is a mandatory, permissive or prohibited subject of bargaining.

SPECIFIC PROVISIONS AND REGULATIONS IN QUESTION

The specific provisions and regulations in question are the following: NRS § 288.150 (outlining the list of mandatory subjects of bargaining); and NRS § 288.200 (regarding the procedures for Binding Fact-Finding to resolve contractual impasse).

POSITION OF THE PETITIONER

The County maintains the following position: Pay Parity Clause/"Me Too" language is **not** a mandatory subject of bargaining. There is no mention of Pay Parity provisions among the list of mandatory subjects of bargaining outlined in NRS § 288.150(2), and Pay Parity does not fall under any of the other enumerated mandatory subjects of bargaining. Pay Parity is not a simple request to negotiate a wage rate with reference to some external index or benchmark.[7] Rather, Pay Parity is a request to allow another employee organization, bargaining unit, or union to negotiate on behalf of the employees in the instant bargaining unit. As the CCPA is not the certified bargaining representative of the Defenders (*i.e.*, CCDU's bargaining unit employees), the CCDU cannot force the County to negotiate with another union over the wages of employees represented by the CCDU. Therefore, Pay Parity is a prohibited subject of bargaining because it runs contrary to the principles of having a recognized or certified bargaining representative for a specified bargaining unit. Alternatively, Pay Parity is a permissive subject of bargaining as only the local government employer has the power to voluntarily recognize the bargaining unit and the Union cannot compel negotiations over such subjects. Regardless of whether the Board finds the subject to be permissive or prohibited, insisting on presenting Pay Parity language at binding impasse fact-finding is an unlawful prohibited practice.

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[7] For example, the current language that references CPI is merely a request to use a benchmark that will become a fixed calculation at a given point in time.

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MEMORANDUM OF LEGAL POINTS AND AUTHORITIES

A. Pay Parity Is Not A Mandatory Subject Of Bargaining Under NRS § 288.150 And The CCDU Cannot Insist On Presenting Such A Pay Parity Clause At Binding Fact-Finding

The Board has previously held that a party can only be forced to negotiate (and by extension go to binding impasse fact-finding) over mandatory subjects of bargaining. *Int'l Ass'n of Fire Fighters, Local 1265 vs. City of Sparks*, Case No. A1-045362, EMRB Item No. 136, *5 (EMRB, Aug. 21, 1982); *see also Juvenile Justice Supr. Ass'n v. County of Clark*, Case No. 2017-20, Item No. 834 (EMRB, Dec. 13, 2018); *Nevada Classified Sch. Employees Ass'n Ch. 5, Nevada AFT v. Churchill County Sch. Dist.*, Case No. 2020-008, Item No. 863 (EMRB, May 20, 2020). The parties can voluntarily agree to present proposals on a permissive subject at fact-finding, but may not be compelled to do so. *Washoe County School District v. Washoe School Principals' Association, et al.*, Consolidated Case 2023-024 (consolidated with 2023-031), EMRB Item #895, *8 (EMRB, March 29, 2024). Parties are not permitted to negotiate over, or include provisions in their CBAs, pertaining to prohibited subjects of bargaining. *See In re Natl. Maritime Union of Am.*, 78 N.L.R.B. 971, 981-982 (NLRB, Aug. 17, 1948) (". . . what the Act does not permit is the insistence, as a condition precedent to entering into a collective bargaining agreement, that the other party to the negotiations agree to a provision or take some action which is unlawful or inconsistent with the basic policy of the Act. Compliance with . . . collective bargaining cannot be made dependent upon the acceptance of provisions in the agreement which, by their terms or in their effectuation, are repugnant to the Act's specific language or basic policy").

Any provision of a CBA on a prohibited subject of bargaining is illegal and shall be given no effect. *Cf. Newspaper Agency Corp.,* 201 N.L.R.B. 480, 492 (NLRB, Jan. 29, 1973) (NLRB invalidated clause recognizing Pressmen Union over competing union reasoning that "What Respondent could not properly do under the Act was to relegate to itself the selection of a bargaining representative for the employees who ultimately would comprise the complement of the new department, or prematurely extend recognition to

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one of two competing labor organizations."). The determination of whether a proposal is a mandatory subject of bargaining is a determination that must be made by the Board. *Clark County School Dist. v. Local Gov't Emp. Mgmt. Relations Bd.*, 90 Nev. 442, 446, 530 P.2d 114, 117 (Nev. 1974).

1. Pay Parity Is Not Enumerated As A Mandatory Subject Of Bargaining Under NRS § 288.150 And Does Not Bear A "Significant Relationship" To A Mandatory Subject

NRS § 288.150 lists all the mandatory subjects of bargaining and Pay Parity is not included in the list. *See* NRS § 288.150(2).

The Union may attempt to argue that Pay Parity is nonetheless a mandatory subject of bargaining by means of the significant relationship test, see NAC 288.100, by proposing that Pay Parity is significantly related to the subject of wages, but this argument is misleading.

The "significant relationship" test, when properly applied, serves to define the scope of mandatory bargaining but does not expand it. *Ormsby Cty Ed. Ass'n vs. Carson City School Dist.*, Case No. A1-045549, EMRB Item No. 333, at *3 (EMRB, June 27, 1994). Indeed, because the legislature has decreed in NRS § 288.150(2) that "the scope of mandatory bargaining is limited to" the enumerated list, the Board must act within the bounds of the legislature's determination. *Nevada Serv. Emps. Union, Local 1107 v. Orr*, 121 Nev. 675, 119 P.3d 1259 (2005). Thus, the Board cannot, even in principle, expand the scope beyond the legislature's determination. *White Pine Assoc. of Classroom Teachers v. White Pine Cty Sch. Dist.,* Case No. A1-045288, EMRB Item No. 36 (EMRB, May 30, 1975). In this way then a proper application of the significant relationship test asks whether a particular item can be said to fit within the statutory scope of mandatory bargaining by being both directly and significantly related to one of the enumerated subjects. *Washoe Cty v. Washoe Cty Employees Assoc.*, Case No. A1-045365, EMRB Item No. 159 (EMRB, March 8, 1984). This is consistent with how other jurisdictions that have adopted the same test have applied it. *State Dept. of Admin. v. Public Employees Relations Bd*., 257 Kan. 275, 284, 290, 894 P.2d 777 (1995) (the same "significantly

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related" test asks whether the topic is "related in kind to a mandatory subject of bargaining.")

The "significant relationship" test only serves its purpose if it is reasonably applied. *Truckee Meadows v. Int'l Firefighters*, 109 Nev. 367 (1993). In order to reasonably apply the test, the Board may look to and evaluate sources both from within and outside of the Act to resolve questions concerning mandatory subjects of bargaining. *Washoe Ed. Ass'n. vs. Washoe Cty Sch. Dist.*, Case No. A1-046034, EMRB Item No. 778, at *2 (EMRB, April 4, 2012) (*citing City of Reno v. Reno Police Protective Ass'n*, 98 Nev. 472, 653 P.2d 156 (1982)).

While at first blush one might think Pay Parity would bear a significant relationship to wages — as many would equate "pay" with "wages" — this is only superficial. Pay Parity is readily distinguishable because it is something else entirely. It fundamentally changes the issue from a question of **"what"** to a question of **"who."** Pay Parity does not tell you *what* the actual wages are to be. Instead, it tells you only *who* is to negotiate wage changes. And by designating who, Pay Parity often is an attempt to sluff that obligation off onto another union. *Int'l Longshoremen's Ass'n v. NLRB*, 277 F.2d 681, 683 (D.C. Cir., 1960) (concurring). This is exactly what has happened here as CCDU's Pay Parity proposal proposes only to have a completely different organization, the CCPA, decide what the wages are to be for the employees in the CCDU bargaining unit. No part of NRS § 288.150(2) has anything to do with designating another union to negotiate on one's behalf, therefore Pay Parity bears no relationship, let alone one that is direct and significant, to any of the listed mandatory subjects of bargaining.

This approach of letting another union carry your water even contravenes NRS § 288.150(1) which provides that negotiations are to be "…with the designated representatives of the recognized employee organization . . . for each appropriate bargaining unit among its employees." The Defenders are a separate and distinct "appropriate bargaining unit" from the Prosecutors' unit. *Clark County v. Clark County Defenders Union*, A1-046058, EMRB Item No. 792 (EMRB, Dec. 11, 2014). The

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mandate of NRS § 288.150(1), and a consequence of Item No. 792, is for the County to bargain with the recognized employee organization for this separate unit. That means bargaining with CCDU, and not with CCPA, over the Defenders. As the significant relationship test cannot be properly used to undermine a statutory standard, it cannot be used here to find that Pay Parity is a mandatory subject of bargaining.

Nothing would prevent the CCDU from requesting the same dollar amount or same percentage increase that was received by another unit, but this could be done without a Pay Parity clause and without shifting the duty to bargain over the amount of wages to a different union.[8] Thus, Pay Parity serves a different primary function than merely calculating wages. As the CCDU is demanding a different union serve as the bargaining representative for its members, the Board should find Pay Parity to be a prohibited subject of bargaining.

Moreover, even if the Board concluded there was a "significant relationship" to wages (which it should not do), such a conclusion would not prevent the Board from also finding Pay Parity to be a prohibited subject of bargaining. For example, a union and an employer could negotiate a provision into a CBA that stated, "all male employees will be paid $5.00 more per hour than female employees." Such a clause would bear a clear relationship to wages but would still be a prohibited subject of bargaining because such a provision is illegal (and discriminatory) on its face.

2. The Board Should Find Pay Parity To Be A Prohibited Subject Of Bargaining As Pay Parity Is More Akin To A Prohibited Recognition Clause

The purpose of Pay Parity language is different from simply negotiating for wages equal to those of a different bargaining unit in that Pay Parity is a requirement that if some other union negotiates for a change, then the subject union automatically receives the same change. (*See* Ex. 6). In other words, it is language that puts the burden of

[8] The Union will likely argue that Pay Parity is no different than using some external benchmark to set wages (*e.g.*, CPI, tax revenue, etc.), and thus bears a direct relationship to the calculation of wages themselves. This argument is misleading as those objective measurements do not alter the relative bargaining power of the parties or take away the fundamental responsibilities of the union to negotiate in the best interest of the employees in the bargaining unit.

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negotiating wages on a different union than the certified bargaining representative selected by the employees in the subject unit.[9]

On this theory a number of other boards overseeing public sector collective bargaining have determined that a pay parity clause is a prohibited subject of bargaining. *E.g. City of New York and Patrolmen's Benevolent Assoc*., 9 PERB 4507, 1976 WL 395126 (N.Y. PERB, 1976) (addressing Pay Parity and reasoning that "in effect, the [union] seek[s] to be silent partners in negotiations between the employer and employees in another negotiating unit. The vice in such an agreement…was that it would improperly inhibit negotiations between the City and another union representing employees in a different unit.") (citing a number of other cases from other state boards) (emphasis in original).

Under the National Labor Relations Act ("NLRA"), requiring negotiation over Pay Parity is equivalent to requiring a union to negotiate over a recognition clause (*i.e.*, which employees will be represented by the union). The United States Court of Appeals for the D.C. Circuit has reasoned that "[a]s a matter of law the union cannot resort to economic pressure, including strike action, to force the employer to agree ***to deal with representatives of a unit different from the unit certified by the Board***." *Int'l Longshoremen's Ass'n v. NLRB*, 277 F.2d 681, 683 (D.C. Cir., 1960) (concurring). The NLRB has also ruled that agreement to a personal services contract provision — which would have allowed "the employer, in effect, to deal with its employees [directly] rather than with their statutory representative — was a permissive subject of bargaining." *Retlaw Broad. Co. v. NLRB*, 172 F.3d 660, 667 (9th Cir. 1999) (emphasis added).

The Nevada Supreme Court has acknowledged that the National Labor Relations Board ("NLRB") decisions and cases interpreting the NLRA have been helpful to the

[9] The County's wage proposal to the CCDU would make the Defenders' wages equal to the Prosecutors' wages. *Compare* Ex. 5 *with* Ex. 8. An employer is always free to offer the same wage proposal to two different unions. Similarly, a union is always free to propose a wage increase that is similar to what was obtained by another union. The CCDU's parity proposal is designed to tie an employer's hand based on what has happened in its negotiations with another union.

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Board when interpreting and applying Chapter 288. *Truckee Meadows v. Int'l Firefighters*, 109 Nev. 367, 375 (1993). This is appropriate here where prohibited practices language under NRS Chapter 288 are almost identical to the NLRA. *Compare* 29 USC § 158(b)(3) *with* NRS § 288.270(2)(b); *see also State, Dep't of Bus. & Indus., Office of Labor Com'r v. Granite Const. Co*., 118 Nev. 83, 88, 40 P.3d 423, 426 (2002) (emphasis added) ("When a federal statute is adopted in a statute of this state, a presumption arises that the legislature knew and intended to adopt the construction placed on the federal statute by federal courts. This rule of [statutory] construction is applicable, however, only if the state and federal acts are substantially similar and the state statute does not reflect a contrary legislative intent."). Additionally, NLRB case law has identified many of the same mandatory subjects of bargaining that are itemized in NRS § 288.150. *See Labor Board v. Borg-Warner Corp*., 356 U.S. 342, 348-349 (1958) (". . . establish the obligation of the employer and the representative of its employees to bargain with each other in good faith with respect to 'wages, hours, and other terms and conditions of employment' . . ."); *see also* ABA/Bloomberg Law, *The Developing Labor Law: The Board, the Courts, and the National Labor Relations Act*, Chapter 16. Subjects Of Bargaining at § 16.IV (online edition, current through December 31, 2023) (listing topics the NLRB has found to be mandatory subjects of bargaining).

Only the EMRB has the power to certify an employee organization as a bargaining representative, and only the local government employer has the initial ability to recognize the union as the bargaining representative for the unit. *See* NRS § 288.160. Management could not refuse to negotiate with the certified representative of the employees in a bargaining unit, and, therefore, should also not be compelled to negotiate with a different union via a Pay Parity provision. Similarly, the EMRB has held that a union's attempt to force the employer to recognize and negotiate for employees outside the existing bargaining unit (who may not wish to be represented by the union) violates the Act. *Int'l Ass'n of Fire Fighters, Local 1265 vs. City of Sparks*, EMRB Item No. 136, at *8.

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In fact, the EMRB held that compelling negotiations with another bargaining unit was not a mandatory subject of bargaining despite the "recognition clause" being among the itemized list of mandatory subjects of bargaining in NRS § 288.150(2)(j). *Id*. ("That the determination of the bargaining unit is a right vested in the local government employer pursuant to NRS 288.170(l) and not a mandatory subject of bargaining under NRS 288.l50(2)."). Thus, logic would hold that the inverse principle — *i.e.*, where the union attempts to negotiate for its employees to be represented by a different union — would also hold true as a prohibited practice. *Id.*

3. The Board Should Revisit The Subject Of Pay Parity And Should Find Pay Parity To Be A Prohibited Subject Of Bargaining

In one of the Board's early cases, the Board previously ruled that agreeing to a parity or matching agreement, and/or maintaining a pattern among bargaining units is not a prohibited practice, but did not discuss Pay Parity in terms of whether it was a mandatory or permissive subject of bargaining. *Clark County Teachers Ass'n vs. Clark County School District*, EMRB Item No. 131, Case No. A1-045354, *6 (EMRB, July 12, 1982). The Board ultimately concluded Pay Parity was not a prohibited subject based primarily on the long-term practice of parties negotiating for patterns or parity provisions among different bargaining units. *Id.* at *4.[10] However, the laissez-faire approach displayed in Item No. 131 is inconsistent with the statutory text calling for negotiations to be conducted "for each appropriate bargaining unit." NRS § 288.150(1). Subsequent to that decision, the Nevada Supreme Court has confirmed that bargaining can only lawfully occur within the bounds of the statutory authorization to bargain. *Nevada Highway Patrol Ass'n v. State*, 107 Nev. 547, 551, 815 P.2d 608, 611 (1991) ("…we adopt the majority common law rule and hold that absent express statutory authority, Nevada public officials and state agencies do not have the authority to enter into collective bargaining agreements with public employees"). The subsequent decision in *Highway*

[10] *Id.* at *4 (The Board even noted the critical problem that "the size and negotiating strength of one bargaining unit should not . . . be the only determiner of the salary package of public employees.").

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Patrol points out an analytical deficiency if the Board were to simply look the other way, as it did in Item No. 131, instead of measuring a topic against the actual statutory text. *Id.* Comparison to the actual statutory text has become the more contemporary approach that this Board has followed. *Cf. Nye County v. Nye County Association of Sheriff's Supervisors and David Boruchowitz (Including Counterclaim)*, Case 2022-009, EMRB Item No. 887, at *2 (EMRB, July 19, 2023) (even though the parties' CBA agreed to include the Administrative Captain position in the bargaining unit, the position was found to be supervisory and thus could not legally be in same bargaining unit as subordinates). This alone calls for the Board to at least re-visit the question of whether Pay Parity is a prohibited subject.

While Item No. 131 held that Pay Parity was not a prohibited subject of bargaining, more recent decisions from the EMRB have cast down on this point by clarifying the principle under the Act that a union that has been recognized for one bargaining unit cannot negotiate on behalf of another bargaining unit.

That line of subsequent decisions begins with *IAFF Local 1265 v. City of Sparks,* Case No. A1-045362, EMRB Item No. 136 (EMRB, Aug. 21, 1982) in which this Board found it to be a prohibited labor practice for a union to attempt to bargain on behalf of employees outside its unit. In *Water Emp. Assoc. v. LVVWD*, Case No. A1-045418, EMRB Item No. 204 (EMRB, March 16, 1988) this Board held that even when one organization represents two different units it cannot combine its bargaining team so that representatives from one unit are bargaining on behalf of another unit. In *Stationary Engineers, Local 39, Int'l Union of Operating Engineers v. Lyon County*, Case No. A1-045457, EMRB Item No. 241 (EMRB, June 11, 1990) this Board held that a co-mingled bargaining team with members representing different units was unlawful.

In the case of *Clark County Education Assoc. v. Clark County School Dist. and Intervenor Education Support Employees Assoc.*, the ESEA entered into an agreement with the Teamsters to assist the ESEA in performing its duties as the recognized bargaining agent. Case No. 2023-009, EMRB Item No. 890. at *3 (EMRB, Jan. 25,

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2024). While the Board found that CCSD did not directly deal with the Teamsters and the Teamsters only assisted in negotiations, had the Board found that CCSD negotiated directly with the Teamsters this would have been a prohibited practice despite an agreement between ESEA and the Teamsters authorizing the Teamsters to negotiate on behalf of the ESEA. *Cf. Id.* at *3 ("It is clear that once a unit has been recognized, the governmental employer is obligated to bargain only with the unit which has been recognized – which in this case is ESEA. Furthermore, it is clear to this Board that any attempt by a governmental employer to bargain with an employee of a recognized bargaining unit on behalf of an unrecognized bargaining unit would constitute a prohibited practice under NRS 288.170."). The Board has found that the recognized bargaining representative of the unit cannot simply "pawn-off" its duties to negotiate and represent its members on a different union or organization. *Id.* This indicates that Pay Parity — which is essentially a request to have an entirely different union serve as the bargaining representative — would be viewed similarly by the Board and found to be a prohibited subject of bargaining.

In each of these cases, an employee organization voluntarily sought to bargain on behalf of other units and the Board shot down that approach. When it comes to Pay Parity, it is not even an issue of a union volunteering for something; it is rather an issue of a union being involuntarily drafted to negotiate for another unit. In this case, the CCPA has not volunteered to negotiate for the Public Defenders, instead the Defenders seek to saddle the CCPA with that obligation, whether they want it or not.

The Board's ban on individuals who are not the recognized bargaining representatives of the bargaining unit negotiating a CBA would thus tend to indicate that the Board would reconsider its position on Pay Parity and would find Pay Parity to be a prohibited subject of bargaining.

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4. If The Board Does Not Find Pay Parity To Be A Prohibited Subject, The Board Should Still Find It To Be a Permissive Subject

Even if the Board were to conclude that Pay Parity was not a prohibited subject of bargaining, the fact that only the local government employer can voluntarily recognize a union (thereby defining the scope of the bargaining unit) suggests that this is — at most — a permissive subject of bargaining. Where only one side has control over a topic (*e.g.*, handbook rules; personnel policies and ordinances) the topic cannot be a mandatory subject of bargaining. *See Service Employees International Union, Local 1107 v. Clark County,* EMRB Case 2021-019, Item No. 881, at *5 (EMRB, Oct. 4, 2022) (The County's decision to draft, prepare, and implement the Ordinance and Directives was a management decision and thus was not a mandatory subject of bargaining); *see also Int'l Assoc. of Fire Fighters, Local 1908 v. Clark County*, EMRB Case No. A1-046120, Item No. 811 (EMRB, Dec. 17, 2015) ("It is a bedrock principle of the Act that a bargaining agent and an employer will negotiate to jointly establish the terms and conditions of employment affecting any position within the represented bargaining unit . . . There is no middle ground under the Act that allows an employer to treat an employee in a bargaining unit position as only partially . . . covered by a collective bargaining agreement.")

Additionally, if the Board is unwilling to find Pay Parity is a prohibited subject of bargaining, the reasoning set forth in the *Clark County Teachers Ass'n* case would tend to suggest that Pay Parity is at most a permissive subject of bargaining. *Clark County Teachers Ass'n vs. Clark County School District*, EMRB Item No. 131, Case No. A1-045354, *6 (EMRB, July 12, 1982). The Decision in the *CCCTA v. CCSD* case contains absolutely no reference to Pay Parity being a mandatory subject of bargaining. Concluding Pay Parity was a mandatory subject of bargaining would have been a ready defense to a bad faith bargaining charge and simpler grounds to justify the Board's Decision than the discussion of whether Pay Parity was permissible versus prohibited which actually appears in the Decision. *Id*. As the simpler "mandatory" finding is absent,

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this case suggests that the 1982 Board considered Pay Parity to be a permissive subject and not a mandatory subject of bargaining.

B. A Finding That Pay Parity Was A Mandatory Subject Of Bargaining Would Be Highly Disruptive To The Collective Bargaining Process

1. Pay Parity Clauses Alter The Relative Bargaining Power Of All Parties Involved

Pay Parity provisions present a host of problems, including altering the bargaining power of the two unions. While the CCPA and CCDU bargaining units are relatively similar in size, this is not always the case.[11] Assume, for example that an employer is negotiating with two unions, one "Big" (5,000+ employees) and one "Small" (≈10 employees). If Big Union has Pay Parity language in its contract, then management is going to approach negotiations with Small Union as if it has all the employees of both unions (≈5,010 employees), making it virtually impossible for Small Union to negotiate for any increases management might be willing to give to just Small Union but not Big Union.[12] It also would allow Big Union to focus its negotiations on different issues besides wages, meaning Big Union is likely to end up negotiating for more "other benefits" than Small Union will be able to negotiate for.

The CCDU and the CCPA are two different unions with different priorities and different benefits in their contracts (*e.g.*, vacation sell back, etc.).[13] By altering the relative bargaining power of the two units in their negotiations with the County, Pay Parity provisions would increase the number of differences in benefits between the units. This would negatively impact the County's overall bargaining strategy of maintaining a

[11] The County has 10 different bargaining units ranging in size from the Clark County Law Enforcement Association ("CCLEA") with 21 members to the Service Employees International Union ("SEIU") with 5,009 members.

[12] For example, management might be willing to give a $100 wage increase to Small Union when the total cost is $1,000 but would not be willing to give that same $100 increase to Small Union when it would mean $501,000.

[13] The CCDU may attempt to justify Pay Parity by arguing that the Prosecutors and the Defenders both represent parties in the criminal court system. However, similarity is not a limitation on which other union the CCDU could seek to have parity with, and hypothetically force the County to defend against in Binding Fact-Finding. For example, if parity were a mandatory subject of bargaining, nothing would stop the CCDU from seeking parity with a bargaining unit with different job duties (*e.g.*, firefighters); from a different county (*e.g.*, Washoe County); from a different state (*e.g.*, Orange County, CA); or even from the private sector (*e.g.*, casino employees represented by the Teamsters, etc.).

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pattern or consistency across bargaining units. Finally, Pay Parity language would essentially negotiate parity into all future contracts, requiring greater concessions by management to remove the established parity language. This would lessen the County's bargaining power in future rounds of collective bargaining.

2. If Pay Parity Were A Mandatory Subject Of Bargaining, Binding Fact-Finding Could Result In Conflicting CBA Provisions

Additionally, if Pay Parity were a mandatory subject of bargaining, an employer could end up with conflicting obligations to different unions as the result of binding impasse fact-findings. For example, Union A could obtain a clause saying its wages must be equal to Union B (A = B), while Union B could obtain a clause saying that its wages must always be 5% more than Union A (B = A + 5%). Functionally, both awards could not be implemented. This exact scenario arose during the FY 26 negotiations with the Prosecutors and the Defenders. During FY 26 negotiations, the CCPA passed a wage proposal requiring the wages of the Prosecutors to always be 10% higher than the wages of the Defenders.[14] (*See* CCPA FY 26 Wage Proposal attached as **Exhibit 9**). At the same time, the CCDU again proposed Pay Parity language which would require the wages of the Defenders always be equal to the wages of the Prosecutors. (*See* CCDU FY 26 Wage Proposal attached as **Exhibit 10).**

CONCLUSION

Based on the foregoing, the County requests a Declaratory Order stating that Pay Parity is a prohibited subject of bargaining (and is NOT a mandatory subject of bargaining) and insisting on presenting Pay Parity language at Binding Impasse Fact-Finding is an unlawful prohibited practice. Alternatively, the County requests a Declaratory Order finding Pay Parity is a permissive subject of bargaining and insisting

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/ / /

[14] The CCPA has since resolved FY 26 negotiations without the 10% wage differential language in the CBA.

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on presenting Pay Parity language at Binding Impasse Fact-Finding is still an unlawful prohibited practice.

DATED this 23rd day of July, 2025.

FISHER & PHILLIPS LLP

By: */s/ Allison L. Kheel, Esq.*
Mark J. Ricciardi, Esq.
Allison L. Kheel, Esq.
300 South Fourth Street,
Suite 1500
Las Vegas, NV 89101
Attorneys for Petitioner

FISHER & PHILLIPS LLP
300 S Fourth Street, Suite 1500
Las Vegas, Nevada 89101

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of July, 2025, I filed by electronic means the foregoing **CLARK COUNTY'S PETITION FOR A DECLARATORY ORDER CLARIFYING THAT PAY PARITY IS NOT A MANDATORY SUBJECT OF BARGAINING** as follows:

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

I also served one copy of the foregoing, via certified mail, return receipt requested, prepaid postage, with an electronic copy addressed to the following:

P. David Westbrook, Esq., President
Clark County Defenders Union
201 Las Vegas Blvd., South
Unit 2173
Las Vegas, NV 89101
pdavidwestbrook@gmail.com

Binu Palal, President
Clark County Prosecutors Association
P.O. Box 2364
Las Vegas, NV 89125
Binu.Palal@clarkcountydanv.gov

Sam Shaw, Executive Director
Service Employees International Union,
Local 1107 (Non-Supervisory)
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Michelle Maese, President
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Las Vegas, Nevada 89101

Patrick Rafter, President
International Association of Fire Fighters,
Local 1908 (Non-Supervisory & Supervisory)
6200 West Charleston Blvd,
Las Vegas, NV 89146
secretary1908@icloud.com

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Juvenile Justice Probation Officers Association
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EppengKF@Clarkcountynv.gov

Tina Kohl, President
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Kenneth Hawkes, President
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2901 East Sunset Road,
Las Vegas, NV 89120
Kenneth.Hawkes@clarkcountynv.gov

Jocelyn Scoggins, President
District Attorney Investigators Association
325 S. 3rd Street, #216
Las Vegas, NV 89101
jocelyn.scoggins@clarkcountydanv.com

I also served one electronic courtesy copy of the foregoing, addressed to the following:

Adam Levine, Esq.
Law Office of Daniel Marks
610 South Ninth Street
Las Vegas, Nevada 89101
Alevine@danielmarks.net
Attorneys for Respondent, Clark County Defenders Union

/ / /

/ / /

/ / /

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Nathan R. Ring, Esq.
REESE RING VELTO, PLLC
3100 W. Charleston Blvd., Ste. 208
Las Vegas, Nevada 89102
Nathan@RRVLawyers.com
Counsel for Respondent, Clark County Prosecutors Association

By: */s/ Darhyl Kerr*
An employee of Fisher & Phillips LLP

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E-mail: akheel@fisherphillips.com
Attorneys for Petitioner, Clark County

STATE OF NEVADA

EMPLOYEE-MANAGEMENT RELATIONS BOARD

CLARK COUNTY,

Petitioner,

vs.

CLARK COUNTY DEFENDERS UNION; CLARK COUNTY PROSECUTORS ASSOCIATION; SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1107 (NON-SUPERVISORY); SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1107 (SUPERVISORY); INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1908 (NON-SUPERVISORY); INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1908 (SUPERVISORY); JUVENILE JUSTICE PROBATION OFFICERS ASSOCIATION; JUVENILE JUSTICE SUPERVISORS ASSOCIATION; CLARK COUNTY LAW ENFORCEMENT ASSOCIATION, FOP LODGE #11; DISTRICT ATTORNEY INVESTIGATORS ASSOCIATION

Respondent.

Case No.:

INDEX OF EXHIBITS TO CLARK COUNTY'S PETITION FOR A DECLARATORY ORDER CLARIFYING THAT PAY PARITY IS NOT A MANDATORY SUBJECT OF BARGAINING

INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION	PAGE NOs
1	Excerpts of CBA with CCDU Effective July 1, 2023 – June 30, 2024	0001 - 0010

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EXHIBIT	DESCRIPTION	PAGE NOs
2	Salary Schedule Parity Proposal	0011 - 0012
3	Agreement for Factfinding Dated January 30, 2025	0013 - 0017
4	CCPA Fiscal Year 2025 Agreement	0018 - 0024
5	Arbitrator Hirsch Findings & Recommendations	0025 - 0033
6	CCDU's Pay Parity Proposal	0034 - 0035
7	County's Compensation Proposal	0036 - 0042
8	May 30, 2025 E-mail Correspondence	0043 - 0045
9	CCPA Fiscal Year 2026 Wage Proposal	0046 - 0047
10	CCDU Fiscal Year 2026 Wage Proposal	0048 - 0049

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300 S Fourth Street, Suite 1500
Las Vegas, Nevada 89101

Exhibit 1

Agreement Between

Clark County

and

CLARK COUNTY DEFENDERS UNION

July 1, 2023 – June 30, 2024

AGREEMENT

BETWEEN

THE COUNTY OF CLARK

AND

CLARK COUNTY DEFENDERS UNION

JULY 1, 2023

TO

JUNE 30, 2024

TABLE OF CONTENTS

ARTICLE 1
Agreement

This Agreement is made and entered into this 1st day of July 2023, by and between the Clark County Defenders Union, hereinafter referred to as the "Union," and the County of Clark, a government entity of the State of Nevada, hereinafter referred to as the "County."

ARTICLE 2
Intent

It is the purpose of this Agreement to promote and provide a responsible labor relations policy between the County and the employees covered herein; to secure an orderly and equitable disposition of grievances which may arise under the Agreement; and to set forth the full and entire understanding of the parties, reached as a result of good faith negotiations regarding the wages, benefits, hours and other specified conditions of employment of the employees covered hereby. Further, we acknowledge that each employee of the Union is responsible for quality service to the citizens of Clark County and his or her clients by working with courtesy, efficiency, confidentiality, and integrity.

It is intended by the provisions of this Agreement that there be no abrogation of the duties, obligations, or responsibilities of the County expressly provided for by federal laws, state statutes, and/or local ordinances, except as expressly limited herein.

ARTICLE 3
Recognition

1. The County recognizes the Clark County Defenders Union (CCDU) as the sole and exclusive bargaining agent for the classifications listed in Appendix A of this Agreement. The terms and conditions of this Agreement shall apply to those classifications listed in Appendix A of this Agreement, regardless of membership in the Union.

2. The terms and conditions of this Agreement shall not apply to part-time, or temporary employees. Notwithstanding any provision in this agreement, exempt employees, as designated by NRS 245.216, shall not be entitled to tenure or have access to review, grievance, appeal or arbitration.

3. The County shall provide the Union, no later than the fifteenth (15th) of each month, the following with respect to attorney positions within the Office of the Public Defender and Office of the Special Public Defender:

    a. A separate report identifying new hires, temporary employees, terminated employees, and transfers.

    b. Each report shall be submitted in alphabetical order.

    c. Each report shall list the following information: employee's name, home

address, classification (job title), employment status (full time, part time, or per diem), division name, date of hire, benefit accrual date, number of hours paid in that month, and wage rate.

d. All information is furnished for the exclusive use of the Union and shall not be used for any other purpose or be given to any other person or organization without the express written approval of the employee involved.

4. On a quarterly basis, the County shall provide to the Union a complete list of County employees eligible for inclusion in the unit, and shall include the following information: employee's name, home address, classification (job title), employment status (full time, part time, or per diem), division name, date of hire, benefit accrual date, number of hours paid in that month, and wage rate. All information is furnished for the exclusive use of the Union and shall not be used for any other purpose or be given to any other person or organization without the express written approval of the employee involved.

ARTICLE 4
No Discrimination

The County, the Union, and any other party bound by this Agreement shall each apply the provisions of this Agreement equally to all employees in the Union without discrimination as to race, color, religion, gender, sexual orientation, gender identity/expression, age, physical or visual handicap, national origin, or because of political or personal reasons or affiliations.

ARTICLE 5
Union Rights

1. The County recognizes and agrees to meet directly with the elected or appointed representative of the Union on all matters covered by the Collective Bargaining Agreement.

2. The selection of representatives, officers, and the negotiating team members is the sole responsibility of the Union.

3. The Union shall have no more than six (6) representatives.

4. Representatives of the Union may communicate with individual employees at the worksite and via work email.

5. The County shall allow eight (8) Union bulletin boards no larger than 2' x 3' in approved locations, or the County shall allot use of space on existing bulletin boards. The Union may post notices on these bulletin boards that relate to Union business and activities or information that is relevant to its members.

6. The Union shall be allowed to hold Union meetings at County facilities with the prior approval of the Public Defender or Special Public Defender.

ARTICLE 29
Travel Compensation/Use of Private Vehicles

If an authorized County vehicle is available, an employee shall use a County vehicle for County business.

If a County vehicle is unavailable and travel is necessary, an employee may use his/her personal vehicle for County business and shall be reimbursed in a timely manner, for each mile driven on County business. The reimbursement shall be at the amount per mile established by the Nevada Revised Statutes.

ARTICLE 30
Retirement Contribution

1. The County shall pay the employee's portion of the retirement contribution under the employer-pay contribution in the manner provided for by NRS Chapter 286. Any increase in the percentage rate of the retirement contribution above the rate set forth in NRS Chapter 286 on May 19, 1975, shall be borne equally by the County and the employee and shall be paid in the manner provided by NRS Chapter 286. Any decrease in the percentage rate of the retirement contribution shall result in a corresponding increase to each employee's base pay equal to one-half (½) of the decrease. Any such increase in pay shall be effective from the same date the decrease in the percentage rate of the retirement contribution becomes effective.

2. The term "retirement contribution" does not include any payment for the purchase of previous credit service on behalf of any employee.

ARTICLE 31
Compensation

1. Effective July 1, 2023, or upon ratification by the Clark County Defenders Union, whichever is later, the salary schedules for all employees covered in Appendix A will be adjusted by the annual percentage increase to CPI-U all items in West-Size Class B/C, All Urban Consumers, not seasonally adjusted (Series ID CUURN400SA0) for the calendar year ending December 2022. The adjusted percentage increase in salary schedules shall be a minimum of 2% and a maximum of 3.0%. In the event that the annual percentage increase to CPI-U all items in West-Size B/C, All Urban Consumers, not seasonally adjusted (Series ID CUURN400SA0), is equal to or greater than 5%, the adjusted percentage increase in salary schedules shall be 4.5%. In the event the annual percentage increase to CPI-U all items in West-Size Class B/C, All Urban Consumers, not seasonally adjusted (Series ID CUURN400SA0) is equal to or less than 0%, the adjusted percentage increase in salary schedules shall be 1%.

   The adjusted percentage increase is based on U.S. Bureau of Labor Statistics Data (https://data.bls.gov/timeseries/cuurn400sa0).

Calculated as follows:

2022 ANNUAL CPI	181.312
LESS 2021 ANNUAL CPI	167.642
ANNUAL INCREASE	13.67
DIVIDED BY 2021 CPI	.0815
ANNUAL PERCENTAGE INCREASE IN CPI	8.15%
SALARY SCHEDULE ADJUSTMENT	4.50%

2. Effective July 1, 2023, or upon ratification by the Clark County Defenders Union, whichever is later, salary schedules for all employees covered in Appendix A will be adjusted by an additional 1.5%.

3. Employees covered by this agreement are eligible to participate in all rewards incentives, and bonus programs approved by the County for full-time non-management employees, and for programs established by the Public Defender and/or Special Public Defender.

ARTICLE 32
Indemnification/Court Sanctions

The County shall indemnify and hold harmless any employee from an action arising out of an act or omission within the scope of the employee's official duties or employment.

The County shall pay court sanctions or fines levied by any court against employees for acts or omissions committed by such employees, if the acts or omissions were committed while performing within the scope of his/her official duties.

ARTICLE 33
Savings Clause

1. If any provision of this Agreement or any application of the Agreement to any person or persons covered by this Agreement shall be found contrary to Federal law or the NRS, then the provision or application shall be deemed invalid except to the extent permitted by law, but all other provisions thereof shall continue in full force and effect. If there is any change in Federal law or the NRS that would invalidate or supplement any provision of this Agreement, excluding changes in NRS Chapter 288, the parties shall meet to negotiate any change in the Agreement relative to the affected provisions only.

2. In the event NRS Chapter 288 is amended, the County and the Union negotiating teams shall meet within 30 days of such passage to informally discuss its ramification, if any, on the current negotiated Agreement.

ARTICLE 34
Conflicting Agreements

This Agreement supersedes all personnel rules heretofore in effect by the County relating to those subjects addressed by the provisions of this Agreement to the extent such rules are in conflict with the terms of this Agreement. This Agreement does not preclude the County, the Public Defender, or the Special Public Defender from formulating new or additional rules and guidelines which do not conflict with the terms of this Agreement or the provisions of the Nevada Revised Statutes.

ARTICLE 35
Entire Agreement

It is intended that this Agreements sets forth the full and entire understanding of the parties regarding the matters set forth herein. Except for those benefits expressly provided for in this Agreement, the Union acknowledges that when this Collective Bargaining Agreement is ratified and approved by the Board of County Commissioners, that all employees eligible to participate, regardless of membership in the Union, shall no longer have the rights, benefits and privileges contained in the Management Compensation Plan dated July 2002, or any subsequent Management Compensation Plan, with the exception of those specifically referenced in this Agreement.

ARTICLE 36
Terms of Agreement

1. This agreement shall be effective July 1, 2023 and shall remain in effect until the last day of June 2024.

2. This article does not preclude informal discussion between the parties of any matter which is not subject to negotiation or contract. Any such informal discussion is exempt from all requirements of notice or time schedule.

3. In accordance with NRS 288, the Union and the County agree that prior to the expiration of this agreement, either party may provide written notice, pursuant to provisions of NRS 288, of its desire to negotiate a new or modified agreement. In the event of such notice, the terms and conditions of this agreement shall remain in full force and effect during the entire period of negotiations and any statutory impasse provisions until a new or modified agreement is approved by both parties, the effective date of termination notwithstanding. Such request shall be provided to the other party no later than February 1, 2024.

For the County:

James B. Gibson, Chair
Board of County Commissioners

For the Union:

P. David Westbrook, President
Clark County Defenders Union

Appendix A

Clark County Defenders Union
Salary Schedules & Ranges
Effective July 1, 2023
Reflects 6% Increase

Sch	Title		SALARY RANGE Minimum	Midpoint	Maximum
U02	DEPUTY PUBLIC DEFENDER	Annual	84,156.80	124,176.00	164,174.40
		Biweekly	3,236.80	4,776.00	6,314.40
		New Hourly	40.46	59.70	78.93
U03	CHIEF DEPUTY PUBLIC DEFENDER	Annual	123,572.80	157,539.20	191,505.60
		Biweekly	4,752.80	6,059.20	7,365.60
		New Hourly	59.41	75.74	92.07

Salary Schedules & Ranges
Effective July 22, 2023
Reflects 1.875% PERS Decrease

Sch	Title		SALARY RANGE Minimum	Midpoint	Maximum
U02	DEPUTY PUBLIC DEFENDER	Annual	82,576.00	121,846.40	161,096.00
		Biweekly	3,176.00	4,686.40	6,196.00
		New Hourly	39.70	58.58	77.45
U03	CHIEF DEPUTY PUBLIC DEFENDER	Annual	121,264.00	154,585.60	187,907.20
		Biweekly	4,664.00	5,945.60	7,227.20
		New Hourly	58.30	74.32	90.34

Exhibit 2

UNION PROPOSAL: 4/17/2024 **NEW ARTICLE**

ARTICLE 38
SALARY SCHEDULE PARITY

1. Anytime the Clark County Prosecutors Association receives any salary schedule increase(s), then the salary schedules for all employees covered by this Agreement shall be adjusted under the same terms and conditions. This is to ensure and maintain the longstanding historical parity between the Deputy District Attorneys and Deputy Public Defenders in Clark County, and throughout Nevada.

_____ _____
Christina Ramos Date
Clark County HR/Chief Spokesperson

_____ _____
P. David Westbrook Date
Clark County Defenders Union Chief Spokesperson

Exhibit 3

VOID IF NOT SIGNED BY 5:00pm on 1/28/2025

AGREEMENT FOR FACTFINDING 1/30/2025

A. The Clark County Defenders Union ("CCDU") and Clark County (the "County") (collectively the "Parties") hereby agree as follows:

1. The Parties will, upon execution of this Agreement, sign the attached Tentative Agreement on Article 19.
2. The Parties will, upon execution of this Agreement, sign the attached Tentative Agreement on Article 31.
3. The Parties will, upon execution of this Agreement, sign the attached Tentative Agreement on Article 36.
4. The CCDU hereby withdraws its proposal on Article 10 dated 4.17.24, and the Parties agree to maintain the current language on Article 10.
5. The CCDU hereby withdraws its proposal on Article 12 dated 4.17.24, and the Parties agree to maintain the current language on Article 12.
6. The County hereby withdraws its proposal on Article 20 dated 4.17.24, and the Parties agree to maintain the current language on Article 20.
7. The County hereby withdraws its proposal on Article 27 dated 4.17.24, and the Parties agree to maintain the current language on Article 27.
8. The CCDU hereby withdraws its proposal for a new article titled "Bail Reform Pay" dated 4.17.24.

B. The following articles will remain open for the factfinding proceedings:

1. Article 22 – Longevity
2. CCDU's Proposal for a new article titled "Salary Schedule Parity."

C. All outstanding CCDU information requests which do not relate to the articles identified as open in section B above are hereby withdrawn.

D. The Parties hereby request that Arbitrator Hirsch include all of the TA'd articles as part of his final recommendations.

Dated this 28th day of January, 2025

P. David Westbrook
CCDU President

Christina Ramos
Clark County Human Resources

Deleted Language: ~~Strikethrough~~
New Language: Bold

ARTICLE 19
Vacation

1. **Accrual of Vacation Leave:**
   a. Eligible employees hired or rehired and working on a full-time permanent basis shall earn vacation leave based on months of service at the following rates for each pay period:

Months Service	Hours Per Pay Period Accrued
0-24	3.08
25-96	4.62
97-180	5.54
181 and over	6.15

   a. Vacation leave may not be accumulated to exceed 240 hours at the beginning of any calendar year. Prior to the end of the calendar year, employees with more than 240 hours of leave shall be given the option of placing the hours above 240 in the catastrophic leave bank in accordance with Article 19, sellback vacation leave subject to the conditions outlined in Section 4(b) of this Article or lose the leave. If an employee selects none of the options, then the excess hours shall automatically be placed in the catastrophic leave bank.

2. **Vacation Leave Eligibility:**
An employee is not entitled to take accumulated vacation leave or payment until ~~he/she has~~ **THEY HAVE** successfully completed six months of ~~his/her~~ **THEIR** probationary period.

3. **Vacation Leave Use:**
The purpose of vacation benefits is to allow each employee time away from ~~his/her~~ **THEIR** job for rest, recreation, and the pursuit of non-employment objectives. The time when vacation leave may be taken shall be determined by the Public Defender, Special Public Defender, or designee. Vacation leave requests must be approved at least 24 hours in advance, except in cases of emergency as determined by the Public Defender, the Special Public Defender or their designee. Vacation requests for one (1) shift or less may be granted without the 24-hour notification requirement referred to in this section. Once a request for vacation leave is submitted to the Public Defender, Special Public Defender, or designee, every effort shall be made to approve or deny the request in a timely manner.

4. **Payment for Vacation Leave:**
   a. Except as provided in Article 19, Section 2, upon separation from service for any cause, an employee shall be paid a lump sum payment for any unused or accumulated vacation earned through the last day worked. If this is earlier than the last day of the pay period, the vacation shall be prorated. Payment for unused vacation leave shall be at the employee's biweekly salary divided by 80. Only

employees who have successfully completed probation shall be eligible for payment of accumulated vacation leave upon separation.

b. In December of each year, employees shall be eligible to submit a request to be paid for up to a ~~range of twenty (20) hours to a~~ maximum of ~~eighty (80)~~ **ONE HUNDRED TWENTY (120)** hours of vacation leave from December 1ST through November 30TH. ~~The County Manager shall establish the maximum vacation leave sell back for the employee each year prior to December 1st, consistent with Category III employees of the M Plan.~~

5. **Death of an Employee**
Upon the death of a person in the employ of the County, a lump sum payment for vacation time accrued to ~~his/her~~ **THEIR** credit shall be made to the employee's beneficiaries or estate.

ARTICLE 31
Compensation

1. Effective July 1, ~~2023~~ **2024**, or upon ratification by the Clark County Defenders Union, whichever is later, the salary schedules for all employees covered in Appendix A will be adjusted by the annual percentage increase to CPI-U all items in West-Size Class B/C, All Urban Consumers, not seasonally adjusted (Series ID CUURN400SA0) for the calendar year ending December ~~2022~~ **2023**. The adjusted percentage increase in salary schedules shall be a minimum of 2% and a maximum of 3.0%. In the event that the annual percentage increase to CPI-U all items in West-Size B/C, All Urban Consumers, not seasonally adjusted (Series ID CUURN400SA0), is equal to or greater than 5%, the adjusted percentage increase in salary schedules shall be 4.5%. In the event the annual percentage increase to CPI-U all items in West-Size Class B/C, All Urban Consumers, not seasonally adjusted (Series ID CUURN400SA0) is equal to or less than 0%, the adjusted percentage increase in salary schedules shall be 1%.

   The adjusted percentage increase is based on U.S. Bureau of Labor Statistics Data (https://data.bls.gov/timeseries/cuurn400sa0).

CALCULATED AS FOLLOWS:

2023 ANNUAL CPI	188.941
LESS 2022 ANNUAL CPI	181.312
ANNUAL INCREASE	7.63
DIVIDED BY 2022 CPI	181.312
ANNUAL PERCENTAGE INCREASE IN CPI	4.2%
SALARY SCHEDULE ADJUSTMENT	3.0%

~~Calculated as follows:~~

~~2022 ANNUAL CPI~~	~~181.312~~
~~LESS 2021 ANNUAL CPI~~	~~167.642~~
~~ANNUAL INCREASE~~	~~13.67~~
~~DIVIDED BY 2021 CPI~~	~~.0815~~
~~ANNUAL PERCENTAGE INCREASE IN CPI~~	~~8.15%~~
~~SALARY SCHEDULE ADJUSTMENT~~	~~4.50%~~

~~2. Effective July 1, 2023, or upon ratification by the Clark County Defenders Union, whichever is later, salary schedules for all employees covered in Appendix A will be adjusted by an additional 1.5%.~~

2. Employees covered by this agreement are eligible to participate in all rewards incentives, and bonus programs approved by the County for full-time non-management employees, and for programs established by the Public Defender and/or Special Public Defender.

ARTICLE 36
Terms of Agreement

1. This agreement shall be effective July 1, 202~~3~~4 and shall remain in effect until the last day of June 202~~4~~5.

2. This article does not preclude informal discussion between the parties of any matter which is not subject to negotiation or contract. Any such informal discussion is exempt from all requirements of notice or time schedule.

3. In accordance with NRS 288, the Union and the County agree that prior to the expiration of this agreement, either party may provide written notice, pursuant to provisions of NRS 288, of its desire to negotiate a new or modified agreement. In the event of such notice, the terms and conditions of this agreement shall remain in full force and effect during the entire period of negotiations and any statutory impasse provisions until a new or modified agreement is approved by both parties, the effective date of termination notwithstanding. Such request shall be provided to the other party no later than February 1st, 202~~4~~5.

Dated this 28th day of January, 2025

P. David Westbrook
CCDU President/Chief Spokesperson

Christina Ramos
Clark County HR/Chief Spokesperson

Exhibit 4

Deleted Language: ~~Strikethrough~~
New Language: Bold

ARTICLE 12
Dispute Resolution Procedure

Section 1 - Discipline Procedure

1. The District Attorney has the right to discipline or terminate deputies in the District Attorney's Office for just cause. Discipline shall be defined to include documented oral warnings, written reprimands, suspensions, demotions, administrative leave without pay, and terminations.

2. An employee may be placed on administrative leave with pay pending an investigation into alleged misconduct. This shall not be deemed to be discipline, nor shall it be grievable. The principles of progressive discipline shall be utilized. Progressive discipline normally includes a documented oral warning, one (1) or more written reprimand(s) and thereafter more severe disciplinary action. The Association recognizes the need for more severe initial disciplinary action in the event of major violation of established rules, regulations or policies of the County or the District Attorney's Office, or misconduct.

3. All disciplinary actions shall be clearly identified as such in writing. The employee shall be requested to sign the disciplinary action. The employee's signature thereon shall not be construed as admission of guilt or concurrence with the discipline, but rather shall be requested as an indication that he/she has seen and comprehends the gravity of the disciplinary action. Employees shall have the right to review and comment on disciplinary actions. A copy of all disciplinary action documents shall be provided to the employee before such material is placed in his/her personnel file. An employee who receives discipline as defined above, may within thirty (30) working days submit a rebuttal in writing to Clark County Human Resources which shall be attached to and accompany the discipline. If, as a result of the grievance procedure utilization, just cause is not shown, the disciplinary action shall be removed from their personnel file and returned to the employee. The only personnel file to be maintained shall be the employee's official personnel file at the office of Human Resources. Copies of disciplinary actions shall only be included in this file and no other place. Once a disciplinary action document is removed, the basis for the discipline may not be used in any future disciplinary proceeding.

4. The County recognizes the right of an employee who reasonably believes that an investigatory interview may result in discipline to request the presence of an Association representative at such an interview. Upon request he/she shall be afforded an Association representative. The investigator shall delay the interview for a period not to exceed two (2) working days in order to allow an Association representative an opportunity to attend. If an Association representative is not available or delay is not reasonable, the employee may request the presence of a bargaining unit witness. (Weingarten rights).

   Employees shall also have the right to a notice prior to any disciplinary action, and to a determination meeting prior to any disciplinary action except for documented oral warnings and written reprimands. The District Attorney or the Assistant District Attorney designated by the District Attorney must provide a notice and statement in writing to the employee identifying the just cause violations, a finding of fact and the reasons for the proposed action. The employee shall be given an opportunity to respond to the charges in a meeting

with the District Attorney or the Assistant District Attorney designated by the District Attorney and shall have the right to Association representation during that meeting, upon request. (Loudermill rights)

5. No employee who has satisfactorily completed probation may be disciplined without just cause. Just cause may include, but not be limited to:

   a. Violation of the criminal laws, or ordinances, of the cities, counties or the State of Nevada or of any other state, or the United States, the violation of which is considered a crime. Conclusion of a criminal proceeding is not a prerequisite to action under this section. Nor is the result of a criminal proceeding a bar to disciplinary action.

   b. Violation of written County or Departmental Procedures, Policies, Rules and Regulations that do not conflict with the terms of this Agreement and have been properly approved.

   c. Solicitation of the public for money, goods or services which has not been approved in accordance with established procedures.

   d. Acceptance of any reward, gift or other form of remuneration in addition to regular compensation for work related duties, which has not been approved in accordance with established procedures.

   e. Incompetence, insubordination, neglect of duties, unexplained or unexcused absence from duty, withholding services as a result of an intentional work slowdown, malfeasance, misfeasance, or misconduct.

   f. The entry of an order holding an employee in contempt for the employee's noncompliance with a child support order, child visitation order, or a subpoena or order relating to a paternity or child support proceeding will result in immediate suspension without pay and may result in termination.

6. Upon written request by the employee to Clark County Human Resources, the record of a documented oral warning shall be removed from their personnel file after six (6) months from the date of issuance if no further discipline ensues. A record of a written reprimand shall be removed from their personnel file after eighteen (18) months from the date of issuance if no further discipline ensues. All documents shall be returned to the employee.

Section 2 – Grievance Procedure

7. Grievance Definition. A grievance shall be defined as a dispute regarding the interpretation or application of the provision(s) of this Agreement, which adversely affect an employee's wages, hours or conditions of employment, and is contrary to the terms of this Agreement, or a disciplinary matter. The grievance procedure is the exclusive remedy for claims that the Agreement has been violated. An aggrieved employee may personally, or with the assistance of the Association, seek relief through this grievance procedure. Employees shall be safe from restraint, interference, discrimination or reprisal in the grievance process. This Grievance Procedure does not preclude and, in fact, encourages the employee to attempt to discuss or resolve a dispute or complaint prior to the filing of a formal grievance. Further, in instances where a grievance is filed, it is the intent of both

parties that grievances shall be settled and remedied at the lowest possible step and that all procedures set forth herein shall be complied with as expeditiously as possible.

8. Grievance Procedure. Grievances and appeals must be filed within the time limits specified below. However, should the parties agree in writing to informally attempt to settle the grievance, all time periods are tolled. If a grievance is not presented or if an appeal of a decision rendered regarding the grievance/appeal is not filed by the employee or the Association within the time limits, the grievance will be considered abandoned. If the County or the District Attorney fails to abide by the time periods reference in this Section, the discipline shall be overturned.

9. Step 1

a. Documented oral warnings are not subject to the grievance and arbitration procedures as outlined in this Article.

b. Discipline subject to the grievance procedure is defined as an employee's written reprimand, suspension, demotion, or involuntary termination from County service and shall not include matters over which the Nevada Equal Rights Commission has jurisdiction. The grievance shall be filed by the employee or Association representative with the District Attorney within ten (10) working days of the occurrence which gave rise to the grievance or when the employee should have reasonably first had knowledge of the grievance. Such grievance shall set forth the specific disputed facts or issues and include the grievant's proposed remedy. Within five (5) working days of receipt of the written grievance, the District Attorney or the Assistant District Attorney designated by the District Attorney for a matter related to work performance or the District Attorney or his designee for a matter unrelated to work performance shall meet with the employee. Within five (5) working days thereafter, a written decision shall be given to the employee and the Association.

c. A grievance concerning the interpretation or application of the provision(s) of this Agreement concerning a non-disciplinary matter shall be filed by the Association with the County Manager or his or her designee within ten (10) working days of the occurrence which gave rise to the grievance or when the employee or Association should have reasonable first-hand knowledge of the grievance. Such grievance shall set forth the specific contract provisions alleged to have been violated and include the proposed remedy. Within five (5) working days of receipt of the written grievance, the County Manager or her designee shall meet with the employee. Within five (5) working days thereafter, a written decision shall be given to the employee and the Association.

10. Step 2

If the grievance is not resolved at Step 1, an arbitration request may be submitted by the Association representative. Only Association Officers, the District Attorney or the Assistant District Attorney designated by the District Attorney for a disciplinary matter or the County Manager for a non-disciplinary matter may advance a grievance to arbitration. A request for arbitration shall be presented in writing to the County Manager for a Non-Disciplinary Matter or the District Attorney or his designee for a disciplinary matter within five (5) working days from the date the decision was rendered at Step 1. As soon as practicable thereafter or as otherwise agreed to by the parties, an arbitrator shall hear the grievance.

In the event the parties cannot agree on the selection of an arbitrator within ten (10) working days from the receipt of the request for arbitration, the parties shall request a list from the American Arbitration Association (AAA). If the matter is covered under ~~Title 7~~ **TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED,** or the United States Code then in addition to satisfying the standard requirements and qualifications for an arbitrator, the arbitrator shall also have training and/or expertise in the application and interpretation of civil rights laws. The American Arbitration Association shall submit a list of five (5) arbitrators from which a selection shall be made by alternately striking one (1) name from the list until only one (1) name shall remain. The selection shall be accomplished by the County striking first, and the Association next, each striking one (1) name from the list in turn until only one (1) name remains.

11 For the purposes of resolving grievances at the earliest possible point in the process, both parties agree to make a full disclosure of the facts and evidence which are material to the grievance, including but not limited to furnishing copies of all evidence, documents, reports, photographs, written statements, and a complete identification of witnesses relied upon to support their position. Both parties agree to disclose such facts, evidence and witness lists at least one (1) working day prior to Step 1 meetings and at least three (3) working days prior to a Step 2 arbitration hearing. An arbitrator will not consider any evidence or witness testimony from a party who failed to disclose such evidence or witness list.

12. The arbitrator shall conduct the grievance proceeding according to the AAA Guidelines, which may be amended by mutual written agreement of the parties. The decision of the arbitrator shall be rendered as expeditiously as possible (but no later than thirty (30) days from the close of record) and shall be final and binding upon both parties.

13. The decision to uphold disciplinary actions shall be based on the reasonableness of the discipline imposed in response to the actions taken or not taken by the employee. In the event a termination is overturned by an arbitrator, the arbitrator shall have the ability to impose a less severe form of discipline.

14. Any decision rendered shall be within the scope of the Agreement and shall not modify, amend, alter, add to or subtract from any of the terms of this Agreement. The arbitrator shall confine himself/herself to the precise issue(s) submitted for arbitration and shall have no authority to determine other issues not so submitted. The arbitrator is without power to issue an award inconsistent with the governing statutes and/or ordinances of the County. The arbitrator, in the absence of an expressed written agreement of the parties to this Agreement, shall have no authority to rule on any dispute between the parties which is not within the definition of a grievance set forth in this Article. The arbitrator's decision and award shall be based solely on his/her interpretation of the application of the express terms of this Agreement. Any and all settlements or awards issued by the arbitrator shall be limited in retroactivity to the date of the alleged precipitating event or date of the filing of the grievance as decided by the arbitrator.

15. Only one (1) grievance may be decided by the arbitrator at any hearing.

16. Each party shall be responsible for compensating its own witnesses and representatives. The losing party shall pay the arbitrator's fees.

17. The time limits set forth above may be extended by mutual written agreement of the County and the Association.

18. The grievance procedures provided for herein shall constitute the sole and exclusive method of adjusting all complaints or disputes arising from this Agreement which the Association or employees may have, and which relate to or concern the employees and the County. Nothing in this Agreement shall prevent the parties from mutually agreeing to resolve any grievance.

ARTICLE 36
Compensation

~~Effective July 1, 2023, the salary schedules for all employees covered in appendix a will be adjusted by the annual percentage increase of six percent (6.0%), which will result in an increase to the salary schedules in Appendix A.~~

1. **EFFECTIVE JULY 1, 2024, THE SALARY SCHEDULES FOR ALL EMPLOYEES COVERED IN APPENDIX A WILL BE ADJUSTED BY AN INCREASE OF THREE PERCENT (3.0%), WHICH WILL RESULT IN AN INCREASE TO THE SALARY SCHEDULES IN APPENDIX A.**

2. **APPENDIX A REFLECTS THE FINAL CALCULATION OF SALARY SCHEDULES FOR ALL EMPLOYEES EFFECTIVE JULY 1, 2024.**

ARTICLE 41
Term of Agreement

1. This Agreement shall be effective from July 1, ~~2021~~ **2024**, or upon the date approved by the Clark County Board of Commissioners, whichever is later. It shall continue in full force and effect through June 30, ~~2024~~ **2025**.

2. This agreement shall be automatically renewed from year to year thereafter unless either party provides written notice pursuant to provisions of NRS chapter 288, of its desire to negotiate a new or modified agreement. In the event of such notice, the terms and conditions of this agreement shall remain in full force and effect during the entire period of negotiations and any statutory impasse provisions until a new or modified agreement is approved by both parties, the effective date of termination notwithstanding.

APPENDIX A

Clark County Prosecutors Association
Salary Schedules & Ranges
July 1, 2024 – June 30, 2025
Reflects 3% Increase

Sch	Class Code		SALARY RANGE Minimum	Midpoint	Maximum
P02[1]	E06126	Annual	92,747.20	136,801.60	180,856.00
		Biweekly	3,567.20	5,261.60	6,956.00
		Hourly	44.59	65.77	86.95
P03[2]	E06127	Annual	133,723.20	170,497.60	207,272.00
		Biweekly	5,143.20	6,557.60	7,972.00
		Hourly	64.29	81.97	99.65

[1] Includes adjustment of 8%

[2] Includes adjustment of 6%

The parties hereby tentatively agree ("TA") to this proposal. This TA, along with any other articles which the parties have previously tentatively agreed ("TA'd") with signatures, conclude the 2024 negotiations for a complete collective bargaining agreement. All other articles in the current CBA not separately TA'd with signatures remain unchanged. All proposals not TA'd are hereby withdrawn. All outstanding Union information requests are hereby withdrawn. Both bargaining teams, the Association and the County, shall recommend ratification to their members and the Board of County Commissioners (BCC), respectively. Any changes to compensation may take up to 90 days following BCC ratification to implement into the system.

Dated this 3rd day of April, 2025

Binu Palal
CCPA President

Christina Ramos
Clark County Human Resources

Exhibit 5

ATTACHMENT I

FACTFINDING PROCEEDING PURSUANT TO NEVADA REVISED STATUTE 288.200

CLARK COUNTY DEFENDERS UNION, And CLARK COUNTY.	Opinion & Recommendation Hearing Date: January 30, 2025 Award: April 16, 2025 Hirsch Case #: H24-106

FINDINGS & RECOMMENDATIONS
ROBERT M. HIRSCH FACT-FINDER

Appearances By:

Union:

ADAM LEVINE
LAW OFFICES OF DANIEL MARKS
610 South Ninth Street
Las Vegas, Nevada 89101
Alevine@danielmarks.net

Employer:

ALLISON L. KHEEL
ELIZABETH ANNE HANSON
FISHER & PHILLIPS
300 South Fourth Street
Las Vegas, Nevada 89101
Akheel@fisherphillips.com

BACKGROUND

The parties in this matter, the Clark County Defenders Union (Union or CCDU) and Clark County (County or CC) are engaged in Factfinding after reaching impasse in negotiations over two Union proposals. The proposals concern Article 22 – Longevity Pay and Article 38 – Salary Schedule Parity.[1] CCDU represents the non-managerial public defenders employed in the County's Public Defender's Office and Special Public Defender's Office. Clark County is by far the most populous county in the State.

Under Nevada Revised Statutes – NRS 288.200, the parties have the ability to engage in factfinding when contract negotiations reach impasse. The factfinding and recommendations are not binding upon the parties but should receive serious consideration. The statute provides for the following analysis by the factfinder:

STATUTORY CRITERIA AND PROCEDURE FOR FACT FINDING ARBITRATION IN NEVADA

Pursuant to NRS 288.200, Nevada requires consideration of the following:

7. Except as otherwise provided in subsection 10, any fact finder, whether the fact finder's recommendations are to be binding or not, shall base such recommendations or award on the following criteria:

> (a) A preliminary determination must be made as to the financial ability of the local government employer based on all existing available revenues . . .
> (b) Once the fact finder has determined in accordance with paragraph (a) that there is a current financial ability to grant monetary benefits, and subject to the provisions of paragraph (c), **the fact finder shall consider**, to the extent appropriate, **compensation of other government employees, both in and out of the State and use normal criteria for interest disputes regarding the terms and provisions to be included in an agreement in assessing the reasonableness of the position of each party as to each issue in dispute** and the fact finder shall consider whether the Board found that either party had bargained in bad faith.
> (c) A consideration of funding for the current year being negotiated . . .

[1] Union Exhibits (UX) 1 and 20, respectively.

> . . . The fact finder's report must contain the facts upon which the fact finder based the fact finder's determination of financial ability to grant monetary benefits and the fact finder's recommendations or award.

(Emphasis added).

LONGEVITY PAY

Discussion:

The Union proposes the following Article:

Employees appointed prior to July 1, 2002, to a full-time position within the attorney classification series shall upon completion of five (5) years creditable service receive an annual lump sum payment equal to 0.57 of one percent (.57%) of their salary for each year of service.

CCDU argues that the proposal is reasonable under the circumstances presented. First, both parties acknowledge that the County has the financial ability to pay for the contract proposal. Thus, the first criteria for a determination of reasonableness has been met. The Union contends that longevity pay is widely used in Nevada and other neighboring States. It points to the two smaller counties in the State – Washoe and Elko – which offer longevity pay to Public Defenders. Further, CCDU lists law enforcement bargaining units in the State which have secured longevity pay – the LVMPD, North Las Vegas Police Officers, and Las Vegas' Correction Officers, for examples. Others are actively seeking to bring the benefit back.

In contrast, CC maintains that it has engaged in a strong move to eliminate longevity pay for decades. Between 2002 and 2015, longevity pay was removed for all new hires. Only legacy employees now enjoy that benefit in Clark County.

The County counters the Union's arguments by pointing to its strong pattern of COLA adjustments for County employees, which is now the status quo that the Union seeks to upend. The County notes for the Factfinder that the party seeking to change the status quo has the burden of establishing that a change is warranted. Moreover, says CC, comparator bargaining

units must be in similar fields and have similar job duties. Law enforcement is a separate group of public employees with distinctly different job functions.

CCDU argues that longevity pay is needed for hiring and retention purposes. It points to the decline in the number of death penalty qualified attorneys in the Defender's office as an indication of how the loss of longevity pay has impacted the County's ability to attract and retain attorneys. There was a point in time when all the attorneys had longevity pay and there were nine qualified lawyers. Currently, there is only one remaining death penalty attorney in-house. Additionally, turnover by attorneys with more than five years has increased significantly. In 2018 experienced attorneys made up 78% of the unit. In 2024 the number was down to 68%. In 2025, the number had dropped to 63%, with the retirement of a few experienced attorneys.

The County contends that staffing remains an issue for management[2] not the Union, and it does not have a problem finding or retaining qualified attorneys. The average service of a CCDU member over the past seven years is 10.97 years. The attorneys only need three years of experience to become death penalty certified, while the proposed longevity pay doesn't kick in until five years. Thus, says CC, the Union can't really show that the economic proposal will address any shortage, nor is there any evidence that longevity pay provides an incentive to become death penalty certified, an option an attorney may exercise, or not. According to the County, longevity pay ranked last among benefits serving as an employee incentive in a survey conducted in or about 2014.[3]

[2] CC cites, NRS 288.150(3)(c)(1).

Conclusion:

The touchstone for this analysis and determination is the reasonableness of the Union's proposal balanced against the reasonableness of the status quo. The criteria set by the Nevada statute offer a basis for making such a determination. Here, the Union fails to establish that its proposal is the more reasonable approach. Longevity pay, by itself, has not been shown in the record for this factfinding, to have a material correlation with hiring and retention of CCDU members. Moreover, the County has clearly eliminated the benefit for all its employees over the past two decades. The comparator, at least for county employees, strongly favors the County. This is particularly clear when we look at the County prosecutors, with whom the defenders seek economic parity. The prosecutors don't have longevity pay.

Nor can we say that law enforcement personnel are a sound comparator when we consider the distinctly challenging, dangerous nature of the work involved and the shorter work tenure associated with the positions. Longevity pay may incent law enforcement personnel to remain at their positions. We can't really assess that from this record. But the law enforcement comparator is unpersuasive.

It is also apparent from this record that CC is able to subcontract out challenging death penalty work to outside counsel, if need be, undermining the Union's insistence that there is an immediate need for more death penalty qualified attorneys in house. While the Union has raised legitimate issues regarding the total compensation of the attorneys in this unit as noted below, it has not made the case for longevity pay.

Recommendation:

This Factfinder recommends the County's proposal of status quo.

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[3] Transcript (TR) 184-85; County Exhibit (CX) 12.

SALARY SCHEDULE PARITY

Discussion:

The Union proposes the following Article:

Anytime the Clark County Prosecutors Association receives any salary schedule increase(s), then the salary schedules for all employees covered by this Agreement shall be adjusted under the same terms and conditions.

The CCDU confirmed on the record that it seeks parity with the prosecutors, meaning that it seeks the same salary schedule whether there is an increase, no change, or decrease.[4] Accordingly, this Factfinder gives this "parity" interpretation to the Union's proposal. The proposed Article should be rewritten to reflect the true intent of the CCDU.

Again, it is noted that the ability to pay for the Union's proposal is not an issue for the County.

The Union says that since the inception of the Clark County Public Defenders' office in 1966, the unit has always enjoyed pay parity with the Deputy District Attorneys. Until last year, that is. Only then, did another factfinder decide to recommend a wage increase of 1% less than the prosecutors received. The County even sought to have the defenders and the prosecutors in a single bargaining unit after the groups unionized. The District Attorneys apparently rejected that notion.

Still, says the Union, the Nevada judiciary recognizes that it is appropriate for the two adversarial groups to be on economic par with one another. Appendix A to the Nevada Supreme Court Administrative Docket Order No. 411, issued January 4, 2008, states:

[4] TR 82.

> Attorneys employed by defender organizations should be compensated according to a salary scale that is commensurate with the salary scale of the prosecutor's office in the jurisdiction.[5]

Section 39 of the Nevada Administrative Code for the Board of Indigent Defense Services provides:

> An attorney who receives a salary for providing Defense services is entitled to receive a reasonable salary, benefits and resources that are in parity, subject to negotiated collective-bargaining agreements if applicable, with the corresponding prosecutor's office that appears adverse to the office of the public defender in criminal proceedings.[6]

The Union also highlights the fact that the American Bar Association's Standing Committee on Legal Aid and Indigent Defense has gone on record supporting the notion of pay parity between the two groups.

At the time of this hearing, we knew that the County's District Attorneys were receiving one percent more in pay. During the post-hearing briefing period, the prosecutors received a 3% COLA increase for all members (leaving them 1% above the Defenders after the Defenders' COLA) and an additional 8% for the bottom of the salary schedule and 6% for the top of the schedule.[7] This moved the salary schedule of the District Attorneys substantially ahead of the Defenders, says the Union.

The County argues that the lack of parity is the result of different bargaining histories and there is no reason to deviate from the status quo. It posits that the only "me too" provision in the County is in the IAFF contracts, which are identical except for supervisors' wages. IAFF supervisors are required to be in a separate unit.[8]

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[5] UX 24.
[6] UX 25.
[7] CX 31, submitted with permission of the factfinder after the evidentiary hearing was closed.
[8] NRS §288.170(3).

Conclusion:

The Union has presented a reasonable basis for establishing wage parity for the Public Defenders with the County's prosecutors. The District Attorneys and the Public Defenders are indeed the opposite sides of a coin. They are the legal voices for the parties involved in the County's criminal proceedings. Their roles are equally important under the State and Federal Constitutions in guaranteeing the people of California fair and equitable adjudication of their rights. Clearly, the State's Supreme Court, the drafters of the State's Administrative Code, and the ABA believe the two parties are on equal footing and deserve equal pay. Clark County apparently agreed when it advocated for a single bargaining unit for both the District Attorneys and the Public Defenders.

There is little basis offered to reject the CCDU's proposal. Returning to the historic position of economic parity is unquestionably reasonable.

Recommendation:

This Factfinder recommends the Union's proposal, as interpreted to require salary schedule parity between the County Public Defenders and the County District Attorneys.

Date: April 16, 2025

Robert M. Hirsch, Arbitrator

Exhibit 6

UNION PROPOSAL: 5/2/25

[---] = DELETED LANGUAGE
CAPS = NEW LANGUAGE

ARTICLE 38

SALARY SCHEDULE PARITY

1. Anytime the Clark County Prosecutors Association receives any salary schedule increase(s) **OR DECREASE(S)**, then the salary schedules for all employees covered by this Agreement shall be adjusted under the same terms and conditions. This is to ensure and maintain the longstanding historical parity between the Deputy District Attorneys and Deputy Public Defenders in Clark County and throughout Nevada.

_____ _____

Clark County HR/Chief Spokesperson Date

_____ _____

Clark County Defenders Union Chief Spokesperson Date

Exhibit 7

From: Ricciardi, Mark
To: David Westbrook
Cc: Katherine Currie-Diamond; Adam Levine (alevine@danielmarks.net); Ricciardi, Mark; Kheel, Allison
Subject: FW: 2024 Fact Finder Recommendation---Settlement Proposal
Date: Friday, May 9, 2025 10:41:35 AM
Attachments: CCDU Settlement Tentative Final Agreement(54678497.1).pdf

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David:

I am responding to your email of May 3, 2025. The County has reviewed the Fact Finder's report and the proposal you send with your May 3 email.

The County is interested in resolving the prior negotiations. I believe that the CCDU wants wage adjustments similar to what the CCPA received. An economic settlement on those terms would be acceptable however the County prefers not to include any "me-too" or "parity" language in the CBA.

Attached is a settlement proposal from the County that should achieve the CCDU's financial goals. If possible, it would be good to wrap this up on Monday so we can try and make even faster progress in the current negotiations.

Thanks, and let me know if you have any questions.

Mark J. Ricciardi
Regional Managing Partner

Fisher & Phillips LLP
300 S. Fourth Street | Suite 1500 | Las Vegas, NV 89101
mricciardi@fisherphillips.com | O: (702) 862-3804

vCard | Bio | Website *On the Front Lines of Workplace Law℠*

From: Kheel, Allison <akheel@fisherphillips.com>
Sent: Saturday, May 3, 2025 2:53 PM
To: Ricciardi, Mark <mricciardi@fisherphillips.com>; Kheel, Allison <akheel@fisherphillips.com>
Subject: FW: 2024 Fact Finder Recommendation

From: David Westbrook <pdavidwestbrook@gmail.com>
Sent: Saturday, May 3, 2025 10:05 AM
To: Kheel, Allison <akheel@fisherphillips.com>; Allison Kheel <allisonkheel@gmail.com>
Cc: Adam Levine <alevine@danielmarks.net>; Treasurer CCDU <ccdutreasurer@gmail.com>; Katherine Currie-Diamond <kcurriediamond@gmail.com>; Kelsey Bernstein <kbernstein.esq@gmail.com>; Defenders Union <defenders.union@gmail.com>; Kristy Holston <holstonkristy@gmail.com>; Tegan Machnich <tegan.machnich@gmail.com>; Olivia Miller <Oliviamiller620@gmail.com>
Subject: 2024 Fact Finder Recommendation

Dear Allison:

It is unclear why your clients are refusing to indicate whether they are willing to accept the fact finder's recommendation, but rather than further delay this process, CCDU has acquiesced to your demand that we first submit written contract language based on the recommendation. The proposed Article is attached.

Per the fact finder's recommendation, we added language to our original Article 38 proposal indicating that if the Prosecutors receive a salary schedule increase ***OR DECREASE,*** then the CCDU salary schedule will change accordingly in order to preserve parity. This "decrease" language is in keeping with the Fact Finder's recommendation. In addition, we will withdraw our longevity proposal for the 2024 contract year (rather than taking it to binding arbitration).

As over two weeks have already passed since the fact finder issued his recommendation, we request that your client either accept or reject this proposal by **5:00 p.m.** on **Friday, May 9, 2025**. If the proposal is rejected (or if no response is provided), then we will request a strike list for binding arbitration, to schedule it without further delay. If you intend to accept the fact finder's recommendation, but have issues with the wording of our proposal, please contact me to discuss changes. I can be contacted directly anytime at **702-439-4165**.

We look forward to reaching an agreement on our 2024 contract.

Sincerely,
P. David Westbrook
President
Clark County Defenders Union

Deleted Language: ~~Strikethrough~~
New Language: Bold

ARTICLE 31
Compensation

1. Effective July 1, ~~2023~~ **2024**, or upon ratification by the Clark County Defenders Union, whichever is later, the salary schedules for all employees covered in Appendix A will be adjusted by the annual percentage increase to CPI-U all items in West-Size Class B/C, All Urban Consumers, not seasonally adjusted (Series ID CUURN400SA0) for the calendar year ending December ~~2022~~ **2023**. The adjusted percentage increase in salary schedules shall be a minimum of 2% and a maximum of 3.0%. In the event that the annual percentage increase to CPI-U all items in West-Size B/C, All Urban Consumers, not seasonally adjusted (Series ID CUURN400SA0), is equal to or greater than 5%, the adjusted percentage increase in salary schedules shall be 4.5%. In the event the annual percentage increase to CPI-U all items in West-Size Class B/C, All Urban Consumers, not seasonally adjusted (Series ID CUURN400SA0) is equal to or less than 0%, the adjusted percentage increase in salary schedules shall be 1%.

   The adjusted percentage increase is based on U.S. Bureau of Labor Statistics Data (https://data.bls.gov/timeseries/cuurn400sa0).

CALCULATED AS FOLLOWS:

2023 ANNUAL CPI	188.941
LESS 2022 ANNUAL CPI	181.312
ANNUAL INCREASE	7.63
DIVIDED BY 2022 CPI	181.312
ANNUAL PERCENTAGE INCREASE IN CPI	4.2%
SALARY SCHEDULE ADJUSTMENT	3.0%

~~Calculated as follows:~~

~~2022 ANNUAL CPI~~	~~181.312~~
~~LESS 2021 ANNUAL CPI~~	~~167.642~~
~~ANNUAL INCREASE~~	~~13.67~~
~~DIVIDED BY 2021 CPI~~	~~.0815~~
~~ANNUAL PERCENTAGE INCREASE IN CPI~~	~~8.15%~~
~~SALARY SCHEDULE ADJUSTMENT~~	~~4.50%~~

~~2. Effective July 1, 2023, or upon ratification by the Clark County Defenders Union,~~

~~whichever is later, salary schedules for all employees covered in Appendix A will be adjusted by an additional 1.5%.~~

2. **APPENDIX A REFLECTS THE FINAL CALCULATION OF SALARY SCHEDULES FOR ALL EMPLOYEES EFFECTIVE JULY 1, 2024.**

3. Employees covered by this agreement are eligible to participate in all rewards incentives, and bonus programs approved by the County for full-time non-management employees, and for programs established by the Public Defender and/or Special Public Defender.

APPENDIX A

Clark County Defenders Union
Salary Schedules & Ranges
July 1, 2024 – June 30, 2025
Reflects 3% Increase

			SALARY RANGE		
Sch	**Title**		**Minimum**	**Midpoint**	**Maximum**
U02[1]	DEPUTY PUBLIC DEFENDER	Annual	**92,747.20**	**136,801.60**	**180,856.00**
		Biweekly	**3,567.20**	**5,261.60**	**6,956.00**
		New Hourly	**44.59**	**65.77**	**86.95**
U03[2]	CHIEF DEPUTY PUBLIC DEFENDER	Annual	**133,723.20**	**170,497.60**	**207,272.00**
		Biweekly	**5,143.20**	**6,557.60**	**7,972.00**
		New Hourly	**64.29**	**81.97**	**99.65**

[1] Includes 1% increase and adjustment of 8%
[2] Includes 1% increase and adjustment of 6%

The parties hereby tentatively agree ("TA") to this proposal. This TA on Article 31 replaces and supersedes the previously signed TA on Article 31, signed on January 28, 2025. This TA, along with any other articles which the parties have previously tentatively agreed ("TA'd") with signatures, conclude the 2024 negotiations for a complete collective bargaining agreement. All other articles in the current CBA not separately TA'd with signatures remain unchanged. All proposals not TA'd are withdrawn. Both bargaining teams, the Association and the County, shall recommend ratification to their members and the Board of County Commissioners (BCC), respectively. Any changes to compensation may take up to 90 days following BCC ratification to implement into the system.

Dated this ____ day of _____, 2025

_____
P. David Westbrook
CCDU President/Chief Spokesperson

_____
Christina Ramos
Clark County HR/Chief Spokesperson

Exhibit 8

Kheel, Allison

From: Kheel, Allison
Sent: Wednesday, June 4, 2025 3:24 PM
To: Adam Levine (alevine@danielmarks.net); 'Joi Harper'; 'David Westbrook'
Cc: Kerr, Darhyl; Griffin, Sarah; Ricciardi, Mark; Kheel, Allison
Subject: RE: Follow up on CCDU Binding Fact Finding

Adam,

I just wanted to follow up on the e-mail below because I have not seen a response from the Union yet.

thanks

Allison Kheel
Attorney at Law
Fisher & Phillips LLP
300 S. Fourth Street | Suite 1500 | Las Vegas, NV 89101
akheel@fisherphillips.com | O: (702) 862-3817 | C: (702) 467-1066
Website *On the Front Lines of Workplace Law℠*

From: Kheel, Allison
Sent: Friday, May 30, 2025 8:38 AM
To: Adam Levine (alevine@danielmarks.net) <alevine@danielmarks.net>; Joi Harper <jharper@danielmarks.net>; David Westbrook <pdavidwestbrook@gmail.com>
Cc: Kheel, Allison <akheel@fisherphillips.com>; Kerr, Darhyl <dkerr@fisherphillips.com>; Griffin, Sarah <sgriffin@fisherphillips.com>; Ricciardi, Mark <mricciardi@fisherphillips.com>
Subject: Follow up on CCDU Binding Fact Finding

Dear Adam,

Following up on our call last week, you had stated that longevity was no longer on the table, and except for compensation and parity, the parties had either TA'ed or withdrew all other remaining proposals prior to the non-binding factfinding.

This e-mail shall confirm that the only Article that remains open is Article 31 concerning compensation (which includes the Salary Schedules in Appendix A by reference). The attached (which the Union previously received on May 9, 2025) constitutes the County's most recent offer on compensation. This proposal includes the 3% COLA (which the CCDU already received) as well as the additional

1% wage increase and the 8% and 6% increases to the top and bottom of the respective salary ranges for the Deputy PD and Chief Deputy PD. It is the County's current understanding that the Union has rejected this proposal, despite the fact that this proposal will result in the CCDU having the same wage schedule the CCPA. It is also the County's understanding that the Union has not passed any counter proposal on Article 31, but instead is choosing to insist to the point of binding fact finding that the CBA include a new article with "me too" language titled "Salary Schedule Parity."

However, "me too" or "parity" language is **not** a mandatory subject of bargaining under NRS 288.150 and the County does **not** agree to take this issue to binding factfinding. **Please confirm by End of Business on Wednesday, June 4, 2025 whether the Union intends to ask the binding fact finder to impose the new "parity"/"me too" article**.

The County is currently reviewing witness availability for the additional dates provided by Arbitrator Clauss (but I am not optimistic since one is a holiday and one is a Saturday). However, the County has already indicated its availability for September 8, 2025 and remains available and remains ready to present its final offer on Article 31 – Compensation at binding fact finding.

Please do not hesitate to contact me if you wish to discuss this matter further.

Very truly yours,

Fisher Phillips

Allison Kheel
Attorney at Law
Fisher & Phillips LLP
300 S. Fourth Street | Suite 1500 | Las Vegas, NV 89101
akheel@fisherphillips.com | O: (702) 862-3817 | C: (702) 467-1066
Website *On the Front Lines of Workplace Law℠*

Exhibit 9

CCPA Proposal; 4/29/2025

ARTICLE _____
PAY SCALE DIFFERENTIAL

The Salary Schedules and Ranges of Deputy District Attorney shall be, at least, 10% higher than Deputy Public Defender Salary Schedules and Ranges.

The Salary Schedules and Ranges of Chief Deputy District Attorney shall be, at least, 5% higher than Chief Deputy Public Defender Salary Schedules and Ranges.

Dated this ____ day of _____, 2025

_____	_____ _____
Marc DiGiacomo	Marc Ricciardi
CCPA Spokesperson	Clark County Spokesperson

Exhibit 10

UNION PROPOSAL: 03/15/2025

[---] =DELETED LANGUAGE
CAPS=NEW LANGUAGE

ARTICLE 38
SALARY SCHEDULE PARITY

1. Anytime the Clark County Prosecutors Association receives any salary schedule increase(s), then the salary schedules for all employees covered by this Agreement shall be adjusted under the same terms and conditions. This is to ensure and maintain the longstanding historical parity between the Deputy District Attorneys and Deputy Public Defenders in Clark County, and throughout Nevada.

_____ _____

Mark Ricciardi
Clark County, Nevada
Representative/Chief Negotiator

Date

_____ _____

P. David Westbrook
Clark County Defenders Union
Representative/Chief Negotiator

Date

Local 1107's Response to Petition for Declaratory Order

CHRISTENSEN JAMES & MARTIN, CHTD.
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Attorneys for Local 1107

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

CLARK COUNTY, Petitioner, vs. CLARK COUNTY DEFENDERS UNION, *et al.*, Respondents.	CASE NO.: 2025-015

LOCAL 1107'S RESPONSE TO PETITION FOR DECLARATORY ORDER

Respondent, Nevada Service Employees Union aka Service Employees International Union, Local 1107 ("Local 1107" or the "Union"),[1] by and through its counsel of record, and pursuant to NAC 288.390, hereby responds to the petition for declaratory order filed by Clark County.[2]

I.

INTRODUCTION

Despite the County's attempt at linguistic contortion, the questions before the Board are straightforward. Are "salary and wage rates" a mandatory subject of bargaining under NRS 288.150(2)(a)? **The answer is a resounding "yes."** Does a proposal for pay parity fall within the scope of "salary and wage rates" and therefore qualify as a subject ripe for bargaining? **Absolutely.** May the Board override the statutory framework and

[1] Local 1107's address is 2250 S. Rancho Drive, Suite 165, Las Vegas, NV 89102.
[2] Clark County's address is 500 S. Grand Central Parkway, Las Vegas, NV 89155.

impose its own judgment on *how* parties should negotiate over such mandatory subjects? **No.**

Local 1107 does not take a position on whether this specific pay parity provision should ultimately be included in the Clark County Defenders Union collective bargaining agreement. That decision lies with the fact finder. However, what Local 1107 does assert—unequivocally—is that the Board lacks the authority to prevent bargaining parties from using lawful means in an effort to cause such a provision to be stated in a collective bargaining agreement, including through the fact finding process. The Board's role is not to evaluate the merits of individual proposals, but simply to determine whether they fall within the scope of mandatory bargaining.

Pay parity, by its very nature, relates directly to salary and wage rates. As such, it is a mandatory subject of bargaining. Once the Board correctly reaches that conclusion, its involvement ends. The propriety of the specific clause—its fairness, feasibility, or economic impact—is a matter for the fact finder to assess through the process established by the Legislature. The Board must respect that process and refrain from substituting its own judgment for that of the parties or the designated neutral.

II.

STATEMENT OF THE FACTS

Local 1107 has not been involved in the interactions between the County and the Clark County Defenders Union ("CCDU"), which are described in the County's petition. Thus, Local 1107 does not dispute the facts as laid out by the County, except to the extent the County may have misrepresented oral communications between those parties (if at all). Notably, the County points out that an outside source—the Consumer Price Index ("CPI")—is consulted to determine wage increases. Based on Local 1107's experience in negotiating its own collective bargaining agreements, this is the County's typical practice.[3]

[3] Under NAC 288.322, the Board may take official notice of the CBAs between Local 1107 and Clark County, which are in the Board's possession.

III.

MEMORANDUM OF POINTS & AUTHORITIES

A. Neither the Board nor the County can limit the definition of salary or wage rates under NRS 288.150(2)(a).

The very first of twenty-three enumerated mandatory subjects of bargaining under NRS 288.150(2)(a) is "salary or wage rates or other forms of direct monetary compensation." Under this language, not only the outcomes—*i.e.*, the actual rates—but also the methods by which those rates are determined are subjects of mandatory bargaining, as evidenced by the County's reliance upon the CPI, which is just one example of many valid methods for negotiating salary adjustments. It follows logically that any rational mechanism for determining wage rates, including pay parity, falls within the scope of mandatory bargaining.

The County's attempt to exclude pay parity from bargaining by invoking the "significant relationship" test is both misguided and legally unsound. The Nevada Supreme Court has held that any subject with a "significant relationship" to wages, hours, and working conditions is also a mandatory subject of bargaining. *Truckee Meadows Fire Prot. Dist. v. Int'l Ass'n of Fire Fighters, Local 2487*, 109 Nev. 367, 371, 849 P.2d 343, 346 (1993). Properly applied, the "significant relationship" test serves to clarify, not narrow, the scope of bargaining subjects. *See, e.g.*, *Ormsby Cty Ed. Ass'n v. Carson City School Dist.*, Case No. A1-045549, Item No. 333, at 3 (EMRB, June 27, 1994) ("We have never accepted or adopted a narrow statutory interpretation of the term "insurance benefits" as set forth in NRS 288.150(2)(f)."). The Legislature has already defined the boundaries of mandatory bargaining in NRS 288.150(2). The Board is not authorized to further restrict that scope. Any effort to do so would be an overreach and contrary to legislative intent.

The County's semantic gymnastics should be disregarded. It argues that pay parity bears no "significant relationship" to salary or wage rates. Yet, by definition, "pay" is

inherently linked to both salary and wages. Merriam-Webster defines "salary" as "fixed compensation paid regularly for services,"[4] and "wage" as "a payment usually of money for labor or services usually according to contract."[5] The term "pay" is embedded in both definitions. Furthermore, the County's emphasis on the modifier "parity" is misplaced. The Cambridge Dictionary defines "parity" as "equality, especially of pay or position."[6] Thus, pay parity is not tangential—it is central to the concept of salary and wage rates.

The County contends that it is improper for third parties to influence wage calculations. Yet it *routinely and repeatedly* relies on at least one third party source, the CPI, to do precisely that. The distinction it draws between CPI and pay parity is arbitrary. Once wage rates are codified in a contract, they express the "meeting of the minds" of the contracting parties, and they become objective by definition. Merriam-Webster defines "objective" as "expressing or dealing with facts or conditions as perceived without distortion by personal feelings, prejudices, or interpretations."[7] Is the County suggesting that its own contracts with other parties are subjective or biased? If not, then its objection to the inclusion of a contractual pay parity provision on the grounds of subjectivity collapses.

Moreover, the County's claim that pay parity shifts the wage calculation from "what" to "who" is a rhetorical sleight of hand that must be rejected. The CPI itself is not a divine abstraction—people develop it. If the County accepts CPI as a valid "what," then it must accept that other human-created benchmarks, such as comparable contracts, also qualify as "whats." Pay parity does not require referencing a specific individual or even a specific group; it references another contract—a neutral, objective document. In the County's own terms, a contract is a "what," not a "who."

---

[4] https://www.merriam-webster.com/dictionary/salary.
[5] https://www.merriam-webster.com/dictionary/wage.
[6] https://dictionary.cambridge.org/us/dictionary/english/parity.
[7] https://www.merriam-webster.com/dictionary/objective.

Ultimately, whether a fact finder agrees with the merits of pay parity as a method for determining wage rates is a separate issue.[8] That question lies outside the jurisdiction of this Board. What is within the Board's purview is to uphold the statutory framework established by the Legislature, which clearly includes salary and wage rates—and by extension, the methods used to determine them—as mandatory subjects of bargaining.

B. The County's own admissions reveal a pattern of bad faith bargaining.

While the County accuses the CCDU of bargaining in bad faith, it simultaneously reveals its own failure to meet the legal standard for good faith bargaining under NRS 288.270(1)(e). This statute clearly prohibits a local government employer from refusing to bargain collectively in good faith with the exclusive representative of a bargaining unit. Importantly, bad faith bargaining is not judged by isolated incidents but by a pattern of conduct that undermines the collective bargaining process. *See City of Reno v. Reno Police Protective Ass'n*, Case No. A1-046096, Item No. 790 (EMRB, Nov. 27, 2013).

The County's conduct fits this pattern. It has long maintained a rigid adherence to proposals that prioritize uniformity across bargaining units, regardless of the unique needs and interests of each unit. This approach has been flagged by Local 1107 as problematic, and now the County has openly confirmed it. In its own words, the County admits that it does not negotiate based on the specific interests of individual bargaining units. It instead seeks to impose a one-size-fits-all strategy, but only when the County concludes that doing so benefits the County. As stated in its Petition at 16:21–17:1, "This would negatively impact the County's overall bargaining strategy of maintaining a pattern or consistency across bargaining units."

[8] Many of the arguments the County presents to the Board would be more appropriate for a fact finder to consider (*e.g.*, the "Big Union" v. "Small Union" argument starting on page 16 of the Petition). The fact finder is empowered to determine whether there is a significant difference between the two employee organizations to determine if pay parity is inappropriate.

This admission is not just a strategic misstep. It is a direct contradiction of the County's legal duty to bargain in good faith with "each" unit (NRS 288.250(1)), based on each unit's distinct "community of interest." *See* NRS 288.170(1). The County's approach effectively sidelines the voices of individual units in favor of a homogenized framework that serves the County's own convenience.

Furthermore, the County's reasoning is internally inconsistent. It claims that "pay parity would increase the number of differences in benefits" between units—a statement that defies logic. Petition at 16:20. It is self-evident that parity would reduce disparities, not increase them. This contradiction exposes the County's selective application of its "uniformity" principle: it invokes uniformity when the County's position is aided, but abandons uniformity in other circumstances. This opportunistic stance is a hallmark of bad faith bargaining.

Maintaining parity often makes good sense to bargaining parties, and there should be no prohibition on written parity provisions appearing in CBAs. As it relates to the bargaining units represented by Local 1107, the County has already established a clear precedent of maintaining parity across agreements on mandatory subjects of bargaining. Notably, Article 29 of both the Supervisory and Non-Supervisory Collective Bargaining Agreements contains identical language regarding Group Insurance—a mandatory subject under NRS 288.150(2)(f). This article outlines the creation of an executive board composed of management representatives tasked with overseeing the Clark County Group Health Insurance Plan. Critically, both CBAs explicitly assign to that managerial board the responsibility of "[d]eveloping and negotiating any plan changes with SEIU."

The inclusion of this identical provision in both contracts is not incidental. It reflects the County's recognition that consistency and fairness across bargaining units is both appropriate and achievable. By embedding the same language in two separate agreements, the County has demonstrated that parity is not only possible, but also a standard practice when addressing mandatory subjects. This reinforces the argument that

similar treatment should be extended in other areas of negotiation, and none of this would be altered if an express parity provision were stated in a CBA.

In essence, the County wants the ability to treat all bargaining units as one whenever it chooses, and only when it chooses. This is not collective bargaining; it is strategic manipulation. The County cannot have it both ways. If the County truly values fairness and consistency, it must respect the individuality of each bargaining unit and negotiate accordingly, including those bargaining units that may seek to include parity provisions in their contracts. Otherwise, the County is not bargaining in good faith—it is bargaining for control—and its efforts violate the requirements of NRS 288.

IV.

CONCLUSION

Based upon the foregoing, Local 1107 respectfully requests that the Board deny Clark County's Petition for Declaratory Order.

DATED this 14th day of August, 2025.

CHRISTENSEN JAMES & MARTIN, CHTD.

By: */s/ Dylan J. Lawter*
Dylan J. Lawter, Esq.
Nevada Bar No. 15947
7440 W. Sahara Avenue
Las Vegas, NV 89117
Attorneys for Local 1107

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2025, I caused a true and correct copy of the foregoing Response to be filed via email, as follows:

Employee-Management Relations Board
emrb@business.nv.gov

I hereby certify that on August 14, 2025, I served a true and correct copy of the foregoing Response via email to the following recipients:

FISHER & PHILLIPS LLP
Mark J. Ricciardi
Allison L. Kheel
300 South Fourth Street, Suite 1500
Las Vegas, NV 89101
mricciardi@fisherphillips.com
akheel@fisherphillips.com

CHRISTENSEN JAMES & MARTIN, CHTD.

By: */s/ Dylan Lawter*
Dylan Lawter

Clark County's Reply to SEIU and In Support of Petition for Declaratory Order

FISHER & PHILLIPS LLP
MARK J. RICCIARDI, ESQ.
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Attorneys for Petitioner, Clark County

STATE OF NEVADA

EMPLOYEE-MANAGEMENT RELATIONS BOARD

CLARK COUNTY, Petitioner, vs. CLARK COUNTY DEFENDERS UNION; CLARK COUNTY PROSECUTORS ASSOCIATION; SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1107 (NON-SUPERVISORY); SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1107 (SUPERVISORY); INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1908 (NON-SUPERVISORY); INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1908 (SUPERVISORY); JUVENILE JUSTICE PROBATION OFFICERS ASSOCIATION; JUVENILE JUSTICE SUPERVISORS ASSOCIATION; CLARK COUNTY LAW ENFORCEMENT ASSOCIATION, FOP LODGE #11; DISTRICT ATTORNEY INVESTIGATORS ASSOCIATION Respondent.	Case No.: 2025-015 **CLARK COUNTY'S REPLY TO SEIU AND IN SUPPORT OF PETITION FOR A DECLARATORY ORDER CLARIFYING THAT PAY PARITY IS NOT A MANDATORY SUBJECT OF BARGAINING**

Petitioner, Clark County ("County" or "Petitioner"), by and through its counsel of record, Fisher & Phillips, LLP, hereby files this Reply to the Response filed by the Nevada Service Employees Union aka Service Employees International Union, Local

1107 ("SEIU" or the "Union"), and In Support of its Petition for a Declaratory Order to the Employee Management Relations Board ("Board" or "EMRB") requesting a finding that Pay Parity is not a mandatory subject of bargaining and finding that Pay Parity is a prohibited subject of bargaining or in the alternative a permissive subject of bargaining, and insistence upon taking such a non-mandatory subject of bargaining to Binding Fact-Finding is bad faith bargaining.

POINTS AND AUTHORITIES IN REPLY

A. Pay Parity Is A Separate And Distinct Subject From "Salaries And Wage Rates" Under NRS § 288.150(2)(a)

In its Response, SEIU grossly mischaracterizes the nature of a Pay Parity clause and essentially argues that "Pay Parity" and "Pay" are synonymous and the Board should look no further (*i.e.*, "ignore the man behind the curtain"). Focus on the word "pay" is highly misleading, as any "parity" or "me too" clause (*e.g.*, vacation parity, break room parity, etc.) would be prohibited. At its core, a Pay Parity clause is a request for another union or entity to negotiate on your behalf — something the Board has made very clear is prohibited. *Int'l Ass'n of Fire Fighters, Local 1265 vs. City of Sparks*, EMRB Item No. 136, at *8. Nothing makes this distinction clearer than the Limited Joinder filed by the Clark County Prosecutors' Association ("CCPA"), which clearly argues that the CCPA should not be responsible for negotiating on behalf of the CCDU.

SEIU does make a solid point on the top of page 6 of its brief — that bargaining must be with each individual unit per the express language of NRS § 288.150(1). But it is a solid point in favor of the County's position that Pay Parity is a prohibited subject of bargaining. A parity provision, as explained by the County and by the CPAA, would transfer the bargaining obligation outside of the unit and saddle the representative of another unit with that obligation, whether they wanted it or not. This would plainly constitute bargaining with someone other than the recognized representative for each unit, in violation of NRS § 288.150(1). And it is precisely why cases such as *Loc. 1219, Int'l*

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Las Vegas, Nevada 89101

Ass'n of Fire Fighters v. Connecticut Lab. Rels. Bd., 370 A.2d 952 (Conn. 1976) have found Pay Parity to be unlawful and prohibited.

SEIU would have the Board believe that parity is no different than referencing the external metric of CPI[1] (*see* SEIU Resp. p. 4), but as the County explained at length in its Petition, Pay Parity goes beyond merely referencing an external metric and shifts the duty to negotiation on behalf of bargaining unit members. The calculated results of government collected data is just not the same as forcing another union to negotiate a clause in a contract covering people who are not in its bargaining unit and who it does not represent. SEIU improperly focuses on the definitions of "subjective" vs. "objective" and misses the overarching point. Use of CPI is merely a way of referencing an external calculation that will become fixed and known at a predetermined point in time, and with a predetermined methodology for calculation. Stated differently, CPI imports a definite mathematical calculation into the CBA while Pay Parity imports another's negotiations and bargaining power into the CBA.

To illustrate this distinction, imagine a scenario where both the CCPA and CCDU have Pay Parity provisions in their CBAs — *i.e.*, the CCPA contract says: "we get whatever the CCDU negotiates;" and the CCDU contract says: "we get whatever the CCPA negotiates." In this scenario, there would be no way to know what to pay either bargaining unit. Such a scenario could easily occur if the Board incorrectly found Pay Parity to be a mandatory subject of bargaining.

The Board should disregard SEIU's convoluted word games and focus on the crux of the issue: shifting responsibility for negotiations onto another entity.

[1] Additionally, the fact that the County uses CPI in its CBAs is irrelevant to the ultimate question of the Petition. If the Board were to (correctly) conclude that Pay Parity is a prohibited subject and (incorrectly) conclude that use of CPI as a metric somehow violated the law, then the provisions using CPI would simply become illegal. The mere fact that two parties agree to include an illegal term iu a contract does not make it legal.

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300 S Fourth Street, Suite 1500
Las Vegas, Nevada 89101

B. The Board Should Disregard SEIU's Second Argument Concerning Bad Faith Bargaining As Irrelevant

The present matter arises from a Petition for a Declaratory Order, proceedings which focus on the correct interpretation of the statute. This matter does not involve a Prohibited Practices Complaint or any allegations of bad faith bargaining. Therefore, SEIU's inclusion of three pages of argument claiming the County has engaged in a "pattern of bad faith bargaining" is entirely improper in a Response to a Petition for a Declaratory Order.[2] SEIU is clearly attempting to prejudice the Board by mischaracterizing the County's actions in an attempt to make the County defend its actions and sidetrack these proceedings. The Board is not being called upon to adjudicate the legality of Clark County's bargaining history in these proceedings. Therefore, the Board should strike this argument from consideration when resolving the Petition.

C. To The Extent The Board Considers Any Arguments Pertaining To Bad Faith Bargaining, An Overall Bargaining Pattern And Desire For Internal Equity Does Not Demonstrate Bad Faith Bargaining

To the extent that the Board does not strike SEIU's second argument and instead considers it as a general and abstract argument (which it is not, and the Board should not do), the Board should not conclude that maintaining a pattern in bargaining would in any way demonstrate bad faith bargaining. The County agrees with SEIU's statement that the County has a "legal duty to bargaining in good faith with 'each' unit (NRS 288.250(1), based on each unit's distinct 'community of interest.'" (SEIU Resp. p. 6:2-3). However, a duty to bargaining with each unit individually in good faith does not exclude a general pattern in bargaining or a desire to maintain internal equity among all its employees. *Clark County Teachers Ass'n vs. Clark County School District*, EMRB Item No. 131, Case No. A1-045354, *6 (EMRB, July 12, 1982) (holding that having matching agreements, and/or maintaining a pattern among bargaining units is not a prohibited practice). The County, like any party in negotiations, approaches bargaining with overall objectives and strategy, but still negotiates with each bargaining unit separately and based

[2] The County denies that it has engaged in any wrongdoing and reserves the right to fully brief and respond to any allegations of bad faith bargaining.

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300 S Fourth Street, Suite 1500
Las Vegas, Nevada 89101

upon each individual unit's demands and relative bargaining power.[3] While having the same (or very similar) contract language in multiple CBAs may result in parity, this is not the same as having parity language in the contract. Each bargaining unit still individually negotiated for the specific terms in their respective contracts, and made different concessions and trade-offs to get there.[4] A desire for overall consistency and fairness is not equivalent to piggybacking off another unit's negotiations, particularly when that piggybacking is limited to one single contract term.[5] As the County highlighted in Section B(1) of its Petition, limiting negotiations on one subject (by a Pay Parity provision) allows the union to use its relative bargaining power to demand greater concessions on other articles, while hindering the bargaining power of the referenced union. Therefore, even though the wage provisions of the two CBAs become more uniform, the other provisions of the CBAs will become more disparate.

CONCLUSION

Based on the foregoing, the Board should reject SEIU's attempt to mischaracterize Pay Parity language as equivalent to CPI language. "Parity" or "me too" language is a request to shift the duty to negotiate on behalf of bargaining unit members to another union or entity who does not represent those members. The Board should also strike SEIU's second argument as outside the scope of this Petition. To the extent the Board considers SEIU's second argument, the Board should reject it as pattern bargaining and/or matching contract language are not evidence of bad faith bargaining, and simply because these may result in parity among bargaining units does not mean that "parity"/"me too" language is permissible. Therefore, the Board should issue a

/ / /

[3] While irrelevant to these proceedings, there are several instances in the County's bargaining history where it has deviated from its pattern of wage increase and negotiated a lower wage increase in exchange for a concession on another article.

[4] For example, in Fiscal Year 2024 all the County bargaining units agreed to identical CPI wage increase language with the exception of the CCPA who insisted on a flat 3% increase.

[5] Moreover, since wage increases are designed to compensate for inflation, and all units are covered by a single measurement of inflation (i.e. one inflation rate), and inflation impacts all units similarly, it is not surprising that the amount of the wage increases offered to the bargaining units is similar or the same.

FISHER & PHILLIPS LLP
300 S Fourth Street, Suite 1500
Las Vegas, Nevada 89101

Declaratory Order finding that Pay Parity is NOT a mandatory subject of bargaining and presenting Pay Parity language at Binding Impasse Fact-Finding is still an unlawful prohibited practice.

DATED this 19th day of September, 2025.

FISHER & PHILLIPS LLP

By: */s/ Allison L. Kheel, Esq.*
Mark J. Ricciardi, Esq.
Allison L. Kheel, Esq.
300 South Fourth Street, Suite 1500
Las Vegas, NV 89101
Attorneys for Petitioner

FISHER & PHILLIPS LLP
300 S Fourth Street, Suite 1500
Las Vegas, Nevada 89101

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of September, 2025, I filed by electronic means the foregoing **CLARK COUNTY'S REPLY TO SEIU AND IN SUPPORT OF ITS PETITION FOR A DECLARATORY ORDER CLARIFYING THAT PAY PARITY IS NOT A MANDATORY SUBJECT OF BARGAINING** as follows:

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CCDU and DAIA's Answer to Clark County's Petition for Declaratory Order

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STATE OF NEVADA

EMPLOYEE-MANAGEMENT RELATIONS BOARD

CLARK COUNTY,

Petitioner,

vs.

CLARK COUNTY DEFENDERS UNION; CLARK COUNTY PROSECUTORS ASSOCIATION; SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1107 (NON-SUPERVISORY); SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1107 (SUPERVISORY); INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1908 (NONSUPERVISORY); INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1908 (SUPERVISORY); JUVENILE JUSTICE PROBATION OFFICERS ASSOCIATION; JUVENILE JUSTICE SUPERVISORS ASSOCIATION; CLARK COUNTY LAW ENFORCEMENT ASSOCIATION, FOP LODGE #11; DISTRICT ATTORNEY INVESTIGATORS ASSOCIATION

Respondents.

CASE NO.: 2025-015

RESPONDENTS CLARK COUNTY DEFENDERS UNION AND DISTRICT ATTORNEY INVESTIGATORS ASSOCIATION'S ANSWER TO CLARK COUNTY'S PETITION FOR A DECLARATORY ORDER CLARIFYING THAT PAY PARITY IS NOT A MANDATORY SUBJECT OF BARGAINING

COMES NOW Respondents Clark County Defenders Union ("CCDU") and District Attorney Investigators Association ("DAIA") (Collectively "Respondents"), by and through their undersigned counsel Adam Levine, Esq., of the Law Office of Daniel Marks and hereby answer Clark County's Petition for a Declaratory Order Clarifying that Pay Parity is not a Mandatory Subject of Bargaining as follows:

I. BACKGROUND

The "Factual Background" section of Clark County's Petition provides a recitation of the procedural history of this matter, but omits one crucial fact: despite having countless opportunities over the last year to assert that CCDU's Salary Schedule Parity article is not a subject of mandatory bargaining, the County failed to do so until the eve of binding arbitration.

CCDU made its pay parity proposal during the April 17, 2024 negotiation session. See *Clark County Defenders Union v. Clark County*, Case No. 2024-014, Item No. 904 (2024).[1] At no time during the negotiation did Clark County assert that pay parity fell outside the scope of mandatory bargaining. When Clark County would neither accept the parity proposal in any form, nor make any counteroffer(s), CCDU was forced to declare impasse.

Thereafter, Clark County demanded mediation. See Item No. 904. CCDU agreed to the County's demand on May 14, 2024, but the County refused to schedule the mediation until August 1, 2024, a delay that this Board found to be "without cause" and "contrary to the duty to act in good faith." Id. The County had every opportunity during this *three month* delay to assert that the Parity Clause was not a subject of mandatory bargaining, but never did. The parties failed to reach an agreement during the mediation and a non-binding fact-finding was scheduled for January 30, 2025 - a full 6 months later.

[1] The Board's Decision contains a detailed timeline of all proposals made by the parties.

Prior to the 1/30/2025 fact-finding, the parties each filed Prohibited Practices Complaints with the EMRB. See *Clark County Defenders Union v. Clark County*, Case No. 2024-014, Item No. 904 (2024). Clark County filed its Counterclaim in Case No. 2024-014 on July 8, 2024. At no point in its Counterclaim did Clark County assert that CCDU was bargaining on a prohibited subject or was otherwise seeking to take a non-mandatory subject of bargaining to fact-finding.

A hearing was held on the Prohibited Practices Complaints on November 6-7, 2024. Clark County did not seek to amend its Complaint prior to the hearing to assert that CCDU was insisting upon bargaining on a prohibited subject. Not once during the two full days of testimony and argument did the County assert that the parity clause was a prohibited subject. This argument was also absent from the County's post-hearing brief.

As noted in Clark County's "Factual Background," the parties both agreed that the two issues to be submitted to Fact-Finder Robert Hirsch were CCDU's pay parity language and the issue of longevity. (Petition at p. 3 lines 7-10; Exhibit "3" to the Petition). However, at no time during the January 30, 2025 Fact-Finding hearing did Clark County claim that the pay parity proposal fell outside the scope of mandatory bargaining. (Exhibit "A"). Following the hearing, the parties agreed to file post-hearing briefs. At no point in its post-hearing brief did Clark County argue that the pay parity was not a subject of mandatory bargaining. (Exhibit "B").

In the written recommendation issued on April 16, 2025, Fact-Finder Hirsch recommended adding the pay parity clause proposed by CCDU, but modified to include both increases and *decreases* to the salary schedule. (Exhibit "5" to Petition). CCDU sent proposed language adopting the Fact-Finding Recommendation to the County on May 3, 2025. (Exhibit "6" to Petition).

It was not until May 30, 2025, **408 days** after Clark County first received CCDU's Pay Parity proposal, that Clark County asserted *for the first time* that it believed pay parity is not a subject of mandatory bargaining. (Exhibit 8 to Petition, Email from Allison Kheel). That same day, the parties

confirmed that the binding fact-finding before mutually selected Arbitrator Brian Clauss would take place on September 8, 2025. (Exhibit "C").

Throughout the months of June and most of July, Clark County did nothing regarding this emailed assertion. Rather, the County waited another **54 days** until July 23, 2025 to file its Petition for a Declaratory Order. Quickly thereafter, the County sought to use this last-minute filing to postpone the agreed-upon fact finding hearing before Arbitrator Clauss. On August 5, 2025 Clark County, through its counsel, emailed Arbitrator Clauss with a motion to postpone the binding fact-finding hearing based upon its filing of the Petition. (Exhibit "D"). CCDU opposed this motion, arguing that the County was employing yet another delay tactic, and pointing out that another fact-finder had previously rejected sucb eleventh-hour attempts to avoid the statutory process based on newly asserted issues. (Exhibit "E"). The County's motion was denied by Arbitrator Clauss and the binding fact-finding (interest arbitration) will proceed on September 8, 2025.

A. Pay Parity Provisions Have Been an Established Part of Collective Bargaining Under NRS Chapter 288 for Over 40 Years

As noted in Clark County's Petition, this Board has previously approved pay parity provisions in *Clark County Teachers Association v. Clark County School District*, Case No. A1-045354 Item No. 131 (1982) (hereafter "CCTA"). In CCTA, the District had three (3) bargaining units – teachers, classified employees, and administrators.[2] In 1981, the District negotiated parity agreements with its Classified and Administrative bargaining units. The District offered the Classified and Administrative bargaining units salary increases of 24% over two years, and agreed that if the increase offered to the Teachers Association exceeded that amount, the difference would be matched, and the percentage

[2] The Police Officers Association of the Clark County School District did not exist in 1982.

salary parity would be maintained for each bargaining unit. This arrangement had been utilized with the knowledge of the Teachers Association since 1973.

When the District reached an agreement with the Teachers Association to provide a 25.49% increase over the 2-year period, the parity agreement was implemented by the District to increase the amount received by the Classified and Administrative bargaining units. The Teachers Association, which already had a Complaint pending against the District, amended its Complaint to seek a declaration that the parity agreement was "null and void."

In rejecting the argument that parity agreements were unlawful, the Board noted that such parity agreements have been "an established pattern in negotiations in the state for over a decade." The Board specifically recounted:

> Although this is the first time this Board has been asked to directly address the validity of parity agreements, it is not the first time the Board has dealt with similar offers or agreements. These same parties were before this Board *In the Matter of the Clark County Certified Teachers Association v. Clark County School District*, et.al., Case No. A1-045302, Item No. 62 (1976). We held at that time it was not an unfair labor practice for the CCSD to offer the CCCTA the same percentage raise it offered the other two units it bargained with, 3.5 percent. Further, it should be noted that matching agreements were admitted to have been used by the CCSD since 1973. *In Carson City Firefighters Association v. Carson City Board of Supervisors*, et.al., Case No. A1-045285, Item No. 39 (1975), the Board ratified a differential pay raise for city firefighters of 5 percent above the overall cost of living and "parity pay" increase granted for other city employees. More recently, an award under the "Firefighters Final Best Offer" provisions of NRS Chapter 288 was ratified by the Board in *International Association of Firefighters, Local 1607 v. The City of North Las Vegas,* Case No. A1-045341, Item No. 108 (1981). That award granted parity in wages as a provision of the contract for the firefighters of North Las Vegas. In that case parity was ordered not with the salaries of other city employees but was to be based upon the wages of firefighters in the City of Las Vegas, employees of a separate governmental employer.

Thus, the Board concluded, "Parity or matching agreements are not prohibited by any provisions under NRS Chapter 288, or by any other relevant statute or decisional law in Nevada."

Clark County itself has been both a direct and indirect party to pay parity clauses for many years. For example, in its January 30, 2025 Post-Hearing Brief to Fact-Finder Hirsch, the County admitted that it negotiated a pay parity article with the International Association of Firefighters ("IAFF"). In arguing against pay parity for CCDU, the County wrote, "In fact, the only 'me too' provision used by the County is in the IAFF contracts, where the contracts are identical except for the wages of the supervisors are higher by a fixed amount." (Exhibit "B" at p. 19). Of course, even in this acknowledgement the County never argued that its IAFF pay parity provisiou was "outside the scope of mandatory bargaining."

Clark County was also involved in negotiating a pay parity provision in connection with the Las Vegas Metropolitan Police Department ("LVMPD"). LVMPD is governed by a Fiscal Affairs Committee containing two representatives from Clark County and two from the City of Las Vegas. See NRS 280.130 (1),(3).[3] Clark County and the City of Las Vegas are required to prepare a funding apportionment plan for LVMPD to be paid from the County and City budgets. See NRS 280.201. Clark County and the City of Las Vegas are responsible for financing LVMPD, and must therefore provide financial information to employee organizations under NRS 288.180(2).

Because of their roles in financing and financial oversight, these Clark County representatives are part of the Management Team that negotiates collective bargaining agreements between LVMPD and its employee organizations. (Exhibit "A" at p. 187). Likewise, the Clark County Commissioners and City of Las Vegas Council members who are part of the Fiscal Affairs Committee are required to approve any collective bargaining agreement under NRS 288.153.

[3] Each member is required to be part of its jurisdiction's governing body, *i.e.*, a County Commissioner for Clark County, and City Council member for the City of Las Vegas. These four Committee Members then select a fifth member. NRS 280.130(4).

LVMPD has two, separate bargaining units representing its bargaining-eligible peace officer employees: the Las Vegas Police Protective Association ("PPA"), representing non-supervisory officers, and the Las Vegas Police Managers and Supervisors Association ("PMSA"), representing supervisory officers. During the 2006-2010 collective bargaining agreement, LVMPD and PMSA agreed to a parity clause stating that, beginning in 2007, an LVMPD Sergeant would make 25% more than a Police/Corrections Officer II (which is the non-probationary classification for non-supervisory officers). (Exhibit "F").[4] Under this parity provision, if LVMPD negotiates salary increases (be they market or Cost of Living Adjustments) with the PPA, the PMSA automatically receives the same increase in order to maintain *parity*. In 2020, LVMPD and PMSA agreed to increase the "spread" of this parity clause to 26.25%. (Exhibit "G").

Thus, in every contract cycle since 2006, County representatives on the LVMPD management teamhave negotiated a pay parity clause between the PPA and PMSA, and the County Commissioners who serve on the Fiscal Affairs Committee have ratified each of these collective bargaining agreements. *At no point in the last 19 years* has Clark County tried to claim that the LVMPD parity clause is somehow unlawful.

Likewise, the Executive Department of the State of Nevada has been an enthusiastic advocate of pay parity provisions. In the recently concluded bargaining for the contracts for the 2025 – 2027 biennium, the State made the same offer to every single one of its bargaining units:

> 1.1.2 Effective July 1, 2025, the salary schedules for employees in Bargaining Unit N will reflect a cost-of-living increase ("COLA") at the same percentage as that provided by legislation enacted by the Nevada Legislature to Executive Department unclassified and classified employees who are not members of a State Bargaining Unit for Fiscal Year 2026.

[4] Lieutenants would likewise make 20% more than a Sergeant, and a Captain would make 22% more than a Lieutenant.

> 1.1.3 Effective July 1, 2026, the salary schedules for employees in Bargaining Unit N will reflect a cost-of-living increase ("COLA") at the same percentage as that provided by legislation enacted by the Nevada Legislature to Executive Department unclassified and classified employees who are not members of a State Bargaining Unit for Fiscal Year 2027.

(Exhibit "H" at p. 3 of 36).

In their Interest Arbitration briefs, the Executive Department argued that such pay parity provisions were lawful and approved by this Board and went so far as to characterize such parity clauses as having "a history of success". (Exhibit "H" at p. 32 of 36). The parity provisions was reviewed by numerous Interest Arbitrators, and not a single one determined they were unlawful.[5]

In summary, pay parity clauses are not only uniformly recognized as a subject of mandatory bargaining under Nevada law, but they are actively utilized by the State of Nevada, the City of Las Vegas, and Clark County *itself* in other collective bargaining agreements. This is a settled issue.

B. The Board Should Not Overrule *Clark County Teachers Association v. Clark County School District* Because Pay Parity Clauses are Not Unlawful and are Encompassed Within the Scope of NRS 288.150(2)(a).

Clark County's Petition argues that "pay parity" is not a subject of mandatory collective bargaining, as that term is not specifically delineated under NRS 288.150(2). However, not only does this position ignore ample legal precedent and the plain language of the statute, but the same argument could be made with regard to Cost-of-Living Adjustments ("COLAs"), a term that likewise does not appear anywhere within the statute but is universally recognized as a salary compensation article under NRS 288.150(2)(a).[6]

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[5] Undersigned counsel represented Bargaining Units I and N in connection with those interest arbitrations.

[6] In fact, Clark County has entered into collective bargaining agreements with all of its bargaining units that utilize the Consumer Price Index: "CPI-U all items in West-Size Class B/C, All Urban Consumers, not seasonably adjusted." Use of the CPI is also not expressly delineated under NRS 288.150(2), but Clark County has likewise never argued that this provision is not a subject of mandatory bargaining.

NRS 288.150(2)(a) makes "Salary or wage rates or other forms of direct monetary compensation" a subject of mandatory collective bargaining. Articles like pay parity clauses, COLAs, and use of a Consumer Price Index, are just mechanisms for parties to address "salary or wage rates," and have always been recognized as such. As salary parity schedule directly relates to and is encompassed by "salary," "wage rates," and "direct monetary compensations," it falls under the subjects of mandatory bargaining pursuant to the plain language of the statute.

Clark County's Petition incorrectly argues that pay parity is not "significantly related" to NRS 288.150(2)(a) because it "fundamentally changes the issue of 'what' to 'who.'" (Petition at p. 8). Clark County cites to *International Longshoremen's Association* v. NLRB, 277 F.2d 681, 683 (D.C. Cir. 1960) in support of this argument.

Clark County is incorrect that the pay parity clause fundamentally changes the issue from "what" to "who". At all times, Clark County will be bargaining with CCDU. The "what" that will be bargained over is the "salary rates". The salary rates of another bargaining unit, such as the Clark County Prosecutors Association, will simply be the *measure* of these rates. It's not a "who," it's just a detail of the "what."

The Board has heard and rejected similar challenges before. For example, in *Firefighters, Local 1607 v. The City of North Las Vegas,* Case No. A1-045341, Item No. 108 (1981), the City of North Las Vegas refused to implement a binding Interest Arbitrator's award of the Union's package, which included a parity clause requiring that wages for North Las Vegas Firefighters be retained "at parity with the wages of firefighters in the City of Las Vegas." *Id.* The Board rejected the City's argument that the Interest Arbitrator exceeded his authority under the act, and that the award was arbitrary and capricious.

Moreover, a review of *International Longshoremen's Association,* relied on by Clark County, reveals that it does not even *address* the subject of pay parity clauses or proposals. In *International*

Longshoremen's Association, the NLRB entered an order directing the union ("ILA") to cease-and-desist from demanding that any agreement reached with the employer associations (collectively the New York Shipping Association, Inc.) cover employees in units *other than* ILA, and further prohibiting resorting to economic pressure, including strikes, to force any agreement reached with ILA to cover employees in another unit, so long as certification of such other units remained outstanding. In essence, the ILA was trying to directly bargain on behalf of employees outside their bargaining unit. The D.C. Circuit denied enforcement because, during the pendency of the charge, ILA entered into a proper collective bargaining agreement with the shipping association entities, and the matter was remanded back to the NLRB for further consideration in light of the master contract and the court's holding.

Clark County is deliberately confusing the issue of bargaining for employees *outside of the bargaining unit* with the issue of a union bargaining for pay parity clauses on behalf of its own members. These two concepts are not interchangeable. The holding of *International Longshoremen's Association* would be applicable if the CCDU, a bargaining unit made up entirely of public defender attorneys, were attempting to bargain for salary raises for other employees at the Clark County Public Defender's Office, such as file clerks, social workers, or secretaries. These non-attorney employees are either unaffiliated with a union, or are members of SEIU, and CCDU cannot bargain on their behalf. *That* is the conduct prohibited by *International Longshoremen's Association*, not bargaining for parity with the Clark County Prosecutors Association, a unit so similarly situated, that Clark County has identified CCDU and the CCPA on multiple occasions as "two sides of the same coin."

Clark County argues this Board should overrule its 40+ year old precedent in *Clark County Teachers Association v. Clark County School District*, Item No. 131, because the "laissez-faire approach displayed in Item No. 131 is inconsistent with the statutory text calling for negotiations to be conducted for each appropriate bargaining unit". (Petition at p.12). In support of this argument it

cites a number of cases including *IAFF Local 1265 v. City of Sparks,* Case No. A1-045362, EMRB Item No. 136 (EMRB, Aug. 21, 1982), *Water Emp. Assoc. v. LVVWD*, Case No. A1-045418, EMRB Item No. 204 (EMRB, March 16, 1988), *Stationary Engineers, Local 39, Int'l Union of Operating Engineers v. Lyon County*, Case No. A1-045457, EMRB Item No. 241 (EMRB, June 11, 1990) and *Clark County Education Assoc. v. Clark County School District and Intervenor Education Support Employees Assoc.,* Case No. 2023-009, EMRB Item No. 890. (EMRB, Jan. 25, 2004). However, not one of these cited cases addresses pay parity clauses. Instead, every one the County's cases addresses, in one form or another, the representation of employees outside of the bargaining unit. These are two separate and distinct issues which must not be conflated.

In support of its argument that pay parity clauses should be deemed a subject of *prohibited* bargaining, Clark County cites to a single case: *City of New York and Patrolmen's Benevolent Assoc.*, 9 PERB 4507, 1976 WL395126 (1976) from the New York Public Employee Relations Board. What Clark County neglects to inform the Board is that this case is no longer good law after *City of Schenectady v. City Fire Fighters Union,* 448 N.Y.S.2d 806, 85 App.Div.2d 116 (1982), a case discussed in more detail below. The County also fails to mention that the overwhelming weight of decisions from other jurisdictions are in accord with this Board's decision in *Clark County Teachers Association v. Clark County School District*, Item No. 131.

For example, California has reviewed this very issue and ruled that parity clauses are *not* unlawful. In the case of *Banning Teachers Association, CTA/NEA v. Banning Unified School District*, 1985 Cal. PERB LEXIS 1, PERB Decision No. 536 (1985), the School District reached a partial agreement on salaries with its Classified unit, which had a parity clause stating that if any other unit received a higher salary increase than the Classified unit, than Classified unit salaries would be adjusted to receive the higher amount. The Teachers Association filed an unfair practice charge based upon the parity clause.

The issues raised before the California Public Employee Relations Board (PERB) are the exact same issues raised by Clark County here:

> 1. Does a parity agreement with one exclusive representative constitute a per se violation of the EERA?
>
> 2. Does a parity agreement with a classified unit which ties salary increases to the certificated unit violate EERA's mandate for a separation of units?

See 1985 Cal. PERB LEXIS 1 at *3.

The PERB held "parity clauses are not 'per se' unlawful under the EERA". While the PERB did note that such clauses might cause *an employer* (as opposed to the union) to engage in bad faith collective bargaining, such issue should he decided, "on a case-by-case basis". Id. at *5.

The California PERB in *Banning Teachers Association* further rejected the (confused) argument that Clark County makes in the instant Petition regarding one unit bargaining on behalf of another:

> Thus, we hold that parity clauses are not prohibited by the statutory "wall of separation" mandated by the EERA or that such clauses cause a "blurring of unit lines." Therefore, we find that this parity clause does not break down the "walls of separation" between the classified and certificated units.
>
> ....
>
> We find, also, that the instant parity agreement does not require the Association to negotiate on behalf of the classified unit. The classified unit negotiated and reached agreement with the District on a new collective bargaining agreement. One of the negotiated aspects was this clause, which would become effective only if the Association negotiated a raise higher than that previously negotiated by the classified employees. Otherwise, the clause has no effect.

Id. at *8-9.

The Teachers Association petitioned the California Court of Appeals for review. Although a divided Court of Appeals held that parity agreements were per se unlawful, a *unanimous* California Supreme Court reversed the Court of Appeals and reinstated the PERB's decision that parity clauses

are not unlawful. See *Banning Teachers Association v. Public Employment Relations Board* 44 Cal. 3d 799, 750 P.2d 313, 244 Cal. Rptr. 671 (1988).

The California Supreme Court has also noted that parity agreements were lawful and had been upheld by courts and labor relations boards in other jurisdictions. 750 P.2d at 318, citing *Teamsters, Local 126* (Inland Steel) (1969) 176 NLRB 417; *City of Detroit v. Killingsworth,* 48 Mich. App. 181, 210 N.W.2d 249 (1972), *City of Schenectady v. City Fire Fighters Union*, 448 N.Y.S.2d 806, 85 App.Div.2d 116 (1982) ; and *City of Scranton* 16 PPER para. 16016 (1984). The Supreme Court of California concluded:

> To hold parity agreements per se illegal would place a burdensome limitation on public school employers to negotiate effectively in an already cumbersome environment of multi-unit collective bargaining. It would obstruct employment relations, thus defeating the stated purpose of *section 3512* "to foster peaceful employer employee relations . . . ." It would also adversely affect the bargaining efficiency and strategy of school districts and public sector unions in California and would prolong bargaining, making settlements more difficult and labor unrest more frequent.
>
> Although we conclude that parity agreements do not per se violate either section 3543.5, subdivision (c) or section 3545, subdivision (b)(3) and that PERB did not abuse its discretion in finding that the parity agreement here did not violate these statutes, we nevertheless recognize that under different circumstances an employer might violate the EERA by entering into a parity agreement.

Id., 750 P.2d at 318.

In *Associated Administrators Of Los Angeles And Service Employees International Union, Local 99 v. Los Angeles Unified School District*, 1995 Cal. PERB LEXIS 2; PERB Decision No. 1079 (1995), the California PERB addressed situations where a *Banning* a parity clause might constitute a prohibited practice. In *Associated Administrators,* the District entered into a collective bargaining agreement with its teachers' bargaining unit that provided that, if the District entered into any "me-too," "most favored nations," or "equitable treatment" provision with any other bargaining unit, the teachers bargaining unit would receive a 10% lump sum bonus. The Administrative Association and

Service Employees International Union Local 99 alleged that such an arrangement was unlawful. An Administrative Law Judge ("ALJ") concluded that such a clause would prevent good faith negotiations with the other unions, and that such was, in fact, the "exactly the intended effect" of the clause. Id. at 5. In applying *Banning* to determine that the arrangement was unlawful, the ALJ applied a "flexibility" test, which asked the question: "whether the disputed clause restricts the employer's flexibility to negotiate with other exclusive representatives." See Id. at 4, 19.

The District filed exceptions to the ALJ's decision before the PERB. However, PERB reiterated that **pay parity provisions are lawful** and found that, while the ALJ improperly applied a "flexibility" test, that the arrangement was nonetheless unlawful as it discouraged the District from entering into pay parity provisions noting, "the huge size of the bonus makes it inconceivable that the District would agree to otherwise legal clauses with the other units." See 1995 Cal. PERB LEXIS 2 at *12. So, not only are pay parity clauses lawful, but bargaining for arrangements which effectively prohibit an employer from entering into parity clauses is, itself, a prohibited practice.

In *Mayor of Baltimore v. Baltimore City Firefighters IAFF Local 734*, 136 Md. App. 512, 766 A.2d 219 (2001), the union and the City were at impasse and went to binding interest arbitration before a three-member Panel. The union's final, best offer included a pay parity provision which required the City to provide the same wage or benefit increases the City granted to its police officers. The City filed for an injunction in court to prohibit, among other things, the arbitration Panel from considering the pay parity clause asserting the same argument made by Clark County in this case – that a pay parity provision "impermissibly restricts and interferes with the City's ability to negotiate directly and in good faith with both the police and fire unions." 766 A.2d at 221. The trial court dismissed the City's complaint, and the City appealed from the dismissal.

In the interim – after the dismissal but before the appeal was heard – the Panel adopted the union's proposal, including the pay parity provision. Id. 766 A.2d at 223. The Maryland Court of

Special Appeals concluded that the issue of an injunction to prevent the proposal was moot by virtue of the Panel's decision, but nevertheless determined that the complaint was still justiciable as an action to vacate the award. Id. at 224. The Court of Special Appeals rejected the position that pay parity clauses were per se unlawful, and affirmed the interest arbitration award, determining that the better approach was that of the California Supreme Court from *Banning* and the New York case of *City of Schenectady v. City Fire Fighters Union, Local 28, supra*:

> We agree with the New York and California courts that have held that **parity provisions are not per se illegal and are a proper subject for arbitration.** We do not find the parity provision to be violative of MERO's requirement of good faith negotiation, or its prohibition against interfering with or restraining a certified employee organization, nor inconsistent with the Charter.

Id. at 227 (emphasis added). Similar conclusions were reached by the Superior Court of Connecticut in *Town of Madison v. International Brotherhood of Police Officers Local 456*, 1999 Conn. Super. LEXIS 112 (Ct. 1999) wherein a motion to vacate an arbitration award containing a pay parity clause was denied, and *Wilmington Firefighters Ass'n, Local 1590 v. City of Wilmington*, 2002 Del. Ch. LEXIS 29 (Del. 2002), where the Court of Chancery reversed a decision of the Delaware Public Employee Relations Board in holding that a pay parity clause in a collective bargaining agreement was not triggered by the City's later agreement with its police.

As mentioned above, the sole case cited by Clark County, *City of New York and Patrolmen's Benevolent Association, supra*, is not even good law in New York, much less Nevada. Both the California Supreme Court in *Banning*, and the Maryland Court of Special Appeals in *Mayor of Baltimore*, in rejecting the same argument made by Clark County in this case, cite to *Schenectady v. City Fire Fighters Union*, 448 N.Y.S.2d 806, 85 App.Div.2d 116 (1982), which specifically rejected *City of New York and Patrolmen's Benevolent Association* and held that pay parity clauses are <u>not</u> per se illegal, and must be evaluated on a case-by-case basis, citing multiple other New York cases. Id. at

808. The Board should certainly not be compelled to overturn 40+ years of Nevada precedence based on a 49-year-old New York case expressing an outlier opinion that was subsequently overruled.

Finally, as conceded in Clark County's Petition, this Board follows NLRB precedent where the language between the NLRA and NRS Chapter 288 is not in conflict. See, e.g., *Truckee Meadows v. Int'l Firefighters*, 109 Nev. 367, 375 (1993). As pointed out by the California Supreme Court in *Banning*, pay parity provisions are permissible in private-sector bargaining under the NLRA. 750 P.2d at 318. Clark County identifies no statutory provisions of NRS Chapter 288 which would compel a departure from the well-established practice of following NLRB precedent.

Clark County's Petition raises the specter of "conflicting collective bargaining agreement provisions" by inventing a scenario where impasse proceedings result in Union A obtaining an award providing that wages must be equal to Union B, and Union B obtaining an award providing for its wages to be 5% more than Union A. (Petition at p. 17). However, no such scenario would ever arise if Clark County bargained ethically, responsibly, and in good faith. In fact, the County's entire argument relies on adopting the basic presumption that the County does not intend to bargain in good faith with both its fictitious "Union A" and "Union B." And even if such a scenario could somehow arise, under the *Banning / Mayor of Baltimore* approach, the lawfulness of the subject pay parity provisions would be evaluated on a case-by-case basis. Furthermore, it would be incumbent upon Clark County to file a timely complaint, something it neglected to do in the instant case.

Given the widespread acceptance in both the public and private sectors of pay parity clauses, there is no reason for this Board to depart from its prior holding in *Clark County Teachers Association v. Clark County School District*, Case No. A1-045354 Item No. 131 (1982). Accordingly, the Board should reject Clark County's attempt to overrule this decision and make pay parity clauses a subject of prohibited bargaining.

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C. Pay Parity Is a Subject of Mandatory Bargaining, Not Permissive Bargaining.

Alternatively, Clark County argues that pay parity should be deemed a subject of permissive bargaining. (Petition at p.15). However, Clark County's Petition cites no case law or other authorities which support its position. It appears that the only reason for such an argument is to prohibit a union from taking a pay parity proposal to interest arbitration.

Subjects of mandatory bargaining involve "issues that settle an aspect of the relationship between the employer and employees." *Allied Chemical & Alkali Workers of America v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 178 (1971). In contrast, subjects of permissive bargaining are those which fall within "management rights" and/or which "have only an indirect and attenuated impact on the employment relationship". *First National Maintenance Corporation v. NLRB*, 452 U.S. 666, 677 (1981); *In the Matter of a Petition for Declaratory Ruling by City of North Las Vegas*, Case No. A1-045372, Item No. 158 (1983); NRS 288.150(12) ("This section does not preclude, but this chapter does not require, the local government employer to negotiate subject matters enumerated in subsection 3 which are outside the scope of mandatory bargaining").

Pay parity is not a management right. It does not have only an "indirect or attenuated impact on the employment relationship." To the contrary, pay parity goes right to the heart of "Salary or wage rates or other forms of direct monetary compensation." Accordingly, the request for pay parity to be deemed a subject of permissive bargaining should likewise be rejected.

Furthermore, even if the pay parity clause were a subject of "permissive," rather than "mandatory" bargaining, the County clearly expressed its permission by bargaining on the issue for 408 days, through negotiations, mediation, a full Prohibited Practices hearing, and non-binding arbitration without raising a single objection. Either way, the County's petition should be denied.

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D. Principles of Waiver Preclude the County from Prevailing on this Petition, and the Board Should Prohibit the County's Attempt to Delay Impasse Proceedings by Presenting this Unpreserved Claim.

Issues that are raised untimely or not properly preserved are generally waived. See *State Bd. of Equalization v. Barta*, 124 Nev. 612, 621, 188 P.3d 1092, 1098 (2008). In *Barta*, the Nevada Supreme Court extended the waiver rule to judicial review of decisions by an administrative body. Id. Further, in *Highroller Transportation, LLC v. Nevada Transportation Auth.*, 139 Nev. 500, 505, 541 P.3d 793, 800–01 (Nev. App. 2023), the Court addressed the timeliness of raising issues. In that case, the Court concluded that an issue raised in a general session hearing by the Nevada Transportation Authority was waived because the argument was not presented at the first available opportunity: a prior NTA administrative hearing. Id. Thus, controlling case law makes clear that waiver and forfeiture principles apply at the administrative level, and arguments not timely raised may be deemed waived. The laches doctrine likewise applies here. Laches "is more than a mere delay in seeking to enforce one's rights; it is a delay that works to the disadvantage of another." *Carson City v. Price*, 113 Nev. 409, 412, 934 P.2d 1042, 1043 (1997).

During the hearing on the County's motion to postpone the binding fact-finding, Arbitrator Clauss noted that the request came "beyond the 11th hour," and indicated concerns that a continuance would lead to excessive and unwarranted delay. The Board is well-aware of Clark County's use of bad faith delay tactics, as detailed in Item No. 904, *supra*. This Petition is just more of the same. Clark County waited 408 days before asserting, via email, that CCDU's parity clause was not a subject of mandatory bargaining. See County Ex. 8. This claim was made after negotiations, after mediation, after non-binding fact-finding, and after a full "prohibited practices" hearing, which would have been the ideal opportunity to bring such a claim, if the County actually believed in its own assertions. The County made no arguments and preserved no objections. Rather, the County treated the parity clause like what it is: a subject of mandatory bargaining.

The County then waited an *additional* 54 days before filing the instant Petition in a transparent attempt to garner a last-minute continuance of the binding fact-finding scheduled for September 8, 2025. Arbitrator Clauss was not fooled by the County's gambit, and having already found the County's delay tactics "contrary to the duty to act in good faith," the Board should also see the County's actions for what they are: further gamesmanship to achieve further delay.

Clark County's Petition should he denied on the merits, but the Board should also use the opportunity presented by Clark County's Petition to caution public employers and employee/labor organizations that failing to object to proposals as being subjects of prohibited or permissive bargaining, and thereafter attempting to use such a claim to delay statutory impasse proceedings under NRS 288.200 and/or NRS 288.215. Statutory impasse proceedings are part and parcel of the negotiating process itself. *Reno Police Protective Association v. City of Reno*, Case No. A1-045334, Item No. 115 (1981) ("[b]argaining collectively includes the entire bargaining process, including mediation and factfinding, provided for in this chapter"). "The entirety of NRS Chapter 288 makes it clear that time is of the essence in terms of participating in negotiations, mediation and fact-finding". *Clark County Defenders Union v. Clark County*, Case No. 2024-014 Item No. 904 (2024).

If one party believes that the other party's proposal is a subject of prohibited bargaining, or if alternatively one party believes the other is attempting to force statutory impasse over a subject of permissive bargaining, it is incumbent upon the party in receipt of such an objectionable proposal to immediately notify the other party, or alternatively file with this Board—not to continue bargaining on that subject until a time that suits their strategic goals. Remaining silent on the subject, as Clark County did in this case, only to raise the subject for the first time in an attempt to avoid binding fact-finding *more than a year after the fact*, especially while it continued to bargain on the subject during that year, is inconsistent with the good faith bargaining obligations under NRS Chapter 288.

II. CONCLUSION

For all of the reasons set forth above Clark County's Petition For a Declaratory Order Clarifying That Pay Parity Is Not a Mandatory Subject of Bargaining should be DENIED.

DATED this 5th day of September 2025.

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS, and that on the 5th day of September 2025, I served a true and correct copy of the foregoing RESPONDENTS CLARK COUNTY DEFENDERS UNION AND DISTRICT ATTORNEY INVESTIGATORS ASSOCIATION'S ANSWER TO CLARK COUNTY'S PETITION FOR A DECLARATORY ORDER CLARIFYING THAT PAY PARITY IS NOT A MANDATORY SUBJECT OF BARGAINING by emailing the same to the following recipients. Service of the foregoing document by email is in place of service via the United State Postal Service.

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EXHIBIT A

EXHIBIT A

PURSUANT TO NRS 288.200

IN THE MATTER BETWEEN)
)
CLARK COUNTY DEFENDERS UNION)
)
and)
)
CLARK COUNTY)
)

FACT FINDING HEARING

BEFORE ARBITRATOR ROBERT M. HIRSCH, ESQ.

Taken at
500 South Grand Central Parkway
Las Vegas, Nevada 89155

On Thursday, January 30, 2025
At 9:11 a.m.

Reported by: Sarah M. Winn-Boddie, RPR, CCR No. 868
Job No. 58517, Firm No. 116F

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Anna Danchik

*****

UNION EXHIBITS

Number	Description	Admitted
1	Longevity - Article 22 - Most Recent Offer	19
2	Longevity - Article 22 - Original	19
3	Cost for Longevity Proposal - $488K - 1.55%	19
4	Cost Details of Longevity Proposal	19
5	Decline of Experienced PD Attorneys/Rise of Inexperienced PD Attorneys	19
6	Homicide Team - Decline in Experienced Attorneys 2015 vs. 2025	19
7	Summary of Comparable Contracts with Longevity	19
8	Comparable: Washoe County, Nevada	19
9	Washoe County Longevity Calculation Per Year	19
10	Comparable: Elko County, Nevada	19
11	Comparable: Nevada Judges	19
12	Comparable: AB522 - Statewide Nevada Employees	19
13	Comparable: Nevada Elected County Officials	19
14	Comparable: Las Vegas Metropolitan Police Department	19
15	Comparable: North Las Vegas Police Department	19
16	Intentionally Blank	--
17	Comparable: Los Angeles, CA	19
18	Comparable: Sacramento, CA	19

UNION EXHIBITS (CONTINUED)

Number	Description	Admitted
19	Comparable: Fresno County, CA	19
20	Salary Schedule Parity - Article 38 - Union Proposal	19
21	Summary of Comparable Contracts with Parity	19
22	Salary Schedules of Public Defender and District Attorneys 2024	19
23	Salary Schedules of Public Defender and District Attorneys 2021	19
24	ADKT 411	19
25	Nevada Regulations: NAC 180	19
26	Comparable: Alameda County, CA	19
27	Comparable: Orange County, CA	19
28	Comparable: San Francisco, CA	19
29	Intentionally Blank	--
30	Cost: $314K - 1% (Email from C. Ramos Showing 1%)	19
31	EMRB Order	19
32	EMRB Hearing Transcript	19
33	ABA: Ten Principles of a Public Defense Delivery System (Recommending Parity)	19
35	Supreme Court Rule 250 - Procedure in Capital Proceedings	259

COUNTY EXHIBITS

Number	Description	Admitted
1	CCDU CBA 2023-2024	19
2	Article 1 TA - Signed 3/13/24	19
3	CCDU Proposal Article 22 Longevity (4/3/24)	19
4	CCDU New Proposal Article 38 Pay Parity (4/7/24)	19
5	CCPA and Clark County Nonbinding Fact Finding Recommendation (Kagel) 12/27/22	19
6	CCPA and Clark County Final Signed TA 5/25/23	19
7	CCDU and Clark County - Findings and Recommendations (Roose) - Final Dated 4/10/23	19
8	CCDU Final Signed TA 4/20/23	19
9	County Presentation 2025	19
10	Internal COLA Comparison Matrix	19
11	Clark County Attorney Positions Salary Schedule Comparison	19
12	Longevity External Comparison Matrix - Revised	19
13	Longevity Pay Presentation	19
14	Defenders Turnover, Separations, and Recruitment Presentation	19
15	NRS - Chapter 200.200 and 288.215 - Relations Between Governments and Public Employees	19
16	Nevada Constitution Article 15, Section 16	19
17	SEIU 1107 - Clark County - fact finding Decision (Grody Ruben) 12/3/2018	19

COUNTY EXHIBITS (CONTINUED)

Number	Description	Admitted
18	Signed TA with JJ&A 1/6/2023	19
19	Final TA'd Package with DAIA 1/18/2023	19
20	CCDU FY24 - Effective July 1, 2023 - Compensation TA Signed 6/28/2023	19
21	DAIA Final Signed Agreement 10/3/2024	19
22	CCPA Posted Agenda Item FY 2024 Dated 10/15/2024	19
23	SEIU Arbitration Decision re Longevity - Binding fact finding (Runkel) 8/25/2015	19
24	Clark County and SEIU 1107 Arbitration Opinion and Award (Tamoush) Dated 12/15/2021	19
25	(Item No 904) EMRB Decision, Findings of Fact and Conclusions of Law	19
26	CCDU Separation Reason Chart	19
27	Logic Compensation Group Public Defenders Presentation	19
28	SCR 250 Excerpts	119
29	Justice of the Peace Agenda Item re Longevity	270
30	Scott Coffee Cashout Calculation	122

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THURSDAY, JANUARY 30, 2025, LAS VEGAS, NEVADA

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THE ARBITRATOR Okay Let's go on the record Good morning, everybody This is a fact finding under NRS 288 200 involving Clark County Defenders Union and Clark County, Nevada regarding a successor collective bargaining agreement There are two issues, I've been told by the parties, and we'll get to that

My name is Robert Hirsch and I am the fact finder, and I will ask for introductions starting with the union

MR LEVINE Adam Levine, counsel for the Clark County Defenders Union

THE ARBITRATOR Okay And with you?

MR WESTBROOK Good morning David Westbrook, president, Clark County Defenders Union

THE ARBITRATOR Good morning

MR NONES Good morning Rafael Nones, treasurer for the Clark County Defenders Union

THE ARBITRATOR Thank you

And then for the County? You don't need to stand I mean, if you want to, you can

MS KHEEL I'm Alison Kheel from Fisher Phillips I'm representing Clark County, and I will have everybody introduce themselves along with their job title

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MR GERMANY Good morning Curtis Germany, human resources director
MS RAMOS Christina Ramos, deputy director of HR
MS DANCHIK Anna Danchik, County comptroller
MS COLVIN Jessica Colvin, chief financial officer for Clark County
MS SHELL LesLee Shell, deputy Clark County manager
MS HANSON Ann Hanson, Fisher Phillips, representing Clark County
MS MESSER Lori Messer, Logic Compensation Group representing Clark County
THE ARBITRATOR Okay
MS MESSER I -- I'm not an attorney
MR WESTBROOK I feel like we need some more people Should we call some people?
THE ARBITRATOR No
MS KHEEL We've got four more seats
THE ARBITRATOR In an off-the-record conversation, the parties have indicated there are two issues, so I'll let one of the two counsel state the issue
MS KHEEL As it is a fact finding, I believe there are two union proposals, one of which was revised as of yesterday, but it is Article 22, and I believe that's Union Exhibit 1 The original proposal that we were aware of is

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Union Exhibit 2, and then the second one is a newly proposed article for salary schedule parity, which I believe is Union Exhibit 20 or County Exhibit 4
THE ARBITRATOR All right
MR LEVINE I would state it more succinctly, the two issues are longevity and pay parity with the prosecutors
THE ARBITRATOR Okay Does that resonate with the County?
MS KHEEL Sure
THE ARBITRATOR Okay We also have some exhibits in the binders that I'd like to get to The County has proposed how many exhibits here, 30?
MS KHEEL 27
MR LEVINE Yeah Both parties included additional tabs that are blank in case something gets added
THE ARBITRATOR Okay So 27 exhibits And are there any objections to any of the County exhibits?
MR LEVINE The only objection is, as discussed off the record, County Exhibit 12 contains information that we believe is inaccurate or so misleading so as to be inaccurate
THE ARBITRATOR All right And you'll present evidence to that point?
MR LEVINE I will -- the answer is yes I have two witnesses, and if I have to call a third with regard to the -- what's the Las Vegas Peace Officer's Association

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identified as the POA on this chart, I am their general counsel, I can call the president, if necessary I don't want to have to tie this up I can just make the representations on the record, I can call witnesses, but --
THE ARBITRATOR All right
MR LEVINE How would you like me to proceed with that?
THE ARBITRATOR Well, my first suggestion would be make the offer of proof, and if it's accepted by counsel, then we don't have to have witnesses
MR LEVINE Okay So on the offer of proof, as it relates to the City of Las Vegas, it would be that there is not a two-tier wage schedule for the POA -- it's LVPOA I am their general counsel The two-tier wage system was eliminated in, I believe, 2022 And we do have officers in the bargaining unit who are receiving longevity because they were hired before 2000- -- I believe it's 2011, and our contract is expiring and we start negotiations in February with our main emphasis to be regaining the longevity for those members of the bargaining unit who are not currently getting it, okay?
THE ARBITRATOR Okay So let's stop right there and see if that offer is accepted
MS KHEEL So we'll accept that it's now a one-tier system I will accept that And we will agree that people in

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the bargaining unit pre-2011 received longevity, but the chart is labeled "Longevity for New Hires," so we believe it's accurate to say no, new hires are not getting it Whatever may come in negotiations that may be upcoming is unknown, so I can't stipulate to anything on that regard
THE ARBITRATOR All right So we have at least the stipulation that we just heard about there's a single tier --
MR LEVINE Correct
THE ARBITRATOR -- but we're not talking about new hires You're not stipulating to new hires being folded in with that stipulation?
MS KHEEL Correct
MR LEVINE New hires being folded into the one-tier wage system, you're stipulating to?
MS KHEEL No I'm saying that new hires are not presently receiving longevity
MR LEVINE I will stipulate they are not currently receiving longevity, but we start negotiations next week to get it
THE ARBITRATOR All right Well, do you -- you have -- do we need evidence that they're going to start negotiations next week to get it?
MS KHEEL When they start negotiations is, you know, between them and --
THE ARBITRATOR No The question is, do you

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want -- do I need to have a witness tell me that or will you agree that that is what their intention is?
MS KHEEL I will agree that they intend to start negotiations next week
THE ARBITRATOR Over that issue?
MS KHEEL Do we know?
I believe it's an open contract I mean, I can verify --
MR LEVINE I'm the general counsel I mean --
THE ARBITRATOR All right Well, I want to pin this down I want to make sure If I need a witness to take two minutes and tell me that, we'll do it
MS KHEEL It's fine Yes, we will stipulate that, you know, based on Adam's representation as their counsel, they intend to put this on the table in their negotiations
THE ARBITRATOR Okay So we don't need that evidence either
MR LEVINE Okay So I don't have to call Ryan Elias (phonetic) in Good
THE ARBITRATOR Okay
MR LEVINE The next one says City of North Las Vegas police, both That is inaccurate, and I am calling a witness, Jeff Allen (phonetic), on that issue, that the new hire -- people hired after October 2011 are receiving longevity under their new contract They just got it

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THE ARBITRATOR All right So that -- let's offer that as your representation of fact
And do you accept that?
MS KHEEL Can you cite to which one of your exhibits has the contract?
MR LEVINE Yes Yep It is Union Exhibit 15 If you take a look at Bates stamp 53, "All employees hired after July 1, 2024 shall receive additional compensation as follows Employees with 10 to 14 years of consecutive full-time employment shall receive an additional 4 percent, at 15 to 19 years, an additional 4 percent, and at 20 years, an additional 4 percent "
And I have Jeff Allen, it is longevity, he will testify it is longevity, it's just a different form of longevity than those hired -- sorry I said 2011 It's 2014 It's just a different form of longevity than those hired before 2014 receive
THE ARBITRATOR Okay
MS KHEEL I will stipulate that it is a part of the salary schedule it's not part of the longevity article, but I -- I will stipulate that this is an accurate representation of the contract
THE ARBITRATOR All right Is this not longevity pay, as far as you know? Doesn't it read as if it is?
MS KHEEL As far as we're concerned, it's a

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periodic pay bump of 4 percent, so
MR LEVINE Based upon years of service
THE ARBITRATOR Okay Well, all right I have that in the record, then I'll have to figure out what I call it, but --
MR LEVINE Okay Right
THE ARBITRATOR So we don't need that witness either
MR LEVINE Other --
THE ARBITRATOR You can call him if --
MR LEVINE I can call him just so he can say we consider it longevity
THE ARBITRATOR Well, you can make that representation
I don't think you object to him saying we consider it longevity, do you?
MS KHEEL I do not object to him representing that they consider it longevity
THE ARBITRATOR Okay And you consider it, just so I'm clear?
MS KHEEL We consider it part of their salary schedule
THE ARBITRATOR Okay
MR LEVINE Another inaccuracy in Exhibit 12 -- or it's not an inaccuracy It is misleading --

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THE ARBITRATOR All right Before you say it that way, what I'm asking for is offers of proof
MR LEVINE Okay Additional offers of proof
THE ARBITRATOR Right
MR LEVINE For the North Las Vegas Police supervisors, offer of proof that they are at impasse over the same longevity that the Police Officers Association got, and that as the former general counsel of that bargaining unit, I am almost certainly -- I am in discussions to be called at that fact finding with their current representative, tha Nevada Association of Police and Sheriffs Organization, NAPSO, to testify at the fact finding to get the same 4 percent, 4 percent, 4 percent from years 10 to 20-plus that the police officers are getting
THE ARBITRATOR Okay
MS KHEEL I mean, this is all about police I don't really think it's relevant, so we'll --
THE ARBITRATOR Well, you can argue relevance in your brief
MS KHEEL Yeah
THE ARBITRATOR But you don't disagree with the factual offer?
MS KHEEL I don't disagree with that fact
THE ARBITRATOR All right So that will be stipulated

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MR LEVINE And along those same lines, NAPSO, who represents the North Las Vegas Police supervisors is entering into contract negotiations with the City of Henderson to get the same 4 percent, 4 percent, 4 percent

THE ARBITRATOR All right Do you accept that as a factual offer as to the supervisors?

MS KHEEL Are you counsel for NAPSO?

MR LEVINE No, but NAPSO's counsel is the same person as calling me for North Las Vegas Police supervisors NAPSO represents Henderson Police and North Las Vegas Police supervisors

MS KHEEL I mean, I -- yeah It's not really relevant to this It -- if he wants to represent that that's their intent to do during bargaining, sure

THE ARBITRATOR Okay

MR LEVINE Okay

THE ARBITRATOR Well, you can argue relevance, but the fact is in the record

MR LEVINE And then the final one is it says the police PPA, the Police Protective Association over LVMPD I'm going to have a witness come on that one because there's more to it than just an offer of proof

THE ARBITRATOR All right Then I'm just asking for offers of proof at this point

MR LEVINE Okay All right So that's my only --

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those were my only issues with their Exhibit 12, and I think beyond that, I think we're prepared to stipulate in all exhibits

THE ARBITRATOR All right And so the employer's exhibits will be admitted into evidence with the objections that the union has raised, I think most of which have been resolved, right?

(County Exhibits 1 through 27 admitted)

MR LEVINE Right With the offers of proof, yes

THE ARBITRATOR All right And then the union's exhibits, any objections to the union exhibits?

MS KHEEL Just noting that Exhibit 3 is their demonstrative, and so we're going to, you know, raise relevancy and accuracy objections

THE ARBITRATOR All right I will let it in, but you can raise those objections

Okay So all exhibits will be admitted into evidence that have been submitted The union, by the way, I don't think I identified, you have 33?

MR LEVINE 33

THE ARBITRATOR Okay All right Let's go off the record for a second

(Union Exhibits 1 through 33 admitted)

(Off-the-record discussion)

THE ARBITRATOR All right Let's go on the record,

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and we are ready for opening statements

MR LEVINE Thank you Since the union is presenting first, I'll go first with the opening statement As indicated and discussed off the record, we are the Clark County Defenders Union The bargaining unit consists of public defenders and chief public defenders employed by Clark County in its public defender's office and special public defender's office The special public defender's office, part of the bargaining unit, the difference is they handle the conflict cases for class A felonies The bargaining unit is approximately 146 members with five vacancies It was organized in about 2013 or 2014, but not recognized until 2015

As also discussed off the record, this is a nonbinding fact finding for one-year deal It is not interest arbitration, so it's not baseball style You are not obligated to select one side's proposals in their entirety, and you are free to accept, reject, or craft your own recommendations

With regard to the two issues as discussed, the two issues are longevity and pay parity One of the documents you will find in the County's Exhibit is County Exhibit 25 It is a recent finding of the State of Nevada Employee Management Relations Board, which found bad faith bargaining on behalf of both parties What, if anything, you do with that finding is

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up to you, as the fact finding statute says you may consider such findings I will represent, however, that both parties have filed petitions for judicial review, as neither party believes the EMRB got it correct So I just -- you may look at that, you may be wondering what it is I'm just going to represent to you that the Defenders Union filed a petition for judicial review because we believe the board has crafted nonstatutory criteria for impasse that's not found in the statute and that is unlawful

And about last week, I was served with a counterpetition by the County challenging the EMRB's findings against the County, so I just want to put that on the record What, if anything, you do with -- since there's a court reporter here, I will temper my comments regarding our EMRB, but what you choose to do with it, it's up to you I'll just say they're not the board that they used to be in years past when I started practicing

I'm going to start with the longevity article Members of the public defender's office had longevity -- hired before 2002 have longevity Anybody hired before 2002, grandfathered in, they still have longevity After five years of service, they were getting 057 of 1 percent for each year of service Longevity was not bargained away by the public defenders, rather, it was taken away by Clark County before the public defenders unionized It was taken away in 2002,

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and again public defenders were not finally even recognized by Clark County for a year or two after they organized, and that recognition was finally done in 2015

Evidence is going to be, and it's not really in dispute, that after the great recession, a lot of bargaining units gave up or lost longevity It may have been in 2011 for some We had discussions in the offers of proof regarding City of Las Vegas, in 2014, North Las Vegas, including their police, lost or gave up longevity Las Vegas Metropolitan Police Department, you'll hear a witness, gave up longevity in 2011, but you're -- the evidence is also going to be that bargaining units here in Nevada have started getting longevity back

Evidence is going to be in 2023, the Metro Police Protective Association, which is -- represents the rank and file officers, got longevity back The County may contest that it's longevity, but the evidence is going to be that this new longevity is only applicable to officers hired after October of 2011, and officers hired before October 2011 got the old form of longevity

Evidence is going to be that - it will probably even be stipulated to, that Clark County, the entity we're here with today, is a major component of Las Vegas Metropolitan Police Department, that Metro, as we call them, or LVMPD, was created in 1973 by statute which took the Clark

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County Sheriff's Office, the Clark County entity, and merged it with the City of Las Vegas Police Department into one Metropolitan Police Department under the direction of the elected Clark County sheriff Evidence is going to be that Clark County, the entity sitting across the table from us today, funds approximately 70 to 75 percent of Metro's budget, 66 percent of its police operations and 100 percent of its detention services division, which is the county jail

Evidence is going to be that Clark County is part and involved in the bargaining process for LVMPD, and in the new contract for the PPA officers at 10 years receive an additional 4 percent, at 15 years, another 4 percent, and at 20 years, an additionel 4 percent

As discussed in the offers of proof, in 2024, the North Las Vegas Police Officers Association got longevity back for those officers hired after two -- I believe it's 2014 when they lost their longevity, and again, this was discussed in the offer of proof earlier

Evidence is going to be that per the offer of proof, the city is -- of Las Vegas, their bargaining unit represented by me, the Las Vegas Peace Officers Association, is seeking to regain longevity And what is undisputed and in evidence in your binder for the union's exhibits is that in 2023, the State of Nevada, all employees of the State of Nevada regained longevity, and that is going to be Exhibit 12

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It's Assembly Bill 522, which was passed and signed by the governor in June of 2023 So the State, all employees of the State have regained longevity

Evidence is going to be that there are only three public defender bargaining units in this state, the Clark County bargaining unit, which is us, the CCDU, the Washoe County Public Attorneys Association, which represents both prosecutors and public defenders in one public defender unit in Washoe County, which is where Reno is located, and also Elko County The rest of Nevada, if you ever look at the counties, are a bunch of very small counties that don't have true, dedicated public defender's office They usually have an attorney who is hired and works on a contract as a public defender, but the evidence is going to be that of the three true public defender's offices that have collective bargaining, Washoe, Elko, and Clark County, Clark County is the only one who doesn't get longevity Elko gets it, Washoe County gets it

Evidence is going to be that public defender's offices in other jurisdictions get longevity, so why are we here to get longevity back, which was lost in 2002 before we organized? Evidence is going to be that there is a -- has been a significant decline in experienced attorneys at the public defender's office You're going to hear testimony about the murder-homicide team, which is, of course, those

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attorneys that are assigned to do -- defend homicide and death penalty cases The evidence is going to be that a mere ten years ago, there was -- on the murder team, there was 195 years of collective attorney experience on that team, and there were nine attorneys who were qualified by law to be death penalty cases

There is a thing you're going to hear about called Supreme Court Rule 250, and it governs defense of capital cases, death penalty cases Any prosecutor can prosecute a death penalty case May not be a wise move, but there is nothing in the law that prohibits even a first year prosecutor from prosecuting such a case It doesn't work that way on the defense Supreme Court Rule 250 imposes certain qualifications, because obviously if you have somebody who's not qualified, somebody can end up dying and there's huge liability implications

So as of February of 2015, nine attorneys had the experience necessary to do those types of cases Evidence is going to be that as of February 7, in a little over a week, we will be down to 129 years of collective experience, as opposed to 195, and perhaps more significantly, only one attorney qualified to do a death penalty case You're going to hear testimony from -- as of today there are two You're going to hear from a gentleman named Scott Coffee, who is retiring on February 6th, and after he is gone, there's only going to be

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one
Evidence is going to be in the last four years, we've lost approximately 12 experienced public defenders to the judiciary to become judges Yes, judges do get paid more than public defenders, but they also get something else, which we're not currently getting and which we're seeking, which is longevity Evidence is going to be that even amongst inexperienced attorneys, we've lost three -- inexperience, we're defining as less than five years of experience We've lot three inexperienced attorneys to the Washoe County Public Defender's Office, where they get longevity and we don't
Now, at the bargaining table, as I think was highlighted by -- I'm just going to call her Allison instead of Ms Kheel We're on a first-name basis The proposal was to restore the 057 longevity that was lost in 2002, however, we have modified our proposal, and that is -- modified proposal is Union Exhibit 1, and it's to modify it to 27 of 1 percent And if you're wondering why was it modified to 27 of 1 percent, which is less than half of what it was before, the evidence is going to be because it will mirror -- it mirrors what Washoe County is getting, that the longevity earned by the public defenders in Washoe County works out to 027, so we're just -- we have lowered our proposal from the 57 -- 057, which it was in 2002 and which the older members of our bargaining unit are getting, to a 027, which

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is what Washoe County is receiving
THE ARBITRATOR All right And just -- I just want to stop for a second Is that proposal, the 0 27, is that impasse right now? Has that been addressed at all by the County?
MS KHEEL No I mean, the County hasn't -- didn't see it until 1 o'clock yesterday
THE ARBITRATOR All right Let's go off the record for a second
(Off-the-record discussion)
THE ARBITRATOR Back on the record
So the County just got this proposal, but they are not going to accept any proposal on longevity, is that correct?
MS KHEEL Correct
THE ARBITRATOR All right So this, I consider to be an impasse position, then
Go ahead
MR LEVINE The second issue is what we would refer to as a restoration of pay parity with prosecutors The prosecutors represented by the Clark County Prosecutors Association, and occasionally by me on their behalf, organized in 2008, years before the public defenders organized, yet the evidence is going to be that there was pay parity in the salary schedule, even when the prosecutors were unionized and

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the public defenders were not
When the public defenders organized in 2013 and 2014, the County would not recognize the bargaining unit because the County wanted them placed in the same bargaining unit as the prosecutors, in the CCPA bargaining unit Neither side likes each other, that's why they didn't want to be in the same bargaining unit, and it actually ended up going to the EMRB, who said no, they should be separate bargaining units, and then the County challenged that ruling in a petition for judicial review, which I actually defended on behalf of the union, and ultimately the court ruled in favor of the union and the EMRB that they should be two separate bargaining units
But even when there was no collective bargaining for the public defenders, there was salary schedule pay parity And after we were successful -- and had the County prevailed in the attempt to force us into one bargaining unit, there would, of course, be pay parity in the wage scale, and even after we were finally recognized by order of the EMRB, there was pay parity There has always been pay parity in the salary schedule And in fact, Ms Christina Ramos, who is the chief negotiator for Clark County, has referred to the public defenders and the prosecutors as the flip side of the same coin Pay parity is important
You will see in evidence Exhibit 24 which is

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Administrative Docket Order No 411 from the Nevada Supreme Court entered in 2008 addressing indigent defense Amongst that order, if you take -- on Bates stamp 73 under "Performance Standards," it states, "It is hereby ordered that the performance standards contained in Exhibit A to this order are to be implemented effective April 1, 2008 "
Exhibit A to that order begins on Bates stamp 79, and one of the aspects of that is found on Bates stamp 83, which talks about compensation, and under subsection 2, while it falls under a -- a paragraph that starts talking about death penalty cases, Item No 2 says, "Attorneys employed by defender organizations should be compensated according to a salary schedule that is commensurate with the salary schedule of the prosecutor's office in the jurisdiction "
Exhibit 25 are the regulations adopted by the State of Nevada -- adopted, not adapted -- adopted by the State of Nevada Board of Indigent Defense Services, which provides services to the very small counties in the state And amongst these regulations which are adopted pursuant to law and the Administrative Procedures Act, if you take a look at Bates stamp 85, section 39 of the regs state, "An attorney who receives a salary for providing indigent defense services is entitled to receive a reasonable salary, benefits, and resources that are in parity, subject to negotiated collective bargaining agreements, if applicable, with the corresponding

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prosecutor's office that appears adverse to the office of the public defender in a criminal proceeding "

Likewise, if you turn to Exhibit 33, there is -- the American Bar Association has put out ten principles of a public defense delivery system In Principle No 2, which can be found on Bates stamp 124, states, "Full-time public defender salaries and benefits should be no less than the salaries and benefits for full-time prosecutors "

So you may be wondering if we always had historic pay parity before collective bargaining and we had it post collect bargaining, why are we asking for a pay parody article here? The answer is, is that due to a fluke, for lack of a better term, pay parity was broken in fiscal year 2023 In fiscal year 2023, which, of course, begins July 1, 2022, I'm sure the arbitrator remembers we were suffering, we being the country, was suffering with historic hyperinflation The -- both the prosecutors, the CCPA, Clark County Prosecutors Association, and the public defenders both declared impasse and both went to fact finding

Ms Kheel and I did the fact finding, I representing the prosecutors association, Ms -- Allison repreeenting Clark County We had two different fact finders I believe you are familiar with them They are both -- they are Bay Area colleagues of yours John Kagel was the fact finder for the prosecutor's fact finding and Paul Roose was the fact finder

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for the public defenders fact finding Arbitrator Kagel represented a 4 percent COLA based on the same fiscal year and the same fiscal data for the prosecutors Arbitrator Roose recommended 3 percent instead of the 4 that Kagel recommended for the prosecutors Both sides accepted the recommendations rather than go to interest arbitration, and so that is how pay parity was broken We are seeking to restore it

Now, the evidence is going to be that they're going to point out that right now, technically we're actually getting 1 or 2 percent more than the prosecutors are That is because the County voluntarily with -- when no agreement had been reached, gave us a 3 percent COLA this year based on concepts of evergreen in our contract, and the prosecutors are currently at impasse But once the prosecutors contract -- I'm not representing the prosecutors in this year's fact finding Once that fact finding is resolved, the prosecutors will be equal or more likely will jump the public defenders again, so what we are seeking with our pay perity article is just to restore what has been the historic norm, both before collective bargaining and after collective bargaining, which is whatever the salary schedule is for one should be the salary schedule for the other Thank you

THE ARBITRATOR Thank you

Okay Ma'em, are you ready for an opening?

MS KHEEL Yes But before I proceed with that,

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the County just wants to note as Mr Levine mentioned that the first time the County learned of the union's current longevity proposal contained in Union Exhibit 1 was yesterday around 1 o'clock p m This proposal is a 30 percent decrease from the longevity proposal passed at the table, and the County just considers this as continued evidence of bad faith bargaining, as was ruled by the EMRB to be a premature declaration of impasse With that said, I'll proceed to my opening statement

At issue in this fact finding are the union's proposals of two new articles, longevity and pay parity with prosecutors Arbitrators generally agree that the party seeking to add a new provision or benefit to a contract bears a high burden of demonstrating the necessity and reasonableness of that new provision The arbitration board in Twin City Rapid Transit Company described this burden as follows "We believe that an unusual demand casts upon the union the burden of showing that because of its inherent reasonableness, the negotiators should, as reasonable men, have voluntarily agreed to it While we would not deny such a demand merely because it has not found substantial acceptance, but it would take clear evidence to persuade us that the negotiators were unreasonable in rejecting it "

The union will not be able to meet this hefty burden in this case for either proposal To be clear, while

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article 22 is titled "Longevity" and currently exists in the CBA, the longevity benefit in that article was a grandfathered benefit that was a holdover from when the public defenders used to be a part of the management plan, or as you'll hear it referred to, M plan Any employee hired after July 1, 2002 will not receive this benefit At present, there are only nine employees in the bargaining unit receiving this holdover longevity benefit The defenders union was not formed until 2015, and since the formation of the defenders union, they have never had a separate longevity benefit in their CBA

Now, you will hear from deputy county manager LesLee Shell and chief financial officer Jessica Colvin that starting in 2002, 23 years ago, the County made it a priority to remove longevity benefits for all newly hired employees It wasn't until 2015 that the last of the bargaining units, SEIU, eliminated longevity from their CBAs for new hires You'll be able to see from County Exhibit 12 that the vast majority of bargaining units in nearby local government employers have also negotiated to eliminate longevity benefits for new hires

Now, I'm not going to dispute that while there does appear to be a trend in law enforcement to attempt to revive longevity-type benefits, this is easily explained by a very significant hiring crisis in law enforcement They cannot recruit enough people They cannot get them to stay, but this is simple The public defenders are not police officers and

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the circumstances here are not comparable You will hear how the County views longevity as a relic of the past Longevity pay was originally designed to facilitate recruitment and retention at a time when government wages and benefits were significantly below those of the private sector The necessity for the longevity pay has all but disappeared, and prior studies conducted by the County have shown that longevity benefits are not important to new -- recruiting new employees, and it's not what keeps existing employees here That's not causing any retention

The defenders unit has never had longevity benefits, and you will hear from HR director Curtis Germany that the lack of longevity in this unit has not presented a problem for recruitment or retention of experienced attorneys The average tenure of public defenders currently is around 10 42 years Ten and a half years This is more than double the four year national average in the legal field

However, at the end of the day, recruitment and retention issues, those are a matter of staffing, and staffing is an exclusive management right under NRS 288 153(c)(1) and is absolutely not a mandatory subject of bargaining It is an exclusive management right, therefore, the union will not be able to meet its burden to show that the longevity provision is so overwhelmingly necessary that no reasonable negotiator could have rejected it Nor will the union be able to meet

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this high burden for its newly proposed article on pay parity

The newly proposed article contained in County Exhibit 4 is what is often referred to as a "me too" clause Essentially this proposal requires the County to set the salary schedules of the defenders to match whatever the prosecutors ultimately negotiate as their new salary schedules However, this proposed article is based on a faulty assumption that wages for the prosecutors and the defenders should be the same

The prosecutors and the defenders are two different units They, since their inception, have always had separate collective bargaining agreements We heard Mr Levine, they fought to be separate collective bargaining agreements and they've always negotiated separately What's the result of that? They have different contracts The prosecutors and the defenders have different benefits They've negotiated for different changes They've made different concessions in their respective contracts

For example, when the COVID pandemic hit, the prosecutors negotiated to take a pay cut, while the defenders negotiated for a reduced workweek In a later year when both parties were at impasse and participating in nonbinding fact finding, two different fact finders recommended two different cost of living allowances or COLAs Ultimately the prosecutors settled for a 4 percent COLA, while the defenders

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settled for a 3 percent COLA and a 5 percent lump-sum payment in the same fiscal year This ended up putting the defenders 1 percent ahead of the pattern of COLA for the counties' ten bargaining units So this outcome has in fact caused the prosecutor salary schedule to be 1 percent ahead of the defenders salary schedule

Now, this is difficult to see, because as Mr Levine noted, the prosecutors are presently at impasse and have not agreed to their COLA for fiscal year 25, however, if one assumes that they ultimately receive the same 3 percent COLA that other County bargaining units have accepted, and in fact, the defenders have accepted, any additional increase at the top and bottom of the salary schedule would then create that windfall to the defenders if the defenders salary schedule mimics that of the prosecutors, nor would that "me too" clause work in practice, since the defenders are not willing to take a pay reduction to match the current salary schedules of the prosecutors, nor are the defenders willing to adopt other concessions made by the prosecutors

The proposed article is limited to just salary schedule changes The County reasonably commissioned a classification and compensation study to review the defenders' salaries compared to the market This study found that the salaries of the defenders were within the target midpoints of the market The union cannot demonstrate that any change in

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the salary schedule is necessary, nor can the union demonstrate why the defenders should move lockstep with the prosecutors

They reference Washoe Well, Washoe has both groups in the same bargaining unit, so of course they move in lockstep with each other Here, they're in different bargaining units, so they negotiate differently Ultimately, each bargaining unit is a separate entity and must negotiate separately If they wished to negotiate together, they are free to petition the EMRB and join the prosecutors bargaining unit

The union will fail to prove that this new pay parity provision is necessary and/or reasonable, therefore, the County respectfully requests that the arbitrator recommend no changes to article 22 and recommends against the addition of a pay parity provision Thank you

THE ARBITRATOR Thank you

All right Let's go off the record

(Off-the-record discussion)

THE ARBITRATOR Let's go on the record, and we are ready for the union's first witness

Would you please raise your right hand?

Whereupon,

RAFAEL NONES

was administered the following oath by the Arbitrator

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THE ARBITRATOR Do you solemnly swear the testimony you're about to give in this matter will be the truth, the whole truth, and nothing but the truth?
THE WITNESS I do
THE ARBITRATOR Would you state and spell your full name, please?
THE WITNESS My name is Rafael, R-a-f-a-e-l, last name is Nones, N as in Nancy, O, N as in Nancy, e-s as in Samantha I'm the treasurer for the Clark County Defenders Union
THE ARBITRATOR All right Good morning I have two requests Please speak slowly so we get your testimony, and please wait for the full question before you answer so there's no overlap in dialogue
Okay Counsel
DIRECT EXAMINATION
BY MR LEVINE
Q Rafa, can you give the -- the arbitrator already knows you're the treasurer for the union Can you give him a rundown of your professional experience?
A Sure So I've been with the Clark County Public Defender's Office as a deputy public defender and later as a chief public defender for approximately 15 years I've worked on various teams within the office as a public defender, both on track teams, which means we handle all sorts of cases, the

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gamut I was previously on the homicide team for about a year I'm currently on the sex assault team, which means I handle nothing but category A felonies, which contain life tales, or the potential of life in prison for all of the cases that I currently handle.
Prior to coming to the public defender's office, I was a certified public accountant Still remain a certified public accountant, but I don't practice that anymore I worked for Arthur Andersen as a financial auditor for two years I worked for Royal Caribbean and Celebrity Cruises for five years in their finance department, specifically revenue management
Q Okay Rafa, I want to start with the longevity proposals If you could turn to Union Exhibit 1
A Would you like me to describe it?
Q Yeah, please
A Okay. So this is the most recent offer that we've -- we've made, which is a lower rate for new longevity proposal In other words, those who were hired prior to July 1st, 2002 are already grandfathered in, that after five years of creditable service, they would receive every year a lump-sum payment equal to 57 percent of their salary That was the grandfathered part
We are then proposing to strike the line that says employees hired into the classification after that date

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receive nothing, and have added a new paragraph here that says employees that are appointed after the date, again after five years of creditable service will receive a reduced percentage of longevity pay for retention specifically for the purpose of retaining experienced lawyers Both of these, though, would only be applicable to people who have been there five years
Q Okay Now, in opening, the County suggested this was a -- I think she indicated a 32 percent reduction from our original proposal It's -- is her number off?
A It is This is a 53 percent reduction from our initial proposal
Q Okay And can -- notwithstanding the accusation made in opening that this was somehow bad faith, why did we decide to reduce our proposed longevity pay?
A So we -- the reason we chose 27 percent is because we wanted to make this more akin to the Washoe County rate or average rate of longevity pay that they offer
Q Okay So if we turn to Exhibit 8, I am showing you what has been admitted as the wage article for the Washoe County Public Attorneys Association Does that encompass public defenders in Washoe County?
A Yes, it does
Q Okay And can you walk us through Exhibit 8 and Exhibit 9, just explain how we got to the 27 percent?
A Certainly So we've got -- in Exhibit 8, I believe

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it's five pages or so, six pages of their current contract that covers 2024 through 2028 for Washoe County, and it's got the relevant parts that show what their longevity statute is If we turn to what is CCDU0013 Bates --
Q Okay You just -- you anticipated my next question, so keep going
A Okay That shows article 19, which is their longevity They called it -- they entitled it "Career incentive pay," but it is specifically referred to as longevity You'll see in the middle paragraph, "An employee's eligibility for longevity pay," so these terms are interchangeable here, and it defines what it is
For those that were hired prior to 2022, and if we look at the bottom, it defines what the benefit is for those hired after that date If we stay on this page, the -- what look -- not exactly bullet points, but the paragraph there that says ten years less than 15 years is a 3 percent annual base salary, 15 years less than 20 years, everyone with me there?
THE ARBITRATOR I see it
THE WITNESS Okay That is -- that benefit is identical for people that were hired prior to that date or after The only difference for people that were hired prior to that date is they receive a benefit from five to ten years, and that's defined in that first paragraph, which is $150 per

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year of service
Am I going too fast or okay? Great
So we took that, and if we then look at Exhibit 8, I've computed what those amounts would be based on a person's salary in Washoe, and if you look on the left three columns, you'll see in the left side the years of service that that employee would have, and then the rightmost column under Washoe, what the percent per year of service would be. If you add all of those up and get what the average percentage is that they get over the course of a 30-year career, which is the retirement age for the State retirement system, it would be an average of 27 That's why we chose this number specifically to Washoe, and Washoe is one of the most important comparators for us
BY MR LEVINE
Q Now, when it comes to comparators, important comparators, how many or which counties have unionized public defenders offices?
A There's us, there's Washoe County, and there's Elko County
Q. Okay Nobody else has it?
A No one -- there are no other public defender offices specific to a region in Nevada other than those three.
Q How are – in what we sometimes pejoratively refer to as the cow counties that have very, very small populations,

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how are public defender indigent defense services provided?
A Multiple ways So some counties can participate in the State of Nevada's indigent defense system, and they will service the very rural towns throughout the state of Nevada, which is a large desert, some of them are extremely rural, or some will just hire a private attorney to represent indigent
Q. Okay And I think you indicated in a prior answer that Washoe County is the – is the best comparator county Why is that?
A Well, specifically for retention purposes and for longevity We have recently in the last – just last year alone in 2024, we lost two attorneys who went up to Washoe for a better salary, as well as an experienced lawyer who we lost two years ago in 2022, who went to Washoe County
Q. Okay So for the first two that you referenced, would those be what you characterize as experienced or nonexperienced?
A Inexperience
Q Okay And inexperience, when we use the term inexperience, what are we talking about for years of service?
A So we're talking about less than five years, and that number is specific for multiple reasons First, it's not just arbitrarily chosen for when longevity would kick in, that is the grandfathered provision, and for attorneys, it's extremely important because in your first five years, you're

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green. You haven't done many trials. After five years, you should have done somewhere around at least five, maybe eight jury trials at that time and you will become a far more experienced lawyer After ten, even more, of course, but that is kind of the cutoff where you're no longer a complete rookie and you have some experience and institutional knowledge.
Q Okay So we lost two inexperienced attorneys and one experienced attorney to Washoe County?
A. Yes, and they're listed in one of the County exhibits –
Q Okay
A – which I believe is 26.
Q Yes Let's take a look at County Exhibit 26. I will distinguish between union exhibits and County exhibits since we're both using numbers
A And I've got some notes on this exhibit, which I'll show to the County, if that's okay.
THE ARBITRATOR Yeah
THE WITNESS Let me know if you need an explanation for any of those
THE ARBITRATOR Let's go off the record
(Off-the-record discussion.)
THE ARBITRATOR. Okay Let's go back on the record and resume direct examination
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BY MR LEVINE.
Q Okay So Rafa, I'd like you to turn to County Exhibit 26, which we received yesterday.
A Yes I'm there And so this shows what I believe to be separations from the County for the years of 2021 through 2024, looks like calendar years. I'm not sure, there's not an explanation, but this was the County exhibit, that's what it appears to be. And there are -- if you look at number 2 on the list there, the second person listed, Eric Watson, is now a public defender in Washoe County He left our offices for there
Q And just so we're clear, according to their chart, he had -- he left with less than -- he didn't even serve out a full year before he left to go to –
A That's correct.
Q If I'm reading this right Okay
A. That's correct
Julian Gregory was a special public defender. He separated from us and went to Washoe County, as well, as a public defender there
Q After 2 71 years of service?
A. That's correct
And Bridget Matos was with us for three years, but she was also an experienced public defender, so she had many years of public defender service prior to coming here, and she

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is also now a Washoe County public defender
Q In addition to PDs, public defenders leaving Clark County to go to Washoe, have been district attorneys, prosecutors who have left Clark County to go to Washoe where they get longevity?
THE WITNESS There are
MS KHEEL Objection Relevance
THE WITNESS I know of at least two
THE ARBITRATOR Well, I'm going to allow it I don't know if it's relevant yet, but I'll allow it
THE WITNESS I know of at least two prosecuting attorneys, both of whom were experienced, who now work in Washoe
BY MR LEVINE
Q In addition to the inexperienced people who have left to go to Washoe County, are there experienced public defenders who have gone over to the judiciary?
A Yes On this same exhibit, County Exhibit 26, page 1 of 1, there are ten of them listed My notes kind of number them, but if you look at the notes in the right-hand side of elected to court of appeals, elected to justice of the peace, elected to district court judge, there are ten there We recently lost two more, Kristal Bradford and Kern Maxey, who left December 31st of 2024 They're not included on this list, though So 12 in total, we've lost to the

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judiciary recently
Q And we're going to walk through it Does the judiciary get longevity pay?
A They do And they get higher salaries, as well
And then there's other folks on here that have gone to private practice, as well
Q So let's turn to Union Exhibit 3 First, what is Union Exhibit 3?
A This is a summary of what the actual costs of both our current proposal of 27 longevity would be, what the cost of existing longevity pay is for the County, and I've corrected -- there were lots of errors in their calculation, but I've corrected it, it would be the 261,000 listed there, and what the total new cost would be And also, in very small letters, I apologize, I put what the union proposal would be based on our original proposal
Q All right So I'm going to walk through this First and foremost, the highlighted portion says "Last best " Just so we're clear, I wasn't willing to revise exhibits yesterday You understand it's not a last best, it would actually be our current proposal, correct?
A Yeah I'm not familiar with all the terminology that we need to use in fact finding, so --
Q Okay All right So walk us through it So the current -- I'll call it the current proposal of 27 percent

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for those persons who would be eligible to get that longevity pay, the cost would be what?
A $487,900
Q Okay
A Which would be equal to 1 5 percent increase to the current total contract.
THE ARBITRATOR I just want to clarify something on the record, which we didn't do The County is not taking the position that it's unable to pay, correct?
MS KHEEL Right There isn't an inability to pay
THE ARBITRATOR Right Okay
MR LEVINE Yeah The inability to pay defense is not being asserted It's they don't feel it's reasonable, I think, would be a fair summation of their position
THE ARBITRATOR Okay
MS KHEEL Yeah, or necessary
BY MR LEVINE
Q Okay So -- and then when it says 'Cost of existing longevity pay," is that a reference to the approximately nine people who are grandfathered in and still receiving longevity?
A That's correct That is the grandfathered-in people that are in our bargaining unit that are going to receive longevity pay during this fiscal year
Q And that cost for those nine who are currently receiving longevity is $261,815?

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A That's correct
Q And 83 percent of the contract?
A Yes, sir
Q And so if you were to combine the two, i e , give the current public defenders who are not getting any form of longevity the 27 percent on top of the nine who are currently receiving it, the total cost is what?
A Total cost of longevity, if our most recent propesal was accepted, would be $749,715
Q Okay Had we previously requested financial data or did the County provide us with what they asserted was the cost of the longevity proposal?
A They did We requested it in June of 2024 after impasse We requested the costs
Q Okay And did they provide -- I'm not going to ask you whether they provided us the cost, I'm going to ask you, did they provide us with numbers?
A They did, and that's in Exhibit 4
Q Okay And did you examine their numbers?
A I did
Q And did you determine -- you're a CPA In your opinion as a CPA, were their numbers accurate?
A No
Q Can you walk us through Exhibit 4 and explain why the County's calculations are not accurate?

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A Absolutely So this Exhibit 4 is divided into two halves, kind of split right down the middle vertically The data on the left is the data that was provided by the County I've added color to it and highlighted everything that was incorrect in bold and red numbers, just so that we could go through it and I could explain why they were inaccurate

If we look at the forecasted -- first of all, let me back up The language in the upper left that says "Clark County Defender Union RFI No 4," this was forecast data as of January 5th, 2024, however, we sent our request or this data was sent to us in June of 2024, so there should have been much more accurate and up-to-date information, because at that point, they had presented their budget to the Clark County commissioners, but still in June, they gave us data that was six months old That is part of the error in the calculations that we'll go through

Q Okay

A If we look at -- one, two, three, four, five, six -- the number 6 column from the left with the title of "FY25," fiscal year 25 forecasted longevity, this is what the County was forecasting their longevity cost would be I added a total to the top of that, which is $377,491 That would be just adding up everything in that column

The next column is their forecast of what current longevity would be, plus our original proposal of giving

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everyone 57 percent per year, and I've highlighted in there why some of those entries were incorrect

Q Can you -- yeah So can you explain -- let's use the very first --

A Certainly

Q -- defender, Dallas Anselmo

A So Dallas Anselmo, he's highlighted as incorrect and red because he was hired in 2022 He has two years of creditable service He would not be getting longevity pay for the next three years, so he would not be calculated as part of the calculation in this year, and you'll notice multiple There's Dallas, there's Robel, who's two spaces down who also only has two years of service, Bridget Beckett, who's five or so down, getting $470 She's been with us approximately one year Justin Berkman, one year

I won't go through all of them, but the large majority of the reds that are incorrect in their calculation are people that would not be eligible under any of our proposals, the original one or the new one Everyone is required to have five years of creditable service

Q Okay So when costing or claiming what the cost would be of our proposal, even our original proposal, they were including members of the bargaining unit that would not be eligible?

A That's correct It's exaggerated and overstated

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There are some others that are here, and this is partly because the County chose to provide data that was from January 5th of last year instead of updated So they then have Lynn Avants and Jeffrey Banks, who are the fifth -- excuse me, fourth and fifth lines on this exhibit They are no longer with the bargaining unit, and if we refer back to County's Exhibit No 26, you can see their exact separation date So Mr Avants separated April 5th of 2024 and Mr Banks separated January 5th of 2024 So six months prior to us even requesting this information, Mr Banks had left

And there are multiple others who have left the bargaining unit, including Amy Coffee, who you can see there So those are very large amounts they were stating they would have to pay that they do not have to pay

Q Okay So the right-hand or the -- the data on the right-hand of the -- right side of the black dividing line on Bates stamp 4, 5, basically every page of this exhibit represents what?

A Those are calculations that I made based on the data that they -- that the County provided to us, so everything, the creditable service is a simple mathematical calculation of the longevity date based on the date that this was calculated, which was approximately a week or two ago

Q Okay And just so we're clear, not using the term

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last best, but we'll use the term under the current longevity proposal of 27 percent, what is the actual cost?

A $487,900, and that can be seen in the upper right-hand portion of CCDU0004 Bates

Q And that's the same figure that we just saw in Exhibit 3?

A That's correct

Q Okay

A That Exhibit 3 is just a summary of the relevant numbers here and corrected numbers

Q Okay So let's turn to County Exhibit 13 in the County's book If we take a look at the second page, were there some inaccuracies you found in their calculations again?

A Yes

THE ARBITRATOR I'm sorry Which exhibit is that?

MR LEVINE County Exhibit 13

THE WITNESS Page 2

MR LEVINE Page 2, which we just received yesterday

BY MR LEVINE

Q Let me ask you, did you -- after we received it yesterday, did you go through it?

A Yes

Q Did you identify more erroneous calculations or assumptions?

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A I did, and we received the County's exhibits yesterday at 1 p m , at least we did, the same time that they received ours, so I did have to go through these and find some problems So if you look at the left here, the longevity pay, public defenders, the County is asserting that the current longevity pay, they're now using different metrics -- rather than the estimate that they used on the data that they provided us that we just went over, which would result in $377,000, in this exhibit, this purports that the current longevity pay for public defenders, the grandfathered-in would be somewhere around $600,000

Q That's not accurate?

A No It's 200 -- even the figure that they calculated was only $377,000 That was wrong, it's actually 200 -- going back to Exhibit 3 here, it's 261,000 with the best of our information that we have There's never been an estimate of 600,000, and there's a Footnote No 1 that this is conservatively based on calendar year 2023 until 2024 data is available, and this was provided yesterday at 1 p m So this is not a conservative figure, this is grossly overstated, and there is much more accurate information

As I stated, not just the data that they provided us, but they have to present -- there are government regulations that require they have a budget that is accepted They should have calculated an exact amount, and I believe

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that budget is presented in March or April In fact, we're told during our negotiations that the County cannot pass us financial proposals until they've had a budget that is approved, and that would have happened in March or April of this year

THE ARBITRATOR Of 2025?

THE WITNESS Of 2024 My apologizes

THE ARBITRATOR All right

THE WITNESS But for some reason, this is using 2023 and purporting that it's a conservative figure

It also says the union's proposal would result in a 1 4 million annual increase, which again used all of those wrong information that we had seen before Even the original proposal that we made would have been just slightly over $1 million, not 1 4

The other problem with this slide is that it shows longevity pay for all County employees, and we are not requesting longevity pay for all County employees We are specifically requesting it for public defender attorneys, and the reason is because, and I think this will be shown by the exhibits, is that we are unable to retain our experienced lawyers and we are losing our experienced lawyers at a rate we have never seen before

BY MR LEVINE

Q So --

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A I've got some notes on this page

MR LEVINE Would you like to see them?

THE WITNESS It's basically, and I'll say it for the record, it says "False" and it's pointing to the blue bar that shows the estimate would be around $600,000 The verbiage up top says "Currently no new hired County employees can earn longevity " I wrote "Except Metro and North Las Vegas Police Department," and as a result, longevity pay will decline and eventually be eliminated with attrition, I put "Just like our experienced lawyers "

MS KHEEL Given that that's your opinion that they're County employees

THE WITNESS It's just my notes I apologize Some of those are --

THE ARBITRATOR I'm a little confused about a number you used You said the union's proposal, in your estimation, would result in about a $1 million dollar annual increase?

MR LEVINE That was the original proposal --

THE ARBITRATOR Oh All right

MR LEVINE -- of 0 57?

THE WITNESS I think if we turn back to Exhibit 4 of the -- if you look at both of them together, it might help

MR LEVINE Union Exhibit 4

THE WITNESS Union Exhibit 4, and keep that slide

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open to the County's Exhibit 13, page 2 Keep those side by side

THE ARBITRATOR Yeah, I just wanted to make sure because I had the number 487,000 --

THE WITNESS That's correct That is for the current what I called last best, but what is really the most recent proposal

THE ARBITRATOR 27

THE WITNESS If you look right next to that, the column to the left shows our original request of 57 percent That would be calculated at about $1,030,000

THE ARBITRATOR All right I got it Thank you

MR LEVINE I just wanted to make -- it's important that the fact finder not be confused, so I want to make sure that he understands

THE ARBITRATOR I'm there now

BY MR LEVINE

Q So if we go back to the slide in Exhibit 13, under -- it would never have been 1 4, even under our original proposal?

A It would never have been 1 4 million That's $400,000 overstated

Q Okay So let's turn to -- obviously they're talking about and you've -- you've addressed the fact that we're not asking for longevity for all County employees

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A That's correct
Q Let's talk about the need for longevity for public defenders Let's start with County Exhibit 14
A There's a couple of reasons why I think we can be --
Q Right We're going to start with their exhibits and then we're going to go to ours
A 14 Okay
Q Yes So first, County Exhibit 14 seems to utilize some generalized turnover numbers What are your observations when you look at the representations in County Exhibit 14, which we were provided yesterday?
A So they use a generalized note that a 10 percent turnover rate is a healthy standard of turnover
Q Do we agree that when it comes to trial attorneys, 10 percent turnover is healthy?
A It seems like an arbitrary number, so I don't know where that's coming from, but specific to trial attorneys, I don't think there's any published data anywhere that says losing 10 percent of experienced trial attorneys is important And the problem is this doesn't break it down by experience level If we're losing 10 percent and it's evenly distributed, you know, 5 percent coming out of inexperience and 5 percent coming out of an experienced group, that might make sense, but that's not what we've seen We are losing experienced lawyers at an alarming level

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Q So if we go to page 4 of this exhibit --
A So this page 4 four of County Exhibit 14 shows an average year of service, which averaging things sometimes is beneficial Averaging things here, I think, loses the mark on what we should really be looking at, is actual numbers of experienced lawyers This still, even this if you look at it, shows all legal occupations have lost what appears to be over the last ten years 1 4 years of experience, 5 4 versus the 4 0, but again, that is generalizing all legal careers and not specific to our bargaining unit
Q Okay And then all public sector local government, does that -- again, do we believe the service employees represented by Local 1107 are an appropriate comparator to a public defender?
A No Of course not Public defenders are -- can be differentiated in many ways They're attorneys They are professionals that are regulated by the State Bar They're subject to licensure, subject to continuing legal education Having an inexperienced attorney handle a serious case can result in real liability, and has, for the County We've had innocent people be convicted in the history of our office that have resulted in multi-million dollar lawsuits against the County because they were not represented by competent, experienced lawyers That does not exist in most of the County employment jobs

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Q So at this point, let's turn to County Exhibit 12
A Can we stay on 14 for a moment?
Q Yes Absolutely
A Page 5
Q Okay
A This is probably the best, and I do have mathematical calculations on this that I wrote, and this shows a breakdown of experience level of our attorneys in the public defender's office If you look on the far left, what I'll describe as the aqua color --
Q Just so we're clear, this is their exhibit?
A This is the County's exhibit This shows over the last -- one, two, three, four, five, six -- seven years, the difference in experience levels of the attorneys within our office, and this, I think is extremely telling
So if you just look back all the way to 2018, the large number in the aqua all the way on the left is 29 That means the total number of attorneys in our bargaining unit, public defenders in Clark County that had fewer than five years of experience were only 29 attorneys They represented 22 percent of our bargaining unit If you look at everyone else, everyone that is over five years, you would then have to add up all of these colors that I'll show you guys here on mine, the blue, the tan, the orange, the green, and the yellow If you add up those numbers, that adds up to 104

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lawyers So experienced lawyers, there was 104 They made up 78 percent, almost 80 percent of our bargaining unit just six years ago
If you compare that to 2024 numbers, the inexperienced lawyers have grown from 29 to 45 That is 10 percent They now make up 10 percent more of our bargaining unit They make up 32 percent of our public defenders Similarly, the experienced group has contracted, and if you add up all of those, that is 97 experienced lawyers, making up only 68 percent of all of our public defenders
And this trend, you can see, it's not great here, but I've got a graph that shows it -- pretty much the same data, showing that we are on a trend of increasing inexperienced lawyers and the experienced ones are compressing, so we have fewer experienced lawyers in our bargaining unit, and that's why longevity is so important and critical
Q Okay Let's turn briefly to County Exhibit 12 So obviously we have already put on the record many of my objections with this exhibit, and a lot of those have been fixed with stipulations and accepted proffers, but were other bargaining units receiving longevity long after the public defenders lost theirs?
A Yes, and I've got that in my notes I've circled --

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one, two, three -- four units, that's the nonunion, had it until 2013 SEIU, which I believe is the largest group of employees in the County, had it until 2015, so 13 years longer than public defender attorneys had it These are hourly employees, JJPOA, I believe is a police organization --

Q It's Juvenile Justice Probation Officers Association

A And IAFF also had it to 2011, 2012, a decade longer than we did There's one in there, there's JJSA had it until 2011, Clark County law enforcement had it until 2008 Most of the units in here had it long after the public defender's office lost their longevity provision, so we are feeling the effects most now, because most of the people that were retained by longevity are now nowhere to be found in our unit In other units, there's still people that get longevity

Q Now, in opening, the County conceded there is a trend towards restoring longevity, but asserted that this was limited to or a function of law enforcement I would direct your attention to the bottom of their chart, State of Nevada Does State of Nevada get longevity?

A Yes That was added in 2023 That is a recent development where -- and the number is listed on Exhibit 12 all the way at the bottom, 24,440 full-time employees had longevity reinstated that was once taken away

Q And just so we're --

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A That is not law enforcement

Q Yes Just -- the arbitrator can take judicial notice that AFSCME represents the civilian bargaining units at the State, not the law enforcement bargaining units

And just so we're clear, did all employees, civilian and law enforcement, get it for the State?

A Yes

Q If you turn to Exhibit 12

A There's one more there, RTC, SEIU

Q That's the Regional Transportation Commission

A They also receive it, 389 full-time employees

Q So if we turn to Union Exhibit 12, I am showing you Assembly Bill 522 relating to all State employees

A Yes This is the assembly bill that was passed and signed into law by Governor Lombardo, which granted the longevity, reinstated longevity for those 24,440 full-time employees, as well as a 12 percent salary increase

Q Okay Just for the record, there's multiple bargaining units, and they're not all represented by AFSCME I have two of those State bargaining units

All right Let me -- I want to go to our exhibits You touched upon this when looking at County Exhibit 13, page 5 of 9 I want to go to now Union Exhibit 5 Can you explain to the fact finder what is depicted in Union Exhibit 5?

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A Sure So --

MR WESTBROOK And for the fact finder I think that's -- we're on -- is that Union Exhibit 5 or is that --

THE WITNESS Union Exhibit 5

MR WESTBROOK There we go

MR LEVINE Yes

THE ARBITRATOR Thank you

THE WITNESS So Union Exhibit 5 shows, similar to the County's Exhibit 14, page 5, the makeup of our office split into two groups The group on the top, denoted by the blue dots and the blue line, show the number of experienced lawyers in our offices at a specific date and time So if you look at the blue dot all the way on the left that's denoted with 102, that means we had 102 lawyers in the bargaining unit January 31st of 2019 These are lawyers that have more than -- five years or more of experience

The red dots and line just right next to the blue ones show what percentage of the public defenders the experienced lawyers made up at each point in time The numbers on the bottom, the green dots and the green line show experienced public defender lawyers at each point in time, and the, what I'll call, violet or purple shows the percentage that they made up of our bargaining unit

And what this shows is if we just look at the top part, the experienced lawyer, it is a trend downward, so 102

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lawyers back in 2019, fast-forward six years, there are only 92 What used to be experienced lawyers made up 75 percent of our bargaining unit now make 63 percent of our bargaining unit It's a decline of roughly 12 percent, which is similar to the numbers that the County presented They had an extra year in there, and that was a 10 percent decline

BY MR LEVINE

Q Just so we're clear, there seems to have been a precipitous drop in for what's labeled here January 31, 2021 Can you explain why that is?

A Sure Yeah And those numbers do look a little unusual and don't follow the -- what seems to be a very clear trend on all other years That wes the pandemic time, January 31st, 2021 During that fiscal year where January 31st, 2021 was, the County offered an early retirement incentive, which forced even more of our experienced lawyers to leave at that time, or incentivized them to leave, not forced

And you'll notice a decline similarly thet same year in inexperienced lawyers because we -- the County wes on a hiring freeze during that year for our offices, as least, so you see a decline in both But even if you exclude that year, or even if you don't, you can see a very clear trend on both, and that is inexperienced lawyers are increasing, experienced

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lawyers are decreasing, and if this trend is to continue, it will have even fewer experienced lawyers at our office
Q Do we have a retention problem?
A We do I think that's clear here in -- not just in our numbers, which came from the County, these were requests that we made, but by County Exhibit 14, page 5 shows the exact same trend
Q And likewise, if we go back to County Exhibit 14, page 7 of 9 --
A Sorry There's one other thing I wanted to add here
Q Oh, certainly
A This does not include we know of two more retirements of 20-year lawyers that are happening in February, Melinda Simpkins from the special public defenders has announced her resignation and Scott Bindrup has announced his resignation at the end of February Those are 20-year lawyers We're losing two of them
Q And our next witness, Mr Coffee, Scott Coffee, is he an experienced lawyer?
A He is, extremely He's going to be retiring in a week
Q So this trend is going to be accelerating?
A It is
Q Can you turn to County Exhibit 14, page 7 of 9?

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A Sorry Which number?
Q County Exhibit 14, page 7 of 9, vacancy rates
A Yes Want me to explain this?
Q Yes
A So we received this yesterday in the afternoon, as well, with all the exhibits So I don't know that longevity is a recruitment issue It's a retention of experienced lawyers issue I agree that people don't come to an office for, necessarily, longevity They may, but the incentive is to keep them from seeking out greener pastures and offer something that incentivizes them to stay for every extra year that they put into service with us But I am on the hiring committee, and I believe --
Q And when you say "the hiring committee," what is the hiring committee?
A Both preparation for and interviewing of potential new applicants for public defender attorney positions within our office
Q Okay
A But I think this also demonstrates a very serious recruitment issue that we are facing, as well, that is also drastically accelerating If you look at the last three years, those are the highest years in this entire chart that we have ever had vacant positions in our public defender offices That's also exacerbated, if you turn two more pages

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to page 9 of 9 of Exhibit 14, this seems to show historical recruitment data If you look at 2024, we had 11 applicants for all of the public defender positions that we posted, where in years past, the year before, 62 -- or is that 52? I can't --
Q It's a 6
A 62 In 2022, 39 In 2021, 101 In 2020, there's a very low number Once again, that was the pandemic and we were in a hiring freeze, so there were no applicants because there was very few positions that were ever posted Everything else is in the high double digits, 50, 81, 41 I can tell you we did not, and the department head of our office made the decision, even though we had plenty of applicants, to not hire many and leave them vacant because the applicants that we were getting, as minimal as they were, they still weren't very qualified So we do have a recruitment issue, as well I don't think it's necessarily relevant to longevity, but we are having a recruitment crisis, as are the district attorneys
Q All right Now I want to turn to Union Exhibit 7, which -- explain what Union Exhibit 7 is
A This is a summary of comparable employee groups as specifically related to the longevity clause
Q All right So let's start -- let's -- let's walk through this -- again, this is a summary document, and are the

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backup materials for this summary document in Exhibit 7 included in our subsequent exhibits?
A Yes So all the way on the right, you'll have a reference --
Q And just so we're clear, it would be -- the backup documentation would be up through Exhibit 19 for these other bargaining units?
A Yes
Q Okay
A That's correct And we have the exhibit number and the Bates stamp number where you can find the actual contract language that we're summarizing in this demonstrative here
Q Okay So obviously Clark County has a population of 2 4 million?
A 2 4 million That's correct
Q And how does our caseload compare to Washoe County, where they have longevity?
A We have a 42 percent higher caseload than Washoe, meaning per attorney, on average, we handle 206 cases for the last year, whereas Washoe handled 144 per attorney, so we handle 42 percent more cases than Washoe, on average
Q Okay Elko, do they get longevity?
A They do get longevity
Q How does their longevity work?
A Theirs is -- it starts at eight years and it's e

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dollar figure based on the specific term of years that you've been there
Q Okay
A They're also a much smaller town They've got a population of 55,000 They are rural in comparison to the metropolis that is the Las Vegas valley
Q Okay Turn to the next page, Nevada district judges Do they get longevity?
A They do get longevity After four years, they get an additional 2 percent incentive to remain
Q And just so we're clear, the very right-hand column is the exhibit – our exhibit number and the Bates stamp page where this data can be found?
A That's correct That's a statutory benefit that they receive
Q Okay Nevada employees statewide, I think we looked at that just previously That is Exhibit 12, AB 522 Everybody in the State gets longevity?
A That's correct That put over 17,000 Nevada public employees, but the County has listed it as 24,000
Q The County is correct It's FTEs Actually, I think the County is understating I think it's even more than that But anyway, everybody, every employee in the State gets longevity now?
A Yes

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Q Civilians, firefighters, police, everybody?
A Yes
Q Las Vegas Metropolitan Police Department, I've got a witness coming specific to Metro, but do they get it?
A Yes
Q North Las Vegas, do they get it?
A Yes
Q The public defender in Sacramento, do they have longevity?
A Yes, they do, after ten years of service
Q Fresno County?
A Yes They also receive it There's a benefit at five years and a benefit at ten years
Q So they get some longevity at five years and then it increases after ten?
A That's correct
If we turn back to the first page there, it's also, once again, just highlighting in the notes that all public defender offices in Nevada offer longevity pay except for Clark County, the largest county with the highest caseloads and the most serious crimes, as well
Q Okay I would like to now turn to the article involving pay parity, and that is County exhibit -- sorry, Union Exhibit 20 All right What is Union Exhibit 20?
A This is the proposal that we passed during

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negotiations requesting to reinstate the long-standing historical parity that the district attorneys and public defenders in Clark County have enjoyed since the establishment of our office in 1966
Q Okay So let's talk a little bit about the history of the bargaining unit I represented it in opening statement When was -- did the bargaining unit organize and when was it recognized?
A We began organizing in 2013, 2014, we were officially recognized in 2015
Q So did the prosecutors want public defenders as part of the – their bargaining unit?
A No, and there's a little bit of a distinction there in what you said in your opening, as well It's not that we don't like prosecutors I play poker with prosecutors I've had them at my wedding, I've gone to theirs There are some real benefits that we saw to being in the bargaining unit with the prosecutors, as the other offices in Nevada have, but the prosecutors would not have us in their bargaining unit And the County sought to prevent us from being any union unless we were in the bargaining unit with the prosecutors
Q And did it take until 2015 including a -- defending against a petition for judicial review filed by the County to finally get that recognition as a separate bargaining unit?
A Yes They fought us in EMRB and in court

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afterwards
Q Now, prosecutors, I believe, organized somewhere around 2008?
A I think that's right
Q Okay From 2008 up until the recognition in 2015, did you have pay salary parity?
A Yes
Q Okay So even when you didn't have collective bargaining, it was pay parity?
A That's correct I believe the County knew that we should remain in parity
Q Okay And after we unionized in 2015, did that pay parity continue?
A Yes, for some time
Q Right I'll get to the events of fiscal year 2022 or I guess it would be fiscal year 2023 in a moment
You recognize Ms Christina Ramos to your right?
A I do
Q And her role is what?
A Lead negotiator for the County
Q And in negotiations, when it came to the subject of pay, did she have a term or a description comparing prosecutors and public defenders?
A Yes She has maintained many times that we should have the same salary schedules and parity, and has referred to

EXHIBIT B

EXHIBIT B

In the Matter of Factfinding Between

Clark County

v.

The Clark County Defenders Union

BEFORE FACTFINDER,
ROBERT M. HIRSCH

January 30, 2025

CLARK COUNTY

POST-HEARING BRIEF

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I. INTRODUCTION

In this case, the parties, Clark County ("County"), and the Clark County Defender's Union ("CCDU," the "Defenders" or the "Union"), are in Factfinding after reaching impasse in negotiations, following the expiration of their prior one-year collective bargaining agreement ("CBA"). Cx. 1.[1] The only open issues are two proposals by the Union to add new benefits into the CBA: the first proposal seeks to revise Article 22 - Longevity in a manner that would extend the legacy longevity pay to all employees in the bargaining unit; and the second proposal seeks to add an article providing salary schedule parity with the Clark County Prosecutors Association ("CCPA" or "Prosecutors").[2] These proposals, if accepted, would result in significant, immediate, and dramatic changes to the *status quo* in the CBA.

After making a preliminary determination regarding the County's "ability to pay" (which is not at issue here), the Factfinder must compare the proposals of the County and the Union, assessing the ***reasonableness*** of each proposal, with "due regard [given] for the obligation of the local government employer to provide facilities and services guaranteeing the health, welfare and safety of the people residing within the political subdivision." NRS § 288.200(7); Cx. 30, p. 14. When one party seeks to add a brand-new provision to the CBA, that party (in this case the Union) must meet a heightened burden to show that the new provision is necessary.

Here, the Union proposes an outrageous revival of the long dead longevity benefit. Cx. 3. The Union argues that this new language is important to retain experienced attorneys and goes so far as to state that it is necessary to ensure the County has more death-penalty qualified attorneys on its team of Defenders. However, the Union's own witness admits that there is no correlation between longevity and death penalty qualification. Tr. 116:9-11 (Coffee). Since its inception as a Union, the CCDU has never had longevity. The existing contract language was a legacy to accommodate employees who had this benefit as a part of the County's Management Plan ("M-Plan") before the Defenders were unionized. Since 2002, the County has actively and successfully negotiated longevity language out of the CBAs of

[1] Citations to the Hearing Transcript shall be abbreviated as "T,." followed by a page number (and line number where applicable) and the last name of the individual testifying in parenthesis. County Exhibits shall be cited as "Cx. ___" and Union Exhibits shall be cited as "Ux.___."

[2] Notably, the Union advised the County of its revised longevity proposal less than 24 hours before the scheduled Factfinding. The County considers this late submission continued evidence of bad faith bargaining on the part of the Union.

all its bargaining units. Tr. 168:2-4 (Danchik). To recommend longevity here would be unprecedented and detrimental to the County's ability to satisfy its objectives and statutory obligations.

When considering the reasonableness of such a proposal, the Factfinder should focus primarily on internal equity and the strong internal pattern consistently established since 2002 across all 10 bargaining units for the County. Cx. 10; Tr. 148:7-9 (Colvin). No new hires within the County have been eligible for longevity for 10 years. Cx. 12. Maintaining a consistent pattern across all County bargaining units is essential to the County. If the units get out of sync with this pattern, it "becomes a whipsaw" or domino effect, which prolongs negotiations as each unit attempts to get more than the other. Tr. 162:8-12 (Colvin). The Union's proposal for longevity is an extreme break from this important, consistent pattern and should be rejected by the Factfinder.

The Union also proposes a new article, Salary Schedule Parity (new Article 38). This proposal provides for only one direction of parity with the Prosecutors — upwards. The language states that "[a]nytime the [CCPA] receives any ***salary increase(s)***, the salary schedules for [CCDU employees] shall be adjusted." Cx. 4 (emphasis added). The Union attempts to argue that this language is true parity; that if CCPA members experienced reductions in salary and/or benefits so would CCDU. Tr. 82:4-6 (Nones). However, as stated by this Factfinder: "[The Union's proposal] doesn't read that way." Tr. 82:7-8 (Hirsch). Even assuming *arguendo* that the language read as the Union claims was its intent, the CCDU fails to recognize that exchanges may occur in another contract in return for some economic gain.[3]

The County has already granted the Defenders a 3.0% COLA for 2025 due to the Evergreen language of the CBA. Tr. 31:11-13 (Levine). However, the Defenders are not willing to reduce their salaries to the level of the Prosecutors while awaiting a resolution of the Prosecutors' CBA. The Union never even attempted to negotiate for any other compensation/salary schedule increases. Had the Union actually felt that increases to the salary schedule were necessary and justified for the Defenders, the Union should have proposed those changes at the table.

The Union points to Washoe County to support their argument for salary schedule parity between the Prosecutors and the Defenders. But due to its population, geography, and other relevant factors,

[3] The CCDU has offered no concessions while the County has agreed to give increases in several areas in this contract. The worst-case scenario for the CCDU in Factfinding is that the CCDU receives a recommendation of the County's proposal (the same position the County had at the time of impasse). Thus, the CCDU once again faces no risk by forcing the County into Factfinding in an attempt to get more than what it could receive from negotiations. Tr. 150-151 (discussion) (yearly factfinding).

Washoe County is not a comparator to Clark County. Moreover, unlike the current situation in Clark County, Washoe County Prosecutors and Defenders are in the same bargaining unit and covered by the same CBA. Tr. 83:1-2 (Nones). To agree to such salary schedule parity language for CCDU, especially with no reasonable basis for doing so, would create undesirable confusion and competitiveness between the County's other bargaining units, disrupting the County's well established internal pattern.

The Factfinder should see the Union's proposal for what it is — i.e., a surreptitious scheme to obtain the additional 1% COLA enjoyed by the Prosecutors as a result of the Fiscal Year ("FY") 2023 Factfinding. The CCDU also was in Factfinding for FY 23, but Factfinder Roose expressly chose to not recommend the additional 1% for the Defenders — reasoning that the 3% COLA was more reasonable because it was consistent with and maintained the internal pattern. Cxs. 7 and 10. Therefore, the County's proposal to maintain the current language on longevity and refusal to add a "me too" salary schedule parity provision is more reasonable than the Union's proposals within the meaning of the applicable Nevada Statute, and the Factfinder should recommend no change or addition to the CBA.

II. FACTUAL BACKGROUND

A. Clark County Is Many Times Larger Than Any Other County In Nevada And Provides Services To Millions Of Residents And Visitors Requiring That It Balances Its Resources Among Competing Priorities.

Clark County is home to over 2.3 million residents and 41 million visitors. Cx. 9, p. 2; Tr. 138:21-23 (Colvin). It is the most populous county in the State of Nevada, accounting for nearly 75% of Nevada's residents, and it ranks as the 11th largest county in the Nation. Cx. 9, p. 2; Tr. 138:18-21 (Colvin). The next largest county in Nevada, Washoe, is a fraction of the size of Clark County with a significantly smaller population, approximately 500,000 residents. Tr. 137:23-138:1 (Colvin). For visitors and all 2.3 million residents, Clark County provides numerous services on a regional scale (i.e., the nation's tenth busiest airport, air quality compliance, social services, and the State's largest public hospital — University Medical Center). Cx. 9, p. 3. Moreover, Clark County provides municipal services (i.e., fire protection, roads, parks and recreation, and planning/development) to over one million residents living in unincorporated Clark County. Cx. 9, p. 3; Tr. 137:8-18 (Colvin). If unincorporated Clark County were compared with a city (which it should not be), it would be almost double the size of the City of Las Vegas, the largest city in Nevada (pop. appx. 666,780). Cx. 9, p. 6.

The revenue the County receives is limited. Cx. 9, p. 8. Property tax is determined by statute and can only grow by 3.0% for residential and 8.0% for commercial. Cx. 9, p. 8; Tr. 138:18-21 (Colvin). Consolidated tax revenue ("C-Tax"), which is the largest source of revenue, is volatile and has not kept pace with inflation. Cx. 9, p. 8; Tr. 138:24-25; Tr. 140:18-21 (Colvin). C-Tax is determined by the State Legislature, and the County has little control over the revenue it receives and cannot readily increase the revenue it receives. Tr. 139:2-5 (Colvin). This, in turn, presents challenges when allocating revenue to various services.

The County must balance multiple competing objectives and priorities and allocate its financial resources in such a way as to satisfy its statutory obligation to provide services to the public. Cx. 9, pp. 14-16; Tr. 142:21-23 (Colvin). For example, despite being one of the largest counties in the country, Nevada (and by extension Clark County) still ranks 49th in the number of full-time employees ("FTEs") per 1,000 population. Cx. 9, p. 13; Tr. 142:3-5 (Colvin). In the last budget cycle, various County departments requested 321 positions; however, the County was only able to fill 96 of those positions (due to budget constraints). Tr. 143:10-11 (Colvin). The County's position growth is not matching the growth in demand/workload despite the County spending 60% of its operating budget on salaries and benefits. Cx. 9, p. 13; Tr. 142:9-12 (Colvin). The County will eventually reach a breaking point where no amount of additional compensation will allow employees to keep up with the increased workload.

In addition to its day-to-day activities, the County's obligations also include long-term commitments. Tr. 144:14-16 (Colvin). Such unfunded mandates, absorbed by the general fund, which also funds County employee salaries and wages, have totaled $34 million over the State's past two budget cycles. Tr. 144:19-21 (Colvin). Thus, the County needs to prioritize the allocation of any surplus general fund money to funding new FTEs as well as among many other competing priorities, programs, and services. Cx. 17, pp. 13-18; Tr. 94:12-24 (Shell).

B. The County Has Established A Consistent Internal Pattern Among All Bargaining Units, And Additional Compensation Through The Union's Proposed Language For Longevity And Salary Schedule Parity Would Disrupt That Pattern.

The majority of the County's more than 10,000 employees belong to one of the ten County bargaining units. Cx. 10. Between 2002 and 2015, the County engaged in a campaign to systematically remove longevity benefits for new hires from all of its CBAs. Tr. 183 (Shell). The culmination of this

campaign was binding factfinding with SEIU in 2015, where Arbitrator Runkel ultimately ruled that the County's final offer eliminating the longevity benefit for new hires, was more reasonable than SEIU's proposal to retain it. Cx. 23. With the elimination of longevity from the last hold-out (SEIU), the County established a clear internal pattern over the next 10 years (2015 – 2025) of no longevity benefits, except for those legacy employees who were previously eligible for longevity. Cx. 12. The County strongly supports maintaining a pattern among its various bargaining units to avoid a "whipsaw" or domino effect — i.e., if one unit deviates from the pattern and gets more, every other unit will seek the same increase or change. Tr. 162:8-12 (Colvin). At the time longevity was removed for SEIU, the estimated cost savings for that unit over the subsequent thirty years was approximately $264,440,685.00 (including PERS payments). Cx. 23, p. 10. A recommendation to create a new longevity benefit would quickly result in every unit demanding longevity, undoing over ten years of effort by the County to eliminate longevity and reinstituting a significant financial burden for the County that would force the County to cut money from the budget for other services and priorities in order to fund the longevity benefit. No hypothetical, marginal benefit in employee retention is worth the disruptive effect new longevity benefits would have on the County's bargaining units.

Additionally, the various bargaining units in the County have traditionally negotiated an annual Cost of Living Allowance ("COLA") in their CBAs to address the impact of increases in the cost of living over time. Tr. 147-148 (Colvin). The County has established a strong internal pattern for COLA adjustments, which has been consistent among all the bargaining units since at least 2016 in order to promote internal equity and fairness. Cx. 10; Tr. 148:7-11 (Colvin). There have been only a few minor exceptions to this historical pattern, most of which represented a specific concession or trade-off in the applicable CBA. Cx. 10, fns. 1-6; Tr. 148:13-17 (Colvin). One noteworthy exception is that the Prosecutors received an additional 1% COLA in FY 23 as a result of agreeing to implement Factfinder Kagel's recommendations. Tr. 149 (Colvin); Cxs. 5 and 6. During this same timeframe, the Defenders were also at impasse, but despite having knowledge of Kagel's recommendations, Arbitrator Roose recommended only a 3% COLA to the Defenders. Tr. 149-150 (Colvin); Cx. 7, pp. 4 and 9. Thus, the Prosecutors entered negotiations for FY 25 1% ahead of the COLA pattern for other County bargaining units. Cx. 10.

As a result of Evergreen language in the CCDU's last CBA, the County already awarded the Defenders a 3.0% COLA increase for FY 2025.[4] Tr. 31:10-13 (Levine). This COLA increase was fair and consistent with the COLA increases of the other bargaining units. Cx. 10. If the wages of the Prosecutors are increased by 3% (under the assumption that the County's COLA pattern will be implemented for the Prosecutors) the Prosecutors would remain 1% ahead of the Defenders because of the prior Factfinding recommendations. Tr. 154:5-10 (Colvin). Additional compensation in the form of longevity pay and/or salary schedule parity with the Prosecutors, as proposed by the Union, would put the CCDU out of step with the County's remaining bargaining units and disrupt the historically consistent pattern across all units. Thus, the Union's proposals should be denied.

III. EXISTING CONTRACT LANGUAGE

A. Article 22 - Longevity

ARTICLE 22
Longevity

Employees appointed, prior to July 1, 2002, to a full-time position within the attorney classification series shall on completion of five (5) years of creditable service receive an annual lump sum payment equal to 0.57 of one percent (.57%) of their salary for each year of service. Employees hired into the attorney classification series subsequent to June 30, 2002, shall not be eligible for longevity pay.

B. New Article 38 - Salary Schedule Parity

No existing language.

IV. COMPARSION OF PROPOSALS

A. Article 22 - Longevity

1. Union Proposal at Factfinding[5] (Ux. 1).

ARTICLE 22
Longevity

Employees appointed, prior to July 1, 2002, to a full-time position within the attorney classification series shall upon completion of five (5) years of creditable service receive an annual lump sum payment equal to 0.57 of one percent (.57%) of their salary for each year

[4] Defenders also receive annual merit increases of up to 4.0% in addition to the COLA increase. Cx. 1, p. 11; Tr. 144:3-5 (Colvin).

[5] The Union's proposal at Impasse (which remained unchanged until the day before this Factfinding) provided that "all employees covered by this agreement" should receive the annual .57% longevity benefit "upon completion of five (5) years of creditable service." Cx. 3.

of service. ~~Employees hired into the attorney classification series subsequent to June 30, 2002, shall not be eligible for longevity pay.~~

EMPLOYEES APPOINTED, SUBSEQUENT TO JUNE 30, 2002, TO A FULL-TIME POSITION WITHIN THE ATTORNEY CLASSIFICATION SERIES, SHALL UPON COMPLETION OF FIVE (5) YEARS OF CREDITABLE SERVICE RECEIVE AN ANNUAL LUMP SUM PAYMENT EQUAL TO 0.27 OF ONE PERCENT (.27%) OF THEIR SALARY FOR EACH YEAR OF SERVICE.

2. County Proposal — No Change. (Cx. 1, Art. 22, p. 22)

The County proposes to maintain the existing Longevity language which provides a benefit only for those employees that previously had this benefit in 2002 when the Defenders were part of the Management Plan and long before the unit became organized.

B. (New Article) Article 38 — Salary Schedule Parity

1. Union Proposal (Cx. 4)

ARTICLE 38
SALARY SCHEDULE PARITY

Anytime the Clark County Prosecutors Association receives any salary schedule increase(s), then the salary schedules for all employees covered by this Agreement shall be adjusted under the same terms and conditions. This is to ensure and maintain the longstanding historical parity between the Deputy District Attorneys and Deputy Public Defenders in Clark County, and throughout Nevada.

2. County Proposal — No New Article

The County opposes the addition of this new Article as no other bargaining unit in the County has any similar language, and the new article would disrupt the historical pattern of compensation increases among the County's 10 bargaining units.

V. ARGUMENT

A. The Union Has Failed To Meet Its Burden To Show That Addition Of Longevity And/Or Salary Schedule Parity Is Necessary And Reasonable.

1. Reasonableness Is The Statutory Standard Of Review For Factfinding Proposals Under Nevada Revised Statute § 288.200.

Nevada Revised Statute § 288.200(7) sets forth the standard of review to be utilized by the Factfinder in assessing the proposals of the County and the Union at factfinding. First, the Factfinder must make the "preliminary determination" that the County has the financial ability to pay monetary benefits sought by the Union's proposal. NRS § 288.200(7)(a). Ability to pay is not contested in this

matter. Tr. 48:10 (Kheel). Once a preliminary determination is made, the Factfinder must then assess the "**reasonableness**" of each party's position using "normal criteria for interest disputes." NRS § 288.200(7)(b). The statute acknowledges that — and numerous arbitration decisions support the position that — just because the County has the financial resources to allocate to the Union's proposal, does not mean that it is reasonable to do so. NRS § 288.200(7)(a). This is particularly true when considered in light of the County's other obligations to "provide facilities and services guaranteeing the health, welfare and safety of the people residing within" the County. *Id.*

When assessing the reasonableness of the parties' final proposals, the statute also directs the Factfinder to consider "***to the extent appropriate***" the compensation of other "***government***" employees. NRS § 288.200(7)(b). "Reasonableness" cannot be determined in a vacuum and must be informed through evaluation using the normal criteria for interest disputes. These criteria include the bargaining history between the parties, any internal patterns, the impact of external competitors on the County's ability to recruit and retain employees, the competing obligations of the County, and the current fluctuations in the economy. Elkouri & Elkouri, *How Arbitration Works*, Ch 22 Section 22.10. D, 25 (Ruben ed., BNA Books 8th ed. 2021).

Additionally, when a party seeks to add new language to the CBA — as the Union seeks to do in this case — the "normal criteria for interest disputes" imposes a heavy burden on the party seeking to add new language to the CBA and upset the *status quo*.

2. A Party Seeking To Add A New Provision To A Contract Bears A Heightened Burden Of Proof.

Arbitrators generally agree that a party seeking to add a new provision or benefit to a contract bears a high burden of demonstrating the necessity and reasonableness of the new provision. The Arbitration Board in *Twin City Rapid Transit Co.*, 7 BNA LA 845, 848 (McCoy, Freeman & Goldie, 1947) described this burden as follows:

> We believe that an unusual demand . . . casts upon the union the burden of showing that, because of its . . . inherent reasonableness, the negotiators should, as reasonable men, have voluntarily agreed to it. We would not deny such a demand merely because it had not found substantial acceptance, but it would take ***clear evidence*** to persuade us that the ***negotiators were unreasonable in rejecting it.***

Twin City Rapid Transit Co., 7 BNA LA 845, 848 (McCoy, Freeman & Goldie, 1947) (emphasis added).

This same heightened burden is often referred to as the "*status quo* doctrine" or the standard for a "breakthrough" provision. The "*status quo* doctrine" holds that "a party proposing new contract language has the burden of proving that there should be a change in the *status quo*." *Nye County Management Employees Association (NCMEA) v. Nye County*, Findings and Recommendations at *43 (Gaba, December 10, 2023) (*citing City of Tukwila*, PERC No. 130514-I-18 (Latch, 2018)). *NCMEA* explained the principle of the *status quo* doctrine as follows:

> The rationale underlying the *Status Quo* doctrine—an arbitrator created doctrine not found in most fact-finding or interest-arbitration statutes—is that the party seeking to change *status quo* contract language must have given something up to get that language in the first place. Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 9, page 178 (LRIS, 3rd ed., Scott, et al., eds. 2022). When its proponents give any reason for employing the doctrine, they typically argue that a party seeking to change the *status quo* should have to show either: (a) that maintenance of the *status quo* would be unfair (because it has failed or is inequitable in practice); or (b) that it has offered a sufficient "*quid pro quo*" (i.e., concession) in exchange for undoing the *status quo*. *Village of Dolton*, ILRB No. S-MA-11-248 (Fletcher, 2016).

NCMEA, at *43. The Factfinder should not impose significant changes that the parties would not have negotiated on their own without a compelling rationale. *See* The National Academy of Arbitrators, *Arbitration 2014 The Test of Time*, 394, 402 (Richard N. Block et al., eds.) (2015); s*ee also City of Paris Ill. v. Policemen's Benevolent Labor Comm.*, Case No. S-MA-17-269, 6 (Brian Clauss, 2018) ("In interest arbitration, significant gains are meant to be a rarity. It is generally accepted that parties should not make gains at arbitration that they could not get at the bargaining table via face-to-face negotiations."). The Union will not be able to meet this hefty burden in this case for either proposal.

B. Adding Longevity To The CBA Would Be A Dramatic And Unjustified Deviation From The *Status Quo*.

The Factfinder should wholly reject the Union's request to add longevity into the CBA, as it would violate the *status quo* doctrine. In this case, adding longevity to a contract that has never had such a provision before is entirely unjustified.[6] The Union did not satisfy the high burden necessary to show the

[6] Article 22 of the CBA, which is titled "Longevity" simply refers to a hold over benefit for employees who were hired prior 2002 and were previously eligible to receive longevity under M-Plan prior to the Union being formed. Cx. 1, p. 22; Cx. 12. The CCDU was formed in 2015 and new hires in the unit have never received longevity. Tr. 72:9-10 (Nones).

first rationale because the Union failed to prove that "maintenance of the *status quo* would be unfair" in any way. *NCMEA*, at *43. The first rationale should only be invoked in egregious situations where the *status quo* has resulted in a major wage inequity or maintenance of the *status quo* would perpetuate a social injustice (e.g., systemic racism, etc.). *Id.* Such is not the case here.

The market study conducted by Logic Compensation Group showed that, when compensation is adjusted by the tentatively agreed to ("TA'ed") 3% increase to salary schedules and adjusted for total compensation, the Deputy Public Defenders are at 141.5% of the market.[7] Tr. 205-206 (Messer); Cx. 27, pp. 17-18. Thus, there is no evidence of a gross disparity with the market.

The Union points to isolated cases where public defenders in other counties receive longevity benefits or some other form of incentive for years of experience, but these other counties are not comparable to Clark County in terms of location, population, or number of FTEs.[8] For example, longevity benefits for new hires is not a new benefit for Defenders in Washoe County, and it is not known what concessions (or considerations) may have been made to agree to and/or retain longevity. Regardless, looking at one outlier at the very top of the market does not demonstrate a disparity with the market as a whole. Tr. 225:4-9 (Messer). Therefore, the Union has failed to introduce evidence showing that the lack of longevity for the CCDU is causing *any* kind of compensation disparity, much less a compensation disparity that can ***only*** be remedied by adding longevity into the CBA.

The Union may attempt to claim that adding longevity into CBAs is a widespread trend sweeping across the country, but the evidence belies this assertion. The only alleged comparator groups that the

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[7] Lori Messer from Logic Compensation Group explained that the midpoint numbers must be adjusted to account for total compensation including factors like retirement benefits (PERS) and longevity. Tr. 203-205 (Messer). The high/ modified compensation total compensation midpoint represents a figure where the employee is receiving longevity pay, therefore the best number to use to compare to the market would be the low modified total compensation midpoint because that number would not include longevity as part of total compensation. Tr. 203-207 (Messer). When the low figures are compared across the market, Deputy Public Defenders are at 141.5% of the market, and Chief Deputy Public Defenders are at 118.2% of the market. Cx. 27, p. 18. Even considering only salary, the Chief Deputy Public Defenders at 96.7% of the market, are within a very acceptable range of 5% of the midpoint of the market. Tr. 205 (Messer); Cx. 27, p. 18.

[8] For example, Washoe County, the second largest county in Nevada, has only one fifth the population of Clark County. Washoe County is also located appx. 450 miles away from Clark County and competes with the San Francisco Bay area labor market. Tr.138:2-8 (Colvin); Cx. 9, pp. 4-6.

CCDU points to as having recently negotiated for new longevity benefits are law enforcement unions, and thus, are not appropriate comparators to the attorneys in the Defenders' Union. Tr. 132:11-17 (Porter). *See Allegheny County* at *436 (to be considered a comparator, the bargaining units must be in similar fields and have similar job duties). Law enforcement is required by statute to be in a separate unit, and there are no employees working as public defenders in the proffered comparator law enforcement unions. *See* NRS § 288.140(4); Tr. 132:15-17 (Porter). Therefore, law enforcement unions are unlikely to be appropriate comparators to public defenders. The issues facing law enforcement unions are simply different than the issues facing the Public Defenders, and any benefits granted to law enforcement should carry no weight when evaluating the Defenders' benefits.

The County introduced testimony and evidence of the County's multi-year campaign to remove longevity from every single County collective bargaining agreement and established a pattern of no longevity for new hires in any of the 10 internal County bargaining units. Tr. 168:1-9 (Danchik); Tr. 183:8-11 (Shell); Cx. 12. Even the Prosecutors — the very group the Union looks to in its proposal for salary schedule parity — do not have longevity in their CBA. Cx.12. The Union cannot show any widespread pattern of new longevity benefits such that maintaining the *status quo* of no longevity for new hires would create a gross inequity for the CCDU. Thus, the CCDU will fail to satisfy the first rationale of the *status quo* doctrine.

Looking at the second rationale of the *status quo* doctrine, the Union has introduced no evidence that it made any concession during negotiations that would act as a *quid pro quo* for such a radical change. *See NCMEA*, at *43 (breakthrough must be justified by a *quid pro quo* union concession). In fact, the only changes that were TA'ed during negotiations were significant gains to the Union.[9] Thus, the Union will also fail to satisfy the second rationale.

[9] Of the 10 open Articles during negotiations, all but the newly proposed language for Article 22 - Longevity and newly proposed article titled "Salary Schedule Parity" — at issue in this factfinding — have been tentatively agreed to ("TA'ed"). Only two TA'ed Articles made substantive changes to the CBA and are summarized as follows: (1) Article 19 – Vacation (parties agreed to increase the annual maximum of vacation sell back from 80 hours per year to 120 hours per year); and (2) Article 31 - Compensation (parties agreed to a 3% increase in the salary schedules). Both changes are increases to the Union.

C. It Is Unnecessary And Unreasonable To Create A Longevity Benefit For Defenders — Who Have Never Previously Had Such A Benefit — Where None Of The Other Nine County Bargaining Units Have Longevity.

Generally, when a Factfinder is evaluating the reasonableness of the parties' proposals, the Factfinder looks first to the internal pattern of other bargaining units within the organization. Here, the internal pattern was the result of a multi-year campaign to ensure all ten County bargaining units gave up longevity benefits for new hires. Tr. 168:1-3 (Danchik); Tr. 183:8-11 (Shell); Cx. 12. The Factfinder should not upset this strong internal pattern by creating an entirely new, and entirely unnecessary, longevity benefit.

1. A Strong Internal Pattern Of Removing Longevity Benefits For New Hires Established Among The City's Multiple Bargaining Units Must Be Given Considerable Weight.

In *Allegheny County*, Arbitrator Wagner noted that "[t]he [employer] has a legitimate interest in attempting to achieve and maintain pattern contracts for all of its bargaining units. Pattern contracts discourage bargaining units from competing with, or seeking to outdo, each other. Interest arbitration awards that ignore such problems can discourage voluntary agreements and encourage 'leapfrogging' and other undesirable practices. They also provide for less confusion and greater efficiency in contract administration for both parties." *Allegheny County*, 120 BNA LA 432, at 436 (Wagner, June 21, 2004). Factfinder Kagel also highlighted the importance of an internal pattern, reasoning: "under the Statute, the factfinding recommendations must be cognizant of the internal relationships within the Employer's bargaining units" as deviation from the pattern can have a cascading effect. *See Clark County Prosecutors Association v. Clark County, Nevada* (Kagel, 2022); Cx. 5, p. 5.

Internal equity and an examination of the employer's treatment of its other employees is a critical factor and internal comparability should be given ***considerable weight*** when evaluating the reasonableness of the parties' proposals. *See* Elkouri & Elkouri, *How Arbitration Works*, Ch 22 Section 22.10.A & D (Ruben ed., BNA Books 8th ed., 2021); *see also Monroe County, Wis.*, 113 BNA LA 933, 936 (Dichter 1999) (Where a clear pattern has been established [the] factor [of internal comparables] takes on added importance). "Where there is a well-established internal pattern among the bargaining units in a city or county, the internal pattern shall prevail unless adherence to the internal pattern results in unacceptable

wage level relationship between the unit at bar and its external comparables." *City of West Bend, Wis.*, 100 LA 1118, 1121 (Vernon, 1993); *see also Three Rivers Park District*, 136 BNA LA 1289, 1300 (Daly, 2016). Arbitrators should only deviate from an internal pattern where deference to the established internal pattern would result in significant disparities from counterparts in comparable jurisdictions (e.g., unit has failed to keep pace with wages offered by comparable jurisdictions). Elkouri & Elkouri, *How Arbitration Works*, Ch 22 Section 22.10.D (Ruben ed., BNA Books 8th ed., 2021).

Here, the Union cannot show any other bargaining unit in the County who has longevity for new hires. Cx. 10. While the evidence from the Union might demonstrate a new trend for a select group of law enforcement unions,[10] the Union's evidence is far from establishing that longevity has become the norm for all unions either in the County or nationwide. *See* Cx. 23, p.10. As referenced above, removing longevity benefits for new hires from all County bargaining units was a priority for the County for more than thirteen years and had a projected cost savings of more than $264 million for SEIU alone. Tr. 183-185 (Shell); Cxs. 12, 17 and 23. Since the compensation of the CCDU is already 141.5% of the market, there is no "unacceptable" compensation disparity or other downside from maintaining the *status quo*, and the Union will be unable to demonstrate a necessity to deviate from the internal pattern. Cx. 27, p.18.

2. Union's Arguments Regarding A Lack Of Defenders With Death Penalty Certification And Employees Allegedly Leaving After Five Years Are Not Compelling Reasons To Create A New Longevity Benefit.

First, the argument regarding a decreasing number of Defenders with death penalty certifications able to handle capital cases was a new argument that the CCDU raised for the first time at the Factfinding hearing. Had the Union presented this argument during negotiations, the parties could have discussed any number of alternatives that could have addressed the lack of Defenders with death penalty certification.

Next, the alleged purpose for the Union's longevity proposal is to reward employees who remain in job for at least five years of service. Cx. 3. But since employees only require three years of experience to become death penalty certified, the Union cannot show how the creation of a longevity benefit will address the problem. Tr. 114:1-3 (Coffee); Cx. 28. The Union's own witness, Mr. Coffee. agreed that there was no connection between longevity (designed to increase years of service) and incentive to obtain

[10] Even some of the incentives that the Union calls longevity is not directly comparable, e.g., Metro negotiated for additional range movements whereas the County's legacy longevity would be earning compensation on top of the pay range. Tr. 188:9-10 (Shell).

death penalty certification. Tr. 116:4-11 (Coffee). Regardless, staffing is an exclusive management right under NRS 288.150(3)(c)(1), and it is ultimately up to the County alone to determine the best way to address any certification issues.[11] NRS § 288.150(3)(c).

Moreover, the standard of review is not whether the proposed new benefit might tangentially help some alleged problem, the standard is whether creating a new longevity benefit was so clearly necessary "that the negotiators were ***unreasonable in rejecting*** [the proposal]." *Twin City Rapid Transit Co.*, 7 BNA LA at 848 (emphasis added). The Union cannot meet this burden.

Simply put, longevity is a relic of the past and provides almost no functional purpose in the current economic climate. Longevity pay was originally designed to facilitate recruitment and retention at a time when government wages and benefits were significantly below those of the private sector, but by 2002 "the County's thought was at that time that those funds could be used to a better and higher purpose because they really weren't lending themselves as a retention and recruitment tool at that time." Tr. 183:1-4 (Shell). However, as Millennials and Gen Z have become more prevalent in the workforce, the necessity for longevity pay has all but disappeared. Prior studies conducted by the County have shown that longevity benefits are not important to recruiting new employees — with employees consistently ranking longevity last on the list of factors considered when applying for a position. Tr. 184:3-4 (Shell); Cx. 23, p. 11.

Moreover, the County is not experiencing a problem with turnover in the Public Defenders' office. Director of Human Resources, Curtis Germany, testified that "when I look at these recruitment numbers, I look at these retention numbers, from an HR perspective, there's not a problem with either." Tr. 245:14-16 (Germany); Cx. 14, p. 3. While the number of employees with less than five years of experience has increased by 12 from 2022 to 2024, this is mainly due to two factors: (1) voluntary retirements offered during COVID that needed to be backfilled; and (2) the creation of supplemental positions (new vacancies) that need to be filled. Tr. 242-244 (Germany); Cx. 14, pp. 5-8. Younger generations simply tend to have more turnover due to the generational shift towards having more than one job. Lori Messer, from Logic Compensation Group, testified about some market trends and generational dynamics showing that people simply do not plan to stay at a job 20+ years anymore, with most employees remaining at a job for an

[11] The County does not perceive this as a problem and has many alternatives available to the County to address any issues with staffing capital cases — one of which is contracting out capital cases to attorneys in the private sector such as Mr. Coffee. Tr. 112:5-8 (Coffee).

average of three years. Tr. 210:1-2 (Messer). The average years of service for CCDU members over the last seven years is 10.97, which is approximately 4.5 years more than the average tenure of all public sector local government employees, and almost seven years more than the average tenure for employees in all legal occupations. Cx. 14, p. 4. Additionally, the average years of service has remained consistent over the past seven years. Cx. 14, p. 4. Under the current language of Article 22, only employees hired prior to July 1, 2002, were grandfathered in and still receive longevity benefits. Cx. 1, p. 22. Each year, more grandfathered employees leave the bargaining unit. If the Union's contention — i.e., that longevity pay encourages employee retention — was correct (which it is not), one would expect the average years of service to steadily decline as more and more employees who actually receive longevity leave the unit. Since average years of service has remained constant, the unrefuted evidence does not support the Union's argument in support of longevity.

3. **Creating A New Longevity Benefit Is Unreasonable In The Current Market.**

Even if the Factfinder were to only consider the reasonableness of the Union's proposal and not apply the heightened burden for breakthrough contract language (which he should not do), creating a new longevity benefit for the Defenders is still unreasonable when compared to maintaining the *status quo*.

The unrefuted testimony of Deputy County Manager, Les Lee Shell, established that longevity is not the driving factor in recruitment or retention; it is the guaranteed benefit retirement plan through the Public Employees' Retirement System (PERS) and the lucrative retirement cash outs that motivate employees to continue to work for the County. Tr. 183:24-25 (Shell); Cx. 13, p. 3. Mr. Coffee's cash outs after completing over twenty-nine years of service with the County equates to almost 1.5 years of annual salary. Tr. 122:14-16 (Coffee); Cx. 30. Even Mr. Coffee, the Union's own witness, acknowledged that the retirement benefits provide a strong motivation for remaining in his position. Tr. 123:2-4 (Coffee). While the Union has presented no evidence in support of its assertion that longevity will result in employees working additional years of service,[12] ultimately recruitment and retention issues are a matter of staffing and staffing is an exclusive management right under NRS 288.150(3)(c)(1).

[12] The Union's claim that Defenders were accepting judicial appointments due to the monetary benefit of longevity was unpersuasive. Tr. 46:18-47:1 (Nones); Tr. 247:18-20 (Germany). The Union's comparison to the state employees who were recently given a retention benefit capped at $2,400 per year was also unpersuasive, as it is only 2% of a Defender's annual salary and unlikely to be a determining factor in a decision to stay or leave the County. Tr. 191:5-7 (Shell).

Restoring longevity to all employees in the bargaining unit will cause significant harm to the County and will undo the targeted efforts of the County to eliminate longevity benefits for new hires. While the Defenders' unit has never had longevity benefits, recommending a new longevity benefit for the Defenders will motivate all the County's other bargaining units to seek longevity. Tr. 190:1-3 (Shell). When the final union (SEIU) removed longevity in 2015, the projected cost savings was in excess of $264,000,000.00. Tr. 183:1 (Shell); Cx. 23, p. 10. Thus, restoring longevity to every bargaining unit would have an even greater cost, representing approximately one eighth (1/8) of the County's almost $2 billion annual budget. Tr. 139:9-10 (Colvin). The County is required by statute to allocate its budget in the manner that will best serve the "obligation[s] of the local government employer to provide facilities and services guaranteeing the health, welfare and safety of the people residing within the political subdivision." Tr. 145:18-21 (Colvin); *see* NRS 288.200(7)(a). If this financial burden were suddenly imposed upon the County, the County would be forced to sacrifice funding other initiatives currently helping the community in order to pay for this additional benefit. That is money that also could have been used to hire additional FTEs in order to reduce the workload of the Defenders. Tr.143::7-14 (Colvin); Cx. 9. Forcing such a radical change through Factfinding is unreasonable when compared to maintaining the current language of the CBA. For the reasons stated above, the Factfinder should recommend rejecting the Union's proposal on Article 22 – Longevity and recommend adopting the County's proposal to maintain the current language of Article 22.

D. The Union's Proposal For A New Article 38 - Salary Schedule Parity Is Unreasonable.

1. As Currently Written, The Union's Proposal For Salary Schedule Parity With The Prosecutors Does Not Accomplish The Union's Stated Objective.

While the Union claims that it only seeks to get what the Prosecutors get, up or down, this is not actually the case. Tr. 82:4-6 (Nones). As acknowledged by the Factfinder: "[The Union's proposal] doesn't read that way." Tr. 82:7-8 (Hirsch).

The Union's proposal is worded as: "Anytime the Clark County Prosecutors Association receives any ***salary schedule increase(s)***, then the salary schedules for all employees covered by this Agreement shall be adjusted under the same terms and conditions." Cx. 4 (emphasis added). As currently written, the salary schedule parity only applies to this single aspect of compensation (salary schedules), and then

only applies to an **increase** received by the Prosecutors and would not be implicated if the negotiations with the Prosecutors resulted in a decrease in the salary schedules, or a concession was exchanged for a different benefit elsewhere in the contract. Cx. 4. The Union is not willing to take a pay reduction to match the current compensation of the Prosecutors. Ux. 20 ("[a]nytime the Clark County Prosecutors Association receives any ***salary schedule increase(s)***, then the salary schedule for all employees covered by this Agreement shall be adjusted") (emphasis added). Nor does this proposal suggest that the Union is willing to match all contractual benefits and provisions to those of the Prosecutors. Cx. 4. Since both longevity and pay parity effect overall compensation, if the Factfinder recommended both proposals (which he should not do), the Defenders would end up ahead of the Prosecutors, thereby suggesting that the Defenders are not actually concerned with parity if the Defenders are favored by the difference. *See* Tr. 93 (Hirsch question).

Furthermore, the second sentence of the Union's proposal stating: "This is to ensure and maintain the longstanding historical parity between the Deputy District Attorneys and the Deputy Public Defenders in Clark County, and throughout Nevada" is a blatant attempt to slip inaccurate comparison language into the CBA under the guise of a "me too" clause. The lack of parity between the Prosecutors and the Defenders is the result of different bargaining histories and different concessions. In fact, the County sought for the Defenders and Prosecutors to be in the same unit, and the Unions requested to bargain separately. Tr. 72:16-19 (Nones). Although internal parity is of great import to the County, there has never been a historical attempt to maintain identical compensation and benefits between the two units.

Even more ridiculous is the "and throughout Nevada" language that could be interpreted as a statement that the County intended to maintain parity with the Public Defenders in other counties such as Washoe. The Union has made clear that its priority is to achieve similar compensation to that set forth in the Washoe CBA. Tr. 42:12-14 (Nones); Tr. 265:16-18 (Westbrook). Such language is ripe for manipulation and further emphasizes the unreasonableness of the Union's proposal.

Moreover, the Union never proposed any increases to either COLA or the salary schedules in Appendix A at the bargaining table, depriving the County of the opportunity to even consider an additional 1% compensation increase to match the current salary schedule of the Prosecutors. Tr. 152:6-12 (Colvin).

Moreover, the Prosecutors recently resolved the FY 25 CBA by agreeing (pending ratification and approval by the Board of County Commissioners) to increase the salary schedule (increase the top and bottom of the salary range) of the Deputy District Attorneys by 8% and the Chief Deputy District Attorneys by 6%. Cx. 31. The CCDU is already in bargaining for the FY 26 CBA and would have ample opportunity to seek any desired salary schedule increases in those negotiations. Tr.161:2-7 (Colvin). As discussed further below, negotiations are the proper place to seek increases. Such increases should not be accomplished by adding problematic language to the CBA — which will then become the new *status quo* — and force the County to have to negotiate from a weaker position to remove the language in the next round of negotiations. Nevertheless, even if the Factfinder wanted to recommend some kind of change to the Defenders' salary schedule (which he should not do), that change should not exceed the 8% and 6% respective increases received by the Prosecutors and should be accomplished by a direct modification to the salary schedule of the Defenders rather than by some ambiguous "me too" language. Cx. 31. The above facts suggest that the Union's proposal may have less than honorable intentions and will certainly cause significant problems if implemented. Therefore, the Factfinder should reject the Union's proposal.

2. The Union's Proposal For A New Article 38 For Salary Schedule Parity With The Prosecutors Should Be Rejected As An Unreasonable Break With The *Status Quo* And Further Deviation From The County's Internal Pattern.

The Union will likely argue that the lack of parity with the Prosecutors justifies adopting the "me too" provision, but this argument is based on a faulty premise. The lack of parity is the result of different bargaining histories of the Prosecutors and the Defenders and does not justify departing from the *status quo*. In *Village of Franklin Park*, the arbitrator found that arbitrations are not intended to make up for the inequities of prior contracts negotiated between the parties. *Village of Franklin Park*, 136 BNA LA at 34-35 (finding employers should not have to pay premium for wage deterioration resulting from voluntary agreement during prior negotiations between the parties). The 1% increase of the Prosecutors over the Defenders was a result of prior collective bargaining between the parties, derived from the recommendations of two separate factfinders for the same contract year. Tr. 74-77 (Nones). Arbitrator Roose was aware of the 4% recommendation of Arbitrator Kagel and still chose to award only a 3% COLA. Cx. 7, pp. 4 and 9. The County should not be forced to "relitigate" this same issue every year in different factfinding proceedings so the Defenders can have multiple attempts to receive additional money

which Arbitrator Roose did not award them and which no other bargaining unit received. Arbitrator Roose specifically chose the "County's proposal of a 3% increase [because it was] better aligned with the statutory criterion of internal comparability." Cx. 7, pp. 4 and 9.

The Prosecutors departed from the internal COLA pattern, but the Factfinder should not perpetuate this deviation by recommending a poorly written "me too" provision. In general, "me too" provisions between different, independent bargaining units are not favored because each CBA is the result of its own unique bargaining history, and different concessions have led to the current state of the various CBAs. "Me too" or pay parity provisions are further disfavored because such provisions serve as an impediment to the collective bargaining process. *See Application of Civ. Serv. Emps. Ass'n, Loc. 1000 AFSCME, AFL-CIO, Mount Vernon Libr. Unit 9166-01 v. Bd. of Trustees of Mount Vernon Pub. Libr.*, 59 Misc. 3d 1074, 1078 (N.Y. Sup. Ct. 2018) (vacating arbitration award on other grounds) ("'the [Pay Parity Clause] is an impediment to collective bargaining and is at the root of their obviously troubled relationship. I believe in collective bargaining; that means give and take. And that process is impeded when one side enters the bargaining with a crucial issue in its pocket.'"); *see also Lewiston Firefighters Ass'n, Loc. 785, Int'l Ass'n of Firefighters, AFL-CIO v. City of Lewiston*, 354 A.2d 154, 161 (Me. 1976) (abrogated by statute) ("... the pay parity provision has (to the detriment of efficient collective bargaining) affected the public employer's perception of its freedom to negotiate this aspect of the employment relationship.").

In fact, the only "me too" provision used by the County is in the IAFF contracts, where the contracts are identical except for the wages of the supervisors are higher by a fixed amount. Cx. 10. Unlike the Prosecutors and the Defenders, who could join as one union and negotiate together (with all benefits and wages being the same),[13] the IAFF is required by statute to maintain supervisors in a separate bargaining unit from the rank-and-file employees. NRS § 288.170(3). In fact, it was the County who sought to have the Prosecutors and Defenders in the same unit and the Unions who pursued a Petition for Judicial Review with the Employee Management Relations Board ("EMRB") to be in a separate bargaining unit. Tr. 72:16-25 (Nones). If the Union wants to allow the Prosecutors to negotiate for them, the Defenders should seek to combine into one union together with the Prosecutors. Any hesitancy to

[13] In Washoe County, the Prosecutors and Defenders are part of the same bargaining unit and, therefore, negotiate all salary schedules at the same time. Tr. 83:1-2 (Nones); Ux. 8.

combine these unions should signal a desire to negotiate separately with the potential to achieve different results. The Union has failed to demonstrate that the "me too" proposal is necessary or reasonable. Accordingly, the Factfinder should reject the Union's proposal and recommend the County's proposal of maintaining the current CBA.

VI. CONCLUSION

As detailed above, the Union cannot satisfy the heightened burden to show that either of the proposed new benefits are necessary, such that the County was unreasonable in refusing to agree to the additions. There may be a small trend among law enforcement units, which represent positions with challenges clearly distinct from those of the Defenders, to negotiate new longevity benefits. However, longevity certainly has not become the norm or ubiquitous to the point that no reasonable negotiator could refuse such a benefit. The County has established a strong internal pattern of no new longevity benefits in any of its CBAs, and the Factfinder should not force the County to deviate from its internal pattern. The County has also established a clear internal pattern of wage increases among its ten bargaining units, and this Factfinder should not permit the Union to obtain through these proceedings the wage increases it failed to obtain in prior factfinding. This is particularly true where the Union never even asked the County to increase the salary schedules of the Defenders at the bargaining table. Accordingly, the County, respectfully, requests that the Factfinder recommend the County's reasonable proposals of no new contract language and reject the Union's proposals in their entirety.

Dated this the 7th day of April, 2025.

Respectfully submitted,

FISHER & PHILLIPS, LLP

/s/ Allison L. Kheel
Allison List Kheel, Esq.
Elizabeth Anne Hanson, Esq.
300 South Fourth Street, Suite 1500
Las Vegas, Nevada 89101

EXHIBIT C

EXHIBIT C

Adam Levine

From:	andreaclauss . <andreaclauss@claussadr.com>
Sent:	Friday, May 30, 2025 4:15 PM
To:	Brian Clauss; David Westbrook
Cc:	Allison Kheel; Joi Harper; Darhyl Kerr; Mark Ricciardi; Sarah Griffin; Adam Levine; CCDU Treasurer; Tegan Machnich; Katherine Currie-Diamond; Olivia Miller; Kelsey Bernstein; Kristy Holston
Subject:	Re: Binding Factfinding between Clark County, Nevada and Clark County Defenders Union

All,

Thank you for your responses.

Confirming September 8th as the date for this matter. The parties have agreed to an early start to accommodate the arbitrator's later afternoon travel.

Unless other matters postpone or cancel, Brian currently does not have any does not have any available week day dates. between now and September 8th. I've offered the only feasible Saturday date; since Brian is travelling to or from hearings on many weekends.

Regards,

Andrea Stulgies-Clauss, Esq.
Clauss ADR, Inc.
902 South Randall Road, Suite C-252
St. Charles, IL 60174

Tel: 847-692-6330
www.ClaussADR.com
email: andreaclauss@claussadr.com

On Friday, May 30, 2025 at 04:53:41 PM CDT, David Westbrook <pdavidwestbrook@gmail.com> wrote:

Good afternoon, everyone:

EXHIBIT D

EXHIBIT D

Adam Levine

From:	Kheel, Allison <akheel@fisherphillips.com>
Sent:	Tuesday, August 5, 2025 8:50 AM
To:	andreaclauss .; Brian Clauss
Cc:	Kheel, Allison; Ricciardi, Mark; Kerr, Darhyl; Griffin, Sarah; Adam Levine; Joi Harper
Subject:	Motion to Postpone the Binding Fact-Finding between Clark County, Nevada and Clark County Defenders Union Scheduled for 9/8
Attachments:	Clark County's Petition for a Declaratory Order Clarifying Mandatory Subjects of Bargaining.pdf

Dear Arbitrator Clauss,

Please consider this Clark County (the "County")'s motion to postpone the Fact-Finding Hearing presently scheduled for September 8, 2025 pending a decision from the Employee Management Relations Board ("EMRB") on the County's recently filed Petition for a Declaratory Order (a copy of which is attached hereto).

It appears that there is only one issue to be presented at Fact-Finding — i.e. Wages, and more specifically the Salary Schedules in Appendix A.

The Clark County Defenders Union ("CCDU" or "Defenders" or the "Union") has stated that it intends to present a new article entitled "Salary Schedule Parity" containing "me too" language as its final offer at Fact-Finding. The Union is proposing language that would require the County to give same economic increase that it had negotiated with the Clark County Prosecutors Association ("CCPA" or "Prosecutors") to the CCDU.

The County has made a proposal to increase the top and bottom of the salary range of the Deputy Public Defenders by 8% and the top and bottom of the salary range of the Chief Deputy Public Defenders by 6%. That proposal happens to match the minimum and maximums of the Prosecutor's salary schedules and intends to present this proposal as its final offer at Fact Finding.

The County maintains that Pay Parity language is not a mandatory subject of bargaining under NRS 288.150(2), thereby making it illegal for the Union to force the County to participate in Fact-Finding and defend against the Union's Salary 5chedule Parity proposal. *See Int'l Ass'n of Fire Fighters, Local 1265 vs. City of Sparks*, Case No. A1-045362, EMR8 Item No. 136, *5 (EMR8, Aug. 21, 1982) (a party can only be forced to negotiate and go to binding impasse fact-finding over mandatory subjects of bargaining); *see also Juvenile Justice Supr. Ass'n v. County of Clark*, Case No. 2017-20, Item No. 834 (EMRB, Dec. 13, 2018); *Nevada Classified Sch. Employees Ass'n Ch. 5, Nevada AFT v. Churchill County Sch. Dist.*, Case No. 2020-008, Item No. 863 (EMRB, May 20, 2020). The Union disagrees and believes that Pay Parity is a mandatory subject of bargaining.

The County has recently filed with the EMR8 (the Nevada Public Sector counterpart to the NLRB) a Petition for a Declaratory Order to decide whether Pay Parity is or is not a mandatory subject of bargaining. Only the EMR8 has the authority to interpret the statute and determine whether or not Pay Parity is a mandatory subject of bargaining. *Clark County School Dist. v. Local Gov't Emp. Mgmt. Relations Bd.*, 90 Nev. 442, 446, 530 P.2d 114, 117 (Nev. 1974). Neither an Arbitrator or a Fact Finder has the authority to rule on the issue of what constitutes a mandatory subject of bargaining.

Permitting the Union to present their potentially illegal final offer at Fact-Finding would be akin to ruling that Pay Parity is a mandatory subject of bargaining — which again the Fact Finder has no authority to rule on this issue. As proceeding with the Fact-Finding Hearing would prejudice the County and potentially lead to inconsistent judicial decisions, the

County respectfully requests that you postpone the Fact-Finding Hearing in this matter until such time as the EMRB has issued its final decision on the Petition for Declaratory Order.

In order to address the Union's concern for an expedited hearing date following the EMRB's decision, please send us some available dates for a one-day hearing in or after January of 2026 so that we can reserve a future hearing date in order to minimize the potential for delay following a decision from the EMRB.

Very truly yours,

Allison Kheel
Attorney at Law
Fisher & Phillips LLP
300 S. Fourth Street | Suite 1500 | Las Vegas, NV 89101
akheel@fisherphillips.com | O: (702) 862-3817 | C: (702) 467-1066

Website ***On the Front Lines of Workplace Law℠***

EXHIBIT E

EXHIBIT E

Adam Levine

From:	Adam Levine
Sent:	Tuesday, August 5, 2025 5:21 PM
To:	Kheel, Allison; andreaclauss .; Brian Clauss
Cc:	Ricciardi, Mark; Joi Harper
Subject:	RE: Motion to Postpone the Binding Fact-Finding between Clark County, Nevada and Clark County Defenders Union Scheduled for 9/8
Attachments:	e-mails regarding mediation delays.pdf; EMRB Order in Case 2024-014.pdf; 2025 CCDU and Clark County FactFinding.pdf; email Motion by County Counsel to postpone NCMEA Fact Finding_.pdf; Nye County Written Findings and Recommendations FINAL 12-10-2023.pdf

Arbitrator Clauss:

The Clark County Defenders Union objects to the "motion" to postpone the Binding Fact-Finding Hearing (Interest Arbitration) previously scheduled by both parties and agreed to for September 8, 2025. This is simply a delay tactic engaged in by Clark County's Counsel. As forth below, this sort of last-minute continuance based upon a newly manufactured dispute is actually the *modus operandi* of the outside counsel utilized by Clark County.

This Interest Arbitration under NRS 288.200 is for the collective bargaining agreement which expired June 30, **2024** – more then a year ago. The Union declared impasse in April of 2024. During the one of the six (6) negotiation sessions prior to impasse the Union proposed a pay parity clause. While Clark County indicated they did not wish to agree to such, at no time did they claim that this somehow did not properly fall within the scope of mandatory collective bargaining.

After the Union declared impasse it sought to schedule a non-binding fact-finding under NRS 288.200. Clark County refused to engage in the selection of such a fact-finder so as to schedule a hearing until mediation was completed. The County took this position even though it knew that it takes many months to find an available date with most arbitrators to conduct such a hearing. (See attached correspondence).

After the mediator provided dates for mediation, Clark County refused to show up claiming "all the County folks" were not available thereby delaying the mediation until August,1 2024. The State of Nevada Government Employee Management Relations Board has already held that Clark County engaged in bad faith bargaining by delaying the mediation. It is notable that at no point during the proceedings before the EMRB, which went to hearing in November of 2024 did Clark County assert that the Union was insisting upon impasse on a subject which was not one of mandatory bargaining. A copy of the EMRB's Order is attached.

The Fact-Finding hearing went forward before Arbitrator Robert Hirsch on January 30, 2025. At no time during the Fact-Finding did Clark County claim that the pay parity clause being sought by CCDU was outside the scope of mandatory collective bargaining.

Arbitrator Hirsch issued his Opinion & Recommendation on April 16, 2025 wherein he recommended the adoption of the Union's proposed pay parity language with only a slight revision. A copy of

Arbitrator Hirsch's Opinion & Recommendation is attached.

It is Clark County who has refused to adopt the Recommendation of Arbitrator Hirsch thereby necessitating a binding interest arbitration under the statute. However, it is notable that Clark County has been in possession of the Recommendation since April of this year. Clark County had months to file any Petition for Declaratory Order with the EMRB, but did not do so. Instead, Clark County and its counsel agreed to the September 8 interest arbitration hearing date, and then waited until July 23 to file their Petition so as to manufacture an excuse to seek a continuance.

It is not a coincidence that this is the same type of delay tactic which the same counsel for Fisher and Phillips attempted in 2023 for Fact-Finding between Nye County and the Nye County Management Employee Association. I was also the attorney for the NCMEA for that impasse.

In that instance, the parties were utilizing Arbitrator David Gaba. After years of negotiations, on the very eve of the Fact Finding the same counsel made a similar motion by e-mail claiming that there were persons within the bargaining unit who did not belong and therefore the Fact Finding could not go forward. Arbitrator Gaba determined that he did not have statutory jurisdiction to continue the hearing. I have attached the emails from the Fisher Phillips request for a continuance in 2023 with the NCMEA, my objections, and Arbitrator Gaba's response, for your review.

After the Fact-Finding hearing, and on or about the agreed-upon date that the Post Arbitration Briefs were due, Fisher Phillips filed a Petition for a Declaratory Order with the EMRB and attempted to use that filing to stay submission of the issue to Arbitrator Gaba. That attempt was likewise rejected by Arbitrator Gaba. I have attached Arbitrator Gaba's Findings and Recommendations which recounts the history of the last-minute attempts to continue the proceedings, and Gaba's rejection thereof and his reasons why.

Clark County and its counsel are only interested in delay. The Petition is not well taken as the EMRB has already approved pay parity provisions in other cases, and Clark County through its membership on the LV MPD Fiscal Affairs Committee has agreed to the same in connection with the collective bargaining agreement of the Police Managers and Supervisors Association (PMSA) for the last 18 years (I also represent PMSA). However, they have had plenty of time to raise the issue previously so as not to delay the agreed-upon Interest Arbitration date. They have deliberately elected not to do so.

Accordingly, I am requesting that you deny Clark County's Motion and reaffirm that the hearing will go forward on September 8 as previously agreed and scheduled.

Adam Levine
Law Office of Daniel Marks
610 S. 9th St.
Las Vegas, NV 89101
(702) 386-0536
alevine@danielmarks.net
Outside Labor Counsel for
the Clark County Defenders Union

Joi Harper

From:	Adam Levine
Sent:	Monday, November 27, 2023 12:45 PM
To:	Kheel, Allison; david gaba; Owens, Susan; Joi Harper
Cc:	Ricciardi, Mark; Darrin Tuck
Subject:	RE: NCMEA Nye County - Nye County's Motion to Stay
Attachments:	RE: Impasse between Nye County and Nye County Management Employees Association – Motion to Postpone Factfinding; RE: NCMEA

Arbitrator Gaba:

I must strenuously object.

If you will recall, on September 1, 2023 – two (2) days before the fact finding hearing – Nye County requested to postpone the fact-finding based upon "*concerns [about] the composition of the bargaining unit and whether 7 Director positions could properly be included in the NCMEA unit (along with their subordinates).*"

NCMEA opposed the requested postponement and you denied the request for the postponement. I have attached that email thread to this email.

The Briefs were due by 5:00 PM on November 3, 2023. Shortly before the Briefs were due I received a telephone call from Ms. Kheel requesting an extension of time on the Briefs. Because of my relationship with Ms. Kheel, I did not feel I could refuse any good faith request for an extension and therefore I agreed to the extension of 3 weeks up through and including today. I have attached the email thread where Ms. Kheel confirms that the extension is for the "*due date for the post hearing briefs*" and that "*the new deadline for the briefs [will] be Monday, November 27*".

Now today, Ms. Kheel is attempting to seek the same stay of proceedings which was requested, and denied on September 1, in lieu of submitting Nye County's Brief within the extension of time previously requested and granted. This is utterly improper. If Ms. Kheel had said to me in our phone call in early November that she wanted an extension not for the briefs, but to prepare a Petition for the EMRB and to re-seek a stay of proceedings yet again, I would have rejected any request for an extension for such purposes.

To repeat, I will never deny Ms. Kheel extension of time for a *Brief* as I am often in the same boat that she is in with regard to time deadlines for the multiple Briefs I have due to arbitrators. But there is a big difference between requesting an extension of time for a *Brief*, and a request for an extension of time to seek to derail the fact finding process.

The request is further contrary to statute. The fact-finding statute, NRS 288.200 contains very short time deadlines. Subsection (4) states "*A schedule of dates and times for the hearing must be established within 10 days after the selection of the fact finder pursuant to subsection 2, and the fact finder shall report the findings and recommendations of the fact finder to the parties to the dispute within 30 days after the conclusion of the fact-finding hearing.*"

The statute does not provide for stays of fact finding while one party decides to petition the EMRB, much less with regard to a matter which was the subject of a Settlement Agreement (entered into evidence) back in 2014.

Moreover, fact-finding recommendations are nonbinding. There is no reason to stay a nonbinding recommendation other than to impermissibly delay proceedings.

Accordingly, I am requesting that the Arbitrator instruct Ms. Kheel to submit her Post hearing brief by 5:00 PM today. There is no reason it should not be done unless Nye County was acting in bad faith and was using the past 3 weeks to prepare their Petition instead of the Brief as represented.

Because of my relationship with Ms. Kheel, if she needs an additional 24 hours – until 5:00 PM tomorrow to finish her Brief – that will also be acceptable.

Adam Levine, Esq.
Law Office of Daniel Marks
610 S. Ninth Street
Las Vegas, NV 89101
(702) 386-0536: Office
(702) 386-6812: Fax
alevine@danielmarks.net
On behalf of the NCMEA

From: Kheel, Allison <akheel@fisherphillips.com>
Sent: Monday, November 27, 2023 12:13 PM
To: david gaba <davegaba@compasslegal.com>; Adam Levine <ALevine@danielmarks.net>; Owens, Susan <sowens@fisherphillips.com>; Joi Harper <JHarper@danielmarks.net>
Cc: Ricciardi, Mark <mricciardi@fisherphillips.com>; Kheel, Allison <akheel@fisherphillips.com>
Subject: RE: NCMEA Nye County - Nye County's Motion to Stay

Dear Arbitrator Gaba,

Nye County has just filed the attached Petition for a Declaratory Order to Clarify the Bargaining Unit of the NCMEA. The County took the position that the Bargaining Unit of the NCMEA inappropriately included statutory supervisors and the County cannot be forced to bargain with the NCMEA (including reaching impasse and participating in factfinding) where the NCMEA unit is inappropriate.

As the issue of the appropriate composition of the NCMEA bargaining unit is now pending before the EMRB; **Nye County respectfully requests that you issue an order staying all briefing and your decision in the above factfinding pending resolution of the attach petition by the EMRB.** A stay would also streamline the factfinding process by avoiding any disputes over which positions would be covered by your ultimate recommendation/decision.

Thank you in advance for your consideration of Nye County's Motion to Stay.

Very truly yours,

Allison Kheel
Attorney at Law
Fisher & Phillips LLP
300 S Fourth Street | Suite 1500 | Las Vegas, NV 89101
akheel@fisherphillips.com | O. (702) 862-3817 | C. (702) 467-1066

Website *On the Front Lines of Workplace Law℠*

From: david gaba <davegaba@compasslegal.com>
Sent: Friday, November 3, 2023 8:20 AM
To: Kheel, Allison <akheel@fisherphillips.com>; Adam Levine <ALevine@danielmarks.net>; Owens, Susan <sowens@fisherphillips.com>; Joi Harper <JHarper@danielmarks.net>
Subject: RE: NCMEA Nye County

Allison,

Thank you for keeping me in the loop, it's appreciated!

Cheers,

Compass Law Group PS Inc

David Gaba
Direct (206) 251-5488

From: Kheel, Allison <akheel@fisherphillips.com>
Sent: Thursday, November 2, 2023 11:07 PM
To: david gaba <davegaba@compasslegal.com>; Adam Levine <ALevine@danielmarks.net>; Kheel, Allison <akheel@fisherphillips.com>; Owens, Susan <sowens@fisherphillips.com>; Joi Harper <JHarper@danielmarks.net>
Subject: RE: NCMEA

Dear Arbitrator Gaba,

Joi Harper

From:	david gaba <davegaba@compasslegal.com>
Sent:	Friday, September 1, 2023 4:02 PM
To:	Adam Levine; Kheel, Allison; Timothy Sutton
Cc:	Darrin Tuck; Owens, Susan; Joi Harper
Subject:	RE: Impasse between Nye County and Nye County Management Employees Association – Motion to Postpone Factfinding

Allison,

Unfortunately I have to deny your Motion. First, as I wrote to you in June:

> Parties should meet-and-confer prior to requesting a continuance or filing ANY Motion. All continuances that have not been mutually agreed to should state so clearly in the Motion for a Continuance and summarize the efforts that have been made resolve the issue between the parties. All other Motions should at a minimum summarize the efforts that have been made resolve the issue between the parties.

From your statements below it doesn't appear that you complied with my request (although to be fair I could be wrong).

Next, and FAR more important is that you stated to me on May 19; "I also just wanted to clarify that this will be non-binding factfinding under the statute." While I don't know what "the statute" is I'm guessing that it is NRS 288.200 (again, please let me know if I'm wrong). Of course NRS 288.200(4) states in part:

> A schedule of dates and times for the hearing must be established within 10 days after the selection of the fact finder pursuant to subsection 2, and the fact finder shall report the findings and recommendations of the fact finder to the parties to the dispute within 30 days after the conclusion of the fact-finding hearing.

Simply put, I don't know that I have any authority under the statute to "postpone" the hearing especially as you have been aware of the Unit's composition since before the hearing was set. Further when you state, "[T]his was the first time that Counsel for Nye County became aware of the complaint and settlement agreement." Unfortunately, your argument doesn't resonate with me as "Nye County" and their in-house counsel (who from my experience is VERY competent) should have been aware of this issue since it arose (again, this is an assumption on my part).

To conclude, the last minute nature of this request is problematic as I clearly only have a cursory understanding of the facts/law involved. While I feel that I have to deny your request at the present, you can certainly make the Motion again on Tuesday morning when we convene. That said, do we have a start time and hearing location for this one as I requested on Thursday, August 31, 2023, at 9:11 AM?

Cheers,

Compass Law Group PS Inc.

David Gaba
Direct (206) 251-5488

From: Adam Levine <ALevine@danielmarks.net>
Sent: Friday, September 1, 2023 2:48 PM
To: Kheel, Allison <akheel@fisherphillips.com>; david gaba <davegaba@compasslegal.com>; Timothy Sutton <tsutton@nyecountynv.gov>
Cc: Darrin Tuck <dtuck@nyecountynv.gov>; Owens, Susan <sowens@fisherphillips.com>; Joi Harper <JHarper@danielmarks.net>
Subject: RE: Impasse between Nye County and Nye County Management Employees Association – Motion to Postpone Factfinding

Arbitrator Gaba:

The Nye County Management Employees Association opposes any continuance. This is nothing but a frivolous stall tactic.

The NCMEA has been attempting to get a contract since February **2022**. The FMCS panel of arbitrators for impasse was requested in **November 2022**.

There is only one (1) Article which is a subject of the impasse which is wages (i.e. COLAs). The composition of the bargaining unit as nothing to do with the bargaining or the impasse.

Nye County doesn't like the fact that there are Directors included within the bargaining unit. However, the reason Directors are included within the bargaining unit is because Nye County agreed to place them back into the bargaining unit after unlawfully carving them out in 2013. Nye County entered into a Settlement Agreement which forever waived any further claims as it related to the composition of the bargaining unit. I have attached the EMRB Complaint giving rise to the dispute in 2013, and Nye County's 2014 Settlement Agreement (which was drafted by Nye County's Attorney in 2013).

I can't help the fact that Nye County has changed outside Counsel, and that Nye County chooses not to inform its outside counsel as to the prior Settlement Agreements it has entered into. I can't help the fact that subsequent management and subsequent counsel do not like the Agreement that their predecessors entered into. That is not our problem.

What is our problem is the fact that the members of the bargaining unit have not seen an increase to their salaries since July 2021 (before hyperinflation set in), and we have been bargaining since February 2022 to try to get an agreement. If this hearing does not go forward on Tuesday, it is likely that due to the schedules of counsel fact finding would not be able to be convened until December 2022 or January 2023 **at the earliest** (as I am booked with arbitrations, EMRB hearings, and a federal jury trial through the month of December).

I've told Ms. Kheel that the evidence needs to be presented to you as the fact finder on Tuesday, and any issues relating the composition of the bargaining unit can be addressed by the parties between themselves while we are waiting for the court reporter transcript, and preparing any necessary post-hearing briefs.

But there is absolutely no reason for you not to receive the evidence relating to the wage dispute on Tuesday.

Adam Levine, Esq.
Law Office of Daniel Marks
610 S. Ninth Street
Las Vegas, NV 89101
(702) 386-0536: Office
(702) 386-6812: Fax
alevine@danielmarks.net
General Counsel for the NCMEA

From: Kheel, Allison <akheel@fisherphillips.com>
Sent: Friday, September 1, 2023 2:33 PM
To: david gaba <davegaba@compasslegal.com>; Timothy Sutton <tsutton@nyecountynv.gov>
Cc: Adam Levine <ALevine@danielmarks.net>; Darrin Tuck <dtuck@nyecountynv.gov>; Kheel, Allison <akheel@fisherphillips.com>; Owens, Susan <sowens@fisherphillips.com>
Subject: RE: Impasse between Nye County and Nye County Management Employees Association – Motion to Postpone Factfinding

Dear Arbitrator Gaba,

Please consider this e-mail Nye County's Motion to Postpone the Factfinding presently scheduled for Tuesday, September 5, 2023. One of the County's concerns was the composition of the bargaining unit and whether 7 Director positions could properly be included in the NCMEA unit (along with their subordinates).

Very recently, in another matter, the County received a favorable decision from the Nevada Employee Management Relations Board (EMRB) – the public sector equivalent of the NLRB – finding that Police Captains did not belong in the supervisory bargaining unit. This prompted Nye County to re-evaluate the composition of the NCMEA bargaining unit. The composition of the bargaining unit is an issue that can only be decided by the EMRB.
Yesterday afternoon, in response to Nye County raising these concerns to the Union, Mr. Levine informed me that there was a previous EMRB complaint filed over this issue and a settlement agreement. This was the first time that Counsel for Nye County became aware of the complaint and settlement agreement.

Therefore, the County is requesting to postpone the non-binding factfinding in this matter in order to provide the County additional time to review these documents and advise the County on a course of action.

I apologize for the eleventh-hour notice before a holiday weekend and the County will bear the full cancellation fees associated with this motion.

If you require any additional information for this motion please do not hesitate to let me know.

Very truly yours,

Allison Kheel
Attorney at Law
Fisher & Phillips LLP
300 S. Fourth Street | Suite 1500 | Las Vegas, NV 89101
akheel@fisherphillips.com | O: (702) 862-3817 | C: (702) 467-1066

Website *On the Front Lines of Workplace Law℠*

From: david gaba <davegaba@compasslegal.com>
Sent: Thursday, August 31, 2023 9:11 AM
To: Timothy Sutton <tsutton@nyecountynv.gov>
Cc: Adam Levine <ALevine@danielmarks.net>; Kheel, Allison <akheel@fisherphillips.com>; Darrin Tuck <dtuck@nyecountynv.gov>
Subject: Re: Impasse between Nye County and Nye County Management Employees Association – Subpoenas for Fact finding

LOL, thanks for the heads up! Do we have a start time a hearing location?

Cheers,

Dave Gaba
Sent from my IPad which explains my poor syntax, grammar, and the many typographical errors.

> On Aug 30, 2023, at 5:01 PM, Timothy Sutton <tsutton@nyecountynv.gov> wrote:
>
> Maybe you're the one who stuck out like a sore thumb Adam...
>
> **From:** Adam Levine <ALevine@danielmarks.net>
> **Sent:** Wednesday, August 30, 2023 3:51 PM
> **To:** david gaba <davegaba@compasslegal.com>
> **Cc:** Kheel, Allison <akheel@fisherphillips.com>; Timothy Sutton <tsutton@nyecountynv.gov>; Darrin Tuck <dtuck@nyecountynv.gov>
> **Subject:** RE: Impasse between Nye County and Nye County Management Employees Association – Subpoenas for Fact finding
>
>

BEFORE DAVID GABA, FACT-FINDER
IN THE MATTER OF THE IMPASSE FACT-FINDING BETWEEN

NYE COUNTY MANAGEMENT EMPLOYEES ASSOCIATION, on behalf of Bargaining Eligible Civilian Management, Union, and NYE COUNTY, NEVADA, Employer	)	**FACT-FINDER'S WRITTEN FINDINGS AND RECOMMENDATIONS FOR RESOLUTION OF IMPASSE ISSUES PURSUANT TO NEVADA REVISED STATUTE CHAPTER 288, *et seq.*** **Date Issued: December 10, 2023**

APPEARANCES:

On behalf of the Union:

Adam Levine
Law Office of Daniel Marks
610 South Ninth Street
Las Vegas, Nevada 89101
E-mail: alevine@danielmarks.net

On behalf of the Employer:

Allison List Kheel
Fisher & Phillips, LLP
300 South Fourth Street
Suite 1500
Las Vegas, NV 89101
E-mail: akheel@fisherphillips.com

INTRODUCTION

These Written Findings and Recommendations for Resolution of Impasse Issues (the "Recommendations") arise pursuant to Nevada Revised Statute (NRS) Chapter 288, *et seq.* (the Statute), under which David Gaba was mutually selected by the Parties to serve as the Fact-finder under the specific terms of the Statute. These Recommendations involve an impasse between the Nye County Management Employees Association (the Union or the NCMEA), on behalf of "bargaining eligible civilian management employees" (who are not public safety, such as police or fire),[1] and Nye County, Nevada (the Employer or the County) (collectively, the Parties), over a successor Collective Bargaining Agreement covering the period of July 1, 2022, through June 30, 2025 (the Successor CBA). The previous CBA was in effect, from July 1, 2019, through June 30, 2022 (the Expired CBA).

The Fact-Finding Hearing

On September 1, 2023, the County moved to postpone the fact-finding hearing (the Hearing) that had previously been scheduled by mutual agreement, for September 5, 2023, based on the County's concerns about the proper composition of this particular bargaining unit. I denied the County's Motion, as I found nothing in the Statute that gave me authority to grant such a motion.

On September 5, 2023, the Hearing was held in Pahrump, Nevada. The Parties had the opportunity to make opening statements, examine and cross-examine witnesses, introduce

[1] *See* Union's Post-Hearing Brief at page 1.

exhibits, and fully argue all of the issues in dispute. A transcript of the proceedings was provided. At the outset, the County asserted in its Opening Statement:

> 23
> Just for the record, the
> county objects to the fact finder having
> jurisdiction in this matter on the basis of the
> bargaining unit being inappropriate, and the
> appropriateness of the bargaining unit is a matter
> that must be heard and decided by the EMRB[2] before
> the bargaining process can proceed.

While the County did not use the word "motion," when making its above objection, I neither denied the Motion, nor agreed with the County's above argument, as it was simply argument and no *evidence* was presented show my lack of jurisdiction to hear the Parties' evidence concerning the impasse in negotiations to the Successor CBA.

At the end of the Hearing, the Parties stipulated to submit Post-Hearing Briefs on or before November 3, 2023, presuming the transcript was received thirty (30) days prior to that date. I received the Union's Post-Hearing Brief on November 8, 2023; however, the Union subsequently agreed, at the County's request, that the County's deadline to submit Post-Hearing Briefs could be extended to November 27, 2023.

On November 27, 2023—the same date the County's Post-Hearing Brief was due--the County filed a motion for an order *staying* all briefing and my Recommendations in this matter (the County's Motion to Stay), pending resolution of the County's Petition for a Declaratory Order Clarifying the Bargaining Unit (the County's Petition). The County's Petition was filed with the EMRB on the same date, November 27, 2023. The EMRB assigned Case No. 2023-023 to the

[2] The acronym "EMRB" stands for the State of Nevada's Employee-Management Relations Board.

County's Petition. The Union objected to *any* order staying the County's briefing or Recommendations in these proceedings. Ultimately, I denied the County's Motion to Stay, on the ground that I lacked the authority to issue such an order. Specifically, I held:

> Unfortunately, I feel that I have no choice but to deny Ms. Kheel's motion. While I fully understand the county's position, which is logical, I am not acting as an arbitrator in this matter, but as a statutory hearing officer. I think the best reading of NRS 288.200 which uses the word "*shall*" to delineate my actions is clear and absent a stipulation of the parties I don't have the power to stay this matter.[3]

Following my ruling, the County agreed to submit its Post-Hearing Brief on or before November 29, 2023. I received the County's Post-Hearing Brief on that same date. These Recommendations are timely issued in accordance with the Statute.

ISSUES

The Parties did not stipulate to a statement of the issue(s) to be addressed in these Recommendations. In its Post-Hearing Brief, the County re-asserts:

> *Only* the EMRB has jurisdiction to determine the appropriate composition of a bargaining unit. The County maintained a standing objection to the Factfinder's jurisdiction and renews and incorporates this objection in this Brief. Issuance of the recommendations of the Factfinder prior to a determination from the EMRB would prejudice the County and create the potential for inconsistent judicial decisions. Thus, the County renews and incorporates herein its motion for a stay of these Factfinding proceedings pending a resolution of the EMRB proceedings.[4]

I agree that *only* the EMRB has jurisdiction to determine the appropriate composition of this bargaining unit. Indeed, both Parties stipulated to that fact at the Hearing. However, as the Fact-finder, I was *not* selected to determine "the appropriate composition of a bargaining unit." Rather,

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[3] Fact-finder's e-mail to the Parties on November 27, 2023, sent at 1:27 p.m. Pacific Daylight Time (emphasis added).
[4] County's Post-Hearing Brief at page 2, reference to transcript omitted; footnotes omitted (emphasis added).

as more fully addressed below, I was *mutually* selected by the Parties to issue Recommendations concerning the current impasse in negotiations for the Successor Collective Bargaining Agreement (Successor "CBA") between the Parties. Therefore, absent a recitation of *any* statutory or current case law that grants me the *authority* to issue an order granting a motion to stay these impasse proceedings, I have *no choice* but to issue these Recommendations as required by the Statute.

In that regard, the Union asserts:

> Because there is an ability to pay, the Fact-finder is to "consider, to the extent appropriate, compensation of other government employees, both in and out of the State and use normal criteria for interest disputes regarding the terms and provisions to be included in an agreement in assessing the reasonableness of the position of each party as to each issue in dispute and the Fact-finder shall consider whether the Board found that either party had bargained in bad faith."[5]

I adopt the Union's above statement of the issues I am required by Statute to consider and recommend.

APPLICABLE STATUTORY PROVISIONS

The following language from the Nevada Revised Statute (NRS) Chapter 288 (the Statute) governs this impasse proceeding:

> **NRS 288.044 "Fact-finding" defined.** "Fact-finding" means the formal procedure by which an investigation of a labor dispute is conducted by a fact finder at which:
>
> 1. Evidence is presented; and
> 2. A written report is issued by the fact finder describing the issues involved, making findings and setting forth recommendations for settlement which may or may not be binding.
>
> ***

[5] Union's Post-Hearing Brief at page 4.

NRS 288.136 "Recognition" defined. "Recognition" means the formal acknowledgment by the local government employer that a particular employee organization has the right to represent the local government employees within a particular bargaining unit.

***

NRS 288.150 Negotiations by employer with recognized employee organization: Subjects of mandatory bargaining; matters reserved to employer without negotiation; reopening of collective bargaining agreement during period of fiscal emergency; termination or reassignment of employees of certain schools.

1. Except as otherwise provided in subsection 6 and NRS 354.6241, every local government employer shall negotiate in good faith through one or more representatives of its own choosing concerning the mandatory subjects of bargaining set forth in subsection 2 with the designated representatives of the recognized employee organization, if any, for each appropriate bargaining unit among its employees. If either party so requests, agreements reached must be reduced to writing.

2. The scope of mandatory bargaining is limited to:

(a) Salary or wage rates or other forms of direct monetary compensation.

(b) Sick leave.

(c) Vacation leave.

(d) Holidays.

(e) Other paid or nonpaid leaves of absence.

(f) Insurance benefits.

(g) Total hours of work required of an employee on each workday or workweek.

(h) Total number of days' work required of an employee in a work year.

(i) Except as otherwise provided in subsections 8 and 11, discharge and disciplinary procedures.

(j) Recognition clause.

(k) The method used to classify employees in the bargaining unit.

(l) Deduction of dues for the recognized employee organization.

(m) Protection of employees in the bargaining unit from discrimination because of participation in recognized employee organizations consistent with the provisions of this chapter.

(n) No-strike provisions consistent with the provisions of this chapter.

(o) Grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining agreements.

(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 policies for the transfer and reassignment of teachers.

(v) Procedures for reduction in workforce consistent with the provisions of this chapter.

(w) 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.

***

NRS 288.200 Submission of dispute to fact finder: Selection, compensation and duties of fac finder; submission to second fact finder in certain circumstances; effect of findings and recommendations; criteria for recommendations and awards. Except in cases to which NRS 288.205 and 288.215, or NRS 288.217 apply:

1. If:

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

(b) The parties have participated in mediation and by April 1, have not reached agreement,

➥ either party to the dispute, at any 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.

2. If the parties are unable to agree on an impartial fact finder within 5 days, either party may request from the American Arbitration Association or the Federal Mediation and Conciliation Service a list of seven potential Fact-finders. If the parties are unable to agree upon which arbitration service should be used, the Federal Mediation and Conciliation Service must be used. Within 5 days after receiving a list from the applicable arbitration service, the parties shall select their fact-finder from this list by alternately striking one name until the name of only one fact-finder remains, who will be the fact-finder to hear the dispute in question. The employee organization shall strike the first name.

3. The local government employer and employee organization each shall pay one-half of the cost of fact finding. Each party shall pay its own costs of preparation and presentation of its ease in fact-finding.

4. A schedule of dates and times for the hearing must be established within 10 days after the selection of the Fact-finder pursuant to subsection 2, and the Fact-finder shall report the findings and recommendations of the

Fact-finder to the parties to the dispute within 30 days after the conclusion of the fact-finding hearing.

5. The parties to the dispute may agree, before the submission of the dispute to fact-finding, to make the findings and recommendations on all or any specified issues final and binding on the parties.

6. If parties to whom the provisions of NRS 288.215 and 288.217 do not apply [sic] do not agree on whether to make the findings and recommendations of the Fact-finder final and binding, either party may request the submission of the findings and recommendations of a Fact-finder on all or any specified issues in a particular dispute which are within the scope of subsection 11 to a second Fact-finder to serve as an arbitrator and issue a decision which is final and binding. The second Fact-finder must be selected in the manner provided in subsection 2 and has the powers provided for Fact-finders in NRS 288.210. The procedures for the arbitration of a dispute prescribed by subsections 8 to 13, inclusive, of NRS 288.215 apply to the submission of a dispute to a second Fact-finder to serve as an arbitrator pursuant to this subsection.

7. Except as otherwise provided in subsection 10, any fact finder, whether the fact finder's recommendations are to be binding or not, shall base such recommendations or award on the following criteria:

(a) A preliminary determination must be made as to the financial ability of the local government employer based on all existing available revenues as established by the local government employer and within the limitations set forth in NRS 354.6241, with due regard for the obligation of the local government employer to provide facilities and services guaranteeing the health, welfare and safety of the people residing within the political subdivision. If the local government employer is a school district, any money appropriated by the State to carry out increases in salaries or benefits for the employees of the school district must be considered by a Fact-finder in making a preliminary determination.

(b) Once the fact finder has determined in accordance with paragraph (a) that there is a current financial ability to grant monetary benefits, and subject to the provisions of paragraph (c), the fact-finder shall consider, to the extent appropriate, compensation of other government employees, both in and out of the State and use normal criteria for interest disputes regarding the terms and provisions to be included in an agreement in assessing the reasonableness of the position of each party as to each issue in dispute and the fact-finder shall consider whether the Board found that either party had bargained in bad faith.

(c) A consideration of funding for the current year being negotiated. If the parties mutually agree to arbitrate a multiyear contract, the Fact-finder must consider the ability to pay over the life of the contract being negotiated or arbitrated.

↪ The Fact-finder's report must contain the facts upon which the Fact-finder based the Fact-finder's determination of financial ability to grant monetary benefits and the Fact-finder's recommendations or award.

8. Within 45 days after the receipt of the report from the Fact-finder, the governing body of the local government employer shall hold a public meeting in accordance with the provisions of chapter 241 of NRS. The meeting must include a discussion of:

(a) The issues of the parties submitted pursuant to this section;

(b) The report of findings and recommendations of the Fact-finder; and

(c) The overall fiscal impact of the findings and recommendations, which must not include a discussion of the details of the report.

↪ The Fact-finder must not be asked to discuss the decision during the meeting.

9. The chief executive officer of the local government shall report to the local government the fiscal impact of the findings and recommendations. The report must include, without limitation, an analysis of the impact of the findings and recommendations on compensation and reimbursement, funding, benefits, hours, working conditions or other terms and conditions of employment.

10. Any sum of money which is maintained in a fund whose balance is required by law to be:

(a) Used only for a specific purpose other than the payment of compensation to the bargaining unit affected; or

(b) Carried forward to the succeeding fiscal year in any designated amount, to the extent of that amount,

↪ must not be counted in determining the financial ability of a local government employer and must not be used to pay any monetary benefits recommended or awarded by the Fact-finder.

11. The issues which may be included in a recommendation or award by a Fact-finder are:

(a) Those enumerated in subsection 2 of NRS 288.150 as the subjects of mandatory bargaining, unless precluded for that year by an existing collective bargaining agreement between the parties; and

(b) Those which an existing collective bargaining agreement between the parties makes subject to negotiation in that year.

↪ This subsection does not preclude the voluntary submission of other issues by the parties pursuant to subsection 5.

12. Except for the period prescribed by subsection 8, any time limit prescribed by this section may be extended by agreement of the parties.

NRS 288.270 Employer or representative; employee or employee organization.

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

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

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

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

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

FINDINGS OF FACT

After a thorough review and careful consideration of the testimony and documentary evidence presented by the Parties, I make the following Findings.

The Parties

Nye County (the County or the Employer) is Nevada's largest county by area. The County's seat is located in the City of Tonopah. Article 1 of the Expired CBA defines the "County" to mean:

> ....the County of Nye and its Board of Commissioners, its facilities, *and/or the County Manager* or his/her designee (emphasis added)

Article 3, Section 1, provides that the Nye County Management Employees Association (the Union or the NCMEA) is:

> ...*recognized* by the County as the *sole* and *exclusive* collective bargaining representative of the employees assigned to the represented classifications *listed in Addendum B* who are eligible to be represented by the Association.... (emphasis added).

As defined in the Statute, "recognition" is to defined to mean:

> [T]he formal acknowledgment by the local government employer that a particular employee organization has the right to represent the local government employees within a particular bargaining unit.

Addendum B of the Expired CBA lists the classifications covered by the CBA, and recognized by the County as represented by the Union:

Grade	Represented Classification
15	Geoscientist I
	Law Clerk
	Principal Planner
	Specialty Court Coordinator
16	B&G Manager
	Court Reporter
	Human Services Manager
	Program Supervisor
17	Community Planner
	Data Base Manager
	Geoscientist II
18	Tourism Director
19	Geoscientist III
	Network Engineer
20	Utilities Superintendent
21	Assistant Planning Director
	Director, Emergency Management Services
	Geosciences Manager

	Principal Engineer Road Superintendent
22	Assistant Public Works Director Director, Facility Operations
	Director, Information Technology Geotechnical Representative
23	Director, Health & Human Services
24	Director, NWRPO Director, Planning
25	ACM - Director of Community Development Director, Public Works

The Original Dispute Regarding the Proper Composition of the Bargaining Unit

On or about June 18, 2013, the Union's counsel of record filed a Complaint and Petition for Declaratory Order with the EMRB, assigned as Case No. A1-046095 (the Union's Complaint). The Union's Complaint was concerning the proper composition of the bargaining unit as of the date it filed the complaint. Specifically, the Union asserted that the County violated NRS 288.150 by refusing to recognize the following classifications as part of the bargaining unit:

Director, Emergency Management Services
Director, Health and Human Services
Director, Management Information Systems
Director, Planning
Director, Public Works
Director, N.W.R.P.O.
Manager, Facilities Operations
Chief Juvenile Probation Officer
Veterans Service Officer

On or about May 4, 2014, the County and the Union reached a Settlement Agreement concerning the Union's Complaint. In the Settlement Agreement, the County specifically agreed

to recognize *all* the above-listed classifications that were a part of the bargaining unit as of the date of the last ratified agreement, with the *exception* of the Chief Juvenile Probation Officer position. In exchange, the Union agreed to withdraw its Complaint.

Under the "Recitals" section of the Settlement Agreement at subsection C., the Parties agreed:

> Without either Party admitting liability or fault, and in a compromise of each of their positions and rights, the Parties desire to enter into this Agreement to resolve *all* disputes related to their respective rights in the Action and arising out of the claims and allegations set forth therein upon the terms and conditions stated herein. Neither the execution nor the performance of this Agreement shall be considered an admission of fault, liability or wrongdoing whatsoever by any of the Parties.[6]

Based on the above language, it appears that the Parties *mutually* agreed that the Settlement Agreement resolved all disputes concerning the proper composition of this bargaining unit. In any event, more importantly to these Recommendations, there simply is no *evidence* that the County raised the issue of the proper composition of the bargaining unit *at any time* during *any* of the six (6) negotiation sessions held concerning the Successor CBA.

The Union Opens Negotiations for the Successor CBA

In February 2022, the Union notified the County that it wished to negotiate a Successor CBA to the now Expired CBA, in effect from July 1, 2019, through June 30, 2022. The Parties agreed to open (3) articles for renegotiation; those included Article 11 - Probationary Period, Article - 21 Holidays, and Article 26 - Wages.

[6] Union Exhibit 9 (emphasis added).

The Union's President, Darrin Tuck, a County utility superintendent, acted as Chief Negotiator for the Union, and County Manager Tim Sutton acted as Chief Negotiator for the County. County Manager Sutton has been the County Manager since October 1, 2017, and Mr. Tuck has been the President of the Union for "approximately six (6) years."

NRS 288.150 provides, at Section 1:

> Except as otherwise provided in subsection 6 and NRS 354.6241, every local government employer shall negotiate in good faith *through one or more representatives of its own choosing* concerning the mandatory subjects of bargaining set forth in subsection 2 with the designated representatives of the recognized employee organization, if any, for each appropriate bargaining unit among its employees. If either party so requests, agreements reached must be reduced to writing (emphasis added).

Based on the overall record, more likely than not, the County chose County Manager Sutton to act as Chief Negotiator on its behalf. My personal observation is that both these men were imminently qualified to act as Chief Negotiators.

At the Hearing, Mr. Tuck credibly testified that he negotiated the Expired CBA on behalf of the Union; he further credibly testified that the County did *not* raise any objection to the composition of the bargaining unit during negotiations for either the Expired CBA or the Successor CBA. Moreover, County Manager Sutton credibly testified about the County's previous bargaining history with the Union:

88

24 NCMEA is a group that we generally don't
25 have a lot of issues with. We typically work

89

1 together on wages. It's really short. We don't
2 typically involve counsel. So as I recall, I think
3 we had two or three sessions. Were able to TA a
4 document pretty quickly.

Based on both Parties' testimony, more likely than not, the Parties had a good working relationship prior to the meeting held on July 11, 2023, addressed below.

The Parties Reach a Tentative Agreement

Consistent with both Parties' testimony, the Parties initially met for successor negotiations three (3) times: on March 11, 2022, April 12, 2022, and June 13, 2022 (the Initial Meetings). The record further reflects that, as of the third (3rd) negotiation meeting held on June 13, 2022, the Parties reached a Tentative Agreement (TA) on the above three (3) articles, as well as Appendix A, which corresponds with Article 26 - Wages.

The Parties agreed to a three (3)-year Successor CBA, with the effective dates of July 1, 2022, through June 30, 2025 (Article 33 – Term of Agreement). County Manager Sutton signed the TA on behalf of the County, and Mr. Tuck signed the TA on behalf of the Union. Again, Mr. Tuck credibly testified that the County did not raise *any* concerns or issues related to the proper composition of the bargaining unit during *any* of the Initial Meetings concerning the Successor CBA.

The Tentative Agreement

The relevant portions of the TA reached on June 13, 2022, provide:

Article 11- Probationary Period

1. All new full time employees shall fulfill a probationary period of twelve (12) months. During the probationary period following an original appointment and any extension of such period, employment may be terminated at will. Initial appointment shall be made at the entrance rate for the class, except as approved by the County Manager or his/her designee.

a. Upon initial appointment, an employee shall serve a probationary period of 2080- hours.

b. Probationary employees shall be provided a written performance evaluation no later than twenty (20) working days following performing 1040 hours of employment. Any employee that receives less than a fully satisfactory performance shall be continued on probation for the remainder of the probationary period.

c. If a probationary employee receives a fully satisfactory performance evaluation or in the event no written performance evaluation created as required herein the probationary employee shall be deemed to haves successfully completed probation and shall become a regular employee. Employees that complete probation prior to the expiration of the 2080-hour probationary period shall not be entitled to a salary step increase until the one-year anniversary of this Agreement.

d. Probationary employees that do not receive a lesson satisfactory performance evaluation within 20 working days of the completion of the full probationary. Shall be deemed to have successfully completed probation and shall become a regular employee.

2. ~~A probationary employee shall accrue benefit credit from his/her hire date.~~ When a former employee is rehired after a break in service of no more than one 1 year from the date of separation to a position in the same class held at the time of separation, s/he may be paid at or below the same hourly rate (including across the board schedule adjustment provided by this Agreement) s/he held at the time of separation.

~~a. An employee shall become eligible to use sick leave upon completion of thirty (30) days of service.~~

~~b. An employee shall become eligible to use annual leave upon completion of six (6) months of service.~~

~~c. An employee shall be eligible to use his/her group insurance benefits at such time as is provided by the insurance plan then in effect and/or chosen by the employee.~~

3. ~~New probationary employees shall not constitute a part of the bargaining unit. They may, however,~~ join the Association. When an employee is promoted, s/he shall be entitled to a salary increase to the

lowest step in the range for the higher class which provides at least a ten and one-half percent (10.5%) increase, provided that in no event will the new salary be less than the minimum rate of the range or greater than the top step of the range to which the employee is promoted. Any exception may be approved by the County Manager or designee upon written justification.

~~a~~a. A promoted employee shall serve a qualifying period. The qualifying period will normally be 1040 hours - in paid status. At the discretion of the employee's direct supervisor and upon approval by the County Manager, prior to completion of the initial qualifying period, the qualifying period may be extended up to an additional 1040 hours for a maximum of 2080 hours. At the conclusion of the qualifying period, the employees shall be given a performance evaluation. Based on the performance evaluation and demonstrated qualifications, the employee will either be accepted or rejected for the position. If rejected, a reasonable effort will be made to place the employee in his/her previous position or another County position for which s/he qualifies. If no position is available, the action affecting the employee shall be subject to the provisions of Article 28, Layoff and Recall, Section 6.

b. When an employee is promoted, s/he shall retain the right during the first fifteen (15) shifts worked of the qualifying period to voluntarily demote to his/her previously held position. The employee shall have his/her salary reduced to the hourly rate (including across the board schedule adjustments provided by this Agreement) held prior to being placed on the qualifying period.

~~Probationary employees shall receive a written performance evaluation at the completion of their third, sixth, and eleventh month of their probationary period, when applicable.~~

4. A reclassification to a class with a higher grade shall be treated under the same terms and conditions as a promotion.

5. When an employee transfers to a position in the same class or at the same salary grade in another department, s/he shall be entitled to the same hourly rate held at the time of the transfer. The County Manager or designee, upon written justification by the direct supervisor, may approve a higher rate of pay. A voluntary transfer may result in the transferring employee serving a new qualifying period. The transferring employee will be notified, in writing, prior to accepting the transfer if a qualifying period will be required . Upon

successful completion of the qualifying period, the employee may, at the discretion of the direct supervisor, receive a one-step salary increase, provided that the employee is not at the top of the schedule for the class.

6. When an employee is demoted, his/her salary will not exceed the top of the new salary schedule unless the demotion was a result of a reclassification. Demotions, except for reclassifications, initiate a new anniversary date. Employees failing a qualifying period following promotion and returned to his/her previously held class shall have his/her salary reduced to the step and grade (including across the board schedule adjustments provided by this Agreement) held prior to being placed on the qualifying period.

7. For the purposes of this Article, "initial appointment" shall be defined as the first position held by an individual in the service of the County since the employee's last break in service.

***

Article 21 - Holidays

1. The County and the Association agree that per NRS 236.015 the following legal holidays will be observed:
- New Year's Day: January 1
- Martin Luther King Day: Third Monday in January
- President's Day: Third Monday in February
- Memorial Day: Last Monday in May
- Juneteenth: June 19
- Independence Day: July 4
- Labor Day: First Monday in September
- Nevada Day: Last Friday of October
- Veteran's Day: November 11
- Thanksgiving Day: Fourth Thursday in November
- Family Day: Friday following the Fourth Thursday in November
- Christmas: December 25
- Any day that may be appointed by the President of the United States for public fast, thanksgiving or as a legal holiday ~~expect~~ except for any Presidential appointment of the fourth Friday in October as Veterans Day.

2. If any of the above holidays fall on a Sunday, the following Monday shall be considered as a legal holiday. If any of the above holidays fall on Saturday, the preceding Friday shall be considered as a legal holiday.

3. An employee, in order to be entitled to a legal holiday as provided, shall be on pay status on his/her scheduled work day immediately preceding and immediately following such holiday.

~~3.~~4. If an employee works a four-day, forty-hour work week, s/he will only be entitled to claim eight hours of holiday pay for any holiday specified above.

***

Article 26 – Wages

1. Effective July 1, 20~~19~~22 a ~~three~~five and six tenths percent (~~3~~5.6%) COLA (cost of living adjustment) shall be given to all employee's subject to this Agreement, ~~this COLA shall be retroactive to the dates the COLA's were given to the NCEA (Nye County Employee Association) employee's in years 2017 2019~~ This rate is the result of the December 2021 change in Consumer Price index [sic], Urban Wage Earners and Clerical Workers West B/C 12- month period change of 7.1% less the previously granted 1.5% pursuant to the NCMEA Contract, Article 26 section 3 ratified August 16, 2019, with an effective period of July 1, 2019-June 30, 2022. December 2020 12-month average CPI was 1.5%.

2. ~~Immediately upon the removal of the "Me Too" clause from Article 32(1) of the NCEA bargaining agreement and within year two (2020-2021) of this agreement, a three percent (3%) COLA and/or wage increase shall be given to all employee's subject to this Agreement and shall be paid retroactive to July 1, 2020.~~ Effective July 1, 2023 all employees subject to this Agreement shall be given a COLA equal to the change in the Consumer Price Index, Urban Wage Earners and Clerical workers West B/C, and the rate of this COLA shall be based on the calculated average of the CPI index of the three (3) prior years, including the 12-month period ending December of 2022 and the previous two (2) years.

3. Effective July 1, ~~2021~~2024 all employees subject to this Agreement shall be given a COLA equal to the change in the Consumer Price Index, Urban Wage Earners and Clerical Workers, West B/C, ~~as of the previous December~~

~~provided that the cola to be implemented shall not exceed 3%~~and the rate of this COLA shall be based on the calculated average of the CPI index of the previous three (3) prior years, including the 12-month period ending in December of 2023 and the previous two (2) years.

~~3. The COLA increase in paragraph 3 above should only be given if audited property tax revenues (excluding net proceeds) for the prior fiscal year is in excess of five (5%) from the preceding year.~~

4. The County recognizes employees may be under an unusually heavy workload on-call schedule. The County Manager may, from time to time, in his or her absolute discretion, designate one or more employees to be in heavy workload or heavy on-call (HWOC) status. The County Manager may also, in his or her absolute discretion remove the HWOC designation from any employee at any time. The County Manager's decision to bestow the HWOC designation or remove the HWOC designation shall not be grievable and shall not be covered by the Grievance and Arbitration Procedures of this Agreement.

For each full pay period while in HWOC status the employee shall receive a payment of $250.

The TA also includes an Addendum A, which sets forth the new "Pay Scale" for employees.

Significantly, the TA lists the "fiscal impact" to the County:

Fiscal Impact
NCMEA CBA

	FY Impact
FY23 (Including 5.6% COLA)	$7,562,492
FY24 (Estimating 3% COLA)	$7,765,101
FY25 (Estimating 3% COLA)	$7,973,303
Total CBA Cost FY23-FY25	$23,300,896

NRS 288.153 **Agreement must be approved at a public hearing; report of fiscal impact of agreement.** Any new, extended or modified collective bargaining agreement or similar agreement between a local government employer and an employee organization must be approved by the governing body of the local government employer at a public hearing. The chief executive officer of the local government shall report to the local government shall report to the local government the fiscal impact of the agreement.

*Funds affected: 10101, 10205, 10209, 10230, 10236, 10254, 10282, 10283, 10340, 10807, 25101, 25222, 25268, 25220
Staff will bring forward an augment at a later meeting to remedy the budget in each fund.

I find this information to be particularly useful and preponderant on the issue of the County's "ability to pay," addressed in more detail below.

The Board of County Commissioners Refuse to Ratify the TA

On July 11, 2022, the Parties presented the proposed Collective Bargaining Agreement for ratification by the Board of County Commissioners (the Board) (the Ratification Meeting). While the record does not reflect whether the Union had already ratified the TA as of that date, more

likely than not, the Union either already had, or shortly thereafter, ratified the TA. Thus, more likely than not, the Parties only needed ratification by the Board to adopt the contract.

During the Ratification Meeting, the Board communicated they were *not* willing to ratify the contract for a variety of reasons. The first reason, raised by Commissioner Leo Blundo, was because "executive management should *not* be unionized at the top."[7] Commissioner Blundo offered his justification for this statement, when he stated, in relevant part:

> So in my opinion once you hit that tier, *I don't think the Union fits*. I think unions had their place, especially in the twenties (20s) and thirties (30s) in this country[8], but Nye County is not just a fair, but a very good employer. We go to bat for our employees and I think that's a testament to what the County Manager has put in place over the years from the top down (emphasis added).

While I agree with Commissioner Blundo that the County's Manager, Mr. Sutton, appears to have been doing an *outstanding* job representing the County in all negotiations he was involved with for this particular bargaining unit, I respectfully disagree that "*I don't think the Union fits*" is a good justification for failing to ratify the Parties' TA. This is because the County offered *no evidence* as to this alleged justification.

Commissioner Blundo also expressed concern that bargaining unit employees would receive subjective, rather than objective, performance evaluations under the new language in the TA. Again, I can appreciate Commissioner Blundo's comments, but, without any facts or *evidence*, I am simply *not* persuaded by Commissioner Blundo's *opinion*.

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[7] Disclaimer: While I used my best efforts to transcribe what I heard and understood while listening to the recording of the BOCC Meeting, since I am not a certified court reporter, I do not claim that the statements I transcribed are *exactly* what each Commissioner said. However, more likely than not, I captured the essence of what each Commissioner said during the BOCC Meeting.

[8] More likely than not, Commissioner Blundo was referring to the 1920's and the 1930's.

The third issue was raised by then Chairman and Commissioner, Frank Carbone.[9] Commissioner Carbone questioned whether the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers, West B/C used in the TA to determine the cost of living adjustment (COLA) for these bargaining unit members was appropriate. Specifically, Commissioner Carbone said words to the effect of, "we are *not* an urban unit or in an urban area" (emphasis added). Commissioner Carbone expanded on his concerns about the CPI, when he stated:

> As far as I can see, the calculations that we are using may be a little *out of whack* for the simple reason that as of today, the cost of living has gone out of sight and the fuel has gone out of sight (emphasis added).

I *might* have been persuaded by Commissioner Carbone's assertion that the CPI used to establish the COLA in the TA is "out of whack"; however, in its Post-Hearing Brief, the County *concedes*:

> Here, despite concerns raised by members of the BOCC regarding whether the CPI for Urban Wage Earners and Clerical Workers, West B/C was an appropriate CPI index for Nye County, the County *acknowledges* that this CPI index has been used in the NCMEA's predecessor agreements as well as many other CBAs in Nye County, and was contained in *every* bargaining proposal made by either party in negotiations.[10]

Based on the County's concession, more likely than not, I am *entitled* to rely on statistics from the United States Bureau of Labor Statistics (the BLS) concerning the CPI for Urban Wage Earners and Clerical Workers, West B/C, which applies to "areas [with a population of] 2.5 million or less."[11] Thus, while I can appreciate Commissioner Carbone's *opinion* regarding whether the CPI used in the TA was appropriate, again, his *opinion* simply does not matter, as the County conceded

[9] The record is unclear whether Commissioner Carbone was still the Chairman as of the date of the Hearing.
[10] County's Post-Hearing Brief at page 9 (emphasis added).
[11] https://www.bls.gov/regions/west/cpi-summary/ro9xg01a.htm

through its counsel of record that the CPI agreed to in the TA has historically been used by the County.

Next, at Commissioner Debra Strickland's request, Commissioner Bruce Jabbour addressed his concern whether the steps and grades in the TA were "misaligned" and "confusing" to bargaining unit members.[12] While I understood Commissioner Jabbour's comments, there is no *evidence* that any bargaining unit members were confused by *anything* the Parties agreed to in the TA. Again, I appreciate Commissioner Jabbour's opinion, but his opinion is not *evidence*.

Like Commissioner Carbone, Commissioner Strickland also questioned whether the CPI used in the TA was proper, when she stated:

> We all know that the economics currently are *out of whack* is what I heard someone mention, and I'm gonna say *it's not a good time to be negotiating a contract*. I don't know what that means when you're dealing with unions because apparently, we have *no choice* but to have unions, because it only takes two (2) people to unionize.
>
> ***
>
> I don't think an 8 1/2 percent CPI is--I think it's ridiculous. We can't keep up like this so we need to rethink what we're doing and I cannot support this at this time, and perhaps maybe the EMRB--perhaps they will need to come in and look at what we have to offer, what the Union has to offer and come to a negotiated agreement. But *it's not a good time to do a contract* and we are out of control right now as a country (emphasis added).

Again, Commissioner Strickland's repetitive statement that the CPI is "out of whack" is factually inaccurate, based on the County's admissions in its Post-Hearing Brief. Moreover, Commissioner Strickland's statement that "it's not a good time to do a contract" simply has no bearing on the

[12] Presumably, Commissioner Jabbour was referring to Addendum A – Pay Scale, which, as previously sets forth above, corresponds with the newly revised Article 26 – Wages.

statutory criteria I am required to consider. For these reasons, I cannot align my Recommendations with any of Commissioner Strickland's comments.

Lastly, Commissioner Donna Cox provided a general comment regarding her very apparent distaste for unions, when she stated:

> *I don't believe we should have unions.* We are a political entity out in the public sector but I have never supported them and I even know employees who don't support that because there's too many ups and downs, there are some levels making too much money, and other people not making enough money, and we can only do so much up here as a Board as far as working those out, but I know we have unhappy employees that are not in agreement with things that have been done with unions, so on top of that with all the things you people have already said, I feel the same way. I don't think this is going to go anywhere at this point (emphasis added).

In sum, the Board expressed Union animus against this particular bargaining unit and against unions in general during the Ratification Meeting. While I can appreciate the Board's comments were made in the spirit of attempting to understand the County's statutory obligations, none of the Board's comments and opinions carry any weight when issuing these Recommendations, as these comments do not address the statutory criteria I must consider. On this point, I truly sympathize with the County's counsel, and the County's Manager, as, in my humble opinion, they probably had *no idea* the Board would refuse to ratify the TA for the reasons stated.

The Board Gives Direction to the County Manager

At the Hearing, County Manager Sutton credibly testified about the direction the Board gave him following the Ratification Meeting:

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18 A. The Board raised various issues, various
19 concerns that they had with the proposal, with the

TA document.
And one was the fact that we were in a strange economic climate and wanted to wait until that settled down. The other one was, as I mentioned, that the department heads could not be – should not be part of a bargaining unit. The other

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one was whether or not the appropriate comparables were being used. The other one was whether CPI was an appropriate index to be used, considering that we're a rural county.

Based on the overall record, the Board's direction following the Ratification Meeting was very likely *contrary* to *any* direction County Manager Sutton had ever received in the past.

The ERMB's July 19, 2023, Decision

At the Hearing, the County offered to supplement the record with the ERMB's decision, *Nye County v. Nye County Association of Sheriff's Supervisors (NCASS), et al,* Item No. 887, Case No. 2022-009, (July 19, 2023) (the NCASS case), in support of its proposition that:

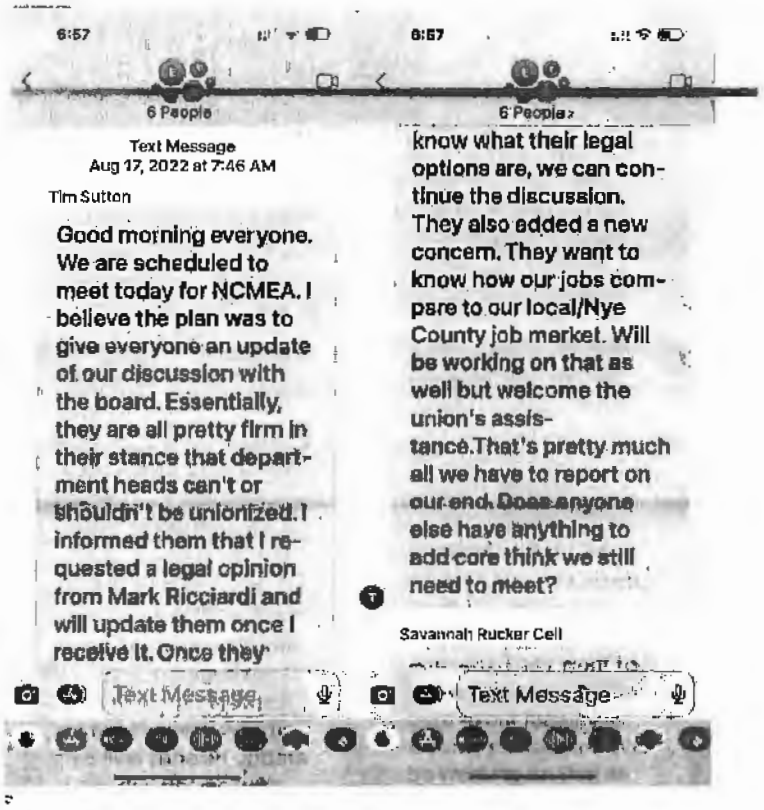
> [T]he impasse proceedings…are an extension of the bargaining process and the County cannot be forced to negotiate and bargain with an inappropriate bargaining unit, nor be compelled to enter into a CBA with an inappropriate bargaining unit.[13]

Both Parties stipulated that, as of the date of the Hearing, the parties in that action were still attempting to negotiate a successor agreement. In any event, I have read the decision, and do not find it persuasive in this particular circumstance, as more fully addressed below.

[13] County's Post-Hearing Brief at page 1.

The County's Text Message to the Union on August 17, 2022

On August 17, 2022, County Manager Sutton sent the following text message to the Union's Chief Negotiator:



I find County Manager Sutton's comment that the Board's "stance that department heads can't or shouldn't be unionized" is pertinent to these Recommendations, as addressed below.

The Final Three (3) Negotiation Sessions

Following the Board's failure to ratify the TA, the Parties met for three (3) additional negotiation sessions, on July 26, 2022, September 22, 2022, and October 25 of 2022 (the Final Negotiation Sessions). During those Final Negotiation Sessions, the Union offered to reduce the

COLA from the agreed-upon rate of 5.6% to 4.5%. The Union's final offer was to reduce the COLA to 4%. The County did *not* accept any of the Union's offers.

Again, the record establishes that the County did not raise any concern about the composition of the bargaining unit during *any* of those Final Negotiation Sessions. Thus, while I totally believe that County Manager Sutton was simply communicating the Board's position to the Union as of August 18, 2022, there simply is no *evidence* that the Board *acted* on its position during the Final Negotiation Sessions.

The Union Declares Impasse

Both Parties stipulated that the Union declared impasse on November 7, 2022. Again, nothing in the record suggests that the County took any *action* concerning the composition of the bargaining unit *prior* to the declaration of impasse, nor is there any evidence that the County took action *before* the Hearing held on September 5, 2023.

The County Files its Petition

As addressed above, the County did not file a Petition with the EMRB until November 27, 2023. Within the Petition, the County alleged:

> The crux of this matter is the Union's improper attempt to insist on the continued unlawful inclusion of the supervisory classifications of Director of Natural Resources, Director of Information Technology, Director of Human Services, Director of Planning, Director of Public Works, Director of Facility Operations, and Director of Emergency Management ("Subject Positions") in the same collective bargaining unit as those positions whom they directly supervise. Including supervisors in the same unit as those they directly supervise is expressly prohibited by Nevada law.

Both Parties stipulated, and I agree, that I do *not* have jurisdiction to determine which classifications are appropriate for this bargaining unit. As such, I am not making any findings or recommendations in that regard.

The BLS Statistics

As set forth above, the County conceded that the CPI-U for West B/C has historically been used for this particular bargaining unit. In that regard, based on the most current information provided by the BLS, as of October 2023, the CPI-U for West B/C advanced 3.3 percent,[14] and food prices rose by 3.5 percent. However, energy prices declined 0.8 percent, largely as the result of a decrease in the price of gasoline. [15] Unfortunately, the index for all items less food and energy advanced 3.7 percent over the past year.[16]

The County's Ability to Pay

The Parties included the estimated fiscal cost of the Successor CBA on page 47 of the TA:

Fiscal Impact
NCMEACBA

	FY Impact
FY23 (Including 5.6% COLA)	$7,562,492
FY24 (Estimating 3¾ COLA)	$7,765,101
FYZS (Estimating 3¾ COLA)	$7,973,303
Total CBA Cost FY23-FY25	$23,300,896

[14] https://www.bls.gov/regions/west/news-release/consumerpriceindex_west.htm
[15] https://www.bls.gov/regions/west/news-release/consumerpriceindex_west.htm
[16] https://www.bls.gov/regions/west/news-release/consumerpriceindex_west.htm

The County's External Comparable Jurisdictions

While County Manager Sutton credibly testified that the Board questioned whether the "traditional" comparable jurisdictions for the County were "appropriate" following the Ratification Meeting, neither Party presented *any evidence* that establishes exactly which counties the Parties have traditionally recognized as the County's external comparable jurisdictions. Having said that, County Manager Sutton did credibly testify:

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24 we have
25 traditionally used Class III counties, which are

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1 counties that are similarly sized in terms of
2 population as our comparative markets. And the
3 Board, kind of surprisingly, indicated that that is
4 not perhaps -- is not what they wanted to be limited
5 to.
6 They wanted to look at neighboring
7 markets, such as Las Vegas, Boulder City, Mesquite,
8 Henderson, and all the other ones that have been
9 previously mentioned. They also wanted to possibly
10 look nationally. And also, not just confined to
11 local government, but also perhaps in looking at the
12 private sector as well. Which was surprising to all
13 of us, but that's what they told us to do.

Based on County Manager Sutton's credible testimony, the Parties need to dialogue concerning the Board's direction to County Manager Sutton to include "neighboring markets" such as Las Vegas, Boulder City, Mesquite, Henderson, et cetera. For purposes of these Recommendations, I will attempt to determine what the "traditional Class III counties" are, since neither Party presented any evidence concerning the County's traditional comparator jurisdictions.

County Manager Sutton also testified that the Board's direction to look at "neighboring markets" prompted the Board to determine that a County Classification and Compensation study should be commenced. However, as of the date of the Hearing, the County was still reviewing proposals from a variety of firms. Importantly, County Manager Sutton agreed at the Hearing that it is *not* the County's position that the Union should go without a Successor CBA "until such time as the County completes its Classification and Compensation study."

The Parties' Stipulations

At the Hearing, the Parties entered into the following stipulations:

- Union Exhibit 5 is the TA'd agreement between the chief negotiators from the NCMEA and Nye County that was presented to the Board of County Commissioners. The Board of County Commissioners voted to reject the TA.
- Union Exhibits 1 through 5 are admitted.
- The County stipulates that Union Exhibits 8, 9, 10 and 11 are true and correct copies of the documents they purport to be. However, the County disputes any relevance to these proceedings or the arbitrator's ability to even rule on the issues that these exhibits would pertain to.
- The Parties talked about, and agreed, to waive mediation.
- The Union declared impasse on November 7, 2022.
- The County has a standing objection on the basis of jurisdiction on the grounds that this matter needs to be presented to the EMRB, and issues of waiver are not relevant.
- The Union's Exhibit 7 is the July 5, 2022 Board of County Commissioners' meeting.
- The Union's Exhibit 7 is in MP4 format.
- The Union's Exhibits 7 through 11 are admitted.
- Large parts of Exhibit 7 are simply irrelevant to today's proceedings.

- The Parties will attempt to provide a Word copy, or at least a high quality pdf of Union Exhibit 3. If the Parties are unable to do so, the Parties will provide a typed version in their Post-Hearing Briefs.

- The Union played Union Exhibit 7 during the hearing, but only played from the 0.0 minute mark to two minutes and nine seconds; and then skipped ahead to minute 30, 13 seconds, and watched it until 43:04; and then we skipped ahead to 46 minutes. And then we played it to 50:29.

- The relevant portions of Union Exhibit 7 are from the start to two (2) minutes and nine (9) seconds, and from thirty (30) minutes and thirteen (13) seconds until fifty-one (51) minutes.

- The supervisor positions at issue that the County wants out can be found in Union Exhibit 1, Bates 31, and they are the Director of Emergency Management Services, the Director of Health and Human Services, the Director of IT, the Facility Operations Manager, the Director of NWRPO, the Director of Planning and the Public Works Director.

- The Factfinder has no jurisdiction over which employees are appropriately in this bargaining unit.

- The issue of who is properly in the bargaining unit is a subject that the Board has exclusive jurisdiction over.

- Employer Exhibits A, B, and C were communicated to the County prior to impasse.

- No EMRB complaint has been filed over this bargaining unit to date.[17]

- The Parties selected a fact-finder from a seven (7)-member fact-finding panel provided by the FMCS pursuant to the Statute; however, the fact-finder selected did not respond to e-mails, and that's why the Parties mutually selected Mr. Gaba.

- Nye County Association of Sheriff's Supervisors (NCASS) is currently still bargaining a successor agreement.

- Briefs are due by close of business by 5:00 p.m. Pacific time on November 3rd, presuming the transcript is received more than 30 days prior to that date.[18]

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[17] However, the County subsequently filed a Petition For a Declaratory Order Clarifying the Bargaining Unit with the ERMB on November 27, 2023.

[18] However, as set forth above, the Parties ultimately agreed to extend the deadline to November 27, 2023, and the County requested an additional extension to November 29, 2023.

- The Fact-finder's fact-finding recommendation will not be due for forty-five (45) days after receipt of the Parties' briefs.

- The court reporter is taking a full set of the exhibits for this hearing with her, and will return the exhibits to Ms. Keel. The court reporter is not transcribing the video that was admitted as the Union's Exhibit 7.

- Fisher Phillips is the official custodian of the record and will have all of the exhibits for this hearing.

- The Fact-finder will strip his file and destroy all exhibits within 48 hours of the issuance of the Recommendations.

OPINION

I. The Parties' Positions

The County asserts:

> The County anticipates the Union will argue that "even if the EMRB had the authority or is willing to exercise the authority to carve the personnel that the county is objecting to out of the bargaining unit, [the Factfinder] would still have the ability to recommend the contract terms for those members that remain in the bargaining unit." However, such a recommendation would be inappropriate because it has the effect of forcing the County to participate in negotiations and impasse proceedings with an illegal bargaining unit. NRS Chapter 288 does not permit an employer to bargain with — and by extension reach impasse with — an illegal bargaining unit. Thus, there is no ripe dispute presently at impasse and the Factfinder should refrain from issuing any recommendations to parties who are not properly before him under NRS § 288.200.[19]

On the other hand, the Union asserts:

> Ultimately, the Fact-finder has jurisdiction because he was *mutually* selected [sic] the parties pursuant to NRS 288.200(2). That statute provides that if the parties are unable to agree upon an impartial factfinder, they may obtain a list of FMCS and strike names until one remains. The parties did strike names, but the fact-finder selected to that process was unresponsive [sic] the emails. Therefore, the County proposed six (6) names, and the Arbitrator was

[19] County's Post-Hearing Brief at page 10 (references to transcript omitted).

> selected from this list proposed by the County. (See email of May 3, 2023 attached to this Brief).
>
> The County's "jurisdictional" argument is resolved by reference to NRS 288.200 itself. In laying out the criteria to be considered under subsection (7)(b), the statute provides that "the Fact-finder ***shall*** consider whether the Board found that either party had bargained in bad faith."
>
> If the County believed that NCMEA's insistence upon bargaining for the positions agreed to in the Settlement Agreement constituted bad-faith bargaining, it was incumbent upon the County to take that matter before the EMRB and obtain a finding as to whether the NCMEA was bargaining in bad faith. However, under the plain language of the statute the existence of potential prohibited practice disputes does not stop the fact-finding process from going forward; the Fact-finder is only to consider an actual Board finding on the subject in fashioning his/her recommendations. Were the rule to be otherwise, an employer could stymie impasse proceedings by raising disputes about the bargaining unit, but not actually taking any action to pursue such disputes (as Nye County has done in this case).[20]

I have taken each of these valid and very well-written arguments into consideration. Having said that, unfortunately, again, while I sincerely believe counsel's arguments on behalf of the County are sound and even creative, based on the Statute, I have no choice but to find that I am *not* authorized to grant the County's request to "refrain from issuing recommendations."

I also find that the Union correctly asserted that I have authority to issue these Recommendations based on the fact that I was *mutually* selected by *both* Parties to act as Fact-finder (as stipulated to at the Hearing), and that my authority to issue these Recommendations are determined by the Statute itself.

Indeed, I am *bound* to consider the criteria that directs that the Fact-finder "*shall*" consider whether either Party…bargained in good faith, and, whether the County *refused* to bargain

[20] Union's Post-Hearing Brief at page 7 (emphasis in original).

collectively in good faith (which also includes actively participating in the "fact-finding" process). I realize that my Recommendations may not be binding; as such, I will make by best attempt to articulate all the reasons for issuing these Recommendations below.

II. Fact-Finding Under NRS 288.200

These Recommendations are issued pursuant to the specific procedures outlined in the Statute. In the case at hand, the Fact-finder has spent a considerable amount of time reviewing the exhibits provided by the Parties and giving full and thoughtful consideration to each of the Parties' arguments. Both Parties provided well-written Post-Hearing Briefs, and I am mindful of my function in this impasse proceeding, as stated by Elkouri and Elkouri:

> The task is more nearly legislative than judicial. The answers are not to be found within the "four corners" of a pre-existing document which the parties have agreed shall govern their relationship. Lacking guidance of such a document which confines and limits the authority of arbitrators to a determination of what the parties had agreed to when they drew up their basic agreement, our task here is to search for what would be, in the light of all the relevant factors and circumstances, a fair and equitable answer to a problem which the parties have not been able to resolve by themselves.[21]

Typically, the standard of proof for contractual disputes is preponderance of the evidence. Preponderance of the evidence can be defined as:

> The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.[22]

I apply the preponderance of evidence standard to these Recommendations.

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[21] Elkouri and Elkouri, *How Arbitration Works*, Chapter 22, page 4 (8th ed. 2020).
[22] *Black's Law Dictionary* (8th ed. 2020).

III. Analysis of the Statutory Criteria

NRS 288.200 at subsection 7. directs me to consider the following criteria:

> (a) A preliminary determination must be made as to the financial ability of the local government employer based on all existing available revenues as established by the local government employer and within the limitations set forth in NRS 354.6241, with due regard for the obligation of the local government employer to provide facilities and services guaranteeing the health, welfare and safety of the people residing within the political subdivision. If the local government employer is a school district, any money appropriated by the State to carry out increases in salaries or benefits for the employees of the school district must be considered by a Fact-finder in making a preliminary determination.
>
> (b) Once the factfinder has determined in accordance with paragraph (a) that there is a current financial ability to grant monetary benefits, and subject to the provisions of paragraph (c), the Fact-finder shall consider, to the extent appropriate, compensation of other government employees, both in and out of the State and use normal criteria for interest disputes regarding the terms and provisions to be included in an agreement in assessing the reasonableness of the position of each party as to each issue in dispute and the Fact-finder shall consider whether the Board found that either party had bargained in bad faith.
>
> (c) A consideration of funding for the current year being negotiated. If the parties mutually agree to arbitrate a multiyear contract, the Fact-finder must consider the ability to pay over the life of the contract being negotiated or arbitrated.

I first address the Statute criteria, and then I will address the reasonableness of the TA.

A. The County's financial ability to pay.

The Statute first requires me to make a "preliminary determination…as to the financial ability of the local government employer."[23] In the public sector, an employer's inability to pay can be the decisive factor in a fact-finding or interest arbitration, notwithstanding the fact that

[23] *See* the Statute at NRS 288.200, Section 7(a): A preliminary determination must be made as to the financial ability of the local government employer.."

comparable employers in the area may have agreed to higher wage scales.[24] Having said that, normally, a case concerning "ability to pay" is necessarily complex, and involves a presentation on governmental budgets, projected revenues and expenditures, a myriad of financial issues pertaining to the resources of the local governmental body, and an assessment of the condition of the local economy.[25]

During times of crisis such as the recent Global Pandemic (as declared by the World Health Organization on March 11, 2020),[26] or the "Great Recession,"[27] there can even be interest arbitrations or fact-findings over the size of pay *decreases*.[28] In such instances, the undersigned has previously framed the issue as:

> In the instant case, there is no question that the County is experiencing a very difficult economic environment; however, the Union is not requesting any increase in wages; rather the only question is how large will the wage reductions be.[29]

Absent a Pandemic, a financial meltdown such as the Great Recession, or an earthquake or other natural disaster, it is normally *incumbent* on an *employer* to raise its alleged inability to pay during negotiations.[30] Put another way, traditionally:

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[24]Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 7, page 132 (LRIS, 3rd ed., Scott, et al. eds. 2022).
[25]Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 7, page 132 (LRIS, 3rd ed., Scott, et al. eds. 2022).
[26] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7569573/
[27] *See, e.g.*, "*World Economic Situation and Prospects 2013*," *Development Policy and Analysis Division of the UN secretariat.* Retrieved December 19, 2012.
[28]Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 7, page 132 (LRIS, 3rd ed., Scott, et al. eds. 2022).
[29] *County of Aurora*, 127 BNA 1773 (Gaba, 2010).
[30]Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 7, page 135 (LRIS, 3rd ed., Scott, et al. eds. 2022).

> The employer has the burden of proof to establish an inability to pay. The burden must be met by more than mere speculation. An *unwillingness* to pay does not satisfy the burden.[31]

In the instant case, while the Board intimated that the CPI used to determine the COLA for bargaining unit members could impact the County's immediate and future obligations, the County failed to provide any *evidence* that would establish that the County had an inability to pay the COLA as agreed upon. Rather, the Parties agreed in the TA that the total fiscal impact over the three (3) years of the Successor CBA would be $23,300,896. By reaching agreement on this number, more likely than not, the County obligated itself to pay the COLA as agreed upon. By implication, the County also agreed that it had the *ability* to pay this amount.

Moreover, as of October 2023, the CPI-U advanced 3.3 percent over the past twelve (12) months.[32] Based on the rate of inflation one can conservatively estimate that property prices will go up by at least half the rate of inflation.[33] It is axiomatic that as inflation increases, the County's collection of property and personal taxes (all other factors being equal) will increase.

The bottom line is, while the County may have an *unwillingness* to pay for the TA'd agreement, the County did not meet its burden to establish that it actually *lacks* the ability to pay. Thus, on this issue, the Union prevails by *default*. Accordingly, the undersigned must now address the other statutory criteria.

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[31] *County of Albany*, No. IA-11-12 (Boedecker, 2013) (*emphasis* added).
[32] https://www.bls.gov/regions/west/news-release/consumerpriceindex_west.htm
[33] *See, e.g.*, https://www.bls.gov/news.release/pdf/cpi.pdf (Table A, "shelter").

B. The compensation of other government employees, both in and out of the State.

Having made the "preliminary determination" (as required by the Statute) that the County has the ability to pay, the next criteria the Statute requires me to consider is, "to the extent appropriate, compensation of other government employees, both in and out of the State." In my opinion, next to ability to pay, the issue of comparability, in and of itself, is the *most important issue* for a fact-finder to consider. Indeed, historically, the most significant factor in public sector interest arbitration (or statutory fact-findings) has been external comparables;[34] those external comparables "meaning the wages, hours, and terms and conditions of employment of similar public employees in comparable units of government."[35]

A major consideration regarding comparative data was expressed by Arbitrator Carlton Snow:

> A concern with any comparative data in interest arbitration is whether the cities being compared accurately reflect what is being compared, such as the real price of labor. Wage rates may be similar, but the price of labor may be substantially different in cities which have been compared. Pension plans and other fringe benefits have a startling impact on the overall wage cost as well as labor market conditions which may be unique to a particular County.[36]

Thus, the comparability of other jurisdictions must focus on the *total compensation* of the employees, so that an apples-to-apples comparison can be made.

When most employees hear the term "compensation," they typically only think of the money they receive in their paycheck each payday.[37] However, "total compensation" goes beyond

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[34] *See, e.g.*, Marvin F. Hill, Jr. and Emily Delacenserie, *Interest Criteria in Fact-Finding and Arbitration: Evidentiary and Substantive Considerations* (Marquette Law Rev. Vol. 74:399) (1991).
[35] See *State of Ill. Dep't of Cent. Mgmt. Svcs*, Case No. S-MA-08-262 (Benn, 2009).
[36] *County of Renton*, 71 BNA 271 (Snow, 1978).
[37] *County of Aurora*, 127 BNA 1773 (Gaba, 2010).

salary; it is the complete pay package for any group of employees. This amount includes all forms of money, benefits, services, and other "perks" employees in this particular bargaining unit are eligible for at the County. Basically, "[t]otal compensation can be defined as all of the resources available to employees which are used by the employer to attract, motivate, and retain employees."[38]

In some--not all--but *most* cases, "the selection of comparable jurisdictions is relatively simple if the parties have historically agreed upon or at least consistently used a certain set of comparable jurisdictions in their prior negotiations."[39] Once a pattern is established, the party seeking to add or subtract jurisdictions to the traditional list bears the burden of proving the previously agreed-upon list unsuitable.[40] It is not uncommon to see interest arbitrator awards and fact finding decisions stating:

> In order to maintain that stability, prior interest arbitration awards must be accepted at face value in subsequent proceedings unless they are glaring wrong which is not the case here... It is well-established that the party seeking to change historical comparables has the burden of clearly proving that a change is warranted.[41]

Here, this impasse proceeding is not a "relatively simple" case, as the Parties did not stipulate to a set of external comparable jurisdictions, nor is there any evidence concerning what the Parties have "historically" considered to be the County's external comparable jurisdictions.

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[38] *County of Aurora*, 127 BNA 1773 (Gaba, 2010).
[39] Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 3, page 64 (LRIS, 3rd ed., Scott, et al. eds. 2022), citing *County of Lynnwood*, WA PERC Case No. 24694-1-12-588 (Beck, 2013) (held: "Arbitrators have routinely used mutually agreed upon comparators as the basis for comparability analysis").
[40] Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 3, page 64 (LRIS, 3rd ed., Scott, et al. eds. 2022), citing *See County of Rockford*, Case No. S-MA-12-108 (Goldstein, 2013), and *County of Rockford*, Case No. S-MA-11-09 (Perkovich), where attempts to change historical comparables were rejected.
[41] Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 3, page 64 (LRIS, 3rd ed., Scott, et al. eds. 2022), citing *Village of Algonquin*, ILRB Case #S-MA-17-262 (Greco, 2019).

Having said that, generally speaking, a "comparability range" sets the extent to which another jurisdiction can vary from the jurisdiction under study (or "target" jurisdiction) and still be considered as a possible comparable jurisdiction.[42]

For example, a very simplistic comparability selection process in this impasse proceeding might search for all counties with populations *within fifty percent* (50%) (plus or minus) of the population of Nye County, the target jurisdiction. Given that the County's population is approximately 54,738,[43] based on County Manager Sutton's credible testimony that the County "traditionally used Class III counties," more likely than not, the County's comparable jurisdictions *could* include:

Jurisdiction	**Population**
Lyon County	61,585
Carson City[44]	58,130
Elko County	54,046
Douglas County	49,628
Churchill County	25,843[45]

Here, unfortunately, neither Party submitted evidence of comparable *total compensation* on the outstanding economic issues for these potential external comparators. Therefore, I can only conclude that the wages and other monetary benefits offered in the TA'd agreement are more-

[42]Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 3, page 65 (LRIS, 3rd ed., Scott, et al. eds. 2022).
[43] *U.S. Census Bureau QuickFacts: Nevada.* U.S. Census Bureau. Retrieved March 30, 2023.
[44]Carson City is an independent city. *U.S. Census Bureau QuickFacts: Nevada.* U.S. Census Bureau. Retrieved March 30, 2023.
[45] All statistics are derived from *U.S. Census Bureau QuickFacts: Nevada.* U.S. Census Bureau. Retrieved March 30, 2023.

likely-than-not *equivalent* to the "compensation of other government employees, both in and out of the State."

C. Other "normal criteria for interest disputes."

Lastly, the Statute requires me to consider "other normal criteria for interest disputes" regarding the terms and provisions to be included in an agreement "in assessing the *reasonableness* of the position of each party as to each issue in dispute" (emphasis added). More likely than not, the "normal criteria for interest disputes" referenced in the Statute includes what has traditionally been developed over decades of interest arbitration practice; these issues include the interest and welfare of the public, comparable wages and working conditions, cost of living (including changes in the cost of living), ability of the employer to pay, ability to attract and retain personnel and/or other factors, depending on the specifics of the issues that are presented to the arbitrator or fact-finder.[46] Thus, having already addressed the ability of the County to pay, and the comparability of the County's external jurisdictions, I now address these other "normal criteria" that appear to be relevant to this impasse proceeding.

1. Interest and welfare of the public.

As a general rule, most arbitrators and fact-finders have found it *impossible* to apply a standard such as "the interest and welfare of the public," without considering other factors. As Arbitrator Carlton Snow observed:

> In the abstract, it is impossible to find meaning in the phrase "the interest and welfare of the public." The meaning of this criterion must be found as it is applied within the context of other criteria and the facts of a given case.[47]

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[46] *See e.g.*, Barry Winograd, *An Introduction to the History of Interest Arbitration in the United States*, Labor Law Journal, Fall 2010, pp. 164-168.
[47] *State of Oregon (OSCI Security Staff)*, IA-1 1-95 (Snow, 1996).

It is my conclusion that the interest and welfare of the public is best served by Recommendations that have the least chance of increasing employee turnover, decreasing employee morale, or inserting language into the contract that is illegal or that may raise taxes. Of course, these goals are mutually incompatible. On this additional relevant consideration, the Union prevails.

2. The "Status Quo" Doctrine.

In addition to the above factors, I am also mindful of the *Status Quo* Doctrine, which holds that "a party proposing new contract language has the burden of proving that there should be a change in the *status quo*."[48] The rationale underlying the *Status Quo* doctrine—an arbitrator-created doctrine not found in most fact-finding or interest-arbitration statutes—is that the party seeking to change *status quo* contract language must have given something up to get that language in the first place.[49] When its proponents give any reason for employing the doctrine, they typically argue that a party seeking to change the *status quo* should have to show either: (a) that maintenance of the *status quo* would be unfair (because it has failed or is inequitable in practice); or (b) that it has offered a sufficient "*quid pro quo*" (*i.e.*, concession) in exchange for undoing the *status quo*.[50] This is sometimes called the "breakthrough" test to represent the burden that must be met to break through the *status quo* and build new terms into the contract.[51]

Here, while some of the County's Board members questioned whether the correct CPI was applied to determine the COLA in the TA'd agreement, the County failed to present any evidence

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[48] *City of Tukwila*, PERC No. 130514-I-18 (Latch, 2018)
[49] Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 9, page 178 (LRIS, 3rd ed., Scott, et al. eds. 2022).
[50] *Village of Dolton*, ILRB No. S-MA-11-248 (Fletcher, 2016).
[51] Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 9, page 178 (LRIS, 3rd ed., Scott, et al. eds. 2022).

that establishes that the *status quo* is unfair or that the County made any *quid pro quo* concessions in order to change the CPI historically used at the County. For this reason, the Union prevails.

3. Other "normal" criteria. Based on the overall record, I recommend that the County ratify the TA, based on my findings above, and for the following additional reasons.

a. Was the County Required to Bargain in Good Faith with the Union?

Yes. In its Post-Hearing Brief, the County asserts that it was not *required* to bargain in good faith with the Union, based on the NCASS[52] case. Specifically, the County asserts:

> The County has objected to the Factfinder's jurisdiction and the appropriateness of the impasse proceedings as such proceedings are an extension of the bargaining process and the County cannot be forced to negotiate and bargain with an inappropriate bargaining unit, nor be compelled to enter into a CBA with an inappropriate bargaining unit. *See Nye County v. Nye County Association of Sheriff's Supervisors (NCASS), et al,* Item No. 887, Case No. 2022-009, (July 19, 2023) (finding no bad faith negotiations occurred in refusal to bargain). For the Union to argue that the Factfinder can impose (or recommend imposing) through factfinding, an agreement the parties could not be compelled to negotiate, defies logic.[53]

The problem with the County's above argument is that the NCASS case is clearly distinguishable from this impasse proceeding.

In the NCASS case, there were two (2) issues before the ERMB; the first being whether then-bargaining unit member David Boruchowitz could continue to be a member of the NCASS after he was promoted to Administrative Captain; the second being whether the County engaged in bad faith bargaining by refusing to bargain with Mr. Boruchowitz while acting as the Union's Chief Negotiator in negotiations. Importantly, the County filed its petition with the ERMB *before*

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[52] *Nye County v. Nye County Association of Sheriff's Supervisors (NCASS), et al,* Item No. 887, Case No. 2022-009, (July 19, 2023).
[53] County's Post-Hearing Brief at page 1 (references to exhibit omitted).

either party declared impasse. As to the first issue, the ERMB found:

> It is clear to the Board that Respondent Boruchowitz is a senior member of the Nye County Sheriff's Office having supervisory control and management responsibilities closely related to the duties of the elected Sheriff and Undersheriff. Thus, the Board finds that given his job description, his actual duties as described in the testimony and other evidence presented, and as admitted by Boruchowitz in his November 22, 2019 e-mail, the evidence presented relative to Boruchowitz' [sic] budgetary authority, the role Boruchowitz played on behalf of Nye County relative to grievances and other factors contained in the record of this case, Boruchowitz is a supervisory employee for the purposes of NRS 288.138(b) and cannot lawfully be a member of Petitioner NCASS.[54]

Regarding the second issue, the ERMB determined:

> It was reasonable for Petitioner to refuse to bargain with Boruchowitz given the findings herein, and as such, no bad faith bargaining occurred nor was there a unilateral change.[55]

Here, neither Party has asserted that the Union's Chief Negotiator cannot be a member of this bargaining unit, so obviously the ERMB's holding on that issue is simply inapplicable to this case. More importantly, unlike the NCASS case, here, the County simply *failed* to act on any of its concerns about the composition of this bargaining unit until *after* the Parties reached a TA; *after* the Union declared impasse; and *after* the Hearing was held. In fact, the record establishes that the County *never* raised the issue of the proper composition of this bargaining unit at *any* time during the six (6) negotiation meetings held concerning the Successor CBA.

Based on this record, more likely than not, the County may have inadvertently violated NRS 288.270(1)(e), which provides:

> (1) It is a *prohibited practice* for a local government employer or its designated representative willfully to:

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[54] NCASS case at page 11.
[55] NCASS case at page 10.

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(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 (emphasis added).

Use of the word "refuse" in the above-cited section is instructive; it means:

1. indicate or show that one is not willing to do something.
   - "I refused to answer"
2. indicate that one is not willing to accept or grant (something offered or requested).
   - "she refused a cigarette"[56]

Synonyms for the word "refuse" include, but are not limited to:

decline; turn down; say no to; reject; spurn; scorn; rebuff; disdain; repudiate; dismiss; repulse[57]

Here, the County chose to select County Manager Sutton to bargain the Successor CBA on its behalf. This is appropriate, considering that the CBA defines the "County" to mean "the County of Nye and its Board of Commissioners, its facilities, *and/or the County Manager* or his/her designee (emphasis added). Moreover, again, more likely than not, the County reasonably *selected* County Manager Sutton to negotiate on its behalf as its representative of "of its own choosing."[58]

As the County Manager, Mr. Sutton was able to quickly reach agreement with the Union during the third of the Initial Meetings, as he had done in the past. However, after the Ratification Meeting, while it may not have been intentional, the County "refused" to bargain in

[56] *Oxford English Dictionary* (11th ed. 2022).
[57] *Oxford English Dictionary* (11th ed. 2022).
[58] NRS 288.150(1).

good faith, by repeatedly asserting that it was not required to do so because of its concerns over the proper composition of the bargaining unit. The logical conclusion is that the County could have, and should have, filed its Petition with the ERMB *before* impasse and *before* the Hearing. The facts are undisputed that the County did not file its Petition with the EMRB until a mere thirteen (13) days ago. This means that the County refused to bargain in good faith with the Union through *"the entire bargaining process*, including mediation and *fact-finding*" as required by the Statute.

b. Can the County Attack these Recommendations on Traditional Common Law Grounds?

No. It is well-established that, generally speaking, an arbitration award (or, in this case, a statutory fact-finding) can only be overturned for one (1) of the following four (4) common law reasons:

> 1. Fraud, misconduct, or partiality by the arbitrator, or gross unfairness in the conduct of the proceedings;
> 2. Fraud or misconduct by the parties affecting the result;
> 3. Complete want of jurisdiction in the arbitrator, or action beyond the scope of the authority conferred on the arbitrator or failure of the arbitrator to fully carry out his or her appointment (i.e., the arbitrator decides too much or too little); and
> 4. Violation of public policy as by ordering the commission of an unlawful act.[59]

I would also add that an arbitration award or fact-finding recommendation could be attacked if there is evidence that there was a "rogue" negotiator that did not act with authority on behalf of the party he or she was purportedly representing. Here, there simply is no *evidence* that any such reasons to attack these Recommendations exist.

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[59] Elkouri and Elkouri, *How Arbitration Works*, Chapter 2, page 22 (8th ed. 2020).

c. Did the County Violate the Statute by Refusing to Recognize the Seven (7) Classifications Throughout the Entire Bargaining Process?

More likely than not, yes. Article 3, Section 1 of the Expired CBA provides that the Union is:

> *recognized* by the County as the *sole* and *exclusive* collective bargaining representative of the employees assigned to the represented classifications *listed in Addendum B* who are eligible to be represented by the Association.... (emphasis added).

Addendum B lists all of the classifications the Union represents; these classifications include the seven (7) classifications the County now asserts should not be included in the bargaining unit.

While I can understand the County's position, it is well-established that the terms and conditions of an expired CBA continues in effect under the National Labor Relations Act, until a new agreement can be reached.[60] Thus, unless and until the County ratifies the TA, or the ERMB rules on the proper composition of this bargaining unit, the terms and conditions of the Expired CBA remain in effect.

Second, by refusing to bargain with the Union *through the entire bargaining process*, the County likely has also inadvertently violated NRS 288.150 at Section 2.(j), which provides:

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[60] *See Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 206, 207 (1991), which held: After a CBA expires:

> ....the terms and conditions [of employment] *continue in effect* by operation of the NLRA. They are no longer agreed-upon terms; *they are terms imposed by law*, at least so far as there is no unilateral right to change them.
>
> ***
>
> NLRA § 8(a)(1) and (5) demand a "*continuation of the status quo*" during negotiations over a successor CBA, absent "explicit" agreement to the contrary.

See also, *NLRB v. Nexstar Broadcasting, Inc.*, 4 F.4th 801, 811 (9th Cir. 2021) (held: a dispute may be arbitrable after the CBA's expiration when the dispute concerns "rights which accrued or vested under the [CBA]."

2. The scope of mandatory bargaining is limited to:
(j) *Recognition clause.*

By refusing to recognize the seven (7) classifications, the County has in essence refused to bargain over a mandatory subject of bargaining.

Lastly, although the County asserts that I lack jurisdiction to issue these Recommendations, again, the undersigned's authority comes from the Statute itself. Specifically, NRS 288.200 provides:

> 1. If:
> (a) The parties have failed to reach an agreement after at least six meetings of negotiations; and
> (b) The parties have participated in mediation and by April 1, have not reached agreement, either party to the dispute, at any 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.
> 2. If the parties are unable to agree on an impartial fact finder within 5 days, either party may request from the American Arbitration Association or the Federal Mediation and Conciliation Service a list of seven potential Fact-finders. If the parties are unable to agree upon which arbitration service should be used, the Federal Mediation and Conciliation Service must be used. Within 5 days after receiving a list from the applicable arbitration service, the parties shall select their fact-finder from this list by alternately striking one name until the name of only one fact-finder remains, who will be the fact-finder to hear the dispute in question. The employee organization shall strike the first name.

The undisputed facts establish that all of the above criteria occurred in this impasse proceeding; that is (1) the Parties failed to reach agreement after six (6) negotiation session; (2) the Parties discussed, but mutually agreed not to participate in mediation; and (3) the Parties stipulated that

they mutually selected the undersigned as the Fact-finder for this case. Thus, again, these Recommendations are issued based on my statutory authority.

IV. The *Reasonableness* of the TA

Lastly, I address the Statute's requirement that I consider "the *reasonableness* of the position of each party as to each issue in dispute" (emphasis added). In that regard, the Union asserts:

> Beyond the selection of the appropriate CPI index, the only remaining dispute is what the COLA should be for the fiscal year July 1, 2022 through June 30, 2023 (hereafter "FY 2023"). As set forth above, at the bargaining table the agreed-upon amount was 5.6%. That is the amount that should be recommended by the Fact-finder because the most "reasonable" proposal is that which the parties actually reached through the bargaining process.
>
> It is anticipated that the County will argue that any recommendation for FY 2023 should be the last proposal made by the Union of a 4% COLA. (County Exhibit "B"). However, it is undisputed that this proposal was rejected by the County without any counterproposals. The NCMEA only came down from the 5.6% *mutually* agreed to by the parties for purposes of attempting to settle the contract without the delay and expense of statutory impasse proceedings. If Nye County wished to the COLA to be 4%, it should have accepted the offer when made. That offer is no longer open as a result of the rejection without any counter.[61]

The County literally made no argument and presented no evidence that rebuts the Union's above assertions, nor is there any *evidence* that the County ever accepted the Union's latest offer of four percent (4%) COLA in the first year. Moreover:

> An interest arbitrator's [and Fact-finder's] job is to determine the deal the parties should have reached during negotiations.[62]

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[61] Union's Post-Hearing Brief at page 9 (references to transcript omitted; emphasis in original).
[62] Elkouri and Elkouri, *How Arbitration Works*, Chapter 22, page 32 (8th ed. 2020).

What happened in this case is not unusual, although it is usually the union who cannot get an agreement ratified. In these cases arbitrators and fact-finders usually impose on the union what was TA'd at the table, much as I did in *Basin Electric Power Cooperative*.[63] In *Basin*, it was the union that failed to ratify an agreed to proposal and it was the union that lost.

Here, the TA is sufficiently useful in determining the agreement the Parties *should* have reached, had the Board not refused to ratify, for reasons that simply have *no bearing* on these Recommendations. In sum, I agree that the most "reasonable" proposal for the COLA FY 2023 should be what the Parties *mutually agreed* upon on June 13, 2022.

I fully understand the positions articulated by the members of the Board in this case. Unfortunately, their opinions/positions simply do not comport with Nevada law. If the Board members wish to limit collective bargaining in Nevada they can do so; however, first they must resign their positions and run for the Nevada state legislature in order to repeal or modify the provisions of NRS 288.200.

Counsel for the County did an excellent job advocating for her client in this matter; in my experience, she is an excellent attorney who works for one of the most prestigious labor-law firms in the United States. Unfortunately, while Ms. Kheel did an excellent job of *arguing* the County's positions, what transpired in this matter left her with few facts and no *evidence* to support her creative and well-thought-out arguments.

[63] *Basin Electric Power Cooperative*, 120 BNA LA 210 (2004).

FINAL WRITTEN RECOMMENDATIONS FOR SETTLEMENT OF THE IMPASSE ISSUES BETWEEN THE PARTIES

Having carefully considered all evidence, authority, and argument submitted by the Parties concerning this matter, and, pursuant to the procedures outlined in the Statute, the Fact-finder issues the following written recommendations:

1. The Parties' Successor CBA shall include *all* language the Parties mutually agreed to in the TA reached on June 13, 2023.
2. Within forty-five (45) days after receipt of these Recommendations, "the governing body of the local government employer shall hold a public meeting in accordance with the provisions of chapter 241 of NRS."
3. The costs associated with the fees and expenses of the Fact-finder shall be shared equally by the Parties, as provided for in NRS 288.200, at Section 3.

/s/ David Gaba
David Gaba, Fact-finder
Irvine, California

DATED: December 10, 2023

EXHIBIT F

EXHIBIT F

Collective Bargaining Agreement

Between

Las Vegas Metropolitan Police Department

And

Las Vegas Metropolitan Police Managers and Supervisors Association, Inc. (PMSA)

July 1, 2006 through June 30, 2010

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ARTICLE 1 - RECOGNITION

ARTICLE 13 - COMPENSATION

13.1 Salary Increase

A. Effective July 1, 2006, the employees shall receive a net 3.5% increase (reference Appendix A: Salary Schedule).

B. Effective June 30, 2007 and thereafter for the life of this agreement, employees shall be compensated as follows:

- Sergeant classification shall be fixed at 25% above the Police Officer/Corrections Officer II classification.
- Lieutenant classification shall be fixed at 20% above the Sergeant classification.
- Captain classification shall be fixed at 22% above the Lieutenant classification.

Annotation: It is intended that this fixed rate will be applied across the board at the time of implementation of June 30, 2007.

C. Funding: In the event the percent increase in the consolidated taxes received by either the City of Las Vegas or Clark County from one fiscal year to the next is less than the increase in the consumer price index for the same period, this section will automatically reopen. The annual CPI change to be used is the U.S. City average, All Urban Consumers, for July each year. Consolidated taxes are those revenues distributed by formula to the City and County. These include sales, motor vehicle, cigarette, liquor and property transfer taxes. Both CPI and actual tax revenue information will be available for comparison by October following the close of each fiscal year. Negotiations regarding this section will affect the fiscal year that begins the following July

13.2 Assignment Differential Pay. Assignment Differential Pay is temporary monetary compensation paid to some members of the PMSA as listed below: (Captains do not receive any assignment differential pay)

- Resident Officer Sergeant +20%

The police lieutenant assigned to Laughlin will receive resident differential of 20% whether or not he/she resides in Laughlin. No other additional compensation, such as commuter pay or shift differential, etc. will apply for this assignment and overtime hours will be accrued as is current practice witb other resident officers as set out by the FLSA.

All sergeants and lieutenants that directly supervise commissioned employees receiving assignment differential pay shall receive the 8% differential pay except as provided in the paragraph below. Once the supervisor/manager ceases to supervise any direct subordinate that is receiving assignment differential pay, their additional pay shall cease.

After the effective date of this agreement, members transferring for the first time to the Traffic Section or any investigative unit will receive four percent (4%) increase in pay for the first year and another four percent (4%) increase in pay thereafter while so assigned. Members who are transferring from one investigative unit to another investigative unit, regardless of bureau, will maintain their eight percent (8%) increase.

EXHIBIT G

EXHIBIT G

PMSA

Police Managers' & Supervisors' Association

&

Las Vegas Metropolitan Police Department

Collective Bargaining Agreement

July 1, 2020 – June 30, 2025

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less than 40 hours can be authorized by the reviewer. The arbitrator may also exonerate the discipline and the sustained complaint if the grievance has been appealed to that level. Additionally, the IAB file will be modified to show exonerated and at whose direction. The reductions of discipline pertaining to paragraph 1 will NOT include discipline that is reduced from a written or above to a Contact Report. Contact Reports are not considered a form of discipline; therefore, the reviewer should follow the language in paragraph 2 where discipline is "exonerated."

The Department will forward a copy of all disciplinary actions of employees covered by this agreement to the Association. Employee identifiers will be redacted from each Adjudication of Complaint.

12.2 Time Limits. In computing any period of time described or allowed in this procedure, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a holiday.

Grievant/Association: Failure on the part of the grievant/Association to process the appeal to the next step within the time limits established in this article presumes that it has been satisfactorily resolved at the last step to which it had been properly processed. However, in the event an employee is unavailable during the response period, the employee may authorize, in writing, the PMSA to respond on the employee's behalf.

Department: Failure on the part of the Department's representatives to answer the grievance in the time limits established in the preceding paragraphs presumes that it has been satisfactorily resolved in the employee's favor.

Time limits specified in this appeal procedure may only be extended by written agreement of both parties. If an appeal is not filed or processed within the time limits set forth above, it will be deemed withdrawn with prejudice, unless the time limitations established are waived or mutually extended by the parties.

Documentation. A copy of all appeals shall be forwarded to the PMSA and the Labor Relations section immediately upon filing with the Department. The Department shall establish procedures for the maintenance, control, and adjustment of appeal records.

ARTICLE 13 - COMPENSATION

13.1 Salary

Effective July 1, 2021, and thereafter for the life of this agreement, employees shall be compensated as follows and as detailed in the pay scales attached hereto:

- Sergeant classification shall be fixed at 26.25% above the Police Officer/Corrections Officer II classification.
- Lieutenant classification shall be fixed at 20% above the Sergeant classification.
- Captain classification shall be fixed at 25.5% above the Lieutenant classification.

Captains are entitled to an additional 3.5% above the Lieutenant classification for a total of 25.5% in exchange for the Arbitrator's award (issued on April 23, 2021) and for any and all work and/or expectations which fall outside of regularly scheduled working hours, including but not limited to standby time, returning to duty, phone calls, attending events, and any other time spent working outside of regularly scheduled hours. The Captain pay scales will no longer include steps but will be based on a range with a bottom and top rate. Notwithstanding the transition to a pay range scale, employees in the Captain classification, as of the date of ratification of the agreement, are still entitled to a 4% increase, not to exceed the top of the salary range.

EXHIBIT H

EXHIBIT H

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BEFORE ARBITRATOR JUAN CARLOS GONZALEZ

FRATERNAL ORDER OF POLICE, LODGE 21, UNIT N, Bargaining Unit, vs. EXECUTIVE DEPARTMENT OF THE STATE OF NEVADA, Employer.	**STATE OF NEVADA'S POST ARBITRATION BRIEF FOR FRATERNAL ORDER OF POLICE, LODGE 21, UNIT N**

Employer, Executive Department of the State of Nevada (hereafter, "Executive Department" or "State"), by and through its counsel, Aaron Ford, Attorney General of the State of Nevada, Josh Reid, Special Counsel – Labor Relations, and Steven O. Sorensen, Deputy Attorney General, hereby submits its Post Arbitration Brief in support of its final offer for the Collective Bargaining Agreement ("CBA") for the Fraternal Order of Police, Lodge 21, Bargaining Unit N (hereafter "Union," "FOP" or "Unit N") commencing on July 1, 2025 and ending on June 30, 2027. The grounds and legal basis for the State's position are set forth in the following Memorandum of Points and Authorities.

Dated this 9th day of May, 2025.

AARON FORD
Attorney General

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to NRS 288.515(m), Bargaining Unit N is comprised of Category III supervisory peace officers. FOP Unit N is currently not under a CBA with the State for the 2023 to 2025 biennium. FOP and the State went to impasse over the CBA for Unit N for the 2023 to 2025 biennium, which would be Unit N's first CBA. There has been no decision to date in that impasse arbitration. Pursuant to NRS 288.565, the State and FOP Unit N began negotiations for what will be the successor to the 2023 to 2025 CBA CBA in September 2024. This CBA will cover the 2025 to 2027 biennium. While the negotiations were successful, the parties failed to agree on all of the provisions for the Compensation for the next biennium.

A. State of Nevada's Compensation Proposal

Due to the current economic climate, the State proposed a "parity" provision in its proposed Compensation article. See Attachment 1. The State's compensation proposal is as follows:

1. SALARY PAYMENT

1.1.1 The compensation schedule for employees in classified State service consists of pay ranges for each salary grade. Within each salary grade are ten (10) steps. Employee pay rates are set within a salary grade at a specific step. Appendix X, "Salary Schedules for Bargaining Unit N" details the salary schedules for employees covered under this Agreement.

1.1.2 Effective July 1, 2025, the salary schedules for employees in Bargaining Unit M will reflect a cost-of-living increase ("COLA") at the same percentage as that provided by legislation enacted by the Nevada Legislature to Executive Department unclassified and classified employees who are not members of a State Bargaining Unit for Fiscal Year 2026.

1.1.3 Effective July 1, 2026, the salary schedules for employees in Bargaining Unit N will reflect a cost-of-living increase ("COLA") at the same percentage as that provided by legislation enacted by the Nevada Legislature to Executive Department unclassified and classified employees who are not members of a State Bargaining Unit for Fiscal Year 2027.

1.2 CONTINUITY OF SERVICE PAYMENTS

1.2.1 Employees in Bargaining Unit N shall receive the same continuity of service payments in the same amounts, and under the same conditions, as those provided for by legislation enacted by the Nevada Legislature to Executive Department unclassified, nonclassified and classified employees who are not members of a State Bargaining Unit for Fiscal Year 2026 and Fiscal Year 2027.

1.3 RETENTION PAYMENTS

1.3.1 Employees in Bargaining Unit N shall receive the same retention incentive payments in the same amounts, and under the same conditions, as those provided for by legislation enacted by the Nevada Legislature to Executive Department unclassified, nonclassified and classified employees who are not members of a State Bargaining Unit for Fiscal Year 2026 and Fiscal Year 2027.

1.4 RECRUITMENT BONUS

1.4.1 For the contract term July 1, 2025 through June 30, 2027, a new employee working in a Rural facility will be eligible to receive a fifteen hundred dollar ($1,500) sign on bonus. This bonus does not apply to rehired or reappointed

NDOC or DHHS employees within five (5) years of separation, nor does it apply to promotional appointments.

This bonus shall be distributed to the new employee according to the following schedule:

The new employee shall receive five hundred dollars ($500) upon successful completion of their first three months of employment.

The new employee shall receive five hundred dollars ($500) upon successful completion of their six months of employment.

The new employee shall receive five hundred dollars ($500) upon successful completion of their twelve (12) month probationary period

1.8 STEP INCREASE

1.8.1 An employee shall receive a step increase each year of this Agreement on their pay progression date until they reach the final step of their respective pay grade.

1.15.4 Muster Pay Adjustment

1.15.4.1 Employees will receive forty-five (45) minutes of Overtime and any applicable shift differential pay, based on their regular schedule, for every day they work at a designated post or work assignment of High Desert and Southern Desert State Prison. The "muster pay" will also account for the time it takes for an employee to arrive at the designated post or work assignment, give a work-related pass down to the next shift that relieves the employee, and leaving the identified to exit the facility. This provision will expire at such time a timing system is installed at a facility to account for muster time Special Assignment.

All other compensation provisions were consistent with the Nevada Administrative Code ("NAC") which currently governs State employees not covered by a CBA including the members of Unit N.

B. FOP Unit N's Compensation Proposal

FOP's proposal for Unit N contains salary Grade increases for the job classifications which are tied to Unit I and could equate to salary increases as high as 36% over the two-year term of

the CBA. No other bargaining unit who has been issued an award or tentatively agreed to a contract in this biennium has had increases anywhere near this amount. The only bargaining units that asked for comparable amounts were the Category II Peace Officer Supervisory Unit, and their compensation proposal was rejected by the arbitrator in favor of the State's proposal which is similar to that offered in the present case. (see State Exhibit 54) On top of these increases, FOP Unit N is requesting that they receive the same increases that Unit I is receiving which includes anything the Nevada Legislature approves for nonrepresented State employees in addition to these massive salary increases.

Each State job classification is assigned a salary Grade ranging from Grade 10 ($10.19 to $13.94 per hour) to Grade 55 ($65.10 to $99.28 per hour) (See TR Day 1, p. 24). Each salary Grade has ten steps, with each step increasing by five percent. Unit N contains three job classifications that currently range from Grade 36 (Forensic Specialist IV) to Grade 40 (Correctional Lieutenant). FOP's proposed Grade increases are outlined in the table below.

FOP UNIT N COMPENSATION PROPOSAL With No Unit I Raises

Job Classification	**Proposed Salary Increase (plus any increase given to non-union employees)**
Forensic Specialist IV	15%*
Correctional Sergeant	10%*
Correctional Lieutenant	20%*

However, because Unit N's salary proposal is tied to Unit I's salary and Unit I has requested that all of their bargaining unit members be given a one grade increase (equal to around 5%) each year of the contract plus a 3% increase on top of the grade increase each year of the contract the following is the possible salary change for Unit N:

FOP UNIT N COMPENSATION PROPOSAL With Unit N Proposed Raises

Job Classification	**Proposed Salary Increase (plus any increase given to non-union employees)**
Forensic Specialist IV	31%*
Correctional Sergeant	26%*
Correctional Lieutenant	36%*

* Charts assume that a Grade is 5%, which is an approximation and are based on testimony (see Lunkwitz Testimony TR: 257 and 289-291).

The State respectfully requests that the arbitrator select the State's proposal for the reasons outlined below.

- FOP's wage analysis is misleading and inadequate under NRS Chapter 288 because the testimony and analysis of its witness is based on opinion testimony and not data, and that FOP's analysis fails to include private employer data as required by NRS 288.580(3)(a)(2).
- The Record Demonstrates that FOP's compensation proposal is not supported by market data or substantial evidence.
- The Nevada Department of Corrections is in a financial crisis, and FOP's compensation proposal will jeopardize public safety.
- The financial ability to pay standard for the Executive Department is different than that of local governments.
- The Governor's determination of the State's ability to pay must be given deference by the arbitrator.
- The Nevada Legislature never intended that arbitrators have the power to override the Executive and the Legislative Branch's authority to determine employee pay.
- Nevada Law prohibits that compensation be contingent on the attainment of future funds.
- The Nevada Constitution requires that education is fully funded before money may be appropriated towards State employee compensation.
- Nevada law prohibits using emergency reserves for employee compensation.
- The State's compensation proposal provides annual salary increases.
- Compensation for FOP Unit N employees is well ahead of inflation.
- PERS retirement contribution increases should not be considered by the arbitrator.
- The parity provisions in the State's compensation offer have a history of success and they protect FOP employees.
- The Union's comparators are misplaced for its compensation proposals.
- The recent awards from other state bargaining units demonstrate that FOP's compensation proposal is unreasonable.

- The State's muster pay proposal complies with federal law and prevents employee windfalls

II. COLLECTIVE BARGAINING IN NEVADA

A. The Nevada Legislature Approves State Employee Unions in 2019

Government employers in Nevada are governed by the Government Employee-Management Relations Board ("EMRB") under NRS Chapter 288. NRS Chapter 288 is attached as Attachment 2. Collective bargaining for local government employees has existed in Nevada since 1969 when the Nevada Legislature passed the Local Government Employee-Management Relations Act. State government employees were not allowed to unionize and collectively bargain with the State until the passage of SB 135 during the 2019 legislative session. While there are some similarities, the collective bargaining process for State employees is different than the process for local government employees.

B. Mandatory Subjects of Bargaining

The terms and conditions of employment that the Executive Department is required to negotiate with State employees within a bargaining unit ("represented employees") are referred to as the "mandatory subjects" of collective bargaining and are outlined in NRS 288.500(2)(a) and NRS 288.150. The mandatory subjects that the Executive Department is required to negotiate are outlined below.

- Salary or wage rates or other forms of direct monetary compensation.
- Sick leave.
- Vacation leave.
- Holidays.
- Other paid or unpaid leaves of absence.
- Total hours of work required of an employee on each workday or workweek.
- Total number of days' work required of an employee in a work year.
- Discharge and disciplinary procedures.
- Union recognition clauses in a CBA.
- The method used to classify employees in a bargaining unit.
- The deduction of union dues from employee paychecks.

- Protection of represented employees from discrimination because of their participation in a state employee bargaining unit.
- No-strike provisions.
- Grievance and arbitration procedures for the resolution of disputes relating to the interpretation or application of a CBA that culminate in final and binding arbitration.
- General savings clauses in a CBA.
- Safety of the employee.
- Layoff and re-employment procedures.
- Re-opening a CBA during a State fiscal emergency.

While insurance benefits are a mandatory subject of bargaining for local government employees in Nevada, they are not for Executive Department employees.

C. Non-Mandatory Subjects of Collective Bargaining and Management Rights

The Executive Department is not required to negotiate terms and conditions of employment that are not within the scope of a mandatory subject of collective bargaining. Nevertheless, NRS 288.500(5) requires the Executive Department to "discuss" non-mandatory subjects upon the request of a State employee bargaining unit. The Executive Department is not prohibited from negotiating non-mandatory subjects of collective bargaining and it could choose to do so if it decided that it was in the best interests of the State. For example, employee training is not a mandatory subject, but many of the State's current CBA's contain articles relating to employee training.

NRS 288.150(3) reserves certain management rights to the Executive Department. These management rights are outlined below.

- The right to hire, direct, assign or transfer an employee, but excluding the right to assign or transfer an employee as a form of discipline.
- The right to reduce in force or lay off any employee because of lack of work or lack of money, subject to any reduction in force or rehire procedures in a CBA.
- The right to determine:
    - Appropriate staffing levels and work performance standards, except for safety considerations.

- The content of the workday, including without limitation workload factors, except for safety considerations.
- The quality and quantity of services to be offered to the public.
- The means and methods of offering those services.

- Public safety.

D. The Applicability of Executive Department Regulations and Department or Division Policies to Represented Employees

Prior to the passage of SB 135, the terms and conditions of employment for State employees were governed by NRS Chapter 284, NAC Chapter 284, the State Administrative Manual, Governor Executive Orders and Directives and department and division polices. Collective bargaining allows recognized State employee bargaining groups to negotiate with the State on the terms and conditions of their employment that are withing the scope of a mandatory subject of bargaining. Accordingly, a CBA may make certain provisions NAC Chapter 284 and department or division policies inapplicable to State employees covered by the CBA.

- If there is a conflict between a CBA provision and an Executive Department regulation or department or division policy, the provisions of the CBA prevail unless the CBA provision "outside the lawful scope of collective bargaining." (NRS 288.505(5)(a))
- If there is a conflict between a CBA provision and NRS Chapter 284, NRS Chapter 287, or the mediation and arbitration provisions of NRS Chapter 288, the provisions of the CBA prevail unless the Nevada Legislature is required to appropriate money to implement the provision. (NRS 288.505(5)(c))
- If there is a conflict between a CBA provision and an existing State statute other than NRS Chapter 284, NRS Chapter 287, the CBA provision will not become effective until the Nevada Legislature amends the State statute in question. (NRS 288.505(5)(b))

E. Bargaining Units are Based Upon Occupational Groups Created by the Nevada Legislature

SB 135 established eleven potential State employee bargaining units based on occupational groups within the Executive Department and the Ne-vada System of Higher Education ("NSHE"). In 2023, the Nevada Legislature added four potential bargaining units, for a total of fifteen State

employee bargaining units. These occupational groups were created in such a way that allows bargaining units to include State employees from many different department and divisions within the Executive Department and NSHE.

F. Biennial CBA Negotiation Cycle

SB 135 created a biennial (two-year) cycle for State employee bargaining unit CBAs that coincides with the Nevada Legislature's odd-year legislative sessions. As is further outlined below, the Nevada Legislature did this because it wanted to bave a role in collective bargaining for State employees. As such, State employee CBAs have two-year terms beginning July 1st of an odd-numbered year and ending on June 30th of the next odd-numbered year (NRS 288.550). New State employee bargaining units that are organized outside of the normal CBA negotiation timeframes can have a CBA with a term of less than two years.

G. All State Departments and Divisions are Represented in Collective Bargaining by the Governor's Designee

Individual departments and divisions within the Executive Department are prohibited from collectively bargaining with State employee bargaining units. Nevertheless, department and division leadership play a critical role in the collective bargaining process. Pursuant to NRS 288.565(1), the Governor designates a representative to conduct collective bargaining negotiations on behalf of the Executive Department and NSHE. Governor Lombardo has designated Bachera Washington, Administrator of the Division of Human Re-sources Management, as the Executive Department's current representative for collective bargaining negotiations with State employee bargaining units. Pursuant to SB 135, NSHE is considered part of the Executive Department for the purposes of collective bargaining and is also represented by the Governor's designee in collective bargaining

H. Legislative Appropriations

All State employee CBAs require a "nonappropriation clause that provides that any provision of the collective bargaining agreement which requires the Legislature to appropriate money is effective only to the extent of legislative appropriation" (NRS 288.505(1)(c)). The scope of this requirement has not yest been defined by the EMRB or the courts. Based on SB 135's legislative history, it's clear that the Nevada Legislature wanted to have a say in authorizing any

salary increases included within a CBA. If the Nevada Legislature appropriates less money than what was agreed upon during CBA negotiations, the CBA article will be amended to incorporate the amount appropriated by the Legislature (NRS 288.505(1)(c)). For example, if the parties agree to a five percent cost of living increase during CBA negotiations, but the Nevada Legislature only approves a three percent increase, the State employees covered under the CBA will receive a three percent cost of living increase. Pursuant to NRS 288.560(2)(a), the Governor is required to request the drafting of a bill that contains any terms in a CBA that requires legislative approval.

III. Peace Officer Categories in the State of Nevada

1. Category I Peace Officers

Just like there are different categories of doctors, each with its own licensing requirements, Nevada has three separate peace officer categories. A Category I peace officer is "a peace officer who has unrestricted duties and who is not otherwise listed as a category II or category III peace officer." NRS 289.460. To be a police officer at large police agencies like the Las Vegas Metropolitan Police Department ("Las Vegas Metro"), the City of Henderson Police Department, the Washoe County Sherriff's Department, or any other police agency for a city or county sheriff's in Nevada, you must have a police officer certification for a Category I peace officer (See State Ex. R., City of Henderson Police Officer Job Specification, Bates # 190; States Ex. V, City of North Las Vegas Police Officer Job Announcement, Bates #212; State's Ex. W, City of North Las Vegas Police Officer Job Classification, Bates # 215; Washoe County Deputy Sheriff Job Classification, Bates #219). Even within the State of Nevada, to be a DPS Officer (Nevada Highway Patrol) you must be a Category I peace officer.

2. Category II Peace Officers

NRS 289.470 defines Category II peace officers as:

"1. The bailiffs of the district courts, justice courts and municipal courts whose duties require them to carry weapons and make arrests;

2. Subject to the provisions of NRS 258.070, constables and their deputies;

3. Inspectors employed by the Nevada Transportation Authority who exercise those powers of enforcement conferred by chapters 706 and 712 of NRS;

4. Special investigators who are employed full-time by the office of any district attorney or the Attorney General;

5. Investigators of arson for fire departments who are specially designated by the

appointing authority;

6. Investigators for the State Forester Firewarden who are specially designated by the State Forester Firewarden and whose primary duties are related to the investigation of arson;

7. Agents of the Nevada Gaming Control Board who exercise the powers of enforcement specified in NRS 289.360, 463.140 or 463.1405, except those agents whose duties relate primarily to auditing, accounting, the collection of taxes or license fees, or the investigation of applicants for licenses;

8. Investigators and administrators of the Division of Compliance Enforcement of the Department of Motor Vehicles who perform the duties specified in subsection 2 of NRS 481.048;

9. Officers and investigators of the Section for the Control of Emissions From Vehicles and the Enforcement of Matters Related to the Use of Special Fuel of the Department of Motor Vehicles who perform the duties specified in subsection 3 of NRS 481.0481;

10. Legislative police officers of the State of Nevada;

11. Parole counselors of the Division of Child and Family Services of the Department of Health and Human Services;

12. Criminal investigators who are employed by the Division of Child and Family Services of the Department of Health and Human Services;

13. Juvenile probation officers and deputy juvenile probation officers employed by the various judicial districts in the State of Nevada or by a department of juvenile justice services established by ordinance pursuant to NRS 62G.210 whose official duties require them to enforce court orders on juvenile offenders and make arrests;

14. Field investigators of the Taxicab Authority;

15. Security officers employed full-time by a city or county whose official duties require them to carry weapons and make arrests;

16. The chief of a department of alternative sentencing created pursuant to NRS 211A.080 and the assistant alternative sentencing officers employed by that department;

17. Agents of the Cannabis Compliance Board who exercise the powers of enforcement specified in NRS 289.355;

18. Criminal investigators who are employed by the Secretary of State; and

19. The Inspector General of the Department of Corrections and any person employed by the Department as a criminal investigator."

Just like an obstetrician and cardiologists are medical doctors with different specialties and certifications, a Category II peace officer is a peace officer that does not have the general patrol and law and order responsibilities of a Category I police officer. While Category II peace officers are not employed by large metropolitan police agencies, they are employed by cities, counties and State agencies throughout the State.[1]

3. Category III Peace Officers

Pursuant to NRS 289.480, a Category III peace officer is "a peace officer whose authority is limited to correctional services, including the superintendents and correctional officers of the Department of Corrections." The State employs nearly 2,000 Category III Corrections Officers

[1] Many of these peace officer positions play an important role in the Office of the Attorney General.

throughout the State.

IV. STANDARD OF REVIEW

The standard of review for the arbitrator in an impasse arbitration for a State bargaining unit is outlined in NRS 288.580. The statute requires the arbitrator to "incorporate either the final offer of the Executive Department or the final offer of the exclusive representative into his or her decision. The decision of the arbitrator shall be limited to a selection of one of the two final offers of the parties." NRS 288.580(1). In determining which final offer to select, the arbitrator must assess the reasonableness of the positions of the parties by:

1) Comparing the wages for the employees withing the bargaining unit with the wages for other employees performing similar services in both public employment and private employment in comparable communities.

2) Comparing the wages of other employees generally in both public employment and private employment in comparable communities.

3) Consider the financial ability of the State to pay the costs associated with the proposed CBA, "with due regard for the primary obligation of the State to safeguard the health, safety and welfare of the people of this State."

4) Consider the average prices paid hy consumers for goods and services in the geographic location where the employees work.

5) Consider other factors traditionally used as part of collective bargaining.

IV. ARGUMENT

A. FOP's Wage Analysis is Misleading and Inadequate under NRS Chapter 288

FOP's proposal for a four grade separation between ranks for Unit N employees is premised on achieving a 20% spread between supervisors and their subordinates. However, the comparisons and methodology relied upon by the Union do not meet the statutory standards for evidence in an arbitration under NRS 288.580.

1. Lack of Valid Public and Private Sector Comparators

In assessing the reasonableness of a proposal under NRS 288.580(3)(a), the arbitrator must "(c)ompare the wages, hours and other terms and conditions of employment for the employees within the bargaining unit with the wages, hours and other terms and conditions of employment for other employees performing similar services and for other employees generally: (1) In public employment in comparable communities; and (2) in private employment in comparable communities." However, Mr. Lunkwitz, the Union's witness admitted that the Union's analysis was limited to internal comparisons between Umit M and Unit H, and general observations about local law enforcement agencies. The analysis was not produced from data from comparable State classifications or private employment sectors. (See Lunkwitz's testimony TR: 215:19-230:1 and FOP Ex. 27)

2. FOP's Central Argument that Unit N Positions are the Same as Positions in Large Police Agencies Fails Because Unit N Employees Do Not Qualify for These Positions

FOP's central argument that Unit I positions should be compared to peace officer positions in large metropolitan Category I police agencies, and that therefore Unit N positions are also similar in supervising Unit I, is only supported by Mr. Lunkwitz's opinion, and FOP provides no other evidence to support this opinion. Based on Lunkwitz's opinion, FOP's compensation analysis is based on positions in large metropolitan police agencies (See Lunkwitz Testimony TR: 115 and 118-119). In his testimony, Mr. Lunkwitz misrepresented the fact that NDOC Category III Corrections Officers could immediately make a lateral move to the City of Henderson or Las Vegas Metro (See Lunkwitz Testimony TR: 115 "If they could get picked up by Henderson who allowed laterals, City of Las Vegas that allowed lateral transfers, meaning, you already had a category III POST certificate so you could apply, go through backgrounds, basically, move over without going through an academy and work at Henderson jail.") This is simply not true. To be a Corrections Officer in the City of Henderson Police Department, you are required to attend the Henderson

Police Academy (See State's Ex. 49, City of Henderson Police Department FAQs; State's Ex. 46, City of Henderson Corrections Officer Job Bulletin, p. 2 "Must successfully complete the Henderson Police Department Academy"). To be a Corrections Officer with Las Vegas Metro you must attend the LVMPD Recruit Academy, and Metro does not accept laterals (See State's Ex. 48, Las Vegas Metropolitan Police Department Website Recruitment FAQs). The Washoe County Sheriff's Department requires a Category I Post Certificate (See State's Ex. 47, Washoe County Deputy Sheriff's Department Deputy Sheriff Job Classification, p. 1).

Accordingly, a Unit N Corrections Officer cannot just join Las Vegas Metro, the City of Henderson Police Department or the Washoe County Sheriff's Department because they are not qualified for these positions. The Las Vegas Metro Corrections Academy consists of "20 weeks of training and a total of 780 hours of training and instruction, followed by a 10 week field training program (See LVMPD Recruitment Website: https://www.protectthecity.com/applicants/police-and-corrections-recruit-information/lvmpd-corrections-academy-training). The Henderson Police Academy is a 24-week program (See HPD Recruitment Website: https://joinhpd.com/frequently-asked-questions/). As such, Unit I's argument that it should have "pay parity" with these organizations is based on a false premise that Unit I employees could just get up and leave the State employment without a lengthy and strenuous academy program. In addition, Las Vegas Metro, the City of Henderson Police Department, the North Las Vegas Police Department and the Washoe County Sheriff's Office are "primary law enforcement agencies" under Nevada law responsible for enforcing all misdemeanor and felony criminal laws in the State. See NRS 171.1223(4)(b).[2]

3. FOP's Analysis Fails to Meet the Standards found in NRS 288.580(3)(a)(2)

There are generally accepted standards for compensation analyses. These standards include: 1) Matching the details of job classifications that will be benchmarked; 2) Finding the most relevant and accurate compensation data available for the positions being analyzed; 3) Using compensation data relevant to the geographic market, and; 4) Analyzing both private and public employer compensation data (See State's Ex. 3, State of Nevada Class and Compensation Study, p. 5). FOP's wage compensation analysis relies solely on the analysis of Mr. Lunkwitz, a retired corrections officer and the FOP President (See Lunkwitz Testimony TR: 108-111). Mr. Lunkwitz

[2] (b) "Primary law enforcement agency" means: (1) A police department of an incorporated city; (2) The sheriff's office of a county; or (3) If the county is within the jurisdiction of a metropolitan police department, the metropolitan police department.

does not claim to have any professional experience in human resources or analyzing compensation FOP's wage compensation analysis entirely relies on the false premise that FOP bargaining unit employees qualify for positions at large metropolitan police agencies. Mr. Lunkwitz admits as much with respect to Las Vegas Metro (See Lunkwitz Testimony TR: 115 (*"Metro accepts laterals, but you do have to go through an academy"*). In addition, their analysis comparing bargaining Unit employees to Nevada State Highway Patrol is misplaced, as Highway Patrol requires a Category I peace officer designation, while Bargaining Unit N requires only a Category III designation. (see NRS 288.515(1)(l) and (n) designating the different bargaining units and NRS 289.460 and 289.480 distinguishing between Category I and III)

4. FOP's Analysis Fails to Include Private Employer Data as Required by NRS 288.580(3)(a)(2)

There are private prisons that employ corrections officers (See State's Ex. 29, CoreCivic Correction Officer Job Announcement). In addition, the gaming industry in Nevada attracts over 41 million visitors a year that stay at hotel and casino properties across the state. With sporting events and concerts attracting tens of thousands of visitors at any one time, Nevada's gaming companies employ hundreds of security officers, intelligence officers, K9 units and rapid response security teams on their properties. As such, security positions in private industry is relevant to any compensation analysis involving FOP employees. Nevertheless, FOP's compensation analysis does not consider similar positions in the private sector, and they presented no evidence whatsoever relating to the private sector. NRS 288.580(3)(a)(2) requires the arbitrator in an impasse arbitration to analyze comparable private sector employment data in its analysis. While there may be differences between the public sector and private sector positions, it is an element that the Legislature required. FOP's failure to include this mandated element in its analysis requires that the State's compensation analysis be given significant weight in the arbitrator's analysis.

B. The Record Demonstrates that FOP's Compensation Proposal is Not Supported by Market Data or Substantial Evidence

The vast majority of FOP's evidence in the record consist of the opinion testimony of FOP's

President. There is no credible evidence in the record demonstrating that FOP employees are compensated below the market. In order for its compensation proposal to be considered "reasonable" under NRS 288.580, it must be supported by evidence supported by private and public sector compensation data. Nevada law requires fact-finders in administrative proceedings make decisions based only on evidence of a type and amount that will ensure a fair and impartial hearing. *See* NRS 233B.125[3]; *State, Dep't of Motor Vehicles & Pub. Safety v. Evans,* 114 Nev. 41, 44–45, 952 P.2d 958, 961 (1998); *Steamboat Canal Co. v. Garson,* 43 Nev. 298, 308–09, 185 P. 801, 804 (1919). The substantial evidence standard of review thus refers to the quality and quantity of the evidence necessary to support factual determinations. *See Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. 245, 249 (2014). It contemplates deference to those determinations on review, asking only whether the facts found by the administrative factfinder are reasonably supported by sufficient, worthy evidence in the record. *See Id.* at 250,, *citing U.S. Steel Mining Co. v. Dir., Office of Workers' Comp. Programs,* 187 F.3d 384, 389 (4th Cir.1999).

C. The Nevada Department of Corrections is in a Financial Crisis, and FOP's Compensation Proposal Will Jeopardize Public Safety

1. The 2023 Legislature Failed to Appropriate the Necessary Funds to Cover the 34% Salary Increases in the Current Unit I CBA

The Nevada Department of Corrections ("NDOC") is already facing a nearly $60 million budget shortfall for the current fiscal year (See State's Ex. 22, "Nevada Prison System Facing $53 M Budget Hole as Overtime Costs Spiral," The Nevada Independent, 4/3/2025; See State's Ex. 28, Transcript of the Interim Finance Committee Hearing 4/03/2025, p. 1). The reason for this budget shortfall is clear, it is due to the increased overtime costs related to the 34% pay increases given to Unit I in 2023 that were not funded by the 2023 Nevada Legislature (See State's Ex. Ex. 28,

[3] NRS 233B.125: **Adverse decision or order required to be in writing or stated on record; contents of final decision; standard of proof; notice and copies of decisions and orders.** A decision or order adverse to a party in a contested case must be in writing or stated in the record. Except as provided in subsection 5 of NRS 233B.121, a final decision must include findings of fact and conclusions of law, separately stated. Findings of fact and decisions must be based upon a preponderance of the evidence. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency regulations, a party submitted proposed findings of fact before the commencement of the hearing, the decision must include a ruling upon each proposed finding. Parties must be notified either personally or by certified mail of any decision or order. Upon request a copy of the decision or order must be delivered or mailed forthwith to each party and to the party's attorney of record.

Transcript of the Interim Finance Committee Hearing 4/03/2025, p.1, 4-5). NDOC has a history of operating with a large amount of overtime, and according to the testimony of Mr. Lunkwitz, large amounts of overtime is impossible to avoid (See Lunkwitz Testimony TR: 185) (*"they always do because they don't fund overtime, typically"*). Even thought the increased overtime costs caused by a 34% base wage increase were completely foreseeable in 2023, the 2023 Nevada Legislature did not appropriate additional funds necessary to cover the salary increases included in the current Unit I CBA (See Lunkwitz Testimony TR: 185 ((*"they always do because they don't fund overtime, typically"*)); See Tilley Testimony, 4/21/2025, p.379-380).

As stated above, all State employee CBAs require a "nonappropriation clause that provides that any provision of the collective bargaining agreement which requires the Legislature to appropriate money is effective only to the extent of legislative appropriation" (NRS 288.505(1)(c)). Unit N has tentatively agreed to this required appropriations clause (see State Exhibit 58), and it is outlined below (emphasis added).

1. The parties recognize that **any provision of this Agreement that requires the expenditure of funds or changes in law shall be contingent upon the specific appropriation of funds or changes in law by the Legislature.** The Governor shall request the drafting of a legislative measure to effectuate those provisions under this Agreement that require Legislative Appropriations pursuant to NRS 288.560(2)(a).
2. **An approved appropriation for less than the amount required pursuant to this Agreement will be implemented pursuant to the amount(s) approved in the legislation.**
3. The Parties recognize this Agreement governs over any and all applicable legislation approved during the 2023 and 2025 Legislative Sessions regarding compensation and benefits unless otherwise specified in this Agreement.

By FOP's own admission, the 2023 Nevada Legislature did not appropriate funds to cover the increased overtime costs related to the 34% salary increases given in the current Unit I CBA.

2. The Legislature is Proposing Significant Increases to the NDOC Budget to Cover Unappropriated Overtime Costs and Increase Public Safety at Nevada's Prisons

NRS 288.580(3)(b)(1) requires the arbitrator to consider the financial ability of the State to pay the costs associated with the proposed CBA, "with due regard for the primary obligation of the State to safeguard the health, safety and welfare of the people of this State." On May 5, 2025, the Legislative Committees that determine State department budgets, the Senate Committee on Finance and the Assembly Committee on Ways and Means, held a hearing and approved its budget recommendations for NDOC for the next two fiscal years (See State's Ex. 36, NDOC Budget Recommendation). While most State departments are looking at their budgets being slashed over the next two years, the committees approved a significant investment in NDOC. This committee approved increasing NDOC's budget by $41.2 million to cover overtime costs and $50.8 million to create 212 new Correction Officer positions (See State's Ex. 36, NDOC Budget Recommendation, p.1-7), for a total investment of $92 million for the next two fiscal years (See State's Ex. 36, NDOC Budget Recommendation, p. 1-7). What is remarkable about the Legislature's proposal is that it came just days after the Nevada Economic Forum lowered its revenue projections for the next two fiscal years by $191 million (See State's Ex. 37, "Fearing Slowdown, Economic Forum Projects $191M Less for Forthcoming Nevada Budget," The Nevada Independent, May 1, 2025).

What was not included in the recommendation, FOP Unit N's request base wage increases as high as 36% for some employees, which will cost over $8 million in just base salary increases (See FOP Exhibit 47) This number does not reflect the related increased overtime costs, PERS costs, health benefits cost, shift differential costs, muster pay, special assignment pay, and uniform allowances. FOP agrees that increased staffing in needed to maintain safety at NDOC institutions (See Lunkwitz Testimony TR: 112-113, 116, 124-125). As stated above, NRS 288.581(1) requires the arbitrator to consider the financial ability of the State to pay the costs associated with the proposed CBA, "**with due regard for the primary obligation of the State to safeguard the health, safety and welfare of the people of this State**." Public safety is a management right for State Executive Department, as is the right to determine staffing and hire employees (See NRS 288.150(3)). FOP's request for what could be a 26%-36% salary increases, which is much larger

than what is being requested by other State peace officer bargaining units (See Union Ex. 50, 51 & 52, 3% COLA arbitration awards for State Bargaining Units A, E & F, C & G), is unreasonable, is not based on the employment market for Category III Corrections Officers, and it would make it impossible for NDOC to hire additional Corrections Officers and maintain public safety, which are management rights.

D. The Financial Ability to Pay Standard for the Executive Department is Different to that of Local Governments

While collective bargaining is relatively new for State employees, local government employees have been able to unionize and collectively bargain with their employers for over 60 years. The Nevada Legislature has created different legal frameworks for determining the employer's financial ability to pay for local governments, school districts and the Executive Department. Unlike the funding rules that apply to local government employers during collective bargaining, the Legislature expressly prohibits the State from increasing monetary benefits through the collective bargaining process without the express consent of the Legislature. Traditionally, local governments, funded annually and by different sources of income, have the authority to amend and/or augment their budgets after they are adopted, in order to increase funding for negotiated changes to compensation (including, in situations where an arbitrator directs the local government to increase compensation through an interest arbitration). However, in enacting SB 135, the Nevada Legislature expressly retained its "power of the purse," placing guard rails on "items of direct compensation" that apply exclusively to the Executive Department, which is biannually funded by the Legislature.

The standards for determining a local government's financial ability to pay in an impasse arbitration is found in NRS 288.215(7). It states that the arbitrator must base its determination on "[a]ll existing available revenues as established by the local government employer and within the limitations set forth in NRS 354.6241[4], with due regard for the obligation of the local

[4] **NRS 354.6241 Contents of statement provided by local government to auditor; expenditure of excess reserves in certain funds; restrictions on use of budgeted ending fund balance in certain circumstances.**
1. The statement required by paragraph (a) of subsection 5 of NRS 354.624 must indicate for each fund set forth in that paragraph:

government employer to provide facilities and services guaranteeing the health, welfare and safety of the people residing within the political subdivision." Pursuant to NRS 288.215(7)(b), the fact-finder's ability to pay analysis is limited to term of the CBA. The standards for determining a school district's financial ability to pay in an impasse arbitration is found in NRS 288.217(5). It states that the arbitrator must base its determination on "[a]ll existing available revenues as established by the school district, including, without limitation, any money appropriated by the State to carry out increases in salaries or benefits for the employees of the school district, and within the limitations set forth in NRS 354.6241, with due regard for the obligation of the school district to provide an education to the children residing within the district." Pursuant to NRS 288.217(5)(b), the fact-finder's ability to pay analysis is limited to the term of the CBA.

Like many aspects of collective bargaining, the Nevada Legislature made the scope of the arbitrator's review of the Executive Department's ability to pay for the unions proposed compensation offer different than that of local government and school district employers. Unlike

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(a) Whether the fund is being used in accordance with the provisions of this chapter.
(b) Whether the fund is being administered in accordance with generally accepted accounting procedures.
(c) Whether the reserve in the fund is limited to an amount that is reasonable and necessary to carry out the purposes of the fund.
(d) The sources of revenues available for the fund during the fiscal year, including transfers from any other funds.
(e) The statutory and regulatory requirements applicable to the fund.
(f) The balance and retained earnings of the fund.
2. Except as otherwise provided in subsections 3 and 4 and NRS 354.59891 and 354.613, to the extent that the reserve in any fund set forth in paragraph (a) of subsection 5 of NRS 354.624 exceeds the amount that is reasonable and necessary to carry out the purposes for which the fund was created, the reserve may be expended by the local government pursuant to the provisions of chapter 288 of NRS.
3. For any local government other than a school district, for the purposes of chapter 288 of NRS, a budgeted ending fund balance of not more than 16.67 percent of the total budgeted expenditures, less capital outlay, for a general fund:
(a) Is not subject to negotiations with an employee organization; and
(b) Must not be considered by a fact finder or arbitrator in determining the financial ability of the local government to pay compensation or monetary benefits.
4. For a school district, for the purposes of chapter 288 of NRS:
(a) A budgeted ending fund balance of not more than 12 percent of the total budgeted expenditures for a county school district fund:
(1) Is not subject to negotiations with an employee organization; and
(2) Must not be considered by a fact finder or arbitrator in determining the financial ability of the local government to pay compensation or monetary benefits; and
(b) Any portion of a budgeted ending fund balance which exceeds 16.6 percent of the total budgeted expenditures for a county school district fund:
(1) Is not subject to negotiations with an employee organization; and
(2) Must not be considered by a fact finder or arbitrator in determining the financial ability of the local government to pay compensation or monetary benefits.

these local government employers, financial ability to pay for the Executive Department is not based on a review of available revenue. One key difference in the legal framework for collective bargaining for State employees that the Nevada Legislature made abundantly clear is that while an impasse arbitrator can bind the representatives negotiating a CBA between a State bargaining unit and the Executive Department, an arbitrator cannot bind the State of Nevada from directly paying compensation to State employees. The Legislature retains its discretion to disapprove of an arbitrator's award involving the appropriation of money. Only the Legislature decides when money is spent.

E. The Governor's Determination of the State's Ability to Pay Must be Given Deference by the Arbitrator

Article 5, Section 1, of the Nevada Constitution provides the Governor of Nevada the "supreme executive power of this State". Article 4, Section 2(3) provides that the Governor submits the proposed executive budget to the Legislature 14 days before the beginning of the Legislative Session. When the Nevada Legislature authorized collective bargaining for State employees, it preserved the authority of the Governor with respect to employee salaries and the State budget. NRS 288.510 states that:

> "[n]otwithstanding the provisions of any collective bargaining agreement negotiated pursuant to the provisions of NRS 288.400 to 288.630, inclusive, the Governor may include in the biennial proposed executive budget of the State any amount of money the Governor deems appropriate for the salaries, wage rates or any other form of direct monetary compensation for employees."

NRS 288.620(3) takes this provision even further and states:

> "The inclusion by the Governor in the biennial proposed executive budget of the State of an amount of money for the salaries, wage rates or any other form of direct monetary compensation for employees which conflicts with the terms of a collective bargaining agreement must not be construed as a failure of the Executive Department to negotiate in good faith."

This is also consistent with the Legislative History of Senate Bill 135, which is the bill that authorized collective bargaining for State employees during the 2019 legislative session.

SENATOR KIECKHEFER: You said that the contracts would be executed, but the salary levels are actually not mandatory. Can you elaborate on that point?

MR.BROWN: The Governor will retain ultimate authority.

MR.SNYDER: With the addition of Exhibit P, S.B. 135 would allow for negotiations over salaries. If the parties reach impasse, an arbitrator would decide the provisions of the new contract. However, a provision in section 25.5, Exhibit P, allows the Governor to put whatever salaries and wages he wishes into the Executive Budget. (See State's Exhibit K, May 29, 2019, Senate Committee on Finance Meeting Minutes, p. 56).

Accordingly, deference is given to the Governor in determining the State's ability to pay for any compensation proposal offered by a State employee bargaining unit. "[W]hen a statute's language is clear and unambiguous, the apparent intent must be given effect, as there is no room for construction." *Edgington v. Edgington*, 119 Nev. 577, 582-83, 80 P.3d 1282, 1286 (2003).

This deference is clearly stated throughout NRS Chapter 288. NRS 288.560 requires the Governor to determine the cost of any provision in the CBA, and to inform the Nevada Legislature of the cost through the drafting of a bill for the Legislature's consideration. NRS 288.620(3) authorizes the Governor to include any amount that they deem appropriate in their executive budget, and the Governor is not bound by the provisions of a CBA. All CBAs for State employees must be approved by the State Board of Examiners pursuant to NRS 288.555. The State Board of Examiners contains three members, the Governor, the Attorney General and the Secretary of State. See NRS 353.010[5]. In addition, any appropriation of money, including money appropriated for employee salaries pursuant to a CBA, must be approved through legislation "made by law." Nev. Const. Art. 4 Section 19. This requires the adoption of a bill by the Nevada Legislature signed by the Governor. "The Governor's approval is as integral to the legislative process as the Assembly and Senate's votes." *Risser v. Thompson*, 930 F.2d 549, 554 (7th Cir. 1991) (Posner, J.) ("That governors have some legislative power is the premise of any gubernatorial veto power.").

There is substantial evidence to show that there is widespread concern about the State budget and the State's ability to pay for essential services (See Tilley Testimony TR: 373-374). A significant amount of revenue in the State budget comes from federal funds (See Tilley Testimony

[5] **NRS 353.010 Members.** The State Board of Examiners shall consist of the Governor, the Secretary of State and the Attorney General.

TR: 278). Proposed reductions in federal funding is expected to have a dramatic effect on the State budget, and the State's ability to pay for services like Medicaid. The State's compensation proposal reflects the general uncertainty surrounding the Nevada budget and the economy in general. At the same time, it protects FOP employees by guaranteeing that they receive the same increases that nonrepresented State employees receive.

F. The Nevada Legislature Never Intended that Arbitrators Have the Power to Override the Executive and the Legislative Branch's Authority to Determine Employee Pay

The Nevada Constitution allocates governmental power between "three distinct and coequal branches of government, as set forth in Article 4 (legislative), Article 5 (executive), and Article 6 (judicial)." *Berkson v. LePome*, 126 Nev. 492, 498, 245 P.3d 560, 564 (2010). "The Legislature enacts laws, and in turn, the executive branch is tasked with carrying out and enforcing those laws." *N. Lake Tahoe Fire Prot. Dist. v. Washoe Cty. Comm'rs,* 129 Nev. 682, 687, 310 P.3d 583, 587 (2013) (internal quotation marks omitted). The Appropriations Clause in the Nevada Constitution provides that "[n]o money shall be drawn from the treasury but in consequence of appropriations made by law." Nev. Const, art. 4,§ 19. It's impossible to read NRS 288.505(5) as permitting unelected arbitrators to draw money from the treasury without an appropriation in order to pay compensation, and the Arbitrator cannot interpret NRS Chapter 288 in a way that would violate the Nevada Constitution. See *Degraw v. The Eighth Jud. Dist. Ct.*, 134 Nev. 330, 333, 419 P.3d 136, 139 (2018). The Nevada Legislature specifically addressed this issue when it enacted SB 135, which authorized collective bargaining for State employees. Unions were involved in drafting SB 135 and provided extensive legislative testimony outlining the bill's provisions (See Legislative History, Senate Committee on Government Affairs April 4, 2019 Meeting Minutes, p. 4-12: (https://www.leg.state.nv.us/Session/80th2019/Minutes/Senate/GA/Final/804.pdf). In his testimony introducing SB 135, Steven Kreisburg, AFSCME's Director of Research and Collective Bargaining Services, stated:

> "The Legislature retains its discretion to disapprove of an arbitrator's award involving the appropriation of money. Only the Legislature decides when money is spent. Arbitrators

cannot bind the State to the expenditure of funds." (Id. at p. 11)

The Nevada State Constitution, Article 4, Section 19 provides: "no money shall be drawn from the treasury but in consequence of appropriations made by law." NRS Chapter 353 further directs Legislative appropriations and authorizations consistent with Const. Art. 4, Sec. 19. NRS Chapter 353 precludes the State from spending money in excess of what the Legislature appropriates. NRS Chapter 353 even makes it unlawful to "attempt to bind, the State of Nevada or any fund or department thereof in any amount in excess of the specific amount provided by law." NRS 353.235[6] (an expenditure may not be established for the current biennium which is contingent upon the attainment of future funds); NRS 353.255 (sums appropriated for expenditures only authorized "to the objects for which they are respectively made, and no others."); NRS 353.260 (prohibits spending in excess of amount appropriated).

G. Nevada Law Prohibits that Compensation be Contingent on the Attainment of Future Funds

Nevada law prohibits the arbitrator from awarding compensation based on the attainment of future funds. NRS 353.235(3) directly addresses the possibility of a contingent award and states: "[a]n appropriation of money must not be made or a level of salary or other expenditure established which is contingent upon the attainment, during the biennium in which the money is to be expended or the salary or level of expenditure is to be effective, of a specified balance in the State General Fund." Even if FOP's primary economic argument for the availability of revenue to pay for its compensation offer relies on the concept that actual revenue may beat the revenue projected by the Economic Forum, this argument contradicts Nevada law. Article IX, Section 2 of the Nevada Constitution requires the State of Nevada to have a balanced budget.

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[6] **NRS 353.235 Appropriation and authorization by Legislature.**

1. Every appropriation in addition to that provided for in the proposed budget must be embodied in a separate bill and must be limited to some single work, object or purpose stated in the bill.

2. A supplementary appropriation is not valid if it exceeds the amount in the State Treasury available for the appropriation, unless the Legislature making the appropriation provides the necessary revenue to pay the appropriation by a tax, direct or indirect, to be laid and collected as directed by the Legislature. The tax must not exceed the rates permitted under the Constitution of the State of Nevada. This provision does not apply to appropriations to suppress insurrections, defend the State, or assist in defending the United States in time of war.

3. An appropriation of money must not be made or a level of salary or other expenditure established which is contingent upon the attainment, during the biennium in which the money is to be expended or the salary or level of expenditure is to be effective, of a specified balance in the State General Fund.

Nevada's budget framework prohibits the Governor from including money in their proposed budget that exceeds the revenue projections made by the Economic Forum in December of each even year (meaning the December before the Nevada Legislature meets) (See Tilley Testimony TR: 373-374). The same framework prohibits the Nevada Legislature from approving a biennial budget that exceeds the final revenue projections by the Economic Forum in May of each odd year (meaning just before the end of the Legislative Session) (See Tilley Testimony TR: 373-374). In addition, it is important to note that any revenue to the State that exceeded the Economic Forum's revenue projections during the current biennium is already accounted for and included in the Economic Forum's December 2024 Report (State's Exhibit 4) and the Governor's recommended budget (State's Exhibit 5, Executive Budget 2025 – 2027, p. 79-84).

H. The Nevada Constitution Requires that Education is Fully Funded Before Money May Be Appropriated Towards State Employee Compensation

If any additional revenue is projected for the upcoming biennium by the Economic Forum in May 2025, the Nevada Constitution requires that this revenue be used to fund K-12 education before State employee salaries. The Nevada Constitution was amended in 2006 to require that during a regular session of the Legislature, before any appropriation is enacted to fund a portion of the state budget, the Legislature must appropriate sufficient funds for the operation of Nevada's public schools for kindergarten through grade 12 for the next biennium, and that any appropriation in violation of this requirement is void. See Nevada Constitution Article 11, Section 6. Unless a constitutional provision is ambiguous, we apply it in accordance with its plain language. *See Nevadans for Nev. v. Beers*, 122 Nev. 930, 942, 142 P.3d 339, 347 (2006). Further, "the Nevada Constitution should be read as a whole, so as to give effect to and harmonize each provision." Id. at 944, 142 P.3d at 348. The Nevada Constitution, like most state constitutions, includes grants of positive rights - such as Nevadans' right to an adequate education - that entitle individuals to a benefit or action from their state government. *See State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 894-95, 179 P.3d 366 (Kan. 2008) ("The difference in the inherent remedial power of state courts arises because all state constitutions also grant positive rights, i.e., rights that entitle individuals to benefits or actions by the state") (citing *Helen Hershkoff, Positive Rights and States Constitutions: The Limits of Federal Rationality Review*, 112 Harv. L. Rev. 1131, 1135 (1999)

((“Unlike the Federal Constitution, every state constitution in the United States addresses social and economic concerns, and provides the basis for a variety of positive claims against the government.”)).

The Nevada Supreme Court has not shied away from its mandate to interpret the law and ensure the Legislature effectuates positive rights such as the right to education. Indeed, the Court has in the past decided questions of great political importance involving the two other branches of government. See, e.g., *Guinn v. Legislature*, 119 Nev. 277, 71 P.3d 1260 (2003) (hereinafter “*Guinn*”) (granting Governor's petition for writ of mandamus to compel Legislature to fulfill its constitutional duty to approve balanced budget and to fund K-12 education), overruled on other grounds by, *Nevadans for Nevada v. Beers*, 122 Nev. 930, 142 P.3d 339 (2006). Furthermore, the *Guinn* Court rightly recognized “the vital role that education plays in our state” and the mandatory nature of the Education Clauses. Id., 119 Nev. at 286. Critically, the Court found that “constitutional provisions imposing an affirmative mandatory duty upon the legislature are judicially enforceable in protecting individual rights, such as educational rights.” Id. (quoting *Campbell Cnty. School Dist. v. State*, 907 P.2d 1238, 1264 (Wyo. 1995)). This is the enduringly important aspect of the *Guinn* case, that the Nevada Constitution affords Nevadans a judicially enforceable right to an adequate and sufficient public education.

The Nevada Supreme Court has recently interpreted the Education Clauses in the Nevada Constitution as “[t]he legislative duty to maintain a uniform public school system is not a ceiling but a floor upon which the [L]egislature can build additional opportunities for school children.” *Shea v. State*, 138 Nev. 346, 352 (2022) (citing *Schwartz v. Lopez*, 132 Nev. 732, 750 (2016) (internal quotation marks omitted); *see also Campaign for Quality Educ. v. State*, 246 Cal.App.4th 896, 209 Cal. Rptr. 3d 888, 897 (2016) (construing the analogous provisions of the California Constitution and stating that the text of these two sections together “speak[ ] only of a general duty to provide for a [uniform] system of common schools and does not require the attainment of any standard of resulting educational quality”).

I. Nevada Law Prohibits Using Emergency Reserves for Employee Compensation

The Governor's proposed budget is required to include emergency reserves. See NRS

353.288. The "Rainy Day Fund" is a State trust fund that was established by the Nevada Legislature in 1991, and it is codified in NRS 353.288[7]. Its purpose is to provide financial stability during economic downturns. There is no legal basis to support an argument that the Rainy Day Fund can be used to pay for FOP's requested salary increases. NRS 353.288 restricts its use funds

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[7] **NRS 353.288 Creation; annual deposit of state revenue required; annual transfer of percentage of total anticipated revenue required; limitation on balance; transfer of percentage of balance to Disaster Relief Account; uses.**

1. The Account to Stabilize the Operation of the State Government is hereby created in the State General Fund. Except as otherwise provided in subsections 3 and 4, each year after the close of the previous fiscal year and before the issuance of the State Controller's annual report, the State Controller shall transfer from the State General Fund to the Account to Stabilize the Operation of the State Government:

(a) Forty percent of the unrestricted balance of the State General Fund, as of the close of the previous fiscal year, which remains after subtracting an amount equal to 7 percent of all appropriations made from the State General Fund during that previous fiscal year for the operation of all departments, institutions and agencies of State Government and for the funding of schools; and

(b) Commencing with the fiscal year that begins on July 1, 2017, 1 percent of the total anticipated revenue for the fiscal year in which the transfer will be made, as projected by the Economic Forum for that fiscal year pursuant to paragraph (e) of subsection 1 of NRS 353.228 and as adjusted by any legislation enacted by the Legislature that affects state revenue for that fiscal year.

2. Money transferred pursuant to subsection 1 to the Account to Stabilize the Operation of the State Government is a continuing appropriation solely for the purpose of authorizing the expenditure of the transferred money for the purposes set forth in this section.

3. The balance in the Account to Stabilize the Operation of the State Government must not exceed 26 percent of the total of all appropriations from the State General Fund for the operation of all departments, institutions and agencies of the State Government and for the funding of schools and authorized expenditures from the State General Fund for the regulation of gaming for the fiscal year in which that revenue will be transferred to the Account to Stabilize the Operation of the State Government.

4. Except as otherwise provided in this subsection and NRS 353.2735, beginning with the fiscal year that begins on July 1, 2003, the State Controller shall, at the end of each quarter of a fiscal year, transfer from the State General Fund to the Disaster Relief Account created pursuant to NRS 353.2735 an amount equal to not more than 10 percent of the aggregate balance in the Account to Stabilize the Operation of the State Government during the previous quarter. The State Controller shall not transfer more than $500,000 for any quarter pursuant to this subsection.

5. The Director of the Office of Finance in the Office of the Governor may submit a request to the State Board of Examiners to transfer money from the Account to Stabilize the Operation of the State Government to the State General Fund:

(a) If the total actual revenue of the State falls short by 5 percent or more of the total anticipated revenue for the biennium in which the transfer will be made, as determined by the Legislature, or the Interim Finance Committee if the Legislature is not in session; or

(b) If the Legislature, or the Interim Finance Committee if the Legislature is not in session, and the Governor declare that a fiscal emergency exists.

6. The State Board of Examiners shall consider a request made pursuant to subsection 5 and shall, if it finds that a transfer should be made, recommend the amount of the transfer to the Interim Finance Committee for its independent evaluation and action. The Interim Finance Committee is not bound to follow the recommendation of the State Board of Examiners.

7. If the Interim Finance Committee finds that a transfer recommended by the State Board of Examiners should and may lawfully be made, the Committee shall by resolution establish the amount and direct the State Controller to transfer that amount to the State General Fund. The State Controller shall thereupon make the transfer.

8. In addition to the manner of allocation authorized pursuant to subsections 5, 6 and 7, the money in the Account to Stabilize the Operation of the State Government may be allocated directly by the Legislature to be used for any other purpose.

in the Rainy Day Fund to situations where shortfall in revenue are 5% more of the total amount of the anticipated revenue, or if the Legislature and Governor formally declare a fiscal emergency. Senate Bill 431 of the 2023 Legislative Session increased the maximum balance allowed in the Rainy Day Fund from 20% to 26% of the total of all General Fund appropriations made for the operation of the government, the funding of schools, and the regulation of gaming (See State's Ex.5, Official State Executive Budget 2025-2027, p.76). Pursuant to NRS 353.213, the Executive Budget shall include a transfer to the Rainy Day Fund of one percent of the revenue projected for each fiscal year of the biennium by the Economic Forum at their December meeting from the previous even-numbered year, adjusted for any changes or adjustments to state revenue recommended in the proposed budget.

A full Rainy Day Fund does not mean that funds reserved pursuant to State statute, or money previously appropriated by the Legislature, provide additional revenue for employee compensation. The State General Fund is the default account that receives tax revenue; within it exist other designated accounts. *See* NRS 353.323(2)[8] (stating that the State General Fund "must

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[8] **NRS 353.323 State General Fund created; use of categories of funds and account groups.**
1. Governmental funds must be used as a means of accounting for segregations of financial resources by focusing upon a determination of financial position and changes in financial position rather than upon a determination of net income.
2. The State General Fund is hereby created and must be used to receive all revenues and account for all expenditures not otherwise provided by law to be accounted for in any other fund.
3. Governmental funds include:
(a) The State General Fund.
(b) Special revenue funds, which must be used to account for revenues from specific sources, other than expendable trusts and revenues for major capital projects, that are legally restricted to expenditures for specified purposes and not provided for by law in any other fund.
(c) A fund for construction of capital projects, which must be used to account for financial resources to be used for the acquisition or construction of major capital facilities, other than those financed by proprietary funds or trust funds.
(d) Debt service funds, which must be used to account for the accumulation of resources and the use of those resources for the retirement of any general long-term debt.
4. Proprietary funds must be used to account for the state's ongoing organizations and activities that are similar to those found in nongovernmental entities by focusing upon a determination of net income, financial position and changes in financial position. Proprietary funds include:
(a) Internal service funds, which must be used to account for and finance the self-supporting activities of a service characteristically utilized by departments of State Government or other governments, on a cost-reimbursement basis.
(b) Entsrprise funds, which must be used to account for operations that are financed and conducted in a manner similar to the operations of a private business:
(1) When the intent of the governing body is to have the expenses, including depreciation, of providing goods or services on a continuing basis to the general public, financed or recovered primarily through charges to the users; or

be used to receive all revenues and account for all expenditures not otherwise provided by law to be accounted for in any other fund" (emphasis added)); see also NRS 353.288(1) (The Rainy Day Fund officially known as "The Account to Stabilize the Operation of the State Government is hereby created in the State General Fund."). The State General Fund may increase for a variety of reasons. For example, an increase in the State's tax-paying population would increase the amount of taxes paid into the State General Fund and thus increase the public revenue the State receives. As stated by the Nevada Supreme Court, "redirecting funds previously designated for a specific use (an appropriation) back to the State General Fund does not increase public revenue, even if it increases the unrestricted revenue available in the General Fund." *Morency v. Department of Education*, 137 Nev. 622, *See Schwartz*, 132 Nev. at 753 (defining an appropriation). The EMRB has also addressed this issue in *Reno Police Protective Assn. v. City of Reno*, Item No. 366 (1996), where it held that that it was not practical to consider a surplus of money into a fund that was used for emergencies since its fluctuations could quickly become unreliable ("it is not practical to project a surplus in the Self-Funded insurance Program, inasmuch as one or two catastrophic events in a short period of time can cause the program to go over-budget").

J. The State's Compensation Proposal Provides Annual Salary Increases

The salary schedule for State employees, including members of FOP, consists of pay ranges for each salary grade, and within each salary grade are ten steps (See Article 1.8.1 of State's proposal and NAC 284.194-196). Article 1.8.1 of the State's proposal states that an "employee shall receive a merit pay or step increase each year of this Agreement on their pay progression date." Step increases consist of a 4.5% base wage increase per year. The State's proposed compensation article makes no changes to this provision, and there is no dispute between the State and FOP

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(2) For which the Legislature has decided that a periodic determination of revenues earned, expenses incurred and net income is consistent with public policy and is appropriate for maintenance of capital assets, control of organizational and financial management, accountability or similar purposes.

5. Fiduciary funds must be used to account for assets held by the State in trust or as an agent of any person, governmental agency, political subdivision or other fund. Each trust fund must be classified for accounting purposes as a governmental fund or a proprietary fund.

6. Account groups must be used to account for and control the State's general fixed assets and general long-term debts, and include:

(a) The general long-term debt account group, which must be used to account for the principal and interest on all unmatured general obligation bonds and long-term liabilities not required to be accounted for in a specific fund; and

(b) The general fixed assets account group, which must be used to account for all fixed assets except those accounted for in proprietary funds or trust funds.

with respect to annual step increases.

K. Compensation for FOP Employees is Well Ahead of Inflation

In addition to the 4.5% annual merit increases mentioned above, FOP Unit N Employees have already received historic salary increases of 24%-29% over the past two years, which were far in excess of other years for State employees (See State Exhibits 55 and 56 showing State employees Salaries by grade, Exhibit 57 showing class specs of Correctional Sergeants (grade 37) and Lieutenants (grade 40) in 2022 and Lunkwitz Testimony TR: 289 stating Sergeants are a Grade 39 and Lunkwitz testimony TR: 223 stating Lieutenants are at Grade 41)[9]. The Department of Labor index tracking price increases in the western United States put the 12-month price change for all goods and services at 2.98% (See State's Ex 21, Department of Labor Consumer Price Survey) Accordingly, having received nearly 24%-29% wage increases over the last two years, FOP employees are well ahead of inflation. This amount does not include any step increases, meaning some employees in Unit N have received as much as a 38% increase in their salary over the past 2 years. FOP provided no evidence in the record of projected inflation over the next two years remotely close to 24%-38%.

L. PERS Retirement Contribution Increases Should Not Be Considered by the Arbitrator

The Public Employee Retirement System ("PERS") is a tax-qualified defined benefit retirement plan created by the Nevada Legislature as an independent public agency to provide a reasonable base income to qualified employees who have been employed by a public employer and whose earning capacity has been removed or has been substantially reduced by age or disability. All employees of government employers in Nevada are enrolled in PERS. Pursuant to NRS 286.421(6)[10], PERS contribution rates are set by PERS "based on the actuarially determined

[9] Data pulled from State website https://hr.nv.gov/Sections/Compensation/Compensation_Schedules/

[10] **NRS 286.421(6):** If an employer is paying the basic contribution on behalf of an employee, the total contribution rate, in lieu of the amounts required by subsection 1 of NRS 286.410 and NRS 286.450, must be:

(a) The total contribution rate for employers that is actuarially determined for police officers and firefighters and for regular members, depending upon the retirement fund in which the member is participating.

(b) Except as otherwise provided in subsection 7, adjusted on the first monthly retirement reporting period commencing on or after July 1 of each odd-numbered year based on the actuarially determined contribution rate indicated in the biennial actuarial valuation and report of the immediately preceding year. The adjusted rate must be rounded to the nearest one-quarter of 1 percent.

contribution rate indicated in the biennial actuarial valuation and report of the immediately preceding year." The Governor is not involved in setting the PERS contribution rate (See Krumme Testimony TR: 91-92). PERS contribution rates may not be negotiated in a CBA, and retirement is not a mandatory subject of bargaining for State employees (See Paragraph II(B) above). Accordingly, the arbitrator should not consider biannual changes in PERS contribution rates that apply to all State, local government and school district employees in Nevada.

M. The State's Compensation Offer Has a History of Success and it Protects FOP Employees

The State's compensation proposal, commonly referred to as a "parity" clause, has been used in CBAs for decades. The EMRB has held that "parity" or "matching" agreements are not prohibited under NRS Chapter 288. *See Clark Cnty. Tchr.'s Ass'n v. Bd. of Tr.'s of the Clark Cnty. Sch. Dist.*, Case No. A1-045354, Item No. 131 (1982) (holding that a parity or matching settlement agreement, which was consistently offered for the previous nine years, was not illegal); *Clark Cnty. Certified Tchr.'s Ass'n v. Clark Cnty Sch. Dist.*, Case No. AI-045302, Item No. 62 (1976) (holding that CCSD's practice since 1973 of offering one unit the same percentage raise as it offered two other units was not an unfair labor practice); *see also Int'l Ass'n of Firefighters, Loc. 1607 v. City of N. Las Vegas*, Case No. A1-045341, Item No. 108 (1981) (ratifying a parity award provision that was tethered to the wages of firefighters in another city, a separate governmental employer)). The State's compensation proposal reflects the general uncertainty surrounding the Nevada budget and the economy in general. At the same time, it protects FOP employees by guaranteeing that they receive the same increases that nonrepresented State employees receive from the Nevada Legislature. Parity provisions have been used in CBAs with other State Bargaining Units to the benefit of the employees. A similar parity provision provided the 1,600 employees in Bargaining Unit I CBA with a 12% COLA in Fiscal Year 2024, and an 11% COLA in Fiscal Year 2025 (See AB 522, 2023 Legislature, Sections 4, 5, 13 and 14: (https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6159/Text#).

N. The Union's Comparators are Misplaced

FOP's proposal focusses on benefits received by non-supervisory employees and spreads contained in other union's CBA's. FOP relied on the conditions contained within these collective bargaining agreement as a comparator. FOP did not compare their proposal to any non-represented group and relied on a single article, compensation, for the other bargaining units it based its proposal on. This comparison is misplaced and legally insufficient.

The Ninth Circuit has held that a single element of a collective bargaining agreement should not be considered in isolation because "there may be a considerable amount of 'give and take' exercised by the parties in coming to a final agreement on all of the elements." See Gardiner v. Sea-Land Serv., Inc, 786 F.2d 943, 946 (9th Cir.1986) (citing Grove v. Dixie Carriers, Inc., 553 F. Supp. 777, 780 (E.D.La. 1982).

In this case, the Union does just that. They examine a single element of these collective bargaining agreements, many of which have existed for many years. The Union provided no negotiating history or evidence to show that these compensation benefits were simply given away by the employer. The Union instead presented them in isolation as if they were not part of a broader agreement that involved give and take.

Without the bargaining history of these compensation provisions, it is impossible to rely on them in isolation. The unrepresented groups, such as the other supervisors within the Executive Department, are therefore a much better comparator than organized employees who have had years of collective bargaining to negotiate better benefits. Here the Union wishes to be given the benefits that other groups had to negotiate and they wish to be given them without any of the give and take that would be typical of a collective bargaining agreement. This makes it unreasonable to compare Unit N's compensation spread to other hargaining groups. The only evidence presented of non-represented groups was by the State in the form of the NAC and the NRS, and Unit N enjoys the benefits of both currently. The State's proposal is therefore the more reasonable of the two.

O. The Recent Awards from other State Bargaining Units Demonstrate that FOP's Compensation Proposal is Unreasonable

FOP has introduced three separate recent arbitration awards for State bargaining units in support of its own compensation proposal. The first award is for AFSMCE Bargaining Units A, E & F, which consists of nearly 3,000 State custodial, labor and health care employees, who proposed and were awarded 3% COLAs by the impasse arbitrator (See Union Ex.50). The second award is for AFSCME Bargaining Unit C, which consists of 3,000 technical aides and regulatory inspectors, who proposed and were awarded 3% COLAs by the arbitrator (See Union Ex. 51). The third award is for NPU Bargaining Unit G, which consists of Nevada Highway Patrol Officers (Category 1 police officers), who requested and were awarded 3% COLAs by the arbitrator (See Union Ex. 52). The important thing to note about these union compensation proposals is that they are in line with the 12-month change in CPI at the time of their arbitration hearings (See State's Ex. 20, Consumer Price Index Summary 2025 M03).

On May 9, 2025, the State received arbitration decisions in the impasse arbitrations with Bargaining Unit H (Category II Peace Officers/Investigators) and NPOA Bargaining Unit M (Category II Peace Officer/Investigators Supervisors) (See State's Ex. 53, Arbitration Decision 5/9/2025 NPOA Unit H; State's Ex. 54, Arbitration Decision 5/9/2025 NPOA Unit M). NPOA's compensation proposal was very similar to what FOP is proposing in this case. NPOA Unit H proposed 10-15% pay increases (depending on job classification) (See State's Ex. 53, p. 4-5). NPOA's rational for its salary increases mirrored FOP's argument, that they should get paid the same as Category I police officers in large metropolitan police agencies like Las Vegas Metro and the Henderson Police Department (See State's Ex. 53, p. 6-7).

NPOA's Supervisory Unit M, similar to FOP Unit N, sought a 20% (4 grade) difference between supervisors and their subordinates (see State Ex 54, p. 7) and requested to receive all of the pay adjustments that their subordinates received. In the words of Arbitrator Robert Hirsch (see States Ex. 54, p. 12),

> ***"...I conclude that the State's final offer is more reasonable than the one proposed by the NPOA for Unit M. If compression ratio were the sole basis of the Union's Article and did not incorporate the significant increases to Unit H, there might be a different result here. But the Compensation Article and total pay package proposed by the Union is extremely rich. For some individual positions it may be justified, but taken as a whole – which must be done – it is far more generous than the record supports ."***

P. The State's Muster Pay Proposal Complies with Federal Law and Prevents Employee Windfalls

FOP's Unit N proposal requires the State to pay "forty-five (45) minutes of overtime which can be taken for pay or Compensatory Time, for every day that they work regardless of their post or work assignment." As outlined in testimony by both the State and FOP, the purpose of muster pay is to ensure that employees working in large correctional facilities get paid for muster time, which includes getting through security and traveling long distances get paid for that time. Not all NDOC facilities are large institutions. Accordingly, muster pay is just free money for FOP employees working at smaller institutions. The State's proposal is simple and reasonable, that employees get paid for their actual mustering time, as opposed to every FOP employee being paid 45 minutes of overtime each shift, regardless of their actual mustering time. This is a fair and equitable solution for both parties.

CONCLUSION

WHEREFORE, for the reasons set out above, the State hereby requests that the arbitrator select the State's compensation article pursuant to NRS 288.580(1).

Dated: May 9, 2025.

AARON FORD
Attorney General

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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on May 9, 2025, I served a true and correct copy of the foregoing STATE OF NEVADA'S POST ARBITRATION BRIEF FOR NEVADA POLICE UNION UNIT M by electronic service, addressed to:

Arbitrator Robert Hirsch: rmhirsch@gmail.com and rmh.arbitrator@gmail.com

/s/ Steve Sorensen
Josh Reid, an employee of the Office of the Nevada Attorney General

Clark County's Reply to CCDU and DAIA and In Support of Petition for Declaratory Order

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STATE OF NEVADA

EMPLOYEE-MANAGEMENT RELATIONS BOARD

CLARK COUNTY,

Petitioner,

vs.

CLARK COUNTY DEFENDERS UNION; CLARK COUNTY PROSECUTORS ASSOCIATION; SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1107 (NON-SUPERVISORY); SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1107 (SUPERVISORY); INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1908 (NON-SUPERVISORY); INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1908 (SUPERVISORY); JUVENILE JUSTICE PROBATION OFFICERS ASSOCIATION; JUVENILE JUSTICE SUPERVISORS ASSOCIATION; CLARK COUNTY LAW ENFORCEMENT ASSOCIATION, FOP LODGE #11; DISTRICT ATTORNEY INVESTIGATORS ASSOCIATION

Respondent.

Case No.: 2025-015

CLARK COUNTY'S REPLY TO CCDU AND DAIA AND IN SUPPORT OF PETITION FOR A DECLARATORY ORDER CLARIFYING THAT PAY PARITY IS NOT A MANDATORY SUBJECT OF BARGAINING

Petitioner, Clark County ("County" or "Petitioner"), by and through its counsel of record, Fisher & Phillips, LLP, hereby files this Reply to the Response filed by the

Clark County Defenders Union ("CCDU") and District Attorney Investigators Association ("DAIA") (collectively the "Unions") and In Support of its Petition for a Declaratory Order to the Employee Management Relations Board ("Board" or "EMRB") requesting a finding that Pay Parity is not a mandatory subject of bargaining and finding that Pay Parity is a prohibited subject of bargaining or in the alternative a permissive subject of bargaining, and insistence upon taking such a non-mandatory subject of bargaining to Binding Fact-Finding is bad faith bargaining.

POINTS AND AUTHORITIES IN REPLY

A. The Unions' Arguments Regarding The Timing Of Filing The Petition Are Irrelevant As A Petition To Clarify The Statute May Be Brought At Any Time

The Unions make lengthy arguments claiming the County delayed in filing the Petition in this matter[1], however it is never too late to raise an issue of illegality before the Board and to seek clarification. A Petition for Declaratory Order may be brought at any time and has no statute of limitations. *See Nye County v. Nye County Association of Sheriff's Supervisors and David Boruchowitz (Including Counterclaim)*, Case 2022-009, EMRB Item No. 887, at *2 (EMRB, July 19, 2023). The County cannot waive the right to challenge the legality of an action, even if the party has previously agreed to contract language and/or participated in proceedings that would be considered illegal. *Id.* (Held it was illegal to include Captains in the Bargaining Unit despite previous contract language agreeing to do so). To hold otherwise would permit two parties to a CBA to conspire to break the law.

NRS Chapter 288 expressly identifies three types of proceedings before the Board: (1) complaints, (2) appeals, and (3) petitions for declaratory orders. *See* NRS §

[1] The County denies that it has engaged in any wrongdoing and reserves the right to fully brief and respond to any allegations of bad faith bargaining, waiver or delay.

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288.220(5). However, only complaints and appeals are identified in the statute as having a 6-month statute of limitations. *See* NRS § 288.110(4) ("The Board may not consider any complaint or appeal filed more than 6 months after the occurrence which is the subject of the complaint or appeal"); NRS § 288.280. Conversely, the Nevada Administrative Procedure Act requires that the Board hear petitions for declaratory orders. NRS § 233B.120. As the present matter arises from a Petition for a Declaratory Order, and not a prohibited practices complaint for violation of NRS § 288.270, the 6-month statute of limitations on bringing a "complaint" does not apply to this case. *See* NRS § 288.110(4).

Moreover, the Unions' arguments regarding timing seem to be a deliberate attack on Counsel for the Petitioner and a blatant attempt to make the County defend its actions in order to sidetrack these proceedings from the legal question at hand. In fact, it is the CCDU who appears guilty of gamesmanship in forcing this matter to binding fact-finding (thereby necessitating filing this Petition) because the salary schedule changes agreed to with the Clark County Prosecutors Association ("CCPA") are already known and the County has already offered to pay the CCDU the exact monetary equivalent of the CCPA. Insisting on "Pay Parity" language in the face of offered economic parity can only be explained as a tactic clearly designed to hold up the process at every turn and force this exact issue before the EMRB. Therefore, the Board should disregard the Unions' arguments regarding the timing of filing the Petition.

B. The Unions' Arguments Regarding Other Examples of Parity Clauses Are Both Irrelevant and Incorrect

The Unions also raise several examples of what they call "Pay Parity" clauses in various contracts in Nevada (*e.g.*, IAFF Supervisors; PMSA, etc.). (CCDU Resp. pp. 6-7). As a preliminary matter, this argument is irrelevant. As discussed in Section A above, the County could have illegal parity language in one of its contracts and still would not

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be prohibited from filing the instant Petition seeking legal clarification. *Id.* The fact that the parties may have been doing something illegal for 40 years or more is not a reason to keep doing it.[2]

Fnrthermore, every clause that the Unions cite to as examples of "Pay Parity" language found in other CBAs in Nevada, are actually examples of "salary differential" language, which is readily distinguishable. By statute, supervisors are not permitted to be in the same bargaining units as their subordinates. While there is a clear community of interest between the two units (as oftentimes the supervisors are performing many of the same duties as the subordinates), and the positions might desire to be in the same bargaining unit, the two units must be separate. The justification for salary differentials between positions is to encourage promotion and avoid compression (*i.e.*, no one will want to promote to a higher position with more work and more responsibility without receiving additional pay). In fact, if the two positions were covered by the same CBA, the salary differential would not raise any questions (*e.g.*, Paramedics receive 10% more than EMTs) and would be akin to a special assignment premium.

The Unions are attempting to draw a false distinction when the salary differential language must — by statute — appear in a different CBA and refer back to the subordinate position. These provisions are the same whether they appear in the same contract or two different contracts. Therefore, salary differential language is distinguishable from Pay Parity language because "salary differential" language is limited to one chain of command.

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[2] As this was the basis of the Board's reasoning in the CCTA Case — *i.e.*, other unions have had pay parity clauses in the past so it must be permissible — this is the exact reason that the CCTA Case should be overturned. *See Clark County Teachers Ass'n vs. Clark County School District*, EMRB Item No. 131, Case No. A1-045354, *6 (EMRB, July 12, 1982) (hereinafter "CCTA Case").

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C. The Cases Cited By The Unions Are Inapposite And The Board Should Disregard The Unions' Conclusions That Pay Parity Is A Mandatory Subject of Bargaining

1. The Unions Misrepresent The Holding Of The CCTA Case

The Unions spend a great deal of time focused on the fact that the CCTA Case states "parity or matching agreements are **not prohibited** by any provisions under NRS Chapter 288, or by any other relevant statute or decisional law in Nevada" and assert that this case found parity clauses to be a mandatory subject of bargaining. However, no such discussion of mandatory v. permissive appears in the CCTA Case. Simply because something is not illegal or prohibited does not make it mandatory.

Furthermore, the Petition outlined all the reasons to **overrule** the CCTA Case because it is inconsistent with more recent precedent addressing representing employees outside of the bargaining unit.[3] The County is not denying the text of the CCTA Case, it is just stating that it should be overturned. The County is not conflating two separate issues as Pay Parity and representation of employees outside the bargaining unit go hand in hand.

The Unions also deliberately try to mislead the Board by citing *International Association of Firefighters, Local 1607 v. The City of North Las Vegas*, Case No. A1-045341, EMRB Item No. 108 (EMRB 1981) for the proposition that "the Board has heard and rejected similar challenges before." In *IAFF v. City of N. Las Vegas*, the final offer chosen by the binding fact-finder makes reference to "retention of wages at parity" with the City of Las Vegas, however, neither party raised (and the Board did not discuss) the inclusion of a parity clause in a binding fact-finding final offer as grounds to overturn the award. *Id.* It is well established that prior cases that do not "squarely address" a particular issue do not bind later panels on the question. *Brecht v. Abrahamson*, 507 U.S. 619, 631, 113 S. Ct. 1710, 123 L.Ed.2d 353 (1993). "Questions which merely lurk in the record,

[3] The fact that none of the cited cases "addresses pay parity clauses" (CCDU Resp. p. 11) is irrelevant because such was not the basis of the County's argument.

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neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *See United States v. Kirilyuk*, 29 F.4th 1128, 1134 (9th Cir. 2022) (*citing United States v. Ped*, 943 F.3d 427, 434 (9th Cir. 2019). As the issue in this case was never considered by the Board in the *IAFF v. City of N. Las Vegas* Case, the Unions' statement that the issue was "challenged" or "heard and rejected" is plainly false. The Board has never decided whether Pay Parity is a mandatory or a permissive subject and, thus, this issue is a matter of first impression in this case.

The Unions attempt to oversimplify the matter by arguing that all mandatory subjects involve some aspect of the employer-employee relationship while permissive subjects must fall within attenuated management rights. (CCDU Resp. p. 17). However, clauses which pertain to the representation of bargaining unit members (such as Pay Parity clauses) and the bargaining obligations of exclusive representatives fall outside of the Unions' false construct.[4]

Pay Parity goes beyond merely referencing an external metric to calculate pay and shifts the duty to negotiation on behalf of bargaining unit members by forcing another union to negotiate a clause in its contract covering people who are not in its bargaining unit and who it does not represent. The Unions argue on page 10 that the holding of *International Longshoremen's Association* would only be applicable if the CCDU was attempting to bargain for other County employees in the Public Defender's Office (such as file clerks, social workers, or secretaries) who "are either unaffiliated with a union, or are members of SEIU" which the CCDU is not doing. (CCDU Resp. p. 10). However,

[4] Contrary to the Unions' assertions, in states like New Jersey that have considered the issue in terms of whether parity is or is not a mandatory subject, those states have declined to find parity provisions a mandatory subject of bargaining because parity provisions unlawfully limit the right of an employee organization to negotiate fully its own terms and conditions of employment. *Board of Education v. Employees Asso. of Willingboro Schools*, 178 N.J. Super. 477, 478-479 (App. Div. 1981) (*citing City of Plainfield*, PERC No. 78-87, 4 *NJPER* 255 (1978)). *Borough Of Rutherford*, 14 NJPER 642 (NJPER (LRP) 1988)) held that clauses which automatically extend to one unit any increases in salary or benefits ***negotiated*** by other units are **not** mandatory subjects.

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this argument ignores the fact that Pay Parity language in such a situation would force the other union (*i.e.*, SEIU) to negotiate on behalf of the CCDU.

The Unions then illogically try to bolster this argument by pointing out that the CCPA and CCDU are "so similarly situated . . . [they are] 'two sides of the same coin'" which somehow makes this illegal practice permissible. (CCDU Resp. p. 10). However, the question of Pay Parity language presented by the Petition is not limited to just the CCPA and CCDU. If the Board were to find Pay Parity language to be a mandatory subject, the Unions could force negotiations over parity language with any referenced union or unrepresented entity. Therefore, "similarity" has nothing to do with the question of appropriately designating (*i.e.*, mandatory; permissive or prohibited) Pay Parity as a subject of bargaining.

Parity language is not a simple reference point or "measure of these rates" (CCDU Resp. p. 9), and the Board cannot ignore the impact on the **referenced** union (*i.e.*, the CCPA). Pay Parity clauses place the *de facto* burden of negotiations upon the referenced union. If the amount of a wage increase cannot be ascertained by a fixed formula and is solely dependent upon the CCPA (another bargaining unit) negotiating and reaching agreement with the County, the CCDU cannot reasonably argue that it is bearing the burden of negotiating wages. The Board has already held that shifting this burden is prohibited. *Int'l Ass'n of Fire Fighters, Local 1265 vs. City of Sparks*, EMRB Item No. 136, at *8.

2. The Non-Nevada Cases Referenced By The Unions Are Inapposite

The Unions cite several cases for the proposition that "pay parity clauses are uot ***per se*** illegal" but cite no case that expressly found pay parity clauses were a mandatory subject of bargaining. In one of the cases cited by the Unions, *Associated Administrators of Los Angeles and Service Employees Int'l Union, Local 99 v. Los Angeles Unified Sch.*

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Dist., the California Public Employees Relations Board did reject a finding of *per se* illegality by rejecting the "flexibility" test which considered "whether the disputed clause restricts the employer's flexibility to negotiate with other exclusive representatives" in favor of a case-by-case factual analysis of motives. 1995 Cal. PERB LEXIS 2; PERB Decision No. 1079, *10 (1995). However, this case still found that attempting to interfere with the negotiations of another bargaining unit was a violation of the Act. *Id.*

That is exactly what the CCDU is doing with the Pay Parity clause here, directly interfering and restricting the County's negotiations with the CCPA. This is highlighted by the Limited Joinder filed by the CCPA, which clearly argues that the CCPA should not be responsible for negotiating on behalf of the CCDU. In each of the example cases cited by the Unions, the respective board or commission was faced only with a question of enforcement of a previously existing pay parity provision. The Board was only concluding in each case that the provision was not illegal as a matter of law. Those cases never face a challenge to the mandatory uature of the subject and, thus, do not rule that there is a mandatory duty to bargain over the provision prior to agreeing to the provision.

Despite the fact that some states (e.g. New Jersey) find parity clauses illegal and some states (*e.g.*, California) do not, the discussion always focuses on how parity clauses limit negotiations and interfere with good faith collective bargaining. *Compare id. with City of Plainfield*, PERC No. 78-87, 4 *NJPER* 255 (1978). Moreover, on page 11 of the Response, the Unions' claim that the case of *City of New York v. Patrolmen's Benevolent Assoc.* "is no longer good law after *City of Schenectady v. City Fire Fighters Union*, 448 N.Y. S.2d 806, 85 App. Div.2d 116 (1982)," but this statement is not accurate. (CCDU Resp. p. 11). The *City of Schenectady* Case does not mention the prior *City of New York* Case or expressly overturn its holding. Rather the *City of Schenectady* Case distinguishes the matter by focusing on a "case-by-case examination of the . . . circumstances of each case" and ultimately found that the parity provision caused no impairment of the City's

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ability to negotiate primarily due to the fact that the two referenced unions had a 12-year history of negotiating their CBAs ***jointly***.[5] *Id.* at 809.

Even if the Board choose to disregard the reasons to overturn this holding set forth in the Petition (which it should not do), the Board cannot escape the logical problems that come with finding "Pay Parity" a mandatory subject of bargaining. If a subject is a mandatory subject of bargaining that means that a union can declare impasse over it and force binding arbitration over the provision. *Int'l Ass'n of Fire Fighters, Local 1265 vs. City of Sparks*, Case No. A1-045362, EMRB Item No. 136, *5 (EMRB, Aug. 21, 1982); *see also Juvenile Justice Supr. Ass'n v. County of Clark*, Case No. 2017-20, Item No. 834 (EMRB, Dec. 13, 2018); *Nevada Classified Sch. Employees Ass'n Ch. 5, Nevada AFT v. Churchill County Sch. Dist.*, Case No. 2020-008, Item No. 863 (EMRB, May 20, 2020). This leads to the very real possibility for conflicting parity language to be awarded in two different contracts. What happens when the CCPA is awarded language that requires CCPA to get 10% more than the CCDU and the CCDU is awarded language that requires the CCDU to be equal to what the CCPA receives? What happens when both are awarded parity language and are relying upon the other union to negotiate for them? In these situations, the County can never ascertain what to pay the employees.

The Unions' attempt to dismiss these scenarios by arguing "no such scenario would ever arise if Clark County bargained ethically, responsibly, and in good faith." (CCDU Resp. p. 16). This argument is offensive and absurd, and the County strongly denies that it bargained in bad faith.[6] Every union that has reached impasse in negotiations with the County in the past four years has been the party to declare impasse, not the County. The CCDU has repeatedly rejected the County's reasonable counter

[5] Not only have the CCDU and CCPA never bargained jointly, the CCPA's filing in this case hints at a certain amount of animosity between the two groups.

[6] The obligation to bargain in good faith does not require either party to make a concession or that the parties actually reach agreement. *Ed. Support Employees Ass'n v. Clark County Sch. Dist.*, Case No. A1-046113, Item No. 809, 4 (2015). 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).

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proposals in favor of "taking their chances" at fact-finding. When multiple units are in fact-finding simultaneously and the County's only options are fact-finding or capitulation, the possibility of conflicting awards is not only very real,[7] but likely if the Unions get their way.

Therefore, in the alternative to finding Pay Parity a prohibited subject, the Board must find Pay Parity is a permissive subject of bargaining in order to maintain the relative bargaining power between the County and other exclusive representatives like the CCPA.

CONCLUSION

Based on the foregoing, the Board should disregard the Unions' underhanded attempts to argue waiver and/or past practice. The County has the right to file a Petition requesting a Declaratory Order at any time despite prior potential wrong conduct or acquiescence. Pay Parity clauses are a direct attempt to shift the bargaining power and force another unit to bargain on behalf of employees it does not represent. Therefore, for the reasons set forth above and in the Petition and Reply to SEIU as well, the Board should issue a Declaratory Order stating that Pay Parity is a prohibited subject of bargaining (and is NOT a mandatory subject of bargaining) due to the fact that Pay Parity language inherently alters and interferes with the full range of negotiations between the employer and its unions. The Board should further find that insisting on presenting Pay Parity language at Binding Impasse Fact-Finding is an unlawful prohibited practice. Alternatively, the County requests a Declaratory Order finding Pay Parity is a permissive

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[7] Both the CCPA and CCDU reached impasse and non-binding fact-finding for the CBAs for the period July 1, 2022 – June 30, 2023. Had the CCPA and CCDU not agreed to settle their respective agreements, the two units could easily have been at the binding fact-finding stage simultaneously.

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subject of bargaining and insisting on presenting Pay Parity language at Binding Impasse Fact-Finding is still an unlawful prohibited practice.

DATED this 3rd day of October, 2025.

FISHER & PHILLIPS LLP

By: */s/ Allison L. Kheel, Esq.*
Mark J. Ricciardi, Esq.
Allison L. Kheel, Esq.
300 South Fourth Street,
Suite 1500
Las Vegas, NV 89101
Attorneys for Petitioner

FISHER & PHILLIPS LLP
300 S Fourth Street, Suite 1500
Las Vegas, Nevada 89101

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of October, 2025, I filed by electronic means the foregoing **CLARK COUNTY'S REPLY TO CCDU AND DAIA AND IN SUPPORT OF ITS PETITION FOR A DECLARATORY ORDER CLARIFYING THAT PAY PARITY IS NOT A MANDATORY SUBJECT OF BARGAINING** as follows:

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

I also served one electronic copy of the foregoing, addressed to the following:

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Clark County Defenders Union
pdavidwestbrook@gmail.com

Binu Palal, President
Clark County Prosecutors Association
Binu.Palal@clarkcountydanv.gov

Michelle Maese, President
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By: */s/ Darhyl Kerr*
An employee of Fisher & Phillips LLP

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CCDU (Respondent)

Supplement to Its Answer to Clark County's Petition for a Declaratory Order Clarifying that Pay Parity is not a Mandatory Subject of Bargaining

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Email: office@danielmarks.net
Attorney for Respondents Clark County Defenders Union and District Attorney Investigators Association

STATE OF NEVADA
EMPLOYEE-MANAGEMENT RELATIONS BOARD

CLARK COUNTY,

Petitioner,

vs.

CLARK COUNTY DEFENDERS UNION; CLARK COUNTY PROSECUTORS ASSOCIATION; SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1107 (NON-SUPERVISORY); SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1107 (SUPERVISORY); INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1908 (NONSUPERVISORY); INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1908 (SUPERVISORY); JUVENILE JUSTICE PROBATION OFFICERS ASSOCIATION; JUVENILE JUSTICE SUPERVISORS ASSOCIATION; CLARK COUNTY LAW ENFORCEMENT ASSOCIATION, FOP LODGE #11; DISTRICT ATTORNEY INVESTIGATORS ASSOCIATION

Respondents.

CASE NO.: 2025-015

CLARK COUNTY DEFENDERS UNION'S SUPPLEMENT TO ITS ANSWER TO CLARK COUNTY'S PETITION FOR A DECLARATORY ORDER CLARIFYING THAT PAY PARITY IS NOT A MANDATORY SUBJECT OF BARGAINING

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The Clark County Defenders Union ("CCDU") hereby supplements their Answer to Clark County's Petition as follows:

As set forth in CCDU's Answer, on April 16, 2025 Fact Finder Robert Hirsch, who was mutually selected by the parties under NRS 288.200 recommended that the parties collective bargaining agreement included a pay parity clause which would ensure that Deputy Public Defenders and Chief Deputy Public Defenders receive pay parity with their counterparts at the Clark County District Attorney's Office.

Clark County rejected this nonbinding recommendation, and the statutory impasse proceeded to binding fact-finding (interest arbitration) under NRS 288.200(6). On December 18, 2025 Arbitrator Brian Clauss issued his short form award selecting CCDU's pay parity language. (Exhibit "1").

On Monday, January 12, 2026 the parties received arbitrator Clauss's reasoned award explaining his basis for why the pay parity language proposed by CCDU was more reasonable than the proposal made by Clark County which did not include pay parity language. (Exhibit "2").

In short, two (2) experienced labor arbitrators have now determined that pay parity language is appropriate between public defenders and prosecutors who have been described as "two sides of the same coin".

Dated this 16th day of January 2026

LAW OFFICE OF DANIEL MARKS

Adam Levine, Esq.
Nevada State Bar No. 004673
alevine@danielmarks.net
610 South Ninth Street
Las Vegas, Nevada 89101
Attorney for Respondents Clark County Defenders Union and District Attorney Investigators Association

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS, and that on the 16th day of January 2026, I served a true and correct copy of the foregoing CLARK COUNTY DEFENDERS UNION'S SUPPLEMENT TO ITS ANSWER TO CLARK COUNTY'S PETITION FOR A DECLARATORY ORDER CLARIFYING THAT PAY PARITY IS NOT A MANDATORY SUBJECT OF BARGAINING by emailing the same to the following recipients. Service of the foregoing document by email is in place of service via the United State Postal Service.

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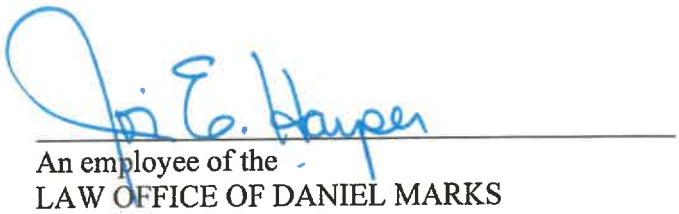

An employee of the
LAW OFFICE OF DANIEL MARKS

EXHIBIT 1

EXHIBIT 1

Adam Levine

From: Brian Clauss <brianclauss@claussadr.com>
Sent: Thursday, December 18, 2025 5:00 PM
To: andreaclauss .; Adam Levine
Cc: Kheel, Allison; David Westbrook
Subject: Short Form Award: Interest arbitration between Clark County and Clark County Defenders Union

This short-form decision advises the parties of the Award in the Clark County Defenders Union and CLARK COUNTY Interest Arbitration. This short-form Award is issued to comply with the ten-day statutory requirement. A reasoned award will follow.

The parties presented evidence and testimony at an interest arbitration hearing. The parties submitted post-hearing briefs.

The parties' final proposals were:

The CCDU Final Proposal:
ARTICLE 38
SALARY AND/OR SALARY SCHEDULE PARITY
Anytime the Clark County Prosecutors Association receives any salary
and/or salary schedule increase(s) or decrease(s), then the salaries and/or
salary schedules for all employees covered by covered by this Agreement
shall be adjusted under the same terms and conditions. This is to ensure and
maintain the long-standing historical parity between the Deputy District

Attorneys and Deputy Public Defenders in Clark County and throughout
Nevada.

The County's Final Proposal:
ARTICLE 31
Compensation
1. Effective July 1, 2024, or upon ratification by the Clark County Defenders
Union, whichever is later, the salary schedules for all employees covered in
Appendix a will be adjusted by the annual percentage increase to CPI-U all
items in West-Size Class B/C, URBAN Consumers, not seasonally adjusted
(Series ID CUURN400SA0) for the calendar year ending December 2023.
The adjusted percentage increase in salary schedules shall be a minimum of
2% and a maximum of 3.0%. In the event that the annual percentage
increase to CPI-U all items in West-Size Class B/C, URBAN Consumers,
not seasonally adjusted (Series ID CUURN400SA0), is equal to or greater
than 5%, the adjusted percentage increase in salary schedules shall be 4.5%.
In the event that the annual percentage increase to CPI-U all items in West-
Size Class B/C, URBAN Consumers, not seasonally adjusted (Series ID
CUURN400SA0) is equal to or less than 0%, the adjusted

percentage
increase in salary schedules shall be 1%.

The adjusted percentage increase is based on U.S. Bureau of Labor Statistics
Data (https://data.bls.gov/timeseries/cuurn400sa0).

CALCULATED AS FOLLOWS:
2023 Annual CPI 188.941

Less 2022 Annual CPI 181.312

Annual Increase 7.63

Divided by 2022 CPI 181.312

Annual Percentage Increase in CPI 4.2%

Salary Schedule Adjustment 3.0%

2. Effective July 1, 2024, or upon ratification by the Clark County Defenders
Union, whichever is later, salary schedules for all employees covered in
Appendix A will be adjusted by an additional 1%.

Appendix A Reflects the final calculation of salary schedules for all
employees effective July 1, 2024.

3. Employees covered by this agreement are eligible to participate in all
rewards incentives, and bonus programs approved by the County for full-

time non-management employees, and for programs established by the
Public Defender Special Public Defender.

FINDING AND AWARD:

The statutory factors of NRS 288.200 (7) govern this interest arbitrator and the interest arbitration. Those factors were applied to reach the conclusion.

The CCDU and the Clark County post-hearing briefs, the hearing evidence, and the hearing transcript have been reviewed. Factfinder Hirsch's report has also been reviewed. All evidence and cited authority have been reviewed.

The Final Proposal of the CCDU best complies with the statutory factors.

The CCDU Final Proposal is awarded.

The cost of the award is agreed as $789,485

A reasoned award will follow.

Brian Clauss
December 19, 2025

Brian Clauss
Neutral Arbitrator, Mediator & Attorney
902 South Randall Road, Suite C-252

St. Charles, IL 60174
www.claussadr.com
+1-847-692-6330
Admitted to the National Academy of Arbitrators

EXHIBIT 2

EXHIBIT 2

IN THE MATTER BEFORE
ARBITRATOR BRIAN CLAUSS

CLARK COUNTY, NEVADA	)
	)
Employer,	)
	)
And	)
	)
CLARK COUNTY DEFENDERS UNION	)
	)
Union.	)

APPEARANCES

For the Employer:
Allison L. Kheel, Esq.
Elizabeth Anne Hanson, Esq.
Fisher & Phillips, LLP

For the Union:
Adam Levine, Esq.
Law Office of Daniel Marks

Hearing Date: September 8, 2025

Hearing Location: Virtual, via Zoom platform

INTRODUCTION

Clark County, Nevada ("County"), and the Clark County Defender's Union ("Union"), have reached an impasse over an unresolved issue regarding compensation in the negotiation of the parties' 2025 collective bargaining agreement ("CBA").

The parties had previously engaged in a Fact-Finding before Arbitrator Hirsch on the two issues of longevity and salary. The Fact-Finder's report rejected the Union's longevity proposal and accepted the Union's pay proposal.

The matter was set for Interest Arbitration pursuant to NRS §288.200.

The parties' final proposals were:

The Union

> ARTICLE 38
>
> SALARY AND/OR SALARY SCHEDULE PARITY
>
> Anytime the Clark County Prosecutors Association receives any salary and/or salary schedule increase(s) or decrease(s), then the salaries and/or salary schedules for all employees covered by covered by this Agreement shall be adjusted under the same terms and conditions. This is to ensure and maintain the long-standing historical parity between the Deputy District Attorneys and Deputy Public Defenders in Clark County and throughout Nevada.

The County

> ARTICLE 31
>
> Compensation
>
> 1. Effective July 1, 2024, or upon ratification by the Clark County Defenders Union, whichever is later, the salary schedules for all employees covered in Appendix a will be adjusted by the annual percentage increase to CPI-U all items in West-Size Class B/C, URBAN Consumers, not seasonally adjusted (Series ID CUURN400SA0) for the calendar year ending December 2023. The adjusted percentage increase in salary schedules shall be a minimum of 2% and a maximum of 3.0%. In the event that the annual percentage increase to CPI-U all items in West-Size Class B/C, URBAN Consumers, not seasonally adjusted (Series ID CUURN400SA0), is equal to or greater than 5%, the adjusted percentage increase in salary schedules shall be 4.5%. In the event that the annual percentage increase to CPI-U all items in West- Size

Class B/C, URBAN Consumers, not seasonally adjusted (Series ID CUURN400SA0) is equal to or less than 0%, the adjusted percentage increase in salary schedules shall be 1%.

The adjusted percentage increase is based on U.S. Bureau of Labor Statistics Data (https://data.bls.gov/timeseries/cuurn400sa0).

CALCULATED AS FOLLOWS:

2023 Annual CPI 188.941

Less 2022 Annual CPI 181.312

Annual Increase 7.63

Divided by 2022 CPI 181.312

Annual Percentage Increase in CPI 4.2%

Salary Schedule Adjustment 3.0%

2. Effective July 1, 2024, or upon ratification by the Clark County Defenders Union, whichever is later, salary schedules for all employees covered in Appendix A will be adjusted by an additional 1%.

   Appendix A Reflects the final calculation of salary schedules for all employees effective July 1, 2024.

3. Employees covered by this agreement are eligible to participate in all rewards incentives, and bonus programs approved by the County for full- time non-management employees, and for programs established by the Public Defender Special Public Defender.

Prior to the hearing, the County sought to continue the matter and cited a pending declaratory action in the EMRB alleging that pay parity is not a mandatory subject of bargaining. The County's motion to continue was denied. The County had a standing objection, as noted during the hearing:

> You have a standing objection that this is a nonmandatory subject of bargaining; therefore, the union is proceeding in bad faith, was your first point. Your second point is that the union's final offer is regressive, therefore that is a prohibited labor practice.

The parties presented evidence and testimony at the interest arbitration hearing as summarized below.

Jessica Colvin has been the Chief Financial Officer for Clark County since 2016. She was promoted from the Clark County Comptroller, a position she began in 2011. She described her position:

> I report directly to the Clark County county manager. I'm responsible for finance functions, accounting functions. So that includes all of your general ledger type of accounting, payroll, the debt portfolio, the capital plan, as well as the annual budget each year.
>
> And then I work closely with senior management and participate in collective bargaining for overall strategy for all of the units. And there are a couple of units that I actually participate in negotiations.

The County has ten bargaining units. Ms. Colvin explained a negotiating goal of "internal equity across all bargaining units." The County COLA proposals attempt to maintain equity between units. Clark County has 2.4 million residents comprising seventy-five percent of the state population, approximately 10,000 employees, and thirty-eight departments. The County receives 42 million visitors per year. Sixty percent of the budget is for salaries.

Ms. Colvin explained how the fact finding and interest arbitration process led to the prosecutors receiving 1% more than the public defenders. She also explained how the current County proposal remedied that difference by increasing the offer to the public defenders. Other bargaining units also got a 1% offer to match what the prosecutors received.

The prosecutors negotiated salary range increases for some of the top attorneys. She explained how the County final offer would remedy the difference:

> [The] increase would equate to the 3 percent, which I think there was testimony -- there was a comment earlier that the defenders' union has already received the 3 percent. We're proposing to offer that additional 1 percent, so that -- . . . - so that we can get them in line with the prosecutors in total.
>
> And then you can see on the defenders' final offer, their final offer is that for FY '25, their cost-of-living increase would be the same as the prosecutors'. The prosecutors received a 3 percent increase in FY '25. So our offer actually gets them that additional 1 percent from the previous year.

Ms. Colvin further explained the County final offer:

> Q Can you turn to County Exhibit 4, page eight. Can you tell me what the County's interpretation was of the arbitrator's conclusions on page eight?
>
> A Our interpretation was that the – that the public defender attorneys and the prosecutor attorneys, the recommendation was for them to be paid the

> same, and that is what our offer is doing. Effectively, we are paying both attorneys -- the same title -- similar titles in the same group the same salary schedules.
>
> And we're also catching them up on the cost-of-living increase as well, rather than tying the two units in -- in the contract together, that whatever the prosecutors negotiate -- to avoid the prosecutors negotiating for the defenders. They're completely different bargaining units.

Ms. Colvin agreed that the Union's pay parity proposal would not adversely affect the health, safety, or welfare of County residents. She also agreed that the proposal would not affect workload or capital assets.

Christina Ramos is deputy director of human resources and the County chief negotiator with nearly three decades of service. She has been involved with negotiations since she was hired. Prior to any negotiations, she and Ms. Colvin discuss the equities of the agreements and factors like COLA.

Ms. Ramos explained that the prosecutors and defenders have differences in their CBAs. Sometimes negotiations included different subjects like longevity or vacation. Prior to organizing in the mid 2000s, the defenders and prosecutors had pay parity under the County management plan. The two groups did not want to be in the same bargaining unit.

One of the differences between the collective bargaining agreements of two groups is performance increases in which the defenders can receive 0 to 4% and prosecutors 0 to 5%. Defenders work four ten-hour days, and prosecutors work five consecutive eight-hour days. Although the two groups accrue vacation at the same rate, the prosecutors can sell back up to 120 hours and the defenders up to 80 hours. The additional sellback was created in return for some prosecutors being on call for police guidance.

Ms. Ramos explained that salary parity between the two units would ruin the dynamics of negotiating packages. The current County proposal remedies the 1% difference created by the prior interest arbitration.

Ms. Ramos agreed that the spring 2024 negotiations did not include the 1% differential for the defenders, despite "the philosophy of the county is that the prosecutors and the public defenders do similar work and should be compensated the same." She cited the various proposals as the reason for the County not offering the 1% during negotiations.

Ms. Ramos also agreed that the County never offered the 1% either before or after the fact-finding. Ms. Ramos also agreed that the prior HR director used the phrase "two sides of the same coin" to describe the prosecutors and defenders. Despite Ms. Ramos using the term during negotiations, she never offered the 1% to the defenders. Although unclear about whether it occurred before or after the briefs for the fact-finding, the County "entered into an agreement with the prosecutors to move the salary schedules for deputy prosecutors 8 percent and for chief deputy prosecutors 6 percent."

The County rested.

Rafael Nones is the chief department public defender and assigned to the sex assault team. He is also responsible for the internship program, recruiting, and the training program for the office of approximately 150 assistant public defenders, including the multiple defendant unit and supervisors. He was a founding member of the local, serves on the executive board, and is also treasurer for the local.

Mr. Nones testified about the recognition and recommendation that prosecutors and public defenders should be paid the same. He noted the administrative docket of the Nevada Supreme Court, the Nevada Administrative Code's section on indigent defense, and the American Bar Association opinion. All three support pay parity. Every other Nevada county's public defenders have pay parity with their prosecutors.

Mr. Nones explained that all the bargaining units took pay reductions during Covid that included reductions in hours. He also acknowledged that the reduction in hours was only on paper for the public defenders. Due to the nature of their defense work, the public defenders continued to provide the same level of defense, regardless of the pay structure.

Pay was restored to prosecutors and public defenders in fiscal year 2022 However, in fiscal year 2023, prosecutors received 4% and public defenders 3%. For fiscal year 2024, the COLA was 6% and the defenders thought the prosecutors would receive 5%, to return the historic pay parity. Instead, the County agreed to 6% for the prosecutors and the 1% disparity remained. Fiscal year 2025 began on July 1, 2024. Despite mentioning parity, the County never offered the 1% to maintain parity at any step prior to the interest arbitration hearing.

Mr. Nones noted that there has been a 1 1% difference between the two bargaining units for three years. Even if the 1% was restored, the public defenders would still be short money. But the public defenders should at least have the 1% and thereby restore parity. The County will not share the details of the 6% and 8% increases for the deputy and chief deputy prosecutors.

Mr. Nones described a letter of agreement dated July 1, 2025, between the County and the prosecutors. Pursuant to that agreement, any prosecutor earning less than $100, 000 would receive a pay adjustment to achieve a $100,000 annual income. The public defenders pay is in the low $80,000s – and the recruiting numbers show a steep drop in recruitment of new attorneys. There is no way to know of this agreement from reading the CBA.

The Union changed the parity proposal slightly to include a pay decrease and not just a pay increase. Mr. Nones explained the rationale for the change and why it was not regressive:

> So when we found out the letter of agreement with the prosecutors – and this is the first time they have ever done it since they have ever been unionized for over a decade. We have never seen any union's salary schedule or minimum salary increase by a letter of agreement instead of just increasing the salary -- we thought it might be an effort by the county, maybe with the prosecutors, to circumvent or kind of do an end-around for the salary schedule parity clause.
>
> So we tweaked the language just a little bit to show what the actual intent was behind this. And I will say that it has been offered to us subsequently, and there's a potential that we would get the same letter of agreement. But in the past, we've had issues, so we don't know that that is going to be the outcome. So we changed this language to ensure it.

The Union rested. The parties submitted post-hearing briefs.

POSITIONS OF THE PARTIES

The County

The County agrees with the Union on the cost of the Union's proposal. The County is not arguing an inability to pay the Union proposal. The County reminds that having the ability to pay the Union's proposal does not mean that the proposal is reasonable. The Union's

pay parity proposal is not reasonable. The County maintains that the Union's proposal must be considered in light of the County obligation to provide facilities and services and guarantee the health, welfare, and safety of residents.

The County maintains that the Union's pay parity proposal is a breakthrough proposal because it changes the status quo. Pay parity has never been part of any County collective bargaining agreement. Because the Union proposal is a breakthrough, the Union must establish the status quo is unfair or that the Union has offered a qui pro quo for the proposal. The Union has not established that the current pay scheme is unfair nor offered a quid pro quo for pay parity.

Even if the Union pay parity proposal is not a breakthrough proposal, it is still an unreasonable proposal and should be rejected. The proposal is not reasonable because it removes the County's flexibility for negotiations and binds the County to wages offered to other bargaining units with no room for quid pro quos. The County cites other bargaining units that have negotiated a lower wage in return for other provisions from the County. Accepting the pay parity proposal will eliminate that possibility.

The Union also cannot establish that a deviation from the status quo is unreasonable. There has never been a pay parity provision in any County bargaining unit. The closest is the protective service units that have a guaranteed differentiation for supervisors, but not a pay parity guarantee. The protective service contract provisions guarantee that supervisors will maintain pay at a stated percentage above those supervised. But the pay is not subject to parity between the various units. The Union also cannot show that there is a pay disparity. The County proposal cures the 1% difference caused by the prior 3% interest arbitration.

The County cites other infirmities with the Union position. The Union's pay parity proposal is unclear because the term "salary" is undefined. The County should not be required to guess about proposal meanings. Because it is also unclear, the proposal should be rejected. The Union's comparators are also dissimilar. Washoe and Elko are small, distant counties, with sparse populations. Their public defenders and prosecutors are in the same bargaining unit and wages are therefore linked. Clark County has separate bargaining units for prosecutors and defenders.

The Union cannot show a widespread pattern of pay parity language in other bargaining units. Pay parity is an attempt to address what occurred in negotiations that did not favor the Union. The 3% recommended by Arbitrator Roose was based upon the facts and the law. It was appropriate.

The Union

The Union maintains that the fact-finder's decision is entitled to great difference. Absent erroneous conclusions, the fact-finder's recommendation should not be rejected. The fact-finder heard the testimony, weighed the evidence, and applied the law and policy. Although the County does not like the fact-finder's decision, the County cannot fault the recommendation. It was a conclusion based upon the statutory factors. Since the fact-finding, no material facts have changed, no new evidence that was unavailable at the hearing has been discovered, no material circumstances have changed, and the law is unchanged. Consequently, the County has not established any reason to ignore the fact-finder's recommendation, other than disliking it. Not liking the recommendation is not a valid reason to reject it. The fact-finder rejected the County argument against parity, and it should again be rejected as unreasonable. Adopting the fact-finder's recommendation in the interest arbitration protects the integrity of the process.

The Union continues that the fact-finder's conclusions were unquestionably reasonable. The recommendation is supported by public policy articulated by the Nevada Supreme Court, the Nevada legislature, and the American Bar Association. The offer was not regressive and was reasonable.

The Union continues that the County's offer should be rejected because it is illegal. Nevada law requires mandatory retroactivity and the County proposal conditions the retroactivity. In addition to the improper County offer, the County has also made meritless objections about pay parity not being a mandatory subject of bargaining. The County defenses should be rejected.

ANALYSIS

There is only one provision at issue -- pay. The Union seeks its parity proposal and the County its pay proposal. The matter is in interest arbitration because the County did not agree to accept the findings and recommendation of Fact-Finder Hirsch.

The statute provides for the next step of the process. That step is binding interest arbitration:

> If parties to whom the provisions of NRS 288.215 and 288.217 do not apply do not agree on whether to make the findings and recommendations of the fact finder final and binding, either party may request the submission of the findings and recommendations of a fact finder on all or any specified issues in a particular dispute which are within the scope of subsection 11 to a second fact finder to serve as an arbitrator and issue a decision which is final and binding. The second fact finder must be selected in the manner provided in subsection 2 and has the powers provided for fact finders in NRS 288.210. The procedures for the arbitration of a dispute prescribed by subsections 8 to 13, inclusive, of NRS 288.215 apply to the submission of a dispute to a second fact finder to serve as an arbitrator pursuant to this subsection.
>
> NRS 288.200 (6)

Section 11 provides the required elements of an interest arbitration award:

> 11. The decision of the arbitrator must include a statement:
>
> (a) Giving the arbitrator's reason for accepting the final offer that is the basis of the arbitrator's award; and
>
> (b) Specifying the arbitrator's estimate of the total cost of the award.

Both parties acknowledge the significance of the parity provision versus the County provision. The County views the parity provision as unnecessary and, if awarded, a significant impediment to County bargaining. The Union views the parity provision as necessary to maintain the historic status quo of the prosecutors and public defenders.

The parties agree that the public defenders are the other side of the criminal justice system of the prosecutors. The defenders' comparable internal bargaining unit is the prosecutors. As County officials have noted, the two are "two sides of the same coin." County witnesses also testified that they want parity between the defenders and the prosecutors.

The evidence shows that the defenders have not received the same COLA adjustment as the prosectors for more than one collective bargaining agreement. A County witness admitted that although the County professes parity between defender and prosecutor pay, the County did not offer the COLA catchup during negotiations. The County witness noted that the catchup COLA adjustment was not offered due to other provisions being negotiated.

After more than one contract without the same increase as the prosecutors, and the County not offering a COLA catchup, the defenders seek as certain of a pay parity guarantee as possible. The Union witness understandably did not believe the County would achieve COLA parity through the negotiation process. For example, the Union learned that the prosecutors also entered a side agreement with the County that was not part of the CBA. Under that side agreement, prosecutors earning less than $100,000 would receive an increase to $100,000. The defenders were offered no similar side letter. The County also agreed to pay increases for some senior prosecutors, but not senior defenders.

As Mr. Nones noted, public defender pay starts in the $80,000 range and they have seen significant recent drops in hiring. Prosecutors are guaranteed are now guaranteed a $100,000 starting salary. The disparity will continue to hurt public defender hiring. The evidence also shows that when the County had the opportunity to lower the prosecutor's COLA adjustment by 1% to return to COLA equity, the County declined and instead agreed to the same COLA for the prosecutor as the defenders, thereby leaving the public defenders 1% lower in the subsequent CBA.

Prior to the Roose fact-finding, there was COLA parity between the two units. The history of pay since at least the 1970s supports the Union pay parity provision. There had also been COLA equity prior to the Roose 3% COLA recommendation. The history of the parties supports the Union pay parity provision as the more reasonable and better way to return to the status quo.

The Nevada Supreme Court has provided guidance on prosecutor and public defender pay equity. The direction of the Nevada Supreme Court on prosecutor and public defender pay equity also supports the Union's pay parity proposal as the more reasonable proposal.

The Union's pay parity proposal would best return the public defenders to the COLA adjustment status quo.

The Nevada statutes provide guidance on compensation for attorneys providing defense for indigent clients. The direction of the Nevada statutes on public defender compensation also supports the Union's pay proposal as the more reasonable proposal.

The American Bar Association provides guidance on compensation for public defenders and others providing defense for indigent clients. The American Bar Association guidance also supports the Union's pay proposal as the more reasonable proposal.

The evidence also shows that other Nevada counties have pay parity between prosecutors and public defenders. Some other Neveda counties have their prosecutors and defenders in the same bargaining units of criminal justice system attorneys – the two sides of the same coin the County witnesses described.

Considering the history of the pay for public defenders and prosecutors, other Nevada counties, the guidance of the Nevada Supreme Court, the Nevada legislature, and the American Bar Association, the Union proposal is the more reasonable of the proposals.

The cost of the award is agreed as $789,485. The County does not allege an inability to pay.

The County raises two defenses -- that pay parity is not a mandatory subject of bargaining and that the Union's proposal was regressive. Neither defense is persuasive. The County offered no valid reasons in support of its argument that the pay proposal was not a mandatory subject of bargaining. The County can continue the litigation already begun in the appropriate forum to determine that issue. The Union's proposal was not regressive; The only change was to provide for pay parity when pay decreased. That did not alter the nature of the proposal for pay equity.

The Union's offer is the more reasonable and appropriate provision to achieve the statutory goals of interest arbitration. The Union's Final Proposal best complies with the statutory factors.

AWARD

The Union provision is adopted and awarded.

Brian Clauss, Arbitrator
January 11, 2026

Limited Joinder of the Clark County Prosecutors Association In Support of Clark County's Petition

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FILED
August 27. 2025
State of Nevada
E.M.R.B.

Before the State of Nevada

Government Employee-Management

Relations Board

CLARK COUNTY,

Petitioner,

v.

CLARK COUNTY DEFENDERS UNION; CLARK COUNTY PROSECUTORS ASSOCIATION; SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1107 (NON-SUPERVISORY); SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1107 (SUPERVISORY); INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1908 (NON-SUPERVISORY); INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1908 (SUPERVISORY); JUVENILE JUSTICE PROBATION OFFICERS ASSOCIATION; JUVENILE JUSTICE SUPERVISORS ASSOCIATION; CLARK COUNTY LAW ENFORCEMENT ASSOCIATION, FOP LODGE #11; DISTRICT ATTORNEY INVESTIGATORS ASSOCIATION,

Respondent.

CASE NO.: 2025-015

LIMITED JOINDER OF THE CLARK COUNTY PROSECUTORS ASSOCIATION IN SUPPORT OF CLARK COUNTY'S PETITION

The Clark County Prosecutors Association ("CCPA"), by and through its undersigned counsel, hereby files this Limited Joinder in Support of Clark County's Petition for Declaratory Order Clarifying that Pay Parity is Not a Mandatory Subject of Bargaining.

CCPA joins in the County's Petition to the extent it seeks a determination that the Clark County Defenders Union's ("CCDU") proposed "Pay Parity" or "Me Too" provision is not a mandatory subject of bargaining under NRS Chapter 288. Should the Board rule otherwise, the result would improperly saddle CCPA with the responsibility of, in effect, bargaining on behalf of CCDU's membership. It is not the duty of CCPA to bargain on behalf of membership of other unions or associations that bargain with the County.

In such a case, every time CCPA advances a wage proposal to the County, the County would necessarily consider not only the cost of that proposal as it applies to CCPA's members, but also the automatic financial impact of applying identical increases to CCDU's members. This dual effect would inevitably diminish CCPA's bargaining leverage, as proposals tailored to CCPA's priorities would be burdened with costs extending beyond CCPA's bargaining unit. In short, CCDU's proposal would undermine CCPA's ability to advocate effectively for its members' compensation interests. This undermines not only the CCPA, but it also undermines the bargaining relationship between the CCPA and the County.

In addition, contrary to CCDU's apparent assertion of "parity" between its members and those represented by CCPA, CCPA does not agree that such parity exists. The CCPA and CCDU represent separate and distinct bargaining units, with different negotiating histories, contractual terms, and bargaining priorities. Any attempt by CCDU to bind CCPA's negotiations through a parity clause is, in substance, an attempt to require CCPA to act on behalf of CCDU's members. This is something CCPA does not want to do, and which the law does not allow under the principles of exclusive bargaining authority. Regardless of whether CCDU purports to waive its own bargaining rights, CCPA does not want, nor will it accept, such responsibility. Such a proposal mischaracterizes the relationship between the units and infringes upon CCPA's exclusive authority to negotiate solely on behalf of its own members, as guaranteed by NRS

288.150(1), which requires a local government employer to bargain only "with the designated representatives of the recognized employee organization … for each appropriate bargaining unit." Furthermore, it potentially undermines and obfuscates CCDU's duties to its membership.

CCPA does not otherwise take a position on the broader issues raised in the Petition, but it respectfully requests that the Board issue a declaratory order finding that specifically CCDU's pay parity proposal, attempting to saddle CCPA with the burden of negotiating wages for members of a bargaining unit that it does not represent, is not a mandatory subject of bargaining, and that insisting upon presenting such language at binding fact-finding constitutes a prohibited practice.

Date: August 27, 2025

Respectfully submitted,

/s/ Nathan R. Ring

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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2025, I have mailed in portable document format as required by NAC 288.070(d)(3), a true and correct copy of **LIMITED JOINDER OF THE CLARK COUNTY PROSECUTORS ASSOCIATION IN SUPPORT OF CLARK COUNTY'S PETITION** as addressed below and sent certified mail pursuant to NAC 288.200(2). I also have filed the document with the Nevada Government Employee-Management Relations Board via its email address at emrb@business.nv.gov:

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Attorney for Clark County

/s/ Michelle Wade
An employee of REESE RING VELTO

Clark County Law Enforcement Association, Lodge 11's Joinder to Local 1107's Response to Petition for Declaratory Order and CCDU and DAIA's Answer to Clark County's Petition for Declaratory Order

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ASSOCIATION, FOP LODGE #11

STATE OF NEVADA

EMPLOYEE-MANAGEMENT RELATIONS BOARD

* * *

CLARK COUNTY, Petitioner, v. CLARK COUNTY DEFENDERS UNION; CLARK COUNTY PROSECUTORS ASSOCIATION; SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1107 (NON-SUPERVISORY); SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1107 (SUPERVISORY); INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1908 (SUPERVISORY); JUVENILE JUSTICE PROBATION OFFICERS ASSOCIATION; JUVENILE JUSTICE SUPERVISORS ASSOCIATION; CLARK COUNTY LAW ENFORCEMENT ASSOCIATION, FOP LODGE #11; and DISTRICT ATTORNEY INVESTIGATORS ASSOCIATION, Respondents.	CASE NO. 2025-015 **RESPONDENT CLARK COUNTY LAW ENFORCEMENT ASSOCIATION, FOP LODGE #11'S JOINDER TO:** **1) LOCAL 1107'S RESPONSE TO PETITION FOR DECLARATORY ORDER; AND** **2) RESPONDENTS CLARK COUNTY DEFENDERS UNION AND DISTRICT ATTORNEY INVESTIGATORS ASSOCIATION'S ANSWER TO CLARK COUNTY'S PETITION FOR A DECLARATORY ORDER CLARIFYING THAT PAY PARITY IS NOT A MANDATORY SUBJECT OF BARGAINING** **Meeting Date: October 16, 2025** **Meeting Time: 8:30 a.m.**

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Respondent CLARK COUNTY LAW ENFORCEMENT ASSOCIATION, FOP LODGE #11, by and through its undersigned attorneys at Clark Hill PLC, hereby joins in Local 1107's Response to Petition for Declaratory Order, and in Respondents Clark County Defenders Union and District Attorney Investigators Association's Answer to Clark County's Petition for a Declaratory Order Clarifying that Pay Parity Is Not a Mandatory Subject of Bargaining (collectively, "Responses"). This Joinder is made and based upon the pleadings and papers on file herein, and any argument presented at the time of hearing on this matter.

For the reasons set forth in the Responses, which are hereby incorporated by reference, the EMRB should deny the declaratory relief requested in Clark County's Petition for a Declaratory Order Clarifying that Pay Parity Is Not a Mandatory Subject of Bargaining.

DATED this 14th day of October 2025.

CLARK HILL PLC

By /s/ William D. Schuller, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Clark Hill PLC, and that on the 14th day of October 2025, I caused to be served a true and correct copy of the foregoing **RESPONDENT CLARK COUNTY LAW ENFORCEMENT ASSOCIATION, FOP LODGE #11'S JOINDER TO: 1) LOCAL 1107'S RESPONSE TO PETITION FOR DECLARATORY ORDER; AND 2) RESPONDENTS CLARK COUNTY DEFENDERS UNION AND DISTRICT ATTORNEY INVESTIGATORS ASSOCIATION'S ANSWER TO CLARK COUNTY'S PETITION FOR A DECLARATORY ORDER CLARIFYING THAT PAY PARITY IS NOT A MANDATORY SUBJECT OF BARGAINING** in the following manner:

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