

FILED
December 12, 2024
State of Nevada
E.M.R.B.

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STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CLARK COUNTY DEFENDERS UNION,

Complainant,

v.

CLARK COUNTY,

Respondent.

Case No. 2024-014

NOTICE OF ENTRY OF ORDER

PANEL A

ITEM NO. 904

CLARK COUNTY,

Counter-Claimant,

v.

CLARK COUNTY DEFENDERS UNION,

Counter-Respondent.

TO: Complainant/Counter-Respondent Clark County Defenders Union and their attorneys, Adam Levine, Esq. and the Law Office of Daniel Marks;

TO: Respondent/Counter-Claimant Clark County and its attorneys, Scott Davis, Deputy District Attorney and the Clark County Deputy District Attorney's Office.

PLEASE TAKE NOTICE that the **DECISION, FINDINGS OF FACT AND CONCLUSIONS OF LAW** was entered in the above-entitled matter on December 12, 2024.

A copy of said order is attached hereto.

DATED this 12th day of December 2024.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD


By: 
MARISU ROMUALDEZ ABELLAR
Executive Assistant

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Government Employee-Management Relations
3 Board, and that on the 12th day of December 2024, I served a copy of the foregoing **NOTICE OF**
4 **ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

5 Law Office of Daniel Marks
6 Daniel Marks, Esq.
7 Adam Levine, Esq.
8 610 South Ninth Street
9 Las Vegas, NV 89101

10 Scott R. Davis, Deputy District Attorney
11 Clark County District Attorney's Office
12 Civil Division
13 500 S. Grand Central Parkway
14 Las Vegas, NV 89155

15 
16 _____
17 MARISU ROMUALDEZ ABELLAR
18 Executive Assistant
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FILED
December 12, 2024
State of Nevada
E.M.R.B.

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STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CLARK COUNTY DEFENDERS UNION,

Complainant,

v.

CLARK COUNTY,
Respondent.

CLARK COUNTY,

Counterclaimant,

v.

CLARK COUNTY DEFENDERS UNION,

Counter-Respondent

Case No. 2024-014

**DECISION, FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

PANEL A

ITEM NO. 904

I. BACKGROUND

On November 6 – 7, 2024 and on December 9, 2024, this matter came before the State of Nevada, Government Employee-Management Relations Board (“Board”) for consideration and decision pursuant to the provision of the Employee-Management Relations Act (the Act), NRS Chapter 288, and NAC Chapter 288. At issue was Clark County Defender’s Union (“Complainant” or “CCDU”) Amended Prohibited Practice Complaint and Clark County’s (“Respondent” or “Clark County”) Counterclaim for Bad Faith Bargaining and Premature Declaration of Impasse. The Board conducted a hearing on the matter on November 6 and 7,

1 2024. The Board began deliberations on November 7, 2024, but was unable to reach a decision
2 on the matter and tabled the final decision until December 9, 2024.

3 4 . II. DISCUSSION

5 A. CCDU's Prohibited Practice Complaint - Failure to Bargain in Good Faith 6 under NRS 288.270(1)(e).

7 Under NRS 288.270(1)(e) and (2)(b), it is a prohibited practice for either a local
8 government employer, or a designated employee representative, to willfully refuse to bargain in
9 good faith as required under NRS 288.150. The requirement to bargain in good faith includes
10 the entire bargaining process, including mediation, and fact finding. NRS 288.270(1)(e)
11 and (2)(b).

12 A party's conduct at the bargaining table must show a sincere desire to come to an
13 agreement. The determination of whether there has been such sincerity is made by drawing
14 inferences from the conduct of the parties as a whole. *City of Reno v. Int'l Ass'n of*
15 *Firefighters, Local 731*, Item No. 253-A (EMRB, Feb. 8, 1991), quoting *NLRB v. Int'l Ass'n of*
16 *Int'l Union*, 361 U.S. 488 (1970).

17 Moreover, "[i]n order to show 'bad faith,' a complainant must present 'substantial
18 evidence of fraud, deceitful action or dishonest conduct.'" *Juvenile Justice Supr. Ass'n v.*
19 *County of Clark*, p.5, Case No. 2017-20, Item No. 834 (EMRB, Dec 13, 2018) (Citations
20 omitted). Adamant insistence on a bargaining position or "hard bargaining" is not enough to
21 show bad faith bargaining. *Reno Municipal Employees Ass'n v. City of Reno*, Item No. 93
22 (EMRB, Jan. 11, 1980); *City of Reno v. Reno Police Protective Ass'n*, Case No. A1-046096,
23 Item No. 790 (EMRB, Nov. 27, 2013) (bad faith bargaining does not turn on a single isolated
24 incident; but rather the Board looks at the totality of conduct throughout negotiations to
25 determine whether a party's conduct at the bargaining table evidences a real desire to come into
26 agreement), citing *Int'l Brotherhood of Electrical Workers, Local 1245 v. City of Fallon*, Case
27 No. A1-045485, Item No. 269 (EMRB, July 25, 1991). Furthermore, as noted in *Washoe*
28 *County School District v. Washoe School Principals Association*, Consolidated Case No.

1 2023-024 and 2023-031, Item No. 895 (EMRB, March 29, 2024), evidence of bad faith may
2 include one or more of the following:

- 3 • *Refusing to bargain on mandatory subjects of bargaining;*
- 4 • *Cancellation of bargaining sessions;*
- 5 • *Delays/Extended periods of unavailability for bargaining;*
- 6 • *Imposing conditions on bargaining;*
- 7 • *Insufficient authority to bargain;*
- 8 • *Refusal to provide information;*
- 9 • *Refusal to meet and unreasonable meeting times and sites;*
- 10 • *Boulwarism (take it or leave it type offers);*
- 11 • *Surface bargaining;*
- 12 • *Direct dealing;*
- 13 • *Regressive bargaining;*
- 14 • *Unilateral changes;*
- 15 • *Withdrawal of accepted offers; and*
- 16 • *Refusal to sign a written agreement.*

17 In this case, Complainant argues that Respondent Clark County failed to negotiate in
18 good faith by: (a) engaging in surface bargaining and regressive bargaining; (b) failing to
19 provide information; and (c) failing to bargain in a timely manner.

20 **1. Surface Bargaining and Regressive Bargaining.**

21 **a. Surface Bargaining.**

22 Surface bargaining is a strategy by which one of the parties merely goes through the
23 motions, with no intention of reaching an agreement. *Washoe County, supra*. In this regard, it
24 is a form of bad faith bargaining. *City of Reno v. Int'l Ass'n of Firefighters, Local 731, Item*
25 *No. 253-A (EMRB, Feb. 8, 1991)*. Distinguishing surface bargaining from good faith bargaining
26 depends on the facts supporting the claim. *See Washoe County*.

27 In this case, Complainant suggests that Respondent was only going through the motions
28 and had no intention of reaching any agreement with Complainant. However, Respondent did
submit numerous articles throughout the course of the negotiations between the parties.
Furthermore, Respondent did provide responses to most of the proposals submitted by
Complainant aside from those from the final negotiating session where impasse was declared
that is discussed in more detail below in Section B(2). In sum, the Board does not find that

1 Respondent engaged in surface bargaining.

2 **b. Regressive Bargaining.**

3 Regressive bargaining is not defined in the NRS nor NAC, nor has the Board ever had
4 occasion to do so. Thus, the Board finds that it is necessary to turn to NLRB decisions on this
5 topic. A regressive bargaining proposal is defined, logically, as a change from a prior more
6 favorable proposal. *Mid-Continent Concrete*, 336 NLRB 258, 260 (2001). Such proposals
7 include a party making an initial contract proposal that is less favorable to employees than the
8 status quo. Regressive proposals are not per se unlawful; they may be justified by changes in
9 the economy of the industry and the relative strengths of the participants. *Rescar, Inc.*, 274
10 NLRB 1, 2 (1985). However, regressive proposals are indicative of bad faith if left unexplained
11 or if the explanation appears dubious. *Mid-Continent Concrete* at 260. "What is important is
12 whether they are 'so illogical' as to warrant the conclusion that the Respondent by offering
13 them demonstrated an intent to frustrate the bargaining process and thereby preclude the
14 reaching of any agreement." *Barry-Wehmiller Co.*, 271 NLRB 471, 473 (1984)
15 quoting *Hickinbotham Bros. Ltd.*, 254 NLRB 96, 103 (1981). The Board adopts the paragraph
16 above for the purposes of defining regressive bargaining and how to apply the doctrine to cases.

17 There is no dispute that Respondent's first proposals were regressive in nature. The
18 question was whether the proposals were intended to frustrate the bargaining process. The
19 Board does not find the Respondent's proposals were meant to frustrate the bargaining process.
20 Rather, the Board finds that the proposals reflected the relative strength of the parties and were
21 primarily meant to help establish Respondent's bargaining position.

22 **2. Failure to Provide Information.**

23 Under NRS 288.270(2)(d), it is a prohibited practice for an employee organization to fail
24 to provide documents related to mandatory subjects of bargaining as provided under NRS
25 288.180(2) which states:

26 2. Following the notification provided for in subsection 1, the employee
27 organization or the local government employer may request reasonable
28 information concerning any subject matter included in the scope of
mandatory bargaining which it deems necessary for and relevant to the
negotiations. The information requested must be furnished without

1 unnecessary delay. The information must be accurate, and must be
2 presented in a form responsive to the request and in the format in which the
3 records containing it are ordinarily kept. If the employee organization
4 requests financial information concerning a metropolitan police department,
5 the local government employers which form that department shall furnish
6 the information to the employee organization.

7 The language in NRS 288.180(2) makes it clear that both parties can make requests for
8 records, and that the requests must be reasonable and related to mandatory subjects of
9 bargaining. *Id.*, see also *International Association of Fire Fighters, Local 5046*, Case No.
10 2019-011, Item No. 847-A (EMRB, July 8, 2020); *Law Vegas Fire Fighters Local 1285*,
11 *International Association of Fire Fighters v. City of Las Vegas*, Case No. A1-046074, Item No.
12 786 (EMRB, May 21, 2013). Furthermore, once such a request is made, the information must
13 be furnished without unnecessary delay. *Id.* Finally, the Board utilizes the “significant
14 relationship” test when analyzing the negotiability of a topic. *Truckee Meadows v. International*
15 *Association of Fire Fighters, Local 2487*, Case No. A1-045400, Item No. 196 (EMRB, Sept.
16 21, 1987). The significant relationship test can be described as whether or not, from the facts
17 presented, the subject matter involved is directly and significantly related to any one of the
18 subjects specifically enumerated in NRS 288.150(2). *Id.*

19 The evidence in this case shows that CCDU submitted a request for the financial impact
20 of a 1% cost of living (“COLA”) adjustment on January 3, 2024. This information is clearly
21 related to a mandatory subject of bargaining under NRS 288.150(2) and was reasonable. There
22 was also credible evidence presented that the request was routine and that responding to the
23 request was a relatively simple task that should have only required a week at most to comply
24 with. However, Respondent did not provide the requested information until May 1, 2024, i.e.,
25 almost 4 months after the request was made.

26 The Board finds that Respondent failed to furnish the requested information without
27 unnecessary delay. In fact, Respondent failed to provide any credible evidence indicating that
28 the delay was excusable in any way. Clark County as a whole is responsible for ensuring that
information requests are provided in a timely manner and no reasonable excuse for the delay
was provided. The Board therefore finds that Respondent engaged in bad faith bargaining by
failing to provide the requested information within a reasonable period of time.

1 **3. Failure to Bargain in a Timely Manner, Including After Declaration of Impass**

2 Complainant argued that Respondent failed to negotiate in a timely manner, including
3 delaying the scheduling of the mediation. The timeline for events in this matter follows:

- 4 • January 3, 2024 – Notice of Intent to Negotiate delivered to Respondent.
- 5 • February 27, 2024 – 1st negotiating session where Complainant submitted
6 proposed changes to Article 1 (agreement effective date) and Article 10
7 (grievance procedures).
- 8 • March 6, 2024 – 2nd negotiating session held. County attempted to
9 discuss ground rules. Article 1 proposal was signed by Respondent.
- 10 • March 13, 2024 – 3rd negotiating session held. Respondent introduced
11 proposed changes to Article 7 (management rights) and Article 36 (terms
12 of the agreement to create a 3-year contract term). Complainant submitted
13 counterproposal to Article 36 (asking for an annual reopener provision).
- 14 • March 20, 2024 – 4th negotiating session held.
- 15 • April 3, 2024 – 5th negotiating session held. Respondent provided a
16 preliminary tentative budget for FY25 and offered to provide a budget
17 presentation. Complainant introduced 3 new Articles for consideration:
18 Article 37 (bail reform); Article 31 (compensation); and Article 22
19 (longevity pay).
- 20 • April 17, 2024 – 6th negotiating session held where Complainant
21 introduced new financial proposals. Complainant declared impasse at this
22 meeting. The financial proposals Complainant provided were:
 - 23 i. Article 37 – bail reform pay;
 - 24 ii. Article 38 – parity compensation with prosecutors;
 - 25 iii. Article 12 – salary increases for evaluations;
 - 26 iv. Article 9 – vacation sell back; and
 - 27 v. A new Article 10 (version #3) regarding grievances
28 procedures.

1 The parties discussed Article 7 and Respondent indicated they would
2 withdraw their proposal. Respondent introduced four new proposals:

- 3 i. Article 19 (vacation);
- 4 ii. Article 20 (sick leave); and
- 5 iii. Article 27 (severance pay).

- 6 • May 9, 2024 – Respondent requested the parties engage in mediation and
7 indicated that Respondent would “reach out to FMCS for some dates.” If
8 the Complainant was amenable to mediation. *See Exhibit 20 at p. 00069.*
- 9 • May 14, 2024 – Complainant agreed to participate in mediation.
- 10 • June 13, 2024 – Complainant wrote to Respondent and stated that more
11 than one month had passed and mediation still had not yet been scheduled.
12 *See Exhibit 21.*
- 13 • June 17, 2024 – Mediator was finally selected.
- 14 • August 1, 2024 – Mediation session held between the parties.

15 The Board finds the above schedule was reasonable up to the point where impasse was
16 declared and mediation was requested by Respondent on May 9th and agreed upon by
17 Complainant on May 14th. However, after a period of almost 3 months elapsed between the
18 time that Respondent requested mediation and when mediation actually occurred. The entirety
19 of NRS Chapter 288 makes it clear that time is of the essence in terms of participating in
20 negotiations, mediation and fact-finding. NRS 288.190 which governs mediation is no
21 exception to the rule that time is of the essence. Furthermore, NRS 288.200 makes it clear that
22 once mediation has been chosen as an option, that process must be concluded prior to
23 submitting the dispute to fact finding. To bolster this point, under NRS 288.200(1)(b) a
24 mediator may also be a fact-finder in the same matter. Thus, the Board finds that there is no
25 obligation on the part of any party to begin the fact-finding process until after mediation has
26 concluded. However, to counter this finding, the Board reiterates that once mediation is chosen
27 as an option, the parties must diligently work to begin mediation as soon as is feasible. In this
28 case the Board finds that based on the evidence presented Respondent significantly delayed the

1 mediation process without good cause and contrary to the duty to act in good faith.

2 **B. Respondent Clark County Counterclaims - Failure to Bargain in Good Faith**
3 **Under NRS 288.270(2)(b).**

4 As noted in Section A(1) above, NRS 288.270(2)(b) states that it is a prohibited practice
5 for either a local government employer or a designated employee representative to willfully
6 refuse to bargain in good faith as required under NRS 288.150. The requirement to bargain
7 includes the entire bargaining process, including mediation, and fact finding. *Id.* Respondent
8 has asserted that Complainant engaged in surface bargaining and rushed to declare impasse.

9 **1. Surface Bargaining.**

10 Surface bargaining is a strategy by which one of the parties merely goes through the
11 motions, with no intention of reaching an agreement. In this regard, it is a form of bad faith
12 bargaining. *City of Reno v. Int'l Ass'n of Firefighters, Local 731, Item No. 253-A* (EMRB, Feb.
13 8, 1991). Distinguishing surface bargaining from good faith bargaining depends on the facts
14 supporting the claim.

15 In this instance, both parties presented substantive proposals and, aside from the
16 proposals submitted by Complainant at the final meeting, most were considered and some were
17 even adopted. The Board finds that given the facts and circumstances presented to the Board,
18 there was no surface bargaining undertaken by either party. Again, the Board would note that
19 the lack of ground rules may have been a contributing factor to both parties feeling that there
20 may have been surface bargaining.

21 **2. Rush to Impasse.**

22 In *Washoe County, supra*, the Board adopted the following standards to determine what
23 constitutes an impasse. First, an impasse is the point in which the parties are warranted in
24 assuming that bargaining would be futile. *Id.* Second, both parties must believe they are “at the
25 end of their rope.” *Id.* Third, Impasse in negotiations is synonymous with a deadlock; the
26 parties have discussed a subject, or subjects, in good faith, and, despite their best efforts to
27 achieve agreement with respect to such, neither party is willing to move from its respective
28 position. *Id.* Fourth, the bargaining history, the good faith of the parties in negotiations, t...

1 length of the negotiations, the importance of the issue or issues as to which there is
2 disagreement, the contemporaneous understanding of the parties as to the state of negotiations
3 are all relevant factors [the trier of fact should consider] in deciding whether an impasse exists
4 and was proper. Fifth, in analyzing these factors, the Board looks at the totality of the
5 circumstances and one or two factors alone may be sufficient to demonstrate the absence of
6 impasse. *Id.*

7 In this case, a significant number of articles presented by both parties remained
8 unresolved at the final meeting where impasse was declared. Complainant introduced five new
9 financial proposals at the final negotiating session where impasse was declared and Respondent
10 introduced three. *See* Section A(3) above. Thus, the evidence does not suggest that the parties
11 were “at the end of their rope,” rather it seems like the negotiations were just warming up.
12 Furthermore, there was credible evidence that Respondent was open to negotiating all of the
13 pending Articles, other than those that had been previously rejected. Respondent went further
14 and even suggested holding an additional negotiating session in early May which would include
15 counterproposals to those that had been submitted by Complainant. The Board also finds that it
16 is not unreasonable that both Complainant and Respondent would need a bit more time to
17 consider the flurry of proposals from the last two sessions since it was likely the new proposals
18 would require internal discussions and detailed financial evaluation before definitive responses
19 could be provided. The Board also examined the history of negotiations between the parties
20 and finds that Complainant had an inclination to rush to impasse. Finally, the Board notes that
21 there was an alarming lack of futility that would warrant a declaration of impasse. Thus, the
22 Board finds that Complainant declared impasse in bad faith.

23 **C. Failure to Discuss Ground Rules.**

24 Under NRS 280.180(3), the parties are required to at least broach the subject of ground
25 rules at their first meeting. The Board understands that most parties establish bargaining
26 ground rules and that such guidelines serve as a helpful device to streamline the negotiations
27 process and to avoid petty disputes and unfair surprises. *City of Reno v. International Ass'n of*
28 *Firefighters, Local 731*, Case No. A1-045472, Item No. 253-A (EMRB, Feb. 8, 1991).

1 However, disputes over the interpretation of these guidelines should not be allowed to interfere
2 with negotiations regarding mandatory subjects of bargaining. *Id.* If negotiations were allowed
3 to breakdown over mere threshold issues, those who wish to impede the collective bargaining
4 process would have a tool of avoidance to wield at the expense of those willing to bargain in
5 good faith. *Id.*, citing to *NLRB v. Bartlett-Collins Co.*, 639 F.2d 652 (10th Cir. 1981), *cert*
6 *denied* 252 U.S. 961 (1981). Also, ground rules cannot be implemented except by mutual
7 agreement which means that a party cannot unilaterally impose a ground rule as a precondition
8 to bargaining. *Id.* Most importantly, ground rules are not mandatory subjects of bargaining
9 under NRS 288.150.

10 There is no dispute that ground rules were discussed during the first meeting between the
11 parties on February 27, 2024. It is also clear from the evidence presented that Complainant
12 informed Respondent they did not want to discuss ground rules and believed the rules were not
13 needed. However, the law is clear that ground rules are not a mandatory subject of bargaining
14 and once a party unequivocally indicates they do not wish to discuss ground rules, there can be
15 no finding of bad faith if a party rejects any proposed ground rules. However, the Board also
16 finds that the lack of ground rules in this case most likely contributed to the lack of progress by
17 the parties and hastened the declaration of impasse which was unnecessary given the
18 sophistication of the parties and the issues involved.

19 III. FINDINGS OF FACT

20 1. The above discussion is incorporated herein to the extent it sets out findings of
21 fact.

22 2. There was insufficient evidence to sustain a surface bargaining allegation against
23 Respondent. *See* Section II(A)(1)(a) above.

24 3. There was insufficient evidence to sustain a regressive bargaining allegation
25 against Respondent. *See* Section II(A)(1)(b) above.

26 4. Substantial evidence was presented showing that Respondent engaged in bad faith
27 by significantly and unreasonably delaying the provision of information to Complainant as
28 discussed in Section II(A)(2) above.

- *Refusal to meet and unreasonable meeting times and sites;*
- *Boulwarism (take it or leave it type offers);*
- *Surface bargaining;*
- *Direct dealing;*
- *Regressive bargaining;*
- *Unilateral changes;*
- *Withdrawal of accepted offers; and*
- *Refusal to sign a written agreement.*

6. Evidence was presented showing that there were multiple instances of bad faith negotiations by both parties as discussed in the Findings of Fact Section above.

7. Any conclusion of law above construed to constitute a finding of fact is adopted as such to the same extent as if originally so denominated.

V. CONCLUSION

The Board determined that both parties have engaged in bad faith negotiations as described herein. Normally the Board would send the parties back to the table to continue to negotiate when there is a finding of bad faith when an impasse is declared such as the case here *City of Reno v. International Association of Firefighters, Local 731*, Case No. A1-045472, Item No. 253-A (EMRB, Feb. 8, 1991). However, given that the matter is currently before a fact-finder, the Board finds that other remedies are appropriate as set out below.

Based on the foregoing, it is hereby **ORDERED** as follows:


1. The Board finds that both parties engaged in bad faith bargaining as described herein.
2. Clark County will promptly post a copy of this Decision in where the Clark County Commission meeting notices are posted.
3. CCDU will promptly post a copy of this Decision in the office area(s) where the Public Defenders work.
4. Clark County shall provide a copy of this Decision to each member of the Clark County Board of County Commissioners and provide Commissioner Snyder with proof of such within 10 days from the date of this Decision.
5. Clark County will submit a copy of this Decision to the fact-finder within ten (10) days from the date of this Decision and provide proof of such to Commissioner Snyder.

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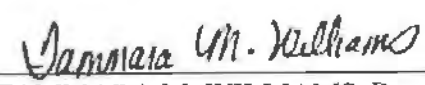
- 6. CCDU will provide a copy of this Decision to each of its current members within ten (10) days from the date of this Decision and provide proof of such to Commissioner Snyder.
- 7. Both parties are hereby Ordered to refrain from engaging in the prohibited conduct described herein.
- 8. All other requested relief is hereby denied.

Dated this 12th day of December 2024.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: 
BRENT ECKERSLEY, ESQ.
Presiding Officer

By: 
SANDRA MASTERS, Board Member

By: 
TAMMARA M. WILLIAMS, Board
Member

District Court Order

**Order Granting Petitioner Clark County Defenders
Union's Petition for Judicial Review in Part and
Denying in Part; and Granting Respondent Clark
County's Counter Petition in Part and Denying in Part**

1 **ORDER**
LAW OFFICE OF DANIEL MARKS
2 DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
3 office@danielmarks.net
ADAM LEVINE, ESQ.
4 Nevada State Bar No. 004673
alevine@danielmarks.net
5 610 South Ninth Street
Las Vegas, Nevada 89101
6 (702) 386-0536; FAX (702) 386-6812
Email: office@danielmarks.net
7 *Attorneys for Plaintiff*

8 DISTRICT COURT
CLARK COUNTY, NEVADA

9 CLARK COUNTY DEFENDERS UNION
10
11 Petitioner,

Case No.: A-24-908956-J
Dept. No.: 20

12 v.
13 CLARK COUNTY; STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
14 RELATIONS BOARD,
15 Respondent.

**ORDER GRANTING PETITIONER
CLARK COUNTY DEFENDERS
UNION'S PETITION FOR JUDICIAL
REVIEW IN PART AND DENYING IN
PART; and GRANTING
RESPONDENT CLARK COUNTY'S
COUNTER PETITION IN PART AND
DENYING IN PART**

16 CLARK COUNTY,
17 Cross-Petitioner,

18 v.
19 CLARK COUNTY DEFENDERS UNION;
STATE OF NEVADA GOVERNMENT
20 EMPLOYEE-MANAGEMENT RELATIONS
BOARD,
21 Cross-Respondents.

22 ///
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24 ///

1 **ORDER GRANTING PETITIONER CLARK COUNTY DEFENDERS UNION'S PETITION**
2 **FOR JUDICIAL REVIEW IN PART AND DENYING IN PART; and GRANTING**
3 **RESPONDENT CLARK COUNTY'S COUNTER PETITION IN PART AND DENYING IN**
4 **PART**

5 The Petition for Judicial Review of the December 12, 2024 Decision, Findings of Fact and
6 Conclusions of Law (hereafter "Decision") of the State of Nevada Government Employee
7 Management Relations Board (hereafter "EMRB") filed by the Clark County Defenders Union
8 (hereafter "Defenders Union") and the Counter-Petition filed by Respondent Clark County of that
9 Decision, having come before the court for a hearing on October 22, 2025, and the Defenders Union
10 being represented by its counsel Adam Levine, Esq., and Clark County being represented by Deputy
11 District Attorney for Clark County District Attorney's Office, Scott Davis, Esq., and the Court
12 having read and considered the papers and pleadings on file and having heard the arguments of
13 counsel finds as follows:

13 **The Defenders Union's Petition**

14 1. The Decision of the EMRB finding that the Defenders Union failed to bargain in good
15 faith in violation of NRS 288.270(2)(b) by rushing to impasse after the completion of the sixth
16 meeting between the parties was in violation of statutory provisions, and arbitrary and capricious
17 within the meaning of NRS 233B.135(3)(a) and (f). The EMRB made no findings of any bad faith
18 bargaining by the Defenders Union prior to the declaration of impasse. The term "impasse" in public
19 sector bargaining only denotes a decision to proceed to statutory dispute resolution procedures such
20 as fact finding. Once the sixth meeting between the parties was completed, under the plain language
21 of NRS 288.200(1) either party could declare impasse to invoke that party's statutory right to
22 proceed through the fact-finding process provided that such declaration was after April 1, 2024.
23 Where there is no other underlying bad faith bargaining such as surface bargaining during the six
24 (6) meetings, nothing within NRS 288.200(1) requires that a declaration of impasse be reasonable

1 or supported by other criteria such as “futility” or being “at the end of one’s rope”, and under the
2 plain language of the statute either party may declare “impasse” so as to invoke the statutory fact-
3 finding process. Therefore, the Defenders Union’s Petition for Judicial Review is **GRANTED** as to
4 this issue and the findings of the EMRB in connection therewith are **SET ASIDE**.

5 2. The Decision of the EMRB finding that Clark County did not fail to bargain in good
6 faith in violation of NRS 288.270(1)(e) through regressive bargaining was supported by substantial
7 evidence in the record. Therefore, the Defenders Union’s Petition for Judicial review is **DENIED** as
8 to this issue and the findings of the EMRB in connection therewith are **AFFIRMED**.

9 3. The undisputed evidence in the record before the EMRB was that Clark County
10 required the Defenders Union to make all of its financial proposals before Clark County would make
11 any financial proposals. The Defenders Union presented to the EMRB case law from the National
12 Labor Relations Board (“NLRB”) which the Defenders Union argues makes such a prohibited
13 practice, and argued this to the EMRB at the hearing of November 6-7, 2024. However, the EMRB’s
14 Decision concluded Clark County did not fail to bargain in good faith throughout the sixth meetings
15 without addressing whether an employer-party may require the union to present financial proposals
16 first. An administrative agency must create a “record at the agency level to enable district courts and
17 appellate courts to meaningfully address the arguments raised in petitions for judicial review.”
18 *Highroller Transportation, LLC v. Nevada Transportation Auth.*, 139 Nev. Adv. Op. 51, 541 P.3d
19 793, 797 (Nev. App. 2023). There is a lack of clarity as to how the EMRB reached its conclusion on
20 this matter. Therefore, the Defenders Union’s Petition for Judicial Review is **GRANTED** as to this
21 issue and the matter **REMANDED** back to the EMRB to properly address this issue and create an
22 adequate record in connection with any Decision.

CCDU (Complainant)

**Redline Version of the Board's Prior Order
Filed on December 12, 2024**

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CLARK COUNTY DEFENDERS UNION,

Complainant,

v.

CLARK COUNTY,

Respondent.

Case No. 2024-014

**DECISION, FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

PANEL A

ITEM NO. 904-A

CLARK COUNTY,

Counterclaimant,

v.

CLARK COUNTY DEFENDERS UNION,

Counter-Respondent

I. BACKGROUND

On November 6 – 7, 2024 and on December 9, 2024, this matter came before the State of Nevada, Government Employee-Management Relations Board (“Board”) for consideration and decision pursuant to the provision of the Employee-Management Relations Act (the Act), NRS Chapter 288, and NAC Chapter 288. At issue was Clark County Defenders Union (“Complainant” or “CCDU”) Amended Prohibited Practice Complaint and Clark County’s (“Respondent” or “Clark County”) Counterclaim for Bad Faith Bargaining and Premature Declaration of Impasse. The Board conducted a hearing on the matter on November 6 and 7, 2024. The Board began

deliberations on November 7, 2024, but was unable to reach a decision on the matter and tabled the final decision until December 9, 2024.

On December 27, 2024 CCDU filed a Petition for Judicial Review of the Board's Decision challenging certain findings of the Board. On January 21, 2025, Clark County filed a Cross-Petition for Judicial Review challenging other portions of the Board's Decision. On November 7, 2025, the Eighth Judicial District Court issued its "Order Granting Petitioner Clark County Defenders Union's Petition for Judicial Review in Part and Denying in Part; and Granting Respondent Clark County's Counter Petition in Part and Denying in Part" (hereafter "PJR Order"). Pursuant to the PJR Order following remand, our Decision in Item No. 904 is hereby modified as follows:

II. DISCUSSION

A. CCDU's Prohibited Practice Complaint - Failure to Bargain in Good Faith under NRS 288.270(1)(e).

Under NRS 288.270(1)(e) and (2)(b), it is a prohibited practice for either a local government employer, or a designated employee representative, to willfully refuse to bargain in good faith as required under NRS 288.150. The requirement to bargain in good faith includes the entire bargaining process, including mediation, and fact finding. NRS 288.270(1)(e) and (2)(b).

A party's conduct at the bargaining table must show a sincere desire to come to an agreement. The determination of whether there has been such sincerity is made by drawing inferences from the conduct of the parties as a whole. *City of Reno v. Int'l Ass'n of Firefighters, Local 731*, Item No. 253-A (EMRB, Feb. 8, 1991), quoting *NLRB v. Int'l Union*, 361 U.S. 488 (1970).

Moreover, "[i]n order to show 'bad faith,' a complainant must present 'substantial evidence of fraud, deceitful action or dishonest conduct.'" *Juvenile Justice Supr. Ass'n v. County of Clark*, p.5, Case No. 2017-20, Item No. 834 (EMRB, Dec 13, 2018) (Citations omitted). Adamant insistence on a bargaining position or "hard bargaining" is not enough to show bad fa

bargaining. *Reno Municipal Employees Ass'n v. City of Reno*, Item No. 93 (EMRB, Jan. 11, 1980); *City of Reno v. Reno Police Protective Ass'n*, Case No. A1-046096, Item No. 790 (EMRB, Nov. 27, 2013) (bad faith bargaining does not turn on a single isolated incident; but rather the Board looks at the totality of conduct throughout negotiations to determine whether a party's conduct at the bargaining table evidences a real desire to come into agreement), citing *Int'l Brotherhood of Electrical Workers, Local 1245 v. City of Fallon*, Case No. A1-045485, Item No. 269 (EMRB, July 25, 1991). Furthermore, as noted in *Washoe County School District v. Washoe School Principals Association*, Consolidated Case Nos. 2023-024 and 2023-031, Item No. 895 (EMRB, March 29, 2024), evidence of bad faith may include one or more of the following:

- *Refusing to bargain on mandatory subjects of bargaining;*
- *Cancellation of bargaining sessions;*
- *Delays/Extended periods of unavailability for bargaining;*
- *Imposing conditions on bargaining;*
- *Insufficient authority to bargain;*
- *Refusal to provide information;*
- *Refusal to meet and unreasonable meeting times and sites;*
- *Boulwarism (take it or leave it type offers);*
- *Surface bargaining;*
- *Direct dealing;*
- *Regressive bargaining;*
- *Unilateral changes;*
- *Withdrawal of accepted offers; and*
- *Refusal to sign a written agreement.*

In this case, Complainant CCDU argues that Respondent Clark County failed to negotiate in good faith by: (1) engaging in surface bargaining and regressive bargaining; (2) insisting that CCDU make all of its proposals with any financial impact first before the County would make any proposals or counter-proposals on such subjects (3) failing to provide information; and (4) failing to bargain in a timely manner.

1. Surface Bargaining and Regressive Bargaining.

a. Surface Bargaining.

Surface bargaining is a strategy by which one of the parties merely goes through the motions, with no intention of reaching an agreement. *Washoe County, supra*. In this regard, it is

a form of bad faith bargaining. *City of Reno v. Int'l Ass'n of Firefighters, Local 731, Item No. 253-A* (EMRB, Feb. 8, 1991). Distinguishing surface bargaining from good faith bargaining depends on the facts supporting the claim. *See Washoe County*.

In this case, CCDU suggests that Clark County was only going through the motions and had no intention of reaching any agreement with CCDU. However, Clark County did submit numerous articles throughout the course of the negotiations between the parties. Furthermore, Clark County did provide responses to most of the proposals submitted by CCDU aside from those from the final negotiating session where impasse was declared that is discussed in more detail below in Section B(2). In sum, the Board does not find that Clark County engaged in surface bargaining.

b. Regressive Bargaining.

Regressive bargaining is not defined in the NRS nor NAC, nor has the Board ever had occasion to do so. Thus, the Board finds that it is necessary to turn to NLRB decisions on this topic. A regressive bargaining proposal is defined, logically, as a change from a prior more favorable proposal. *Mid-Continent Concrete*, 336 NLRB 258, 260 (2001). Such proposals include a party making an initial contract proposal that is less favorable to employees than the status quo. Regressive proposals are not per se unlawful; they may be justified by changes in the economy of the industry and the relative strengths of the participants. *Rescar, Inc.*, 274 NLRB 1, 2 (1985). However, regressive proposals are indicative of bad faith if left unexplained or if the explanation appears dubious. *Mid-Continent Concrete* at 260. "What is important is whether they are 'so illogical' as to warrant the conclusion that the Clark County by offering them demonstrated an intent to frustrate the bargaining process and thereby preclude the reaching of any agreement." *Barry-Wehmiller Co.*, 271 NLRB 471, 473 (1984), quoting *Hickinbotham Bros. Ltd.*, 254 NLRB 96, 103 (1981). The Board adopts the paragraph above for the purposes of defining regressive bargaining and how to apply the doctrine to cases.

There is no dispute that Clark County's first proposals were regressive in nature. The question was whether the proposals were intended to frustrate the bargaining process. The Board

does not find Clark County's proposals were meant to frustrate the bargaining process. Rather, the Board finds that the proposals reflected the relative strength of the parties and were primarily meant to help establish Clark County's bargaining position.

2. Respondent Clark County's Requirement that Complainant CCDU Make All of its Financial Proposals First.

As found by the district court, "The undisputed evidence in the record before the EMRB was that Clark County required CCDU to make all of its financial proposals before Clark County would make any financial proposals." The district court then remanded the case back to the Board to address this issue.

Based upon the district court's finding that the evidence was undisputed, we find no necessity for further argument or evidence regarding this issue.

It is well recognized that the failure to make proposals or counterproposals during negotiations is an indicator of bad faith bargaining. *International Union of Operating Engineers Local 501 v. Esmeralda County*, Case No. 2018-014 Item No. 838 (2019). The collective-bargaining process requires a willingness to engage in a "give and take" by both parties. *Lloyd A. Fry Roofing Co. v. NLRB*, 216 F.2d 273 (1954); *Hooks ex rel. NLRB v. Hood River Distillers, Inc.*, 2021 WL 1837396 (D. Ore. 2021) (seeking to discourage "rigid, inflexible posturing in place of the give-and-take of true bargaining").

In *Hospital of Barstow v. Nurses Association, National Nurses Organizing Committee*, 361 N.L.R.B. 352 (2014) enforced *Hospital of Barstow, Inc. v. NLRB*, 897 F.3d 280 (D.C. Cir. 2018) the union presented its proposed contract with all of its proposals except for wages. Employer responded that it would not give any proposals or counterproposals until all of the Union's proposals were received. 361 N.L.R.B. at 359. The Board affirmed the findings of the Administrative Law Judge determining that this approach to bargaining constituted a failure to bargain in good faith. The DC Circuit Court of Appeals specifically sustained the Board's decision on this point. 897 F.3d at 289. *See also, Fallbrook Hospital Corporation v. California Nursing Association*, 360 NLRB 644 (2014); *Ardsley Bus Corp.*, 357 N.L.R.B. 1009 (2011) (holding that

an employer failed to bargain in good faith by requiring the union present its demands in writing before the employer would do so).

In the instant case, Clark County defended its approach to bargaining in this manner on the grounds that it wanted to fully cost CCDU's proposals before responding. However, we find this reasoning impractical and unpersuasive. Certainly, both sides would like to have perfect financial information before making a financial proposal. Employers would like to fully cost all proposals, and unions would like to know exactly how much an employer is willing to spend. However, if unions adopted the same "you first" approach as Clark County used in this negotiation, there would be stalemate as each side waited for the other to advance its proposals. This would frustrate the "give and take" requirement of good faith bargaining.

We find NLRB's analysis in *Hospital of Barstow and Fallbrook Hospital Corporation* persuasive as to this issue. By requiring CCDU to first make all of its financial proposals before Clark County would make any financial proposals, Clark County failed to negotiate in good faith.

3. Failure to Provide Information.

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

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

The language in NRS 288.180(2) makes it clear that both parties can make requests for records, and that the requests must be reasonable and related to mandatory subjects of bargaining. *Id.*, see also *International Association of Fire Fighters, Local 5046*, Case No. 2019-011, Item No. 847-A (EMRB, July 8, 2020); *Law Vegas Fire Fighters Local 1285, International Association*

Fire Fighters v. City of Las Vegas, Case No. A1-046074, Item No. 786 (EMRB, May 21, 2013). Furthermore, once such a request is made, the information must be furnished without unnecessary delay. *Id.* Finally, the Board utilizes the “significant relationship” test when analyzing the negotiability of a topic. *Truckee Meadows v. International Association of Fire Fighters, Local 2487*, Case No. A1-045400, Item No. 196 (EMRB, Sept. 21, 1987). The significant relationship test can be described as whether or not, from the facts presented, the subject matter involved is directly and significantly related to any one of the subjects specifically enumerated in NRS 288.150(2). *Id.*

The evidence in this case shows that CCDU submitted a request for the financial impact of a 1% cost of living (“COLA”) adjustment on January 3, 2024. This information is clearly related to a mandatory subject of bargaining under NRS 288.150(2) and was reasonable. There was also credible evidence presented that the request was routine and that responding to the request was a relatively simple task that should have only required a week at most to comply with. However, Clark County did not provide the requested information until May 1, 2024, i.e., almost 4 months after the request was made.

The Board finds that Clark County failed to furnish the requested information without unnecessary delay. In fact, Clark County failed to provide any credible evidence indicating that the delay was excusable in any way. Clark County as a whole is responsible for ensuring that information requests are provided in a timely manner and no reasonable excuse for the delay was provided. The Board therefore finds that Clark County engaged in bad faith bargaining by failing to provide the requested information within a reasonable period of time.

4. Failure to Bargain in a Timely Manner, Including After Declaration of Impasse.

CCDU argued that Clark County failed to negotiate in a timely manner, including delaying the scheduling of the mediation. The timeline for events in this matter follows:

- January 3, 2024 – Notice of Intent to Negotiate delivered to Clark County.
- February 27, 2024 – 1st negotiating session where CCDU submitted proposed changes to Article 1 (agreement effective date) and Article 10

(grievance procedures).

- March 6, 2024 – 2nd negotiating session held. County attempted to discuss ground rules. Article 1 proposal was signed by Clark County.
- March 13, 2024 – 3rd negotiating session held. Clark County introduced proposed changes to Article 7 (management rights) and Article 36 (terms of the agreement to create a 3-year contract term). CCDU submitted counterproposal to Article 36 (asking for an annual reopener provision).
- March 20, 2024 – 4th negotiating session held.
- April 3, 2024 – 5th negotiating session held. Clark County provided a preliminary tentative budget for FY25 and offered to provide a budget presentation. CCDU introduced 3 new Articles for consideration: Article 37 (bail reform); Article 31 (compensation); and Article 22 (longevity pay).
- April 17, 2024 – 6th negotiating session held where CCDU introduced new financial proposals. CCDU declared impasse at this meeting. The financial proposals CCDU provided were:
 - i. Article 37 – bail reform pay;
 - ii. Article 38 – parity compensation with prosecutors;
 - iii. Article 12 – salary increases for evaluations;
 - iv. Article 9 – vacation sell back; and
 - v. A new Article 10 (version #3) regarding grievances procedures.

The parties discussed Article 7 and Clark County indicated they would withdraw their proposal. Clark County introduced four new proposals:

- i. Article 19 (vacation);
 - ii. Article 20 (sick leave); and
 - iii. Article 27 (severance pay).
- May 9, 2024 – Clark County requested the parties engage in mediation a

indicated that Clark County would “reach out to FMCS for some dates.” If CCDU was amenable to mediation. *See Exhibit 20 at p. 00069.*

- May 14, 2024 – CCDU agreed to participate in mediation.
- June 13, 2024 – CCDU wrote to Clark County and stated that more than one month had passed and mediation still had not yet been scheduled. *See Exhibit 21.*
- June 17, 2024 – Mediator was finally selected.
- August 1, 2024 – Mediation session held between the parties.

The Board finds the above schedule was reasonable up to the point where impasse was declared and mediation was requested by Clark County on May 9th and agreed upon by CCDU on May 14th. However, after a period of almost 3 months elapsed between the time that Clark County requested mediation and when mediation actually occurred. 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. NRS 288.190 which governs mediation is no exception to the rule that time is of the essence. Furthermore, NRS 288.200 makes it clear that once mediation has been chosen as an option, that process must be concluded prior to submitting the dispute to fact finding. To bolster this point, under NRS 288.200(1)(b) a mediator may also be a fact-finder in the same matter. Thus, the Board finds that there is no obligation on the part of any party to begin the fact-finding process until after mediation has concluded. However, to counter this finding, the Board reiterates that once mediation is chosen as an option, the parties must diligently work to begin mediation as soon as is feasible. In this case the Board finds that based on the evidence presented Clark County significantly delayed the mediation process without good cause and contrary to the duty to act in good faith.

The district court’s PJR Order directed this Board to clarify whether its finding of a failure to bargain in a timely manner was based upon Clark County, as the party requesting mediation, failing to begin the process of selecting a mediator in a timely manner, its refusal to make itself available on the dates initially provided by the mediator, or both. We clarify that this finding of a

failure to bargain in a timely manner was made upon both grounds.

Where the parties failed to reach an agreement at the bargaining table in prior years, the parties agreed to forego mediation. However, during the instant negotiations Clark County requested that CCDU participate in mediation on May 9, 2024, and by May 14, 2024 CCDU communicated its willingness to do so. However, almost a month elapsed with no action being initiated by Clark County to begin the mediator selection process prompting CCDU to write to Clark County regarding this failure.

If Clark County did not otherwise agree upon a mediator with CCDU, it was obligated to request a list of seven (7) mediators from the Commissioner, and the parties agree upon one within five (5) days from the receipt of the list. NRS 288.190(1) and (2). Delaying the selection process for a month was unreasonable and inconsistent with Clark County's obligation to bargain in a timely manner.

The parties agreed to utilize a mediator through the Federal Mediation and Conciliation Service (FMCS). On June 17, 2024 Clark County notified CCDU that the mediator was available July 17, 18 and 23. While CCDU expressed a desire for earlier dates, on June 21, 2024 CCDU's counsel instructed Clark County's counsel to secure all 3 dates – both for CCDU and other County bargaining units represented by the same counsel. (Exhibit "30"). Clark County refused to secure such dates claiming "[t]he County folks were not all available on those days." (Exhibit "31").

The Nevada Supreme Court has repeatedly held that it is appropriate to look to decisions of the National Labor Relations Board, where appropriate, in interpreting NRS Chapter 288. The NLRB has long held that the obligation to bargain at reasonable times requires a party "to provide a representative who could conduct negotiations with the degree of diligence expected and required of it by the statute." *Insulating Fabricators, Inc.*, 144 NLRB 1325, 1328 (1963), *enfd.* 338 F.2d 1002 (4th Cir. 1964). "The Act does not permit a party to hide behind the crowded calendar of his negotiator, whether he be a busy labor attorney or an overworked company officer." *Radiator Specialty Co.*, 143 NLRB 350, 369 (1963).

A party to collective bargaining under NRS Chapter 288 is held to the same stand:

Neither party has a right to insist upon every member of their negotiating team being available, particularly for mediation where the only requirement is a person with actual authority be present. Were the rule otherwise, one party to negotiations could make themselves perennially unavailable by simply increasing the size of their negotiating team to ensure that one person will always be unavailable.

Once a mediator is selected, the mediation is to occur “as soon as possible and, unless otherwise agreed upon by the parties” within 30 days after the mediator is notified of their selection. NRS 288.190(3). By refusing to accept the dates provided by the mediator based upon all of Clark County’s representatives not being available, Clark County prevented the mediation occurring “as soon as possible” and outside of the 30 days provided for in the statute.

B. Respondent Clark County Counterclaims - Failure to Bargain in Good Faith Under NRS 288.270(2)(b).

As noted in Section A(1) above, NRS 288.270(2)(b) states that it is a prohibited practice for either a local government employer or a designated employee representative to willfully refuse to bargain in good faith as required under NRS 288.150. The requirement to bargain includes the entire bargaining process, including mediation, and fact finding. *Id.* Clark County has asserted that CCDU engaged in surface bargaining and rushed to declare impasse.

1. Surface Bargaining.

Surface bargaining is a strategy by which one of the parties merely goes through the motions, with no intention of reaching an agreement. In this regard, it is a form of bad faith bargaining. *City of Reno v. Int’l Ass’n of Firefighters, Local 731, Item No. 253-A* (EMRB, Feb. 8, 1991). Distinguishing surface bargaining from good faith bargaining depends on the facts supporting the claim.

In this instance, both parties presented substantive proposals and, aside from the proposals submitted by CCDU at the final meeting, most were considered and some were even adopted. The Board finds that given the facts and circumstances presented to the Board, there was no surface bargaining undertaken by either party. Again, the Board would note that the lack of

ground rules may have been a contributing factor to both parties feeling that there may have been surface bargaining.

2. Rush to Impasse.

As noted by the Board in *Washoe County School District v Washoe School Principals' Association*, Case No. 2023-024 and *Washoe School Principals' Association v. Washoe County School District*, Case No. 2023-031 (consolidated) Item No. 895 (2024) (hereafter "*Washoe County School District*") the term "impasse" is not defined anywhere in NRS Chapter 288. In that case the Board adopted a definition of impasse from the NLRA and applied the same standard to the parties to this dispute in Item No. 904.

In its PJR Order the district court rejected this standard and set aside the finding of failure to bargain in good faith against CCDU. The district court determined that the term "impasse" in public sector bargaining only denotes a decision to proceed to statutory dispute resolution procedures such as fact finding under NRS 288.200. See e.g. *Moreno Valley Unified School Dist. v. PERB*, 142 Cal. App. 3d 191 (1983) ("impasse under the EERA is, unlike NLRA impasse, a continuation of mutual dispute resolution efforts", and "'impasse' under such a 'statutory scheme denotes a continuation of the labor management dispute resolution process, while 'impasse' under federal law indicates a halt to that process"); see also *Philadelphia Housing Auth. v. Pennsylvania Labor Relations Bd.*, 153 Pa. Comm. 20, 620 A.2d 594 (1993); *AFSCME Iowa Council 61 v. Iowa Pub. Employment Relations Bd.*, 846 N.W.2d 873 (2014).

The district court determined where there is no underlying bad faith bargaining by a party during the requisite six (6) meetings provided for under NRS 288.200(1), a party may declare impasse after six (6) meetings without any additional requirements or conditions, including conditions of the sort required by this Board in *Washoe County School District*. Because the Board found that CCDU did not bargain in bad faith during the six (6) meetings between the parties, CCDU did not fail to bargain in good faith by declaring impasse prematurely.

In conformance with the district court's determination, any party who bargains in good faith through six (6) meetings may declare impasse and to move to statutory resolution procedur

without further requirements. Any prior decisions of the Board to the contrary are hereby overruled.

C. Failure to Discuss Ground Rules.

Under NRS 280.180(3), the parties are required to at least broach the subject of ground rules at their first meeting. The Board understands that most parties establish bargaining ground rules and that such guidelines serve as a helpful device to streamline the negotiations process and to avoid petty disputes and unfair surprises. *City of Reno v. International Ass'n of Firefighters, Local 731*, Case No. A1-045472, Item No. 253-A (EMRB, Feb. 8, 1991). However, disputes over the interpretation of these guidelines should not be allowed to interfere with negotiations regarding mandatory subjects of bargaining. *Id.* If negotiations were allowed to breakdown over mere threshold issues, those who wish to impede the collective bargaining process would have a tool of avoidance to wield at the expense of those willing to bargain in good faith. *Id.*, citing to *NLRB v. Bartlett-Collins Co.*, 639 F.2d 652 (10th Cir. 1981), *cert denied* 252 U.S. 961 (1981). Also, ground rules cannot be implemented except by mutual agreement which means that a party cannot unilaterally impose a ground rule as a precondition to bargaining. *Id.* Most importantly, ground rules are not mandatory subjects of bargaining under NRS 288.150.

There is no dispute that ground rules were discussed during the first meeting between the parties on February 27, 2024. It is also clear from the evidence presented that CCDU informed Clark County they did not want to discuss ground rules and believed the rules were not needed. However, the law is clear that ground rules are not a mandatory subject of bargaining and once a party unequivocally indicates they do not wish to discuss ground rules, there can be no finding of bad faith if a party rejects any proposed ground rules. However, the Board also finds that the lack of ground rules in this case most likely contributed to the lack of progress by the parties and hastened the declaration of impasse which was unnecessary given the sophistication of the parties and the issues involved.

III. FINDINGS OF FACT

1. The above discussion is incorporated herein to the extent it sets out findings of fact.
2. There was insufficient evidence to sustain a surface bargaining allegation against Clark County. *See* Section II(A)(1)(a) above.
3. There was insufficient evidence to sustain a regressive bargaining allegation against Clark County. *See* Section II(A)(1)(b) above.
4. Substantial evidence was presented showing that Clark County engaged in bad faith by requiring CCDU to present all its financial proposals before Clark County would counter or make financial proposals of its own as discussed in Section II (A)(2) above.
5. Substantial evidence was presented showing that Clark County engaged in bad faith by significantly and unreasonably delaying the provision of information to CCDU as discussed in Section II(A)(3) above.
6. Substantial evidence was presented which indicated that Clark County failed to bargain in a timely manner regarding selecting the mediator, setting up the mediation session, and making themselves available to participate in mediation. *See* Section II(A)(3 4) above.
7. There was insufficient evidence to sustain a surface binding bargaining allegation against CCDU. *See* Section II(B)(1) above.
8. CCDU therefore did not engage in bad faith negotiations by rushing to declare impasse as discussed in Section II(B)(2 3) above.
9. CCDU did not fail to bargain in good faith by refusing to agree to ground rules. *See* Section II(C) above.
10. Any finding of fact above construed to constitute a conclusion of law is adopted as such to the same extent as if originally so denominated.

IV. CONCLUSIONS OF LAW

1. The above discussion is incorporated herein to that it sets out conclusions of law.
2. All findings of fact are based on the finding that there was a preponderance

evidence in support of all such findings.

3. There is an ongoing duty to act in good faith that extends from the negotiating period throughout the duration of the CBA. *See e.g.*, NRS 288.270(1)(e) and (2)(b) and NRS 288.032. *See* Discussion in Section II(A) above.

4. A party's conduct at the bargaining table must show a sincere desire to come to an agreement. The determination of whether there has been such sincerity is made by drawing inferences from the conduct of the parties as a whole. *City of Reno v. Int'l Ass'n of Firefighters, Local 731*, Item No. 253-A (EMRB, Feb. 8, 1991), quoting *NLRB v. Int'l Union*, 361 U.S. 488 (1970).

5. As noted in *Washoe County, supra*, evidence of bad faith may include one or more of the following:

- *Refusing to bargain on mandatory subjects of bargaining;*
- *Cancellation of bargaining sessions;*
- *Delays/Extended periods of unavailability for bargaining;*
- *Imposing conditions on bargaining;*
- *Insufficient authority to bargain;*
- *Refusal to provide information;*
- *Refusal to meet and unreasonable meeting times and sites;*
- *Boulwarism (take it or leave it type offers);*
- *Surface bargaining;*
- *Direct dealing;*
- *Regressive bargaining;*
- *Unilateral changes;*
- *Withdrawal of accepted offers; and*
- *Refusal to sign a written agreement.*

~~6. Evidence was presented showing that there were multiple instances of bad faith negotiations by both parties as discussed in the Findings of Fact Section above. The term "impasse" under NRS Chapter 288 is a resort to the statutory resolution procedures in the Act and does not denote a cessation of the obligation to bargain.~~

~~7. If a party otherwise bargains in good faith through the six (6) meetings provided for under NRS 288.270(1) that party may declare impasse and move to statutory resolution~~

procedures without further preconditions.

8. Any conclusion of law above construed to constitute a finding of fact is adopted as such to the same extent as if originally so denominated.

V. CONCLUSION

The Board determined that Clark County engaged in bad faith negotiations as described herein. Normally the Board would send the parties back to the table to continue to negotiate when there is a finding of bad faith after impasse is declared. *City of Reno v. International Association of Firefighters, Local 731*, Case No. A1-045472, Item No. 253-A (EMRB, Feb. 8, 1991). However, given that ~~the matter is currently before a fact finder~~ the collective bargaining agreement has already been resolved by binding fact finding, the Board finds that other remedies are appropriate as set out below.

Based on the foregoing, it is hereby **ORDERED** as follows:

1. The Board finds that ~~both parties~~ Clark County engaged in bad faith bargaining as described herein.
2. Clark County will promptly post a copy of this Decision in where the Clark County Commission meeting notices are posted.
3. ~~CCDU will promptly post a copy of this Decision in the office area(s) where the Public Defenders work.~~
4. Clark County shall provide a copy of this Decision to each member of the Clark County Board of County Commissioners and provide Commissioner ~~Snyder~~ **Abellar** with proof of such within 10 days from the date of this Decision.
5. ~~Clark County will submit a copy of this Decision to the fact finder within ten (10) days from the date of this Decision and provide proof of such to Commissioner Snyder.~~
6. ~~CCDU will provide a copy of this Decision to each of its current members within ten (10) days from the date of this Decision and provide proof of such to Commissioner Snyder.~~
7. ~~Both parties are~~ Clark County **is** hereby Ordered to refrain from engaging in the prohibited conduct described herein.

8. All other requested relief is hereby denied.

Dated this 12th day of ~~December~~ April 2024 6.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: _____
BRENT ECKERSLEY, ESQ.
Presiding Officer

By: _____
_____, Board Member

By: _____
_____, Board Member

Clark County (Respondent)

**Proposed Revisions to the Board's
December 12, 2024, Decision**

1
2
3 **STATE OF NEVADA**
4 **GOVERNMENT EMPLOYEE-MANAGEMENT**
5 **RELATIONS BOARD**
6

7 CLARK COUNTY DEFENDERS UNION,

Case No. 2024-014

8 Complainant,

9 v.

**AMENDED DECISION, FINDINGS
OF FACT AND CONCLUSIONS OF
LAW**

10 CLARK COUNTY,

11 Respondent.

~~PANEL A-EN BANC~~

12
13 CLARK COUNTY,

14 Counterclaimant,

ITEM NO. 904-A

15 v.

16 CLARK COUNTY DEFENDERS UNION,

17 Counter-Respondent
18
19

20
21 Pursuant to the order of the district court on judicial review, the Board's prior
22 order (Item # 904) is amended to read as follows:
23

24 **I. BACKGROUND**

25 On November 6 – 7, 2024 and on December 9, 2024, this matter came before the State of
26 Nevada, Government Employee-Management Relations Board (“Board”) for consideration and
27 decision pursuant to the provision of the Employee-Management Relations Act (the Act), NRS
28 Chapter 288, and NAC Chapter 288. At issue was Clark County Defender’s Union

1 (“Complainant” or “CCDU”) Amended Prohibited Practice Complaint and Clark County’s
2 (“Respondent” or “Clark County”) Counterclaim for Bad Faith Bargaining and Premature
3 Declaration of Impasse. The Board conducted a hearing on the matter on November 6 and 7,
4 2024. The Board’s order in Item No. 904 was issued on December 12, 2024. The matter again
5 came before the Board on March 31, 2025, following an order of remand from the Eighth
6 Judicial District court, Department # 20, on November 7, 2025. Following the remand
7 Complainant moved to have the matter heard before the Board and the motion was briefed by
8 both parties. The Board order each party to submit proposed revisions to its order, and
9 arguments were held before the Board en banc on March 31, 2026. ~~The Board began~~
10 ~~deliberations on November 7, 2024, but was unable to reach a decision on the matter and tabled~~
11 ~~the final decision until December 9, 2024.~~

12 13 II. DISCUSSION

14 A. CCDU’s Prohibited Practice Complaint - Failure to Bargain in Good Faith 15 under NRS 288.270(1)(e).

16 Under NRS 288.270(1)(e) and (2)(b), it is a prohibited practice for either a local
17 government employer, or a designated employee representative, to willfully refuse to bargain in
18 good faith as required under NRS 288.150. The requirement to bargain in good faith includes
19 the entire bargaining process, including mediation, and fact finding. NRS 288.270(1)(e)
20 and (2)(b).

21 A party’s conduct at the bargaining table must show a sincere desire to come to an
22 agreement. The determination of whether there has been such sincerity is made by drawing
23 inferences from the conduct of the parties as a whole. *City of Reno v. Int’l Ass’n of*
24 *Firefighters, Local 731*, Item No. 253-A (EMRB, Feb. 8, 1991), quoting *NLRB v. Int’l Ass’n of*
25 *Int’l Union*, 361 U.S. 488 (1970).

26 Moreover, “[i]n order to show ‘bad faith,’ a complainant must present ‘substantial
27 evidence of fraud, deceitful action or dishonest conduct.’” *Juvenile Justice Supr. Ass’n v.*
28 *County of Clark*, p.5, Case No. 2017-20, Item No. 834 (EMRB, Dec 13, 2018) (Citations

1 omitted). Adamant insistence on a bargaining position or “hard bargaining” is not enough to
2 show bad faith bargaining. *Reno Municipal Employees Ass’n v. City of Reno*, Item No. 93
3 (EMRB, Jan. 11, 1980); *City of Reno v. Reno Police Protective Ass’n*, Case No. A1-046096,
4 Item No. 790 (EMRB, Nov. 27, 2013) (bad faith bargaining does not turn on a single isolated
5 incident; but rather the Board looks at the totality of conduct throughout negotiations to
6 determine whether a party’s conduct at the bargaining table evidences a real desire to come into
7 agreement), citing *Int’l Brotherhood of Electrical Workers, Local 1245 v. City of Fallon*, Case
8 No. A1-045485, Item No. 269 (EMRB, July 25, 1991). Furthermore, as noted in *Washoe*
9 *County School District v. Washoe School Principals Association*, Consolidated Case Nos.
10 2023-024 and 2023-031, Item No. 895 (EMRB, March 29, 2024), **evidence indicia** of bad faith
11 may include one or more of the following:

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

26 In this case, Complainant argues that Respondent Clark County failed to negotiate in
27 good faith by: (a) engaging in surface bargaining and regressive bargaining; (b) failing to
28 provide information; and (c) failing to bargain in a timely manner.

29 **1. Surface Bargaining and Regressive Bargaining.**

30 **a. Surface Bargaining.**

31 Surface bargaining is a strategy by which one of the parties merely goes through the
32 motions, with no intention of reaching an agreement. *Washoe County School Dist, supra*. In

1 this regard, it is a form of bad faith bargaining. *City of Reno v. Int'l Ass'n of Firefighters, Local*
2 *731, Item No. 253-A* (EMRB, Feb. 8, 1991). Distinguishing surface bargaining from good faith
3 bargaining depends on the facts supporting the claim. *See Washoe County School Dist.*

4 In this case, Complainant suggests that Respondent was only going through the motions
5 and had no intention of reaching any agreement with Complainant. However, Respondent did
6 submit numerous articles throughout the course of the negotiations between the parties.
7 Furthermore, Respondent did provide responses to most of the proposals submitted by
8 Complainant aside from those from the final negotiating session where impasse was declared
9 that is discussed in more detail below in Section B(2). In sum, the Board does not find that
10 Respondent engaged in surface bargaining.

11 **b. Regressive Bargaining.**

12 Regressive bargaining is not defined in the NRS nor NAC, nor has the Board ever had
13 occasion to do so. Thus, the Board finds that it is necessary to turn to NLRB decisions on this
14 topic. A regressive bargaining proposal is defined, logically, as a change from a prior more
15 favorable proposal. *Mid-Continent Concrete*, 336 NLRB 258, 260 (2001). Such proposals
16 include a party making an initial contract proposal that is less favorable to employees than the
17 status quo. Regressive proposals are not per se unlawful; they may be justified by changes in
18 the economy of the industry and the relative strengths of the participants. *Rescar, Inc.*, 274
19 NLRB 1, 2 (1985). However, regressive proposals are indicative of bad faith if left unexplained
20 or if the explanation appears dubious. *Mid-Continent Concrete* at 260. “What is important is
21 whether they are ‘so illogical’ as to warrant the conclusion that the Respondent by offering
22 them demonstrated an intent to frustrate the bargaining process and thereby preclude the
23 reaching of any agreement.” *Barry-Wehmiller Co.*, 271 NLRB 471, 473 (1984),
24 quoting *Hickinbotham Bros. Ltd.*, 254 NLRB 96, 103 (1981). The Board adopts the paragraph
25 above for the purposes of defining regressive bargaining and how to apply the doctrine to cases.

26 There is no dispute that Respondent’s first proposals were regressive in nature. The
27 question was whether the proposals were intended to frustrate the bargaining process. The
28 Board does not find the Respondent’s proposals were meant to frustrate the bargaining process.

1 Rather, the Board finds that the proposals reflected the relative strength of the parties and were
2 primarily meant to help establish Respondent’s bargaining position.

3 **2. Failure to Provide Information.**

4 Under NRS 288.270(2)(d), it is a prohibited practice for an employee organization to fail
5 to provide documents related to mandatory subjects of bargaining as provided under NRS
6 288.180(2) which states:

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

13 The language in NRS 288.180(2) makes it clear that both parties can make requests for
14 records, and that the requests must be reasonable and related to mandatory subjects of
15 bargaining. *Id.*, see also *International Association of Fire Fighters, Local 5046*, Case No.
16 2019-011, Item No. 847-A (EMRB, July 8, 2020); *Law Vegas Fire Fighters Local 1285*,
17 *International Association of Fire Fighters v. City of Las Vegas*, Case No. A1-046074, Item No.
18 786 (EMRB, May 21, 2013). Furthermore, once such a request is made, the information must
19 be furnished without unnecessary delay. *Id.* Finally, the Board utilizes the “significant
20 relationship” test when analyzing the negotiability of a topic. *Truckee Meadows v. International*
21 *Association of Fire Fighters, Local 2487*, Case No. A1-045400, Item No. 196 (EMRB, Sept.
22 21, 1987). The significant relationship test can be described as whether or not, from the facts
23 presented, the subject matter involved is directly and significantly related to any one of the
24 subjects specifically enumerated in NRS 288.150(2). *Id.*

25 The evidence in this case shows that CCDU submitted a request for the financial impact
26 of a 1% cost of living (“COLA”) adjustment on January 3, 2024. This information is clearly
27 related to a mandatory subject of bargaining under NRS 288.150(2) and was reasonable. There
28 was also credible evidence presented that the request was routine and that responding to the

1 request was a relatively simple task that should have only required a week at most to comply
2 with. However, Respondent did not provide the requested information until May 1, 2024, i.e.,
3 almost 4 months after the request was made.

4 The Board finds that Respondent failed to furnish the requested information without
5 unnecessary delay. In fact, Respondent failed to provide any credible evidence indicating that
6 the delay was excusable in any way. Clark County as a whole is responsible for ensuring that
7 information requests are provided in a timely manner and no reasonable excuse for the delay
8 was provided. The Board therefore finds that Respondent engaged in bad faith bargaining by
9 failing to provide the requested information within a reasonable period of time.

10 **3. Failure to Bargain in a Timely Manner, Including After Declaration of Impasse.**

11 Complainant argued that Respondent failed to negotiate in a timely manner, including
12 delaying the scheduling of the mediation. The timeline for events in this matter follows:

- 13 • January 3, 2024 – Notice of Intent to Negotiate delivered to Respondent.
- 14 • February 27, 2024 – 1st negotiating session where Complainant submitted
15 proposed changes to Article 1 (agreement effective date) and Article 10
16 (grievance procedures).
- 17 • March 6, 2024 – 2nd negotiating session held. County attempted to
18 discuss ground rules. Article 1 proposal was signed by Respondent.
- 19 • March 13, 2024 – 3rd negotiating session held. Respondent introduced
20 proposed changes to Article 7 (management rights) and Article 36 (terms
21 of the agreement to create a 3-year contract term). Complainant submitted
22 counterproposal to Article 36 (asking for an annual reopener provision).
- 23 • March 20, 2024 – 4th negotiating session held. Respondent proposed to
24 re-adopt 17 articles from the prior agreement.
- 25 • April 3, 2024 – 5th negotiating session held. Respondent provided a
26 preliminary tentative budget for FY25 and offered to provide a budget
27 presentation. Complainant introduced 3 new Articles for consideration:
28 Article 37 (bail reform) (new); Article 31 (compensation); and Article 22

1 (longevity pay). Complainant signed the 17 proposals from the prior
2 meeting.

- 3 • April 17, 2024 – 6th negotiating session held where Complainant
4 introduced new financial proposals. Complainant declared impasse at this
5 meeting. The financial proposals Complainant provided were:
 - 6 i. Article 37 – bail reform pay;
 - 7 ii. Article 38 – parity compensation with prosecutors;
 - 8 iii. Article 12 – salary increases for evaluations;
 - 9 iv. Article 9 – vacation sell back; and
 - 10 v. A new Article 10 (version #3) regarding grievances
11 procedures.

12 The parties discussed Article 7 and Respondent indicated they would
13 withdraw their proposal. Respondent introduced four new proposals:

- 14 i. Article 19 (vacation);
 - 15 ii. Article 20 (sick leave); and
 - 16 iii. Article 27 (severance pay); and
 - 17 iv. A revised version of Article 7
- 18 • May 9, 2024 – Respondent requested the parties engage in mediation and
19 indicated that Respondent would “reach out to FMCS for some dates.” If
20 the Complainant was amenable to mediation. See Exhibit 20 at p. 00069.
 - 21 • May 14, 2024 – Complainant ~~agreed to participate in~~ acknowledged the
22 mediation.
 - 23 • June 13, 2024 – Complainant wrote to Respondent and stated that more
24 than one month had passed and mediation still had not yet been scheduled.
25 See Exhibit 21.
 - 26 • June 17, 2024 – Mediator was finally selected.
 - 27 • August 1, 2024 – Mediation session held between the parties.

28 The Board finds the above schedule was reasonable up to the point where impasse was

1 declared by Complainant and mediation was ~~requested~~ invoked by Respondent on May 9th and
2 ~~agreed-upon~~ acknowledged by Complainant on May 14th. However, after a period of ~~almost 3~~
3 ~~two and-a-half~~ months elapsed between the time that Respondent requested mediation and
4 when mediation actually occurred.

5 As a preliminary, the Board stresses that ~~the~~ entirety of NRS Chapter 288 makes it
6 clear that time is of the essence in terms of participating in negotiations, mediation and fact-
7 finding. NRS 288.190 which governs mediation is no exception to the rule that time is of the
8 essence. Furthermore, NRS 288.200 makes it clear that once mediation has been ~~chosen as an~~
9 ~~option~~ invoked, that process must be concluded prior to submitting the dispute to fact finding.
10 To bolster this point, under NRS 288.200(1)(b) a mediator may also be a fact-finder in the same
11 matter. Thus, the Board finds that there is no obligation on the part of any party to begin the
12 fact-finding process until after mediation has concluded. However, to counter this finding, the
13 Board reiterates that once mediation is ~~chosen~~ invoked as an ~~option~~, the parties must diligently
14 work to begin mediation as soon as is feasible. ~~In this case the Board finds that based on the~~
15 ~~evidence presented Respondent significantly delayed the mediation process without good cause~~
16 ~~and contrary to the duty to act in good faith.~~ The instant matter before this Board asks whether
17 Complainant has met its burden to show that Respondent bargained in bad faith. We turn now
18 to that question and to the evidence presented to the Board at the hearing.

19 The facts show two general stages of events – selecting the individual to serve as a
20 mediator and thereafter scheduling a date to hold the mediation. Here there was approximately
21 one month between Complainant’s acknowledgement of mediation and the date on which the
22 parties selected the mediator. However, the lone fact that a month had passed between invoking
23 mediation and picking a mediator is by itself insufficient to establish bad faith by one party.
24 More is required. The standard for measuring bad faith is that which is stated above; namely
25 does the evidence show that Respondent lacked a sincere desire to come to an agreement. This
26 is not a showing to be made lightly. As noted above there must be substantial evidence of fraud,
27 deceitful action or dishonest conduct.

28 The evidence presented to the Board regarding the mediation was very limited. The

1 Board was presented with no testimony on the topic of what actually happened on this topic
2 between May 14th and the actual mediation on August 1st. The Board notes the testimony of
3 Curtis Germany who explained that these arrangements for mediation were handled by the
4 parties' respective outside counsels. Neither of those counsels testified at the hearing. Instead,
5 the Board was presented only with a selection of e-mail exchanges between those attorneys and
6 some correspondence between Complainant and FMCS to try to piece together the series of
7 events. (Exhibits 20-38). There are numerous gaps in that record and no assurances for the
8 Board whether these e-mails are a complete record or a selective record of everything that
9 transpired.

10 What the Board can piece together from that record does not show bad faith on the part
11 of Respondent.

12 Whenever mediation is invoked the necessary first step is to select a mediator. There are
13 two ways to do this. The preferred way is for the parties themselves to mutually select a
14 mediator. As an alternative, if the parties do not agree then either party can request a panel list
15 from the Commissioner to select the mediator. NRS 288.190(1).

16 Here, the parties were able to mutually select a mediator. The evidence indicates that
17 they did so indirectly by agreeing to use "FMCS." NRS 288.190(1) does not restrict the parties
18 from this sort of agreement. But FMCS itself is not a mediator. FMCS operates under federal
19 regulations, which specify in relevant part that it is the federal service that will assign the
20 mediator to a given dispute. 29 C.F.R. § 1403.4. The Board heard no evidence, one way or the
21 other, that addressed whether or not any contact was made with FMCS between May 14 and
22 June 17, apart from Exhibits 22-23 which indicated that Complainant CCDU contacted FMCS
23 three days after acknowledging mediation, on May 17, 2026. Although NRS 288.200 expressly
24 requires participation in mediation prior to fact findings, Complainant's contact with FMCS
25 was not for mediation purposes but rather to request a fact-finding panel.

26 Approximately two weeks after receiving the FMCS fact-finding panel, Complainant
27 sent an e-mail of May 31st that forwarded the fact-finding panel to Respondent and demanded
28 that Respondent immediately schedule the fact-finding. (Ex.24). This e-mail also purported to

1 memorialize a conversation that Respondent's counsel would reach out to FMCS regarding
2 mediation (Ex. 24). There was no additional evidence to indicate what conversations may have
3 taken place between Respondents counsel and FMCS thereafter. There is simply a gap between
4 May 31st and Thursday June 13th when an e-mail was sent by Respondent's counsel purporting
5 to confirm another conversation between counsel, disputing whether a fact finder should be
6 selected before mediation but agreeing at that point to reach out to FMCS the following
7 morning. (Ex. 25). The Board was not presented with evidence of what happened the following
8 day, but by Monday June 17th the parties had obtained the name of an actual FMCS mediator.
9 In this case it was Herman Brown, who is identified in other exhibits as a Commissioner of the
10 Las Vegas field office of FMCS.

11 In this the Board concludes that there is insufficient evidence to prove that Respondent
12 acted in bad faith. Bad faith must be proven by a preponderance of the evidence. Unexplained
13 gaps in the record cannot rationally support a finding of bad faith because in that case the Board
14 is given no evidence to work with. Here there are unexplained gaps of approximately two
15 weeks on either side of Exhibit 24. And while the parties may speculate as to what happened in
16 those gaps, speculation is not evidence. The only concrete facts before the Board are that the
17 parties agreed to use FMCS to obtain the name of a mediator, that Complainant had contacted
18 FMCS about fact finding rather than mediation, that the parties were sidetracked into an
19 ancillary disagreement about whether or not to begin fact finding by selecting a fact finder
20 before the mediation, that Respondent's counsel agreed to reach out to FMCS on June 14th, and
21 that by the following Monday the parties had been provided with the name of the assigned
22 mediator. The Board also notes that prior to June 17 the parties referred to mediation with
23 "FMCS," and after June 17 the references are to mediation with Commissioner Brown. This
24 process was less than perfect, but it was a process marked by disagreement with both parties
25 sidetracked by a dispute over the proper order of events. Complainant's conduct in prematurely
26 seeking a fact-finding panel and pressing Respondent on factfinding prior to mediation tended
27 to hinder the mediation process. But working through this disagreement was not bad faith by
28 either Complainant nor by Respondent. In this there is no evidence that Respondent lacked a

1 sincere desire to come to an agreement, which is to say no evidence that Respondent acted in
2 bad faith.

3 Complainant asks that this Board adopt a *per se* rule that imposes a duty on the party that
4 invokes mediation to initiate the selection process and to be the point of contact for the
5 mediator. Complainant however cites to no authority that would enable the Board to create such
6 a rule, and this Board is bound by the Administrative Procedures Act to refrain from creating a
7 new legal obligation in the context of this contested case. *Coury v. Whittlesea-Bell Luxury*
8 *Limousine*, 102 Nev. 302, 721 P.2d 375 (1986). And even if such a rule existed, it would not
9 automatically equate to bad faith bargaining.

10 In sum, the limited evidence does not support a finding of bad faith against Respondent
11 regarding contacting FMCS or selecting a mediator.

12 The second contention made by Complainant is that Respondent acted in bad faith in
13 scheduling the mediation. Complainant asserts that Respondent refused to accept the initial
14 dates offered by Commissioner Brown. This accusation cannot be reconciled with the
15 governing law or the facts presented to this Board.

16 Once Commissioner Brown was selected as mediator on June 17, he alone was vested
17 with the control over scheduling the mediation. This was so as a matter of law under NRS
18 288.190(3) which vests the mediator with the authority to set the times and dates for meetings
19 and with the authority to compel the parties to attend. This is also the case under the federal law
20 governing the use of FMCS mediators. 29 C.F.R. § 1406.1(b). Thus, scheduling concerns and
21 what to do about them are entirely within the discretion of the selected mediator.

22 Within that framework the good faith obligations of the Act do not restrict either party
23 from raising a scheduling concern, or for that matter any other concerns that might aid the
24 mediator. We thus do not find that raising a scheduling concern over proposed mediation dates
25 amounts to bad faith. Indeed, scheduling concerns are common and such a rule prohibiting a
26 party from raising a scheduling concern under penalty of bad faith would tend to work against
27 the good faith obligations of the Act. It is the mediator's judgment whether it may be more
28 productive to have all the proper parties in attendance or to press on and hold to inconvenient

1 proposed mediation dates. By way of an illustration Complainant made the very same move in
2 this case. Complainant's own counsel indicated that he was not available for two of the
3 mediation dates (Ex. 27) and when he reached out to mediator Brown on July 9, he indicated
4 that he would likely not be able to be present for the mediation on the proposed dates. (Ex. 33).
5 Even though Complainant offered to appear without counsel, this exemplifies the discretion
6 vested with the mediator as there may be cases where a mediator deems it more beneficial to
7 have an attorney present at a mediation. This too would be a concern for the mediator alone.

8 The Board will not remove the mediator's ability to consider the scheduling concerns of
9 the parties nor will the Board intrude on the authority granted to a mediator under the law. The
10 Act should not be construed to cow a party into silence regarding a possible scheduling conflict.
11 But in any event, it is plainly within a mediator's authority to either accommodate a scheduling
12 concern or alternatively to hold the parties to a particular mediation date. This is the very
13 meaning of a mediator's statutory authority to "establish the times and dates for meetings."
14 NRS 288.190(3).

15 The Board notes that it was not presented evidence showing a refusal to mediate by the
16 County on the original mediation dates, and no other e-mail states that Respondent actually
17 refused to participate. Rather the only evidence presented indicates that the County pointed out
18 that not everyone was available on the dates proposed. The matter then devolved into another
19 side issue when Complainant stated that Respondent did not need its entire bargaining team and
20 Respondent took umbrage at Complainant trying to dictate who would participate at mediation.
21 In the end, however, there is no evidence of an actual refusal by Respondent.

22 The scheduling concern, and the issue of whether to hold to the originally proposed
23 dates, was then presented to Commissioner Brown on July 9 (Ex. 33). Commissioner Brown's
24 response was to provide some new possible dates including the August 1st date on which the
25 mediation was held. (Ex. 36-37). The end result was a mediation that was held approximately
26 one week later than the originally-proposed date of July 23. Moreover, Respondent also raised
27 the possibility of switching mediators to try to find other possible dates. (Ex. 30). This evidence
28 does not rationally support a finding that Respondent acted in bad faith. Thus, Complainant's

1 claim of bad faith cannot be reconciled either with the law or the limited facts presented to the
2 Board.

3 While the Board reiterates that time is of the essence during the mediation phase, the
4 Board finds that Complainant has not proven bad faith by Respondent in this case.

5 4. Negotiation Tactics

6 Complainant also charges Respondent with bad faith through its negotiation tactics. The
7 testimony at the hearing was that Respondent wanted to see all of Complainants complete
8 financial package and its impacts before making counteroffers on financial proposals, rather
9 than engage in piecemeal negotiations over financial articles. (Tr. Vol. I, p. 56:6-57:9; 59:5-13;
10 60:5-20; 76:18-25).

11 Complainant alleges that this was bad faith, relying upon precedent from the NLRB in
12 *Fallbrook Hospital*, 360 NLRB 644 (2014) and *Hospital of Barstow*, 361 NLRB 352 (2014).
13 These cases do not support Complainant’s position because neither case speaks to the situation
14 before the Board in this case. In each of these cases, the employer refused to make any proposal
15 at all on any part of the contract until the union had presented all of its proposals on the entire
16 contract. *Hosp. of Barstow*, at 359-360; *Fallbrook Hospital* at 652. The same is true of *EI*
17 *Dupont*, 303 NLRB 631 and *EI Dupont*, 7-CA-40971, to which Complainant also alluded in its
18 closing arguments. That was plainly not the situation here. As we have noted both parties were
19 exchanging proposals apart from the financial pieces and the County made multiple proposals,
20 including seventeen proposals alone¹ in the fourth meeting.

21 Even then the same NLRB precedent reiterates that a refusal to make any offers at all is
22 not dispositive. It is just one factor among many others that may be considered in the totality of
23 circumstances. See *Fallbrook Hospital* at 652, *Hospital of Barstow* at 360. Thus, to the extent
24 that Complainant asserts that these cases require a finding of bad faith based solely upon a

25
26 ¹ It does not matter whether these were proposals for new contract language or proposals to re-adopt existing contract
27 language because benefits under a collective bargaining agreement do not vest and will lapse if not negotiated again into a
28 new contract. See *San Bernardino Pub. Emps. Assn. v. City of Fontana*, 67 Cal. App. 4th 1215, 1223 (1998) (reasoning that
collective bargaining agreements are for a fixed duration and “once ... expired under their own terms, the employees had no
legitimate expectation that the [] benefits would continue unless they were renegotiated as part of a new bargaining
agreement”).

1 refusal to make offers, we reject that contention. As already stated, bad faith is not deduced
2 from a single instance. Therefore even if these cases had addressed the same situation before
3 the Board in this case they would not compel a finding of bad faith based solely upon a refusal
4 to make counteroffers.

5 Finally, the NLRB has elsewhere indicated that piecemeal negotiations can be
6 detrimental to good faith bargaining "...where it reduces the flexibility of collective bargaining
7 and narrows the range of possible compromises by rigidly and unreasonably fragmenting
8 negotiations." *EI Dupont*, 304 NLRB 792, 800 (1991). This was the County's concern. It did
9 not want to have fragmented piecemeal financial negotiations. (Tr. P. 93:18-94:2). This was
10 common sense, not bad faith.

11 **B. Respondent Clark County Counterclaims - Failure to Bargain in Good Faith**
12 **Under NRS 288.270(2)(b).**

13 As noted in Section A(1) above, NRS 288.270(2)(b) states that it is a prohibited practice
14 for either a local government employer or a designated employee representative to willfully
15 refuse to bargain in good faith as required under NRS 288.150. The requirement to bargain
16 includes the entire bargaining process, including mediation, and fact finding. *Id.* Respondent
17 has asserted that Complainant engaged in surface bargaining and rushed to declare impasse.

18 **1. Surface Bargaining.**

19 Surface bargaining is a strategy by which one of the parties merely goes through the
20 motions, with no intention of reaching an agreement. In this regard, it is a form of bad faith
21 bargaining. *City of Reno v. Int'l Ass'n of Firefighters, Local 731, Item No. 253-A* (EMRB, Feb.
22 8, 1991). Distinguishing surface bargaining from good faith bargaining depends on the facts
23 supporting the claim.

24 In this instance, both parties presented substantive proposals and, aside from the
25 proposals submitted by Complainant at the final meeting, most were considered and some were
26 even adopted. The Board finds that given the facts and circumstances presented to the Board,
27 there was no surface bargaining undertaken by either party. Again, the Board would note that
28 the lack of ground rules may have been a contributing factor to both parties feeling that there

1 may have been surface bargaining.

2 **2. Rush to Impasse.**

3 ~~In *Washoe County, supra*, the Board adopted the following standards to determine what~~
4 ~~constitutes an impasse. First, an impasse is the point in which the parties are warranted in~~
5 ~~assuming that bargaining would be futile. *Id.* Second, both parties must believe they are “at the~~
6 ~~end of their rope.” *Id.* Third, Impasse in negotiations is synonymous with a deadlock; the~~
7 ~~parties have discussed a subject, or subjects, in good faith, and, despite their best efforts to~~
8 ~~achieve agreement with respect to such, neither party is willing to move from its respective~~
9 ~~position. *Id.* Fourth, the bargaining history, the good faith of the parties in negotiations, the~~
10 ~~length of the negotiations, the importance of the issue or issues as to which there is~~
11 ~~disagreement, the contemporaneous understanding of the parties as to the state of negotiations~~
12 ~~are all relevant factors [the trier of fact should consider] in deciding whether an impasse exists~~
13 ~~and was proper. Fifth, in analyzing these factors, the Board looks at the totality of the~~
14 ~~circumstances and one or two factors alone may be sufficient to demonstrate the absence of~~
15 ~~impasse. *Id.*~~

16 ~~In this case, a significant number of articles presented by both parties remained~~
17 ~~unresolved at the final meeting where impasse was declared. Complainant introduced five new~~
18 ~~financial proposals at the final negotiating session where impasse was declared and Respondent~~
19 ~~introduced three. See Section A(3) above. Thus, the evidence does not suggest that the parties~~
20 ~~were “at the end of their rope,” rather it seems like the negotiations were just warming up.~~
21 ~~Furthermore, there was credible evidence that Respondent was open to negotiating all of the~~
22 ~~pending Articles, other than those that had been previously rejected. Respondent went further~~
23 ~~and even suggested holding an additional negotiating session in early May which would include~~
24 ~~counterproposals to those that had been submitted by Complainant. The Board also finds that it~~
25 ~~is not unreasonable that both Complainant and Respondent would need a bit more time to~~
26 ~~consider the flurry of proposals from the last two sessions since it was likely the new proposals~~
27 ~~would require internal discussions and detailed financial evaluation before definitive responses~~
28 ~~could be provided. The Board also examined the history of negotiations between the parties~~

1 ~~and finds that Complainant had an inclination to rush to impasse. Finally, the Board notes that~~
2 ~~there was an alarming lack of futility that would warrant a declaration of impasse. Thus, the~~
3 ~~Board finds that Complainant declared impasse in bad faith.~~

4 Pursuant to the factual determination made by the district court, the Board's prior's order
5 on this topic is hereby vacated. This decision should not be construed as affecting any other
6 Board decision that addresses an impasse in negotiations.

7 [IF APPLYING THE DISTRICT COURT'S NEW DEFINITION OF "IMPASSE"
8 THEN THE FOLLOWING:

9 *The new definition of impasse adopted by the district court was that impasse "only*
10 *denotes a decision to proceed to statutory dispute resolution procedures such as fact finding."*
11 *This new definition does not depend on the criteria of the parties having exhausted their efforts*
12 *to come to an agreement on their own or that future negotiations be futile, which are the*
13 *attributes that relieve the parties of the obligation to continue to meet and negotiate under the*
14 *traditional labor law meaning of impasse. Stationary Engineers Local 39 v. Lyon County, Item*
15 *No. 241, Case No. A1-045457 (1990) (citing NLRB v. American Nat. Ins. Co., 343 U.S. 395*
16 *(1952)); NRS 288.032. As such, the Board now applies this new definition to the facts of this*
17 *case.*

18 *The evidence before the Board showed that Respondent was willing to continue meeting*
19 *with CCDU and had established May 8, 2024 as a date to do so. The County indicated it likely*
20 *would be able to respond the complete financial package that Complainant had just passed at*
21 *the sixth meeting. (Tr. Vol I, 91:5-92:17; p. 131:17-132:10). The County had in fact been able*
22 *to cost out Complainants financial package by May 8 (Tr. Vol. I, p. 98:3-99:3). However, the*
23 *parties never met to negotiate on May 8. This is because Complainant CCDU refused to meet*
24 *after it declared impasse, reasoning that it was not proper to both declare impasse and to*
25 *schedule a future meeting. (Tr. Vol. II p. 35:18-24).*

26 *The County made another effort to meet and negotiate further. The County's HR*
27 *Director Curtis Germany wrote to Complainant on May 6, 2024 asking it to come back to the*
28 *bargaining table. (Ex. 20); (Tr. Vol. I , p. 166:17-22). Complaint responded by placing*

1 conditions upon any return to the bargaining table, stating that it would do so if the County
2 would not make proposals to eliminate existing benefits. (Tr. Vol. I, 94:8-16; 95:23-96:2;
3 232:3-15).

4 Both a refusal to negotiate and placing conditions upon a bargaining are indicative of
5 bad faith bargaining under Washoe County School Dist., as noted above. While this is a non-
6 issue under a traditional definition of impasse where the parties are relieved of the obligation
7 to continue to meet and negotiate, it cannot be so under the new definition of impasse stated by
8 the district court. Under that new definition, Complainant was not at liberty to refuse to
9 negotiate or to place conditions upon a return to the table. By doing so, in particular by
10 refusing to meet on May 8, 2024 and thereafter placing conditions upon any return,
11 Complainant CCDU violated its obligation to negotiate in good faith.]

12 **C. Failure to Discuss Ground Rules.**

13 Under NRS 280.180(3), the parties are required to at least broach the subject of ground
14 rules at their first meeting. The Board understands that most parties establish bargaining
15 ground rules and that such guidelines serve as a helpful device to streamline the negotiations
16 process and to avoid petty disputes and unfair surprises. *City of Reno v. International Ass'n of*
17 *Firefighters, Local 731*, Case No. A1-045472, Item No. 253-A (EMRB, Feb. 8, 1991).
18 However, disputes over the interpretation of these guidelines should not be allowed to interfere
19 with negotiations regarding mandatory subjects of bargaining. *Id.* If negotiations were allowed
20 to breakdown over mere threshold issues, those who wish to impede the collective bargaining
21 process would have a tool of avoidance to wield at the expense of those willing to bargain in
22 good faith. *Id.*, citing to *NLRB v. Bartlett-Collins Co.*, 639 F.2d 652 (10th Cir. 1981), *cert*
23 *denied* 252 U.S. 961 (1981). Also, ground rules cannot be implemented except by mutual
24 agreement which means that a party cannot unilaterally impose a ground rule as a precondition
25 to bargaining. *Id.* Most importantly, ground rules are not mandatory subjects of bargaining
26 under NRS 288.150.

27 There is no dispute that ground rules were discussed during the first meeting between the
28 parties on February 27, 2024. It is also clear from the evidence presented that Complainant

1 informed Respondent they did not want to discuss ground rules and believed the rules were not
2 needed. However, the law is clear that ground rules are not a mandatory subject of bargaining
3 and once a party unequivocally indicates they do not wish to discuss ground rules, there can be
4 no finding of bad faith if a party rejects any proposed ground rules. However, the Board also
5 finds that the lack of ground rules in this case most likely contributed to the lack of progress by
6 the parties and hastened the declaration of impasse which was unnecessary given the
7 sophistication of the parties and the issues involved.

8 III. FINDINGS OF FACT

9 1. The above discussion is incorporated herein to the extent it sets out findings of
10 fact.

11 2. There was insufficient evidence to sustain a surface bargaining allegation against
12 Respondent. *See* Section II(A)(1)(a) above.

13 3. There was insufficient evidence to sustain a regressive bargaining allegation
14 against Respondent. *See* Section II(A)(1)(b) above.

15 4. Substantial evidence was presented showing that Respondent engaged in bad faith
16 by significantly and unreasonably delaying the provision of information to Complainant as
17 discussed in Section II(A)(2) above.

18 5. ~~Substantial evidence was presented which indicated that Respondent failed to~~
19 ~~bargain in a timely manner regarding setting up the mediation session. See Section II(A)(3)~~
20 ~~above—~~ Respondent made a significant number of proposals prior to Complainant presenting
21 financial proposals. .

22 6. There was insufficient evidence to sustain a surface binding allegation against
23 Complainant. *See* Section II(B)(1) above.

24 7. ~~There was insufficient information in support of a~~ The Board vacates its prior
25 ~~finding that there was~~ Substantial evidence was presented showing that Complainant engaged in
26 bad faith negotiations by rushing to declare impasse ~~as discussed in Section II(B)(2) above.~~

27 8. *Complainant engaged in bad faith bargaining by refusing to meet with*
28 *Respondent after April 17, 2024, in particular by refusing to meet at the May 8, 2024 meeting*

1 *and by placing conditions upon any return to the bargaining table.*

2 9. Any finding of fact above construed to constitute a conclusion of law is adopted
3 as such to the same extent as if originally so denominated.

4 IV. CONCLUSIONS OF LAW

5 1. The above discussion is incorporated herein to that it sets out conclusions of law.

6 2. All findings of fact are based on the finding that there was a preponderance of
7 evidence in support of all such findings.

8 3. There is an ongoing duty to act in good faith that extends from the negotiating
9 period throughout the duration of the CBA. *See e.g., NRS 288.270(1)(e) and (2)(b) and NRS*
10 *288.032. See Discussion in Section II(A) above.*

11 4. A party's conduct at the bargaining table must show a sincere desire to come to
12 an agreement. The determination of whether there has been such sincerity is made by drawing
13 inferences from the conduct of the parties as a whole. *City of Reno v. Int'l Ass'n of*
14 *Firefighters, Local 731, Item No. 253-A (EMRB, Feb. 8, 1991), quoting NLRB v. Int'l Ass'n of*
15 *Int'l Union, 361 U.S. 488 (1970).*

16 5. As noted in *Washoe County School Dist., supra*, evidence of bad faith may
17 include one or more of the following:

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

6. Evidence was presented showing that there were multiple instances of bad faith

1 negotiations by both parties as discussed in the Findings of Fact Section above.

2 7. Any conclusion of law above construed to constitute a finding of fact is adopted
3 as such to the same extent as if originally so denominated.

4 V. CONCLUSION

5 The Board determined that both parties have engaged in bad faith negotiations as
6 described herein. Normally the Board would send the parties back to the table to continue to
7 negotiate when there is a finding of bad faith when an impasse is declared such as the case here.
8 *City of Reno v. International Association of Firefighters, Local 731*, Case No. A1-045472, Item
9 No. 253-A (EMRB, Feb. 8, 1991). However, given that the matter is currently before a fact-
10 finder, the Board finds that other remedies are appropriate as set out below.

11 Based on the foregoing, it is hereby **ORDERED** as follows:

- 12 1. The Board finds that both parties engaged in bad faith bargaining as described herein.
- 13 ~~2. Clark County will promptly post a copy of this Decision in where the Clark County~~
14 ~~Commission meeting notices are posted.~~
- 15 3. CCDU will promptly post a copy of this Decision in the office area(s) where the Public
16 Defenders work within five days of this order. The failure to do so may result in
17 sanctions pursuant to NAC 288.373(1)(a).
- 18 ~~4. Clark County shall provide a copy of this Decision to each member of the Clark~~
19 ~~County Board of County Commissioners and provide Commissioner Snyder with proof~~
20 ~~of such within 10 days from the date of this Decision.~~
- 21 ~~5. Clark County will submit a copy of this Decision to the fact finder within ten (10) days~~
22 ~~from the date of this Decision and provide proof of such to Commissioner Snyder.~~
- 23 6. CCDU will provide a copy of this Decision to each of its current members within ten
24 (10) days from the date of this Decision and provide proof of such to Commissioner
25 ~~Snyder~~ Romualdez-Abellar.
- 26 7. Both parties are hereby Ordered to refrain from engaging in the prohibited conduct
27 described herein.
- 28 8. All other requested relief is hereby denied.

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Dated this 12th day of December 2024.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: _____
BRENT ECKERSLEY, ESQ.
Presiding Officer

By: _____
SANDRA MASTERS, Board Member

By: _____
~~TAMMARA M. WILLIAMS~~, Board
Member