

FILED  
December 24, 2025  
State of Nevada  
E.M.R.B.  
11:50 a.m.

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6 *Attorneys for CCDU*

7 STATE OF NEVADA  
8 GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

10 CLARK COUNTY DEFENDERS UNION

Case No.: 2024-014

11 Complainant,

12 vs.

13 CLARK COUNTY

14 Respondent.

**CLARK COUNTY DEFENDERS  
UNION MOTION TO SET FOR  
HEARING AND IMPLEMENT THE  
DECISION OF THE DISTRICT  
COURT DECISION ON JUDICIAL  
REVIEW**

16 CLARK COUNTY,

17 Counterclaimant

18 vs.

19 CLARK COUNTY DEFENDERS UNION

20 Counter-Respondent

22 COMES NOW Complainant/Counter-Respondent Clark County Defenders Union (“CCDU”) by  
23 and through undersigned counsel Adam Levine, Esq. of the Law Office of Daniel Marks and hereby  
24

1 moves the Board to set this matter for a hearing and/or implement the decision of the district court in  
2 connection with its judicial review of this Board's final order in this case.

3 On December 12, 2024 the Board issued its Decision, Findings of Fact and Conclusions of Law  
4 (hereafter "Decision") in this case. The Board found that Clark County failed to bargain in good faith in  
5 connection with its failure to timely produce relevant information relating to the cost of a 1% COLA, and  
6 in connection with its delays of the mediation process which Clark County was demanding. The Board  
7 further found that CCDU failed to bargain in good faith by prematurely declaring impasse and applied a  
8 "rush to impasse" analysis which utilized the "futility" and "at the end of their rope" standard(s) from  
9 *Washoe County School District v. Washoe School Principals Association*, Consolidated Case Nos. 2023-  
10 024 and 2023-031, Item No. 895 (EMRB, March 29, 2024). Some of the arguments raised by CCDU  
11 went unaddressed by the Board.

12 CCDU filed a Petition for Judicial Review of the Board's Decision in the Eighth Judicial District  
13 Court Case No. A-24-908956-J, and Clark County filed a Counter-Petition. On November 7, 2025 the  
14 district court issued its "Order Granting Petition or Clark County Defenders Union's Petition for Judicial  
15 Review In Part And Denying In Part; and Granting Respondent Clark County's Counter Petition In Part  
16 And Denying In Part" (hereafter "PJR Order"). (Exhibit "1"). The PJR Order set aside the findings of the  
17 Board regarding CCDU bargaining in bad faith by rushing to impasse holding that the rush to impasse  
18 standard utilized by the Board was inconsistent with the statutory language of NRS 288.200, and where  
19 as in this case, the Board found no underlying bad faith bargaining, either party has a statutory right to  
20 declare impasse after only six (6) meetings.

21 The PRJ Order further found that the Board did not properly address CCDU's argument that Clark  
22 County's requirement that CCDU make all of its financial proposals before it would make any financial  
23 proposals. The court therefore granted CCDU's Petition on this issue and ordered the matter remanded  
24 back to the Board to address this issue and to create the necessary record in connection therewith as

1 required by *Highroller Transportation, LLC v. Nevada Transportation Authority*, 139 Nev. Adv. Op. 51,  
2 541 P.3d 793 (App. 2023).

3 With regard to the Counter-Petition, the PJR Order found that the Board's conclusion relating to  
4 its bad faith findings arising out of Clark County's delays to the impasse process were unclear as to  
5 whether it was based upon delays in initiating the mediation process, its refusal to make itself available  
6 on the dates proposed by the mediator, or both. The court therefore granted Clark County's Counter-  
7 Petition on this issue in part, and ordered the matter remanded back to the Board to address this issue and  
8 to create the necessary record in connection therewith.<sup>1</sup>

9 After reviewing the most recent agenda of the Board published in the monthly newsletter, it  
10 appeared that this matter had not yet been set by the Board for further proceedings. A call with the  
11 Commissioner confirmed that a Motion to bring this matter back before the Board would be necessary.

12 Therefore, this matter should be set for a Hearing before the Board to ensure that the findings  
13 relating to the "rush to judgment" issue are properly vacated, and that an Amended Decision issue  
14 addressing those matters which were not properly addressed, or which were unclear, in the Decision. The  
15 Board should further consider action with regard to its orders and decisions available online so as to  
16 inform practitioners and the public that the Board's analysis on the "rush to impasse" issue from *Washoe*  
17 *County School District v. Washoe School Principals Association*, *supra* has been overruled.

18 In connection with the remand to address the Board's findings of undue delay by Clark County,  
19 CCDU would request brief additional testimony. The Board's Decision on p.7 states "June 17, 2024 –  
20 Mediator was finally selected". This is inaccurate. June 17 was the date of an email referencing the  
21 selection of the Mediator; the actual agreement to utilize Herman Brown of FMCS was made by counsel  
22  
23

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24 <sup>1</sup> The remaining findings of the Board challenged by both parties were affirmed.

1 much earlier, and testimony regarding this will assist the Board in addressing the matter as directed by  
2 the district court.

3 DATED this 24th day of December 2025.

4 LAW OFFICE OF DANIEL MARKS

5 

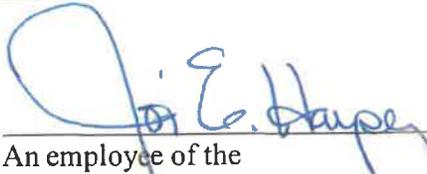
6  
7 DANIEL MARKS, ESQ.  
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16 *Attorneys for CCDU*

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1 **CERTIFICATE OF ELECTRONIC SERVICE**

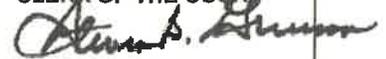
2 I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS, and that on  
3 the 24th day of December 2025, I served a true and correct copy of the foregoing MOTION TO SET  
4 FOR HEARING AND IMPLEMENT THE DECISION OF THE DISTRICT COURT DECISION ON  
5 JUDICIAL REVIEW by emailing the same to the following recipients. Service of the foregoing  
6 document by email is in place of service via the United State Postal Service.

7 STEVEN B. WOLFSON  
8 District Attorney  
9 CIVIL DIVISION  
10 SCOTT DAVIS  
11 Deputy District Attorney  
12 500 South Grand Central Pkwy.  
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16 E-Mail: [scott.davis@clarkcountyda.com](mailto:scott.davis@clarkcountyda.com)  
17 *Attorneys for Clark County*

18   
19 \_\_\_\_\_  
20 An employee of the  
21 LAW OFFICE OF DANIEL MARKS  
22  
23  
24

# **EXHIBIT 1**

# **EXHIBIT 1**



1 **NEOJ**  
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Email: [office@danielmarks.net](mailto:office@danielmarks.net)  
7 *Attorneys for Plaintiff*

8 DISTRICT COURT  
CLARK COUNTY, NEVADA

9 CLARK COUNTY DEFENDERS UNION

10  
11 Petitioner,

12 v.

13 CLARK COUNTY; STATE OF NEVADA  
GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD,

14  
15 Respondent.

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

23 TO: CLARK COUNTY, Respondent/Cross-Petitioner;

24 TO: SCOTT DAVIS., Deputy District Attorney for Respondent/Cross-Petitioner Clark County;

1 PLEASE TAKE NOTICE that an Order Granting Petitioner Clark County Defenders Union's  
2 Petition For Judicial Review In Part and Denying In Part; And Granting Respondent Clark County's  
3 Counter Petition In Part and Denying In Part was entered in the above-entitled action on the 7<sup>th</sup> day of  
4 November 2025, a copy of which is attached hereto.

5 DATED this 18<sup>th</sup> day of November 2025.

6 LAW OFFICE OF DANIEL MARKS

7 /s/Adam Levine, Esq.

8 DANIEL MARKS, ESQ.

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13 *Attorneys for Petitioner*

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**CERTIFICATE OF SERVICE BY ELECTRONIC MEANS**

I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 18<sup>th</sup> day of November 2025, pursuant to NRCPC 5(b) and Administrative Order 14-2, I electronically transmitted a true and correct copy of the above and foregoing NOTICE OF ENTRY OF 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, by way of Notice of Electronic Filing provided by the court mandated E-file & Serve system, to the e-mail address on file for:

Scott Davis, Esq.,  
Deputy District Attorney  
CLARK COUNTY DISTRICT  
ATTORNEY'S OFFICE  
500 S. Grand Central Parkway, #5075  
Las Vegas, Nevada 89155  
Phone: (702) 455-4761  
e-mail: [scott.davis@clarkcountyda.com](mailto:scott.davis@clarkcountyda.com)  
*Attorneys for Respondent/Cross-Petitioner  
Clark County*

/s/Joi E. Harper  
An employee of the  
LAW OFFICE OF DANIEL MARKS

1 **ORDR**  
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6 (702) 386-0536; FAX (702) 386-6812  
Email: [office@danielmarks.net](mailto:office@danielmarks.net)  
7 *Attorneys for Plaintiff*

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 CLARK COUNTY DEFENDERS UNION

11 Petitioner,

12 v.

13 CLARK COUNTY; STATE OF NEVADA  
GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD,

14 Respondent.

15 CLARK COUNTY,

16 Cross-Petitioner,

17 v.

18 CLARK COUNTY DEFENDERS UNION;  
19 STATE OF NEVADA GOVERNMENT  
20 EMPLOYEE-MANAGEMENT RELATIONS  
BOARD,

21 Cross-Respondents.

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

**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**

22 ///

23 ///

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:

14 **The Defenders Union’s Petition**

15 1. The Decision of the EMRB finding that the Defenders Union failed to bargain in good  
16 faith in violation of NRS 288.270(2)(b) by rushing to impasse after the completion of the sixth  
17 meeting between the parties was in violation of statutory provisions, and arbitrary and capricious  
18 within the meaning of NRS 233B.135(3)(a) and (f). The EMRB made no findings of any bad faith  
19 bargaining by the Defenders Union prior to the declaration of impasse. The term “impasse” in public  
20 sector bargaining only denotes a decision to proceed to statutory dispute resolution procedures such  
21 as fact finding. Once the sixth meeting between the parties was completed, under the plain language  
22 of NRS 288.200(1) either party could declare impasse to invoke that party’s statutory right to  
23 proceed through the fact-finding process provided that such declaration was after April 1, 2024.  
24 Where there is no other underlying bad faith bargaining such as surface bargaining during the six  
(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.

1 Clark County's Counter-Petition

2 4. The Decision of the EMRB that Clark County failed to bargain in good faith in  
3 violation of NRS 288.270(1)(e) by withholding requested information without adequate explanation  
4 was supported by substantial evidence in the record. Therefore, Clark County's Counter-Petition for  
5 Judicial Review is **DENIED** as to this issue and the findings of the EMRB in connection therewith  
6 are **AFFIRMED**.

7 5. The Decision of the EMRB that Clark County failed to bargain in good faith in  
8 violation of NRS 288.270(1)(e) is not sufficiently clear as to the basis for the Decision. It is unclear  
9 to the court as to whether the Decision was based upon delays by Clark County as the requesting  
10 party in initiating the mediation process, a refusal by Clark County to make itself available on the  
11 dates initially provided by the mediator, or both. Accordingly, Clark County's Petition for Judicial  
12 Review is **GRANTED In Part** and this issue is **REMANDED** back to the EMRB to properly  
13 address this issue and create an adequate record in connection with any Decision. Accordingly,

14 **IT IS HEREBY ORDERED ADJUDGED AND DECREED** that this matter is remanded  
15 back to the EMRB:

16 1. To vacate that portion of its Decision finding that the Defenders Union failed to  
17 bargain in good faith by rushing to impasse;

18 2. To address and clarify its record regarding the issue raised by the Defenders Union  
19 that Clark County failed to bargain in good faith by requiring the Defenders Union to make all of its  
20 financial proposals before Clark County would make its financial proposals and to issue findings in  
21 connection therewith consistent with its obligations under *Highroller Transportation, LLC v.*  
22 *Nevada Transportation Auth.*, 139 Nev. Adv. Op. 51, 541 P.3d 793, 797 (Nev. App. 2023);

23 ///

24 ///



**Joi Harper**

---

**From:** Scott Davis <Scott.Davis@clarkcountydav.gov>  
**Sent:** Tuesday, October 28, 2025 4:59 PM  
**To:** Joi Harper  
**Cc:** Adam Levine  
**Subject:** RE: CCDU v. Clark County and related Counterpetition A-24-908956-J

Thanks Joi,

And thank you for incorporating the changes. You have my permission to e-sign on my behalf.

**SCOTT DAVIS**  
DEPUTY DISTRICT ATTORNEY  
OFFICE OF THE DISTRICT ATTORNEY | CIVIL DIVISION  
500 SOUTH GRAND CENTRAL PARKWAY, SUITE 5075  
LAS VEGAS, NEVADA 89155-2215  
702 455 4761 | [Scott.Davis@clarkcountydav.gov](mailto:Scott.Davis@clarkcountydav.gov)

**From:** Joi Harper <JHarper@danielmarks.net>  
**Sent:** Tuesday, October 28, 2025 4:46 PM  
**To:** Scott Davis <Scott.Davis@clarkcountydav.gov>  
**Cc:** Adam Levine <ALevine@danielmarks.net>; David Westbrook <p davidwestbrook@gmail.com>  
**Subject:** CCDU v. Clark County and related Counterpetition A-24-908956-J

**CAUTION:** This email originated from an External Source. Please use caution before opening attachments, clicking links, or responding to this email. Do not sign-in with your DA account credentials.

Good afternoon Scott,

Attached is the 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 Deny in Part for your review. Please let me know if the agreed upon changes are acceptable to you and if so, please give me permission to esign on your behalf.

Thank you,

Joi E. Harper, Paralegal  
LAW OFFICE OF DANIEL MARKS  
610 S. Ninth Street  
Las Vegas, Nevada 89101

(702) 386-0536  
[Jharper@danielmarks.net](mailto:Jharper@danielmarks.net)

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**CSERV**

DISTRICT COURT  
CLARK COUNTY, NEVADA

Clark County Defenders Union,  
Petitioner(s)  
  
vs.  
  
Clark County, Respondent(s)

CASE NO: A-24-908956-J  
DEPT. NO. Department 20

**AUTOMATED CERTIFICATE OF SERVICE**

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 11/7/2025

Marilyn Millam	mmillam@ag.nv.gov
Daniel Marks	Office@danielmarks.net
Joi Harper	Jharper@danielmarks.net
Daenna Kaapana	dbekaapana@ag.nv.gov
Jessica Guerra	jguerra@ag.nv.gov
Scott Davis	scott.davis@clarkcountyanv.gov
Christine Wirt	Christine.Wirt@clarkcountyanv.gov
Matilda Sanchez	Matilda.Sanchez@clarkcountyanv.gov

**Clark County (Respondent/Counterclaimant)**

**Response to Motion to Set For Hearing**

FILED  
January 8, 2026  
State of Nevada  
E.M.R.B.  
8:46 a.m.

1 STEVEN B. WOLFSON  
District Attorney  
2 CIVIL DIVISION  
State Bar No. 001565  
3 By: SCOTT DAVIS  
Deputy District Attorney  
4 State Bar No. 10019  
500 South Grand Central Pkwy.  
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7 Attorneys for *Clark County*

8 STATE OF NEVADA

9 GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

10 CLARK COUNTY DEFENDERS UNION, )  
11 Complainant, )  
12 vs. )  
13 CLARK COUNTY, )  
14 Respondent )

Case No: 2024-014

15 \_\_\_\_\_ )  
16 CLARK COUNTY, )  
17 Counterclaimant )  
18 vs. )  
19 CLARK COUNTY DEFENDERS UNION, )  
20 Counter-respondent )  
21 \_\_\_\_\_ )

22  
23 **RESPONDENT/COUNTERCLAIMANT’S RESPONSE TO**  
**MOTION TO SET FOR HEARING**

24 COMES NOW, Respondent/Counterclaimant CLARK COUNTY, by and through  
25 District Attorney, STEVEN B. WOLFSON, through Scott Davis, Deputy District Attorney,  
26 and pursuant to NAC 288.240(4) and responds to Complainant/Counterrespondent CCDU’s  
27 Motion to Set for Hearing and Implement the Decision of the District Court Decision on  
28 Judicial Review.

1 **I. INTRODUCTION**

2 As there is as remand order from the district court, the County agrees that further  
3 Board action is necessary and this case needs to be put on a future Board agenda. When it  
4 does consider the matter, then for each of the three points on which the Court remanded this  
5 case back to this Board the Board should re-visit and re-evaluate each respective point. This  
6 does not require an additional hearing to develop a factual record, as the Board has already  
7 received an adequate factual record that can easily accommodate a re-evaluation of each  
8 point without the need to develop additional facts.

9 The County’s position on each of the three points that have been remanded is set forth  
10 below.

11 **II. THE BOARD’S PROPER RESPONSE TO AN ORDER OF REMAND**

12 While the Board is bound to honor the court’s decision on judicial review, this does  
13 not mean that the Board is limited or handcuffed in the manner by which it does so. This  
14 freedom for the Board to act with latitude is well-established. E.g. 73A C.J.S. Public  
15 Administrative Law and Procedure § 558 (“...where a cause is remanded to the  
16 administrative body[], unless the remand order to the agency provides otherwise, the remand  
17 is general and the agency is free to address a claim anew”).

18 Here the district court’s order is a general remand. It instructs this Board only to (1)  
19 vacate that portion of its order finding that CCDU was guilty of bad faith bargaining by  
20 prematurely declaring impasse; (2) to address and clarify the decision that the County was  
21 not guilty of bad faith by letting CCDU make its initial financial proposals before the County  
22 did so; and (3) to clarify its findings relating to the notion that the County somehow delayed  
23 the mediation process. (See Exhibit 1 to motion, pp. 4-5).

24 Apart from the outer bounds of this order, the Board retains authority to re-visit each  
25 of the three points.

26 **A. The Board’s Finding of Bad Faith Bargaining By CCDU**

27 The first point to address on remand was the Board’s finding that CCDU was guilty  
28 of bargaining in bad faith.

1                   1.     The Board’s Prior Decision

2                   In its decision, this Board took the term “impasse” to have a certain meaning – that  
3                   impasse is the point at which the parties are warranted in assuming that bargaining would be  
4                   futile, that the parties were “at the end of their rope” and that there truly is a deadlock in  
5                   negotiations. Item. No. 904, p. 10 (citing to *Washoe County School Dist. v. Washoe*  
6                   *Principals Assoc.*, Item No. 895, Case Nos. 2023-024 and 2023-031 (2024).

7                   The definition of “impasse” employed by the Board is consistent with decades of  
8                   Board precedent and with the meaning that is ubiquitously used in labor law. See e.g. 1  
9                   Hardin, *The Developing Labor Law* 691-699 (3d. ed. 1992) (discussing the concept and  
10                  implications of impasse). One of the implications of an “impasse,” at least under this  
11                  traditional definition, it that the duty to bargain is suspended precisely because the parties are  
12                  at a genuine stalemate. *Id.*; see also e.g. *Richfield Hosp., Inc.*, 369 NLRB No. 111, p. 3 (June  
13                  26, 2020) (citing various cases and noting that “Precisely because impasse temporarily  
14                  suspends the duty to bargain, a premature declaration of impasse is often an indicium of bad-  
15                  faith bargaining”).

16                  This meaning of “impasse” thus provides a certain lens by which to view the actions  
17                  of CCDU. Under this traditional view of “impasse” CCDU unquestionably acted in bad faith  
18                  because, as the Board found, negotiations were just warming up and initial proposals were  
19                  just being made at the same time that CCDU declared “impasse” which would halt  
20                  negotiations based upon “an alarming lack of futility that would warrant a declaration of  
21                  impasse.” (Item No. 904, p. 11). This is sound rationale and it still holds if the definition of  
22                  “impasse” is the same one employed by the Board.

23                   2.     The District Court’s Order

24                  The basis upon which the district court vacated the Board’s decision is precisely by  
25                  assigning an entirely different meaning to the term “impasse.” This is seen on page 2 of the  
26                  court’s order where the court utilized a curiously different definition of the term “impasse”  
27                  stating: “The term ‘impasse’ in public sector bargaining only denotes a decision to proceed  
28                  to statutory dispute resolution procedures such as fact finding.” (Ex. 1 to motion, p. 2).

1 The district court's order does not provide any further explanation for its choice to  
2 assign this unusual alternate meaning to the term "impasse." But it was on this basis that the  
3 court vacated and remanded this matter back to the Board. (Ex. 1, p. 2)

4 3. The Board Should Simply Note is Prior Decision Was Vacated Due to  
5 the District Court's Order and Should Not Expand the District Court's  
6 Alternate Definition of "Impasse"

7 In its motion CCDU asks the Board to expand this alternate definition of impasse to  
8 the entire user community served by the EMRB and to overrule its prior decision in *Washoe*  
9 *County*, Item No. 895.<sup>1</sup>

10 This is entirely the wrong approach.

11 Because the district court re-defined a recognized as a term of art in the field of labor  
12 law, there is potential for widespread confusion and destabilization within the EMRB's user  
13 community should the Board now go along with the notion that "impasse" does not really  
14 mean impasse after all as labor professionals have understood the term for years. This is  
15 especially the case in light of the point that there was no authority provided to support the  
16 district court's decision. This also cuts against the general principle of law that the Board is  
17 justified in looking to the NLRB when applying Chapter 288. See *Rosequist v IAFF, Local*  
18 *1908*, 118 Nev. 449, 49 P.3d 651 (2002). There is therefore a strong likelihood that the user  
19 community will continue to view the term "impasse" in accordance with the same meaning  
20 that is used by the NLRB, which is also the same meaning that this Board originally applied  
21 in this case.

22 Rather than expand this novel meaning of "impasse" to the entire state of Nevada, the  
23 better course of action is to quarantine it and limit it to the factual confines of this particular  
24 case. There is precedent for this sort of approach. In *Washoe County Public Attorneys*  
25 *Association v. Washoe County*, Item No. 750A, Case No. A1-046001 (2011) a majority of  
26 this Board concurred in giving due heed to a prior district court order that was suspect, but  
27 also clarifying that the taint of that order would not be extended to any other circumstance.

28 <sup>1</sup> To the extent that CCDU is asserting that the decision in this case overrules *Washoe County*, it is mistaken as the district court did not have subject matter jurisdiction over that decision. See NRS 233B.130-.133.

1 *Id.* pp. 8-9.

2 In order to give effect to the district court decision, the Board should recognize the  
3 district court's order for what it is – a factual assessment as to what CCDU intended when it  
4 used the term “impasse” on April 17, 2024, *i.e.* that it only intended to proceed to fact  
5 finding in that round of negotiations.

6 The proper course of action then is for the Board to issue an order stating:

7 “In accordance with the factual determination made by the district court on judicial  
8 review, the Board vacates its prior order.”

9 Nothing more is required and this sort of decision would preserve the integrity of the  
10 Board's original decision for further judicial review proceedings,<sup>2</sup> while still giving effect to  
11 the district court's order of remand. This would stop the spread of potentially upending the  
12 well-settled meaning of the term “impasse” for the entire state.

13 4. The Board Should Find that CCDU Bargained in Bad Faith

14 CCDU is not absolved of its bad faith simply by virtue a new definition. As noted  
15 above, the remand order does not restrict the Board from re-visiting the issue of CCDU's bad  
16 faith bargaining. And since the district court indicated that an alternate definition of  
17 “impasse” ought to apply in this case, there is nothing that prevents the Board from taking  
18 that alternate definition and considering the actions of CCDU under this new definition.  
19 Doing show still shows bad faith on the part of CCDU.

20 As noted above, the ordinary definition of “impasse” means that the parties are  
21 genuinely at a stalemate in negotiations. *Patrick & Co.*, 248 NLRB 390, 393 (1980)  
22 (“Impasse has been defined by the Board as that point of time in negotiations when the  
23 parties are warranted in assuming that further bargaining would be futile”). And as NRS  
24 288.032 and 29 U.S.C. § 158(d) identically read that the law does not require an agreement,  
25 one of the implications of the ordinary definition of an “impasse” is that the duty to bargain  
26 is suspended.

27 \_\_\_\_\_  
28 <sup>2</sup> As a procedural matter, the remand order precluded the County from seeking an appeal of the district court's re-  
definition of the term “impasse.” *Taxicab Authority v. Greenspun*, 109 Nev. 1022, 862 P.2d 423 (1993).

1 The Board may recall from the hearing that after CCDU declared impasse in this case  
2 it refused to meet at a subsequent negotiation session that had been proposed for May 8,  
3 2024 to continue the exchange of proposals. (See Item No. 904, p. 11:13-15, referring to this  
4 proposed negotiation session).

5 Under the ordinary definition of “impasse,” this refusal would not be bad faith  
6 because the parties would be at a stalemate and the duty to meet would have been suspended.  
7 But that is not true when one applies the alternate definition of impasse that was used by the  
8 district court. The duty to meet would not have been suspended and CCDU would have still  
9 been under an obligation to continue to meet and negotiate in good faith.

10 Since a consequence of the district court’s order is that CCDU’s duty to continue to  
11 meet was not suspended this then opens up the avenue to consider whether CCDU’s refusal  
12 to meet to negotiate and continue with the exchange of proposals was bad faith. There is  
13 nothing in the district court’s order that prevents the Board from taking the district court’s  
14 own definition and applying it to the facts of this case.

15 No additional factual record is necessary because the Board has already heard, and  
16 apparently already credited testimony, that the County was open and willing to continue to  
17 negotiate whereas CCDU was not willing to meet. (See Testimony of Christina Ramos, p.  
18 91:5-92:17; p. 131:17-132:10; Testimony of Rafael Nones p. 35:22-24 (stating that CCDU  
19 refused to meet because “we can’t both declare impasse and schedule a future meeting.”). If  
20 CCDU’s impasse was not an “impasse” within the ordinary meaning -and the district court  
21 said that it was not - then the duty to meet would not have been suspended and the Board  
22 can, and should, find CCDU’s refusal to continue meeting with the County to negotiate to be  
23 bad faith bargaining. See *Washoe County*, Item No. 895, p. 4 (listing refusing to bargain on  
24 mandatory subjects and cancelling bargaining sessions as indicators of bad faith bargaining).

25 Similarly, it was undisputed that CCDU would not return to the bargaining table  
26 unless the County agreed to comply with CCDU’s conditions for the County to only make  
27 certain types of proposals. (Testimony of Christina Ramos, p. 94:8-16; 95:23-96:2;  
28 Testimony of Curtis Germany, p. 232:3-233:2). As this Board noted in *Washoe County*,

1 “[s]igns of bad faith bargaining may include...imposing conditions on bargaining.” *Washoe*  
2 *County*, Item No. 895, p. 4.

3         These issues arise now because of the different lens through which the district court  
4 viewed the term “impasse.” Given the potential widespread implications for the term  
5 “impasse” and for negotiation procedures statewide the Board would be wise to address this  
6 point on remand and to find bad faith bargaining against CCDU under this new pathway that  
7 the district court has created by re-defining the term “impasse.”

8         Finally, CCDU’s bad faith is further corroborated by the fact that CCDU did not  
9 comply with the statutory requirements to move to fact finding. At the hearing before this  
10 Board, and in the current motion, CCDU has pretended that NRS 288.200(1)(b) does not  
11 exist. But it does. That subsection provides that in addition to six meetings the parties must  
12 also have participated in mediation before fact finding becomes an option.

13         There was no dispute at the hearing that in its exuberance to go to fact finding CCDU  
14 bypassed mediation altogether and it was the County that had to point out the mediation  
15 component to CCDU. (Exhibit 20 from the EMRB hearing). This too is indicative of bad  
16 faith because it only reiterates CCDU’s strategy in this round of negotiations was to dispense  
17 with its good faith obligations under Chapter 288 and to rush to a litigation-style fact finding  
18 process.

19         Once again, this new consideration is directly caused by the district courts order.  
20 Mediation is ordinarily not an issue when one applies the traditional definition of “impasse”  
21 because mediation is not required prior to declaring impasse. It is only required prior to  
22 moving to fact finding. NRS 288.200(1)(b). The district court’s re-definition of “impasse”  
23 that equate impasse with a desire to go to fact finding in turn demands a consideration of  
24 whether CCDU’s cavalier bypassing of mediation is indicative of bad faith bargaining.

25         All of the foregoing is already evident in the record and is simply the result of a  
26 rational application of the district court’s order to the facts developed at the hearing. The  
27 Board need not hold a new evidentiary hearing to reach a finding of bad faith bargaining.

28         On this first point of the remand then the Board should comply with the district

1 court's order by vacating its prior decision but should not expand the district court's order to  
2 other cases. The Board should also re-visit the issue using the lens supplied by the district  
3 court's re-definition of "impasse." When it does so CCDU's refusal to meet on May 8,  
4 2024, its placing conditions upon returning to the bargaining table, and its skipping the  
5 required step of mediation all point to the same conclusion – CCDU was still guilty of bad  
6 faith bargaining. The Board can and should make that finding.

7 **B. The Exchange of Financial Proposals**

8 The second issue on remand concerns the order in which financial proposals were  
9 exchanged.

10 The County prudently let CCDU complete its financial package so that the County  
11 could properly cost out the financial articles and give a meaningful response. The Board  
12 correctly found that the County did not act in bad faith by opting against a piecemeal  
13 approach to financial articles and instead waiting for a more complete picture.

14 The district court's order did not disagree with the Board's conclusion on this point,  
15 but it did ask to see more of the reasoning behind the Board's conclusion.

16 The crux of the district court's contention that more explanation is needed is that  
17 CCDU presented two cases from the NLRB that it believes "makes such a prohibited  
18 practice." (Ex. 1, p. 3).

19 This is easily addressed.

20 The Board should first reiterate the point that CCDU is beginning with the wrong  
21 paradigm. This is not a criminal case where one might isolate an action and ask whether a  
22 violation of some code occurs based upon a single specific act. Bad faith bargaining is not  
23 like that at all. It is not determined by one circumstance alone and instead involves a  
24 consideration of the totality of circumstances and an evaluation of whether those  
25 circumstances indicate a lack of a sincere desire to come to an agreement. Thus an action  
26 will not be viewed in isolation and will rarely if ever support a bad faith bargaining finding  
27 on its own. Again this is well-established standard. *City of Reno v. IAFF Local 731*, Item No.  
28 253-A (1991) ("A party's conduct at the bargaining table must evidence a sincere desire to

1 come to an agreement. The determination of whether there has been such sincerity is made  
2 by drawing inferences from conduct of the parties as a whole.”) (quoting *NLRB v. Ins.*  
3 *Agent's Int'l Union*, 361 U.S. 488 (1970)).

4 Thus the Board should explain for the district court’s benefit that it would not be  
5 proper to isolate a single action, such as the order of financial proposals, from the entire  
6 course of bargaining and to ask whether based on that alone CCDU had shown bad faith  
7 bargaining.

8 The Board should next address the district court’s concern over the NLRB cases. The  
9 NLRB cases referenced are the two that CCDU dropped for the first time in its closing  
10 arguments: *Fallbrook Hospital v Cal. Nursing Assoc.* 360 NLRB 66 (2014) and *Hospital of*  
11 *Barstow v Nurses Assoc.*, 361 NLRB 352 (2014). (See Transcript Day 2, pp.97-98). The  
12 Board should point out that these cases do not even support CCDU’s position because  
13 neither one speaks to a scenario where an employer waited only on financial articles to let a  
14 union first complete its financial proposals. *Hospital of Barstow* was not about financial  
15 proposals; it dealt with a situation where an employer did not make any proposals at all until  
16 a union had made all of its proposals. *Hosp. of Barstow*, 361 NLRB 352, 359-360 (2014).  
17 Even then the refusal to make any proposals at all does not “show” a violation. It was only  
18 one factor to weigh amongst others when assessing bad faith bargaining. *Id.* at 360 (stating  
19 “it may not be bound to make counter proposals, nevertheless, evidence of its failure to do so  
20 may be weighed with all other circumstances in considering good faith.”) (internal quotation  
21 omitted). *Fallbrook Hospital* is the same in that it also did not address the more limited  
22 scope of letting a union complete its financial proposals first. The administrative law judge  
23 there found that the employer “refused to bargain over anything until the Union submitted all  
24 of its initial written proposals.” *Fallbrook Hosp. Corp.*, 360 NLRB 644, 652 (2014). Neither  
25 of these cases even stand for the position that an employer must engage in piecemeal  
26 negotiation over financial proposals and the Board need only to point that out to dispense  
27 with the NLRB cases.

28 The Board should further reiterate that neither NLRB case speaks to this situation

1 because in this case it was not the case that the County was refusing to make any proposals  
2 at all, as was the scenario in both the NLRB cases relied upon by CCDU. The Board should  
3 point out that the County had passed a number of proposals on other articles while waiting  
4 for CCDU to finally show a complete picture of the costs behind its proposals. By the end of  
5 the fourth negotiation meeting the County had passed over proposals on ground rules and  
6 nineteen proposals on other contract language. (Exhibit 11 from EMRB hearing containing  
7 County proposals on Articles 7 and 36); (Exhibit 43 from the hearing containing County  
8 proposals on Articles 2, 3, 4, 6, 8, 9, 11, 15, 17, 21, 23, 24, 30, 32, 33, 34, and 35). The  
9 Board has already hinted at this in its order, see Item No. 904, p. 5:24-25 (noting that the  
10 County "...did submit numerous articles throughout the course of negotiations between the  
11 parties'), but the district court has asked for a more detailed explanation. The Board should  
12 therefore highlight this point and explain that the County's active proposal-making on other  
13 articles whilst waiting for a discernable complete financial picture from CCDU does not  
14 remotely suggest bad faith bargaining by the County.

15 Finally, the Board can point to the impracticalities that are rather obvious in a  
16 piecemeal financial negotiation. If this is done an employer cannot know what the actual cost  
17 of an agreement would be while there are still unknown financial variables floating around  
18 that have not been addressed. How then can there be the sort of meaningful response that is  
19 envisioned by the good faith bargaining obligations of Chapter 288 without this foundation?  
20 This is basic common sense, but the Board should include this point as well when  
21 articulating its reasoning, as requested by the district court.

22 **C. The Board Should Remove its Finding of Bad Faith Based Upon a**  
23 **Supposed Delay in Mediation**

24 The last point in the district court's order of remand is the finding that the County was  
25 guilty of bad faith bargaining due to a perceived delay in mediation. As noted above, in re-  
26 visiting this issue the Board retains its full authority and is not restricted from now reaching  
27 the correct conclusion that this was not bad faith bargaining.

28 The Board's order on pages 8-9 sets forth a timeline of events. There was no finding

1 by the district court that this timeline was inaccurate or was not supported by substantial  
2 evidence in the record.

3 As to mediation, that timeline stated:

4 May 9, 2024 – Respondent requested the parties engage in mediation and  
5 indicated that Respondent would “reach out to FMCS for some dates.” If  
6 the Complainant was amenable to mediation. See Exhibit 20 at p. 00069.

7 May 14, 2024 – Complainant agreed to participate in mediation.

8 June 13, 2024 – Complainant wrote to Respondent and stated that more  
9 than one month had passed and mediation still had not yet been scheduled.  
10 See Exhibit 21.

11 June 17, 2024 – Mediator was finally selected.

12 August 1, 2024 – Mediation session held between the parties

13 The Board took issue with the fact that nearly 3 months elapsed between the County’s  
14 invoking the mediation requirement and the actual mediation session, and the Board noted  
15 that once mediation is pursued the parties must both work diligently to begin mediation as it  
16 is feasible. (Item No. 904 p. 9).

17 The district court did not see the connection between the ideal of timely mediation  
18 and the blame on Clark County for bad faith bargaining, and remanded for the Board to try  
19 to explain itself on this point.

20 But when the facts are considered, the Board cannot coherently factually explain how  
21 the County delayed this process and how it is culpable for bad faith.

22 At the hearing there was not much evidence presented at all on this point. The Board  
23 did not hear any actual testimony, relying solely upon a series of e-mail exchanges as the  
24 body of evidence. CCDU seems to recognize the evidentiary deficiency as it asks to be able  
25 to present new evidence on this topic. (Motion, p. 3:18-19). The Board should reject this  
26 request. CCDU made the strategic decision not to call witnesses or present additional  
27 exhibits at the hearing, and the remand is not intended to give them a second bite at the  
28 apple. CCDU has acknowledged that it has already been given a full opportunity in the first  
go-round to present all the evidence that it wanted to present. (Transcript of hearing, day 2,

1 p. 157:21-23). If such a hearing were ordered, it would require the full panoply of NRS 233B  
2 procedures, including notices and issue identification, *see* NRS 233B.121, and the County  
3 would be entitled to present its evidence on the topic of trying to get the mediation scheduled  
4 and CCDU's own failures in that process. NRS 233B.123(4). But as the Board has already  
5 received sufficient evidence on this topic once, it need not give CCDU a mulligan merely  
6 because CCDU may have overlooked some evidentiary point the first time around.

7 The district court's order points to two considerations for the Board to make when  
8 revisiting this topic: delays by Clark County in initiating the mediation process and a refusal  
9 by Clark County to make itself available on the dates initially provided by the mediator. (Ex.  
10 1 to motion, p. 4). Each topic should be considered in turn.

11 1. There Is No Basis to Find a Delay By Clark County in Initiating the  
12 Mediation Process

13 Mediation is not optional. It is a required step before a party can proceed to fact  
14 finding and, more to the point, mediation is at all times entails a mutual obligation on both  
15 parties.

16 It is true enough that the County did point out CCDU's missteps in skipping over  
17 mediation in violation of NRS 288.200(1)(b) but this does not impose some new or different  
18 obligations on the County as "the requesting party in the mediation process." The law does  
19 not distinguish between parties on the basis of which one pointed to mediation first. Rather  
20 mediation is part of bargaining which entails the same mutual obligation on both parties.

21 NRS 288.032.

22 This is the first point that should be considered. There is no statutory warrant to  
23 assign any different duty to the County as a party requesting mediation. To do so in the  
24 absence of a statutory basis would be arbitrary. The Board should avoid arbitrary decisions.  
25 NRS 233B.135(3)(f). Moreover to place additional or special obligations on a party simply  
26 as the party initiating mediation would be an instance of illicit *ad hoc* rulemaking, which is  
27 forbidden by the Administrative Procedures Act. e.g. *Coury v. Whittlesea-Bell Luxury*  
28 *Limousine*, 102 Nev. 302, 721 P.2d 375 (1986).

1           Within that mediation process the law provides for the same obligations on both  
2 parties, beginning with picking a mediator. And there really is not much that can be done at  
3 all until a mediator is chosen. Picking a mediator is clearly a mutual obligation. NRS  
4 288.190(1) and if that cannot be done mutually then the law provides for either party to seek  
5 assistance from this Board in picking a mediator. *Id.* But the operative point is that the  
6 County cannot simply unilaterally select a mediator.

7           Here, the Board determined that a mutual selection was made. The Board noted it in its  
8 order and even stated this in its timeline. It was done on June 17, 2024. (See Exhibit 33 from  
9 the hearing). That same day the County's attorney reached out to get dates from the selected  
10 mediator. (Exhibit 26 from the hearing).

11           Even if it were the case that there were some unique legal duties placed on the County  
12 in the mediation process here, there was no evidence to coherently support any delay by the  
13 County "as the party in initiating the mediation process" where the County reached out the  
14 mediator about scheduling the very same day that he was chosen. Thereafter it was a matter  
15 of scheduling the mediation.

16           When it comes to scheduling mediation, that issue has passed out of the hands of the  
17 County. Neither Clark County nor CCDU can unilaterally schedule the mediation. Instead,  
18 the law wisely gives control over scheduling matters to the mediator. NRS 288.190(3).

19           The upshot is that when it comes to a potential delay as the party initiating the  
20 mediation process the law did not assign some special duty on the County to select a  
21 mediator and once the mediator was selected the County promptly reached out, the very  
22 same day, to the mediator. Within this framework there is simply no room to fault the  
23 County for a delay, let alone to a fault it for a delay that equates with bad faith.

24           2.     There is No Basis to Support a Finding of Bad Faith Based Upon the  
25                    Mediation Scheduling

26           The second consideration that the district court asked the Board to address was "a  
27 refusal by Clark County to make itself available on the dates initially provided by the  
28 mediator."

          The mediator did initially propose some dates in mid to late July of 2024, which were

1 only a few days earlier than the actual mediation on August 1, 2024. (Exhibit 26 from the  
2 hearing). On June 21, 2024 the County did point out a scheduling conflict on those initial  
3 dates and indicated that it would prefer alternate dates (Exhibit 30 from the hearing).

4 But how can this coherently be cashed out to a finding of bad faith? That is the  
5 explanation that the district court is looking for the Board to try to provide.

6 The simple answer is that this scheduling conflict cannot be cashed out to a finding of  
7 bad faith at all. And this is based upon a very straightforward application of the law.

8 NRS 288.190(3) vests the mediator with the prerogative to set the mediation dates.  
9 This means that when scheduling conflicts inevitably arise, it is ultimately up to the mediator  
10 to decide what to do about it. It is the mediator's decision to either accommodate a party's  
11 request for new dates or to hold the original dates and compel attendance. NRS 288.190(3).  
12 A mediator may have their own reasons to either cooperate on finding a mediation date or to  
13 hold a party to a strict schedule but at all times it is the mediator's responsibility.

14 This should not be a foreign concept. It is the same sort of process followed by this  
15 Board when it schedules hearings through its Commissioner. See NAC 288.205(3). The  
16 Board can either try to accommodate a scheduling conflict of the parties or not, but the point  
17 is that it is ultimately up to the Board to set the date and time of a hearing.

18 It is precisely because it is the mediator's prerogative to decide what to do about a  
19 scheduling conflict it cannot be coherently converted into a finding of bad faith bargaining  
20 against either party simply for pointing out a conflict.

21 The better course of action would be to defer to the statute and let the mediator handle  
22 proposed scheduling conflicts. NRS 288.190(3). But when this is done, the notion that the  
23 County may be faulted for a delay amounting to bad faith simply falls to pieces.

24 This is a potentially far-reaching point. The Board should carefully consider how such  
25 a rule would play out in negotiations and mediations if it were inclined to fault a party for  
26 acting in bad faith simply by pointing to a scheduling conflict on a proposed mediation date.  
27 This is an area where the Board should exercise extreme caution.

28 It may also be pointed out that CCDU sat on this scheduling conflict and did not reach

1 out to the mediator for two whole weeks before finally, on July 9, 2024, writing to the  
2 mediator asking him to compel the County to attend the mediation on the original dates,  
3 which was its right to do. (Exhibit 33 from hearing). But due to CCDU's unexplained two-  
4 week delay in doing so, the mediator was then only able to offer new dates including the date  
5 that the mediation actually occurred. (Exhibits 34, 36 from the hearing).

6 The end result was that the mediation was delayed about a week, from July 23, 2024  
7 to August 1, 2024. This brief delay does not equate with a lack of a sincere desire to come to  
8 an agreement. It cannot coherently support a finding of bad faith against any party.

9 It is not a terrible result for an administrative agency on remand to accept a *mea culpa*  
10 and to fix a prior defective finding. Since there is no coherent explanation that the Board can  
11 provide to fault the County for a delay in mediation the Board should accept that its initial  
12 assessment is unsupportable and should retract it.

### 13 **III. CONCLUSION**

14 For the foregoing reasons the Board should place this item on a future agenda to  
15 revisit the three topics that were remanded back to it. In so doing the Board can allow for  
16 arguments by counsel but it need not entertain additional evidence at a hearing as the Board  
17 has already developed an adequate factual record.

18 In revisiting the three topics the Board should note that its finding of bad faith against  
19 CCDU for rushing to impasse is vacated but it should not expand the district court's rational  
20 beyond this case. The Board should then enter a finding of bad faith due to CCDU's refusal  
21 to negotiate further, placing conditions upon further negotiations and moving to fact finding  
22 without completing mediation in violation of NRS 288.200(1)(b).

23 The Board should explain that the County did not bargain in bad faith because it is not  
24 required to entertain piecemeal negotiations on financial matters, and the NLRB cases cited  
25 by CCDU are irrelevant. The County was busily and actively making a number of proposals  
26 while waiting for CCDU to present its financial proposals.

27 The Board should remove its finding of bad faith against the County for a delay in the  
28 mediation process because when the facts and the law are considered such a finding is

1 untenable. The County is not under a special duty when it comes to mediation in the first  
2 place. It cannot unilaterally pick a mediator. Once the mediator was picked there was no  
3 evidence of any delay. And simply raising a scheduling issue, which should be dealt with by  
4 the mediator, cannot coherently equate to bad faith.

5 DATED this 7th day of January, 2026.

6 STEVEN B. WOLFSON  
7 DISTRICT ATTORNEY

8 By: /s/ Scott Davis

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10 Deputy District Attorney  
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12 500 South Grand Central Pkwy. 5<sup>th</sup> Flr.  
13 Las Vegas, Nevada 89155-2215  
14 Attorney for Clark County

15 **CERTIFICATE OF ELECTRONIC SERVICE**

16 I hereby certify that I am an employee of the Office of the Clark County District  
17 Attorney and that on this 8<sup>th</sup> day of January, 2026, I served a true and correct copy of the  
18 foregoing Respondent/Counterclaimant's Response to Motion to Set for Hearing (United  
19 States District Court Pacer System or the Eighth Judicial District Wiznet), by e-mailing the  
20 same to the following recipients. Service of the foregoing document by e-mail is in place of  
21 service via the United States Postal Service.

22 Adam Levine. Esq.  
23 610 S. Ninth Street  
24 Las Vegas, NV 89101  
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26 *Attorney for CCDU*

27 /s/ Matilda Sanchez

28 An Employee of the Clark County District  
Attorney's Office – Civil Division

**RESPONDENT/COUNTERCLAIMANT'S RESPONSE TO  
MOTION TO SET FOR HEARING**

**CCDU(Complainant)**

**Reply to Opposition/Response to Motion to Set  
for Hearing and Implement the Decision of the  
District Court Decision on Judicial Review**

FILED  
February 6, 2026  
State of Nevada  
E.M.R.B.  
4:11 p.m.

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8 STATE OF NEVADA  
GOVERNMENT EMPLOYEE-MANAGEMENT  
9 RELATIONS BOARD

10 CLARK COUNTY DEFENDERS UNION

Case No.: 2024-014

11 Complainant,

12 vs.

13 CLARK COUNTY

14 Respondent.

**CLARK COUNTY DEFENDERS  
UNION REPLY TO  
OPPOSITION/RESPONSE TO  
MOTION TO SET FOR HEARING  
AND IMPLEMENT THE DECISION  
OF THE DISTRICT COURT  
DECISION ON JUDICIAL REVIEW**

16 CLARK COUNTY,

17 Counterclaimant

18 vs.

19 CLARK COUNTY DEFENDERS UNION

20 Counter-Respondent

21  
22  
23 Clark County Defenders Union (“CCDU”) by and through undersigned counsel Adam Levine,  
24 Esq. of the Law Office of Daniel Marks and hereby Replies to Clark County’s Response to the Motion

1 to Set for Hearing and Implement the Decision of the District Court Decision on Judicial Review as  
2 follows:

3 **I. THE DISTRICT COURT SPECIFICALLY VACATED THE FINDING OF FAILURE**  
4 **TO BARGAIN IN GOOD FAITH AGAINST THE CLARK COUNTY DEFENDERS**  
5 **UNION BECAUSE THE BOARD UTILIZED AN INCORRECT LEGAL STANDARD IN**  
6 **CONNECTION WITH ITS CLAIM OF “RUSH TO IMPASSE,” AND THE BOARD**  
7 **SHOULD REJECT CLARK COUNTY’S INVITATION TO DISREGARD THE BASIS**  
8 **FOR THE DISTRICT COURT’S RULING.**

9 This Board incorrectly held that CCDU failed to bargain in good faith because it declared  
10 impasse after six (6) meetings. In doing so, the Board applied its own test of “futility,” whereby the  
11 parties must be “at the end of their rope” from *Washoe County School District v. Washoe School*  
12 *Principals Association*, Consolidated Case Nos. 2023-24 and 2023-31, Item No. 895 (March 29, 2024)  
13 (hereafter “*Washoe County*”) which came out at the time CCDU and Clark County were in negotiations.

14 Setting aside the fact that no evidence was presented that CCDU even knew of this case when  
15 CCDU declared impasse, CCDU sought judicial review because, (1) the Board lacks authority to change  
16 or add to the statutory requirements for moving to fact-finding under NRS 288.200, (2) the exercise of  
17 a statutory right cannot constitute a prohibited labor practice, and (3) in both *Washoe County* and the  
18 instant case, the Board used a definition of "impasse" from the *private* sector which differs significantly  
19 from *public* sector bargaining.

20 To understand why the district court granted judicial review and vacated the finding of failure to  
21 bargain in good faith against CCDU, it is important that the Board review the authorities the district  
22 court found persuasive. The Opening Brief and Reply Brief filed by CCDU in the district court are  
23 attached hereto as Exhibits “A” and “B” for the Board’s convenience. However, a condensed summary  
24 of such authorities is set forth as follows:

While NLRB precedent may be persuasive to the Board in some circumstances, both parties  
agreed before the district court that NLRB precedent should not be followed where there are significant

1 differences between the National Labor Relations Act (“NLRA”) and Nevada’s Employee Management  
2 Relations Act (“EMRA”), NRS Chapter 288. See e.g. *City of Mesquite v. Eighth Judicial Dist. Court*,  
3 135 Nev. 240, 445 P.3d 1244 (2019) (rejecting the hybrid model of *Vaca v Sykes*); *Cone v. Nevada*  
4 *Service Employees Union Local 1107*, 116 Nev. 473, 998 P.2d 1178 (2000) (“[T]his court is not bound  
5 by an NLRB decision when it determines that the statutes involved do not fall within the purview of the  
6 National Labor Relations Act.”).

7 The term “impasse” does not even appear in NRS 288.200 or 288.215. Likewise, the Nevada  
8 Supreme Court has never used the term in connection with the statutes. However, in public sector  
9 bargaining, the term “statutory impasse” is a term recognized and used by courts in other states to refer  
10 to the statutory fact finding and interest arbitration process. See, e.g., *Moreno Valley Unified Sch. Dist.*  
11 *v. Public Employment Relations Bd.*, 142 Cal. App. 3d 191, 204, 191 Cal. Rptr. 60, 69 (1983);  
12 *Philadelphia Housing Auth. v. Pennsylvania Labor Relations Bd.*, 153 Pa. Comm. 20, 620 A.2d 594  
13 (1993); *AFSCME Iowa Council 61 v. Iowa Pub. Employment Relations Bd.*, 846 N.W.2d 873 (2014).

14 In *Washoe County*, and in this case, the Board used the definition of impasse from the *private*  
15 sector under the NLRA. However, the term “impasse” means something very different in the private  
16 sector than it does in the public sector. In private sector bargaining, once impasse is reached, the parties  
17 may resort to economic pressure tactics which are *contrary* to the procedures provided in Chapter 288.

18 As explained by the NLRB, in private-sector bargaining:

19 When such a deadlock is reached between the parties, the duty to bargain about  
20 the subject matter of the impasse merely becomes dormant until changed  
21 circumstances indicate that an agreement may be possible. **Once a genuine  
22 impasse is reached, the parties can concurrently exert economic pressure on  
23 each other: the union can call for a strike; the employer can engage in a  
24 lockout, make unilateral changes in working conditions** if they are consistent  
with the offers the union has rejected, or hire replacements to counter the loss of  
striking employees.... Thus, a genuine impasse is akin to a hiatus in negotiations.  
In the overall ongoing process of collective bargaining, it is merely a point at  
which the parties cease to negotiate and often resort to forms of economic  
persuasion to establish the primacy of their negotiating position.

1 *Independent Association of Steel Fabricators, Inc. et al.*, 231 N.L.R.B. 264 (1977) (**emphasis added**);  
2 *see also, N.L.R.B. v. Truck Drivers Local Union No. 449, International Brotherhood of Teamsters,*  
3 *Chauffeurs, Warehousemen and Helpers of America, AFL (Buffalo Linen Supply Co.)*, 353 U.S. 87  
4 (1957); *N.L.R.B. v. Brown, et al. d/b/a Brown Food Stores*, 380 U.S. 278 (1965); *American Ship Building*  
5 *Company v. N.L.R.B.*, 380 U.S. 300 (1965). The usual dispute in such private-sector cases is whether the  
6 employer prematurely declared impasse so as to permit it to unilaterally implement its proposals.

7         Such concepts are entirely inconsistent with NRS Chapter 288. The Nevada Supreme Court has  
8 held that unilateral changes by an employer are “repugnant to the Employee-Management Relations  
9 Act.” *City of Reno v. Reno Police Protective Ass’n*, 118 Nev. 889, 897, 59 P.3d 1212, 1217 (2002).  
10 Likewise, economic pressure tactics by a union, such as going on strike, are expressly made *illegal* for  
11 public employees. NRS 288.700.

12         Under Chapter 288 there is never a suspension of the process, as the statutory obligation to  
13 bargain in good faith “includes the entire bargaining process, *including mediation and fact-finding,*  
14 provided for in this chapter.” NRS 288.270(1)(e). This was recognized by the California Court of  
15 Appeals in *Moreno Valley Unified School Dist. v. PERB*, 142 Cal. App. 3d 191 (1983) which noted,  
16 with regard to public sector bargaining, that “impasse under the EERA is, unlike NLRA impasse, a  
17 continuation of mutual dispute resolution efforts,” and ““impasse” under such a “statutory scheme  
18 denotes a continuation of the labor management dispute resolution process, while “impasse” under  
19 federal law indicates a halt to that process.” *Id.* at 199.

20         Simply put, when a local government or an employee organization declares “impasse” under  
21 Chapter 288, they are not refusing to bargain further. Rather, the term is used as a two-syllable shorthand  
22 phrase that is more convenient than attempting the mouthful, “We are now invoking the statutory dispute  
23 resolution process under NRS 288.200.”  
24

1 Administrative agencies have only those powers which the legislature specifically delegates to  
2 them. *See Andrews v. Nevada State Board of Cosmetology*, 86 Nev. 207, 467 P.2d 96 (1970). This does  
3 not include the power to modify or change a duly enacted statute. *See Clark Cnty. Sch. Dist. v. Clark*  
4 *Cnty. Classroom Tchrs. Ass'n*, 115 Nev. 98, 103, 977 P.2d 1008, 1011 (1999). The additional standards  
5 of “futility” and being “at the end of their rope” are not contained within NRS 288.200, and therefore  
6 cannot be applied by this agency.

7 In rendering its decision, the district court applied a plain language analysis to NRS 288.200.  
8 All that is required under the statute for a fact-finding hearing is that there have been six (6) meetings,  
9 that the request for fact-finding be made after April 1, and that the parties participate in mediation upon  
10 request. The district court was cognizant of the legislative history of the statute prior to the imposition  
11 of the six (6) meeting requirements in 2009, whereby either party was permitted to proceed to fact-  
12 finding after April 1, provided that mediation had occurred.

13 Clark County’s Response argues that the parties had not participated in mediation at the time  
14 that CCDU declared impasse. However, NRS 288.200 does not require mediation to have occurred  
15 *before* either party articulates an intent to move beyond meetings to the statutory process. The statute  
16 merely requires a mediation – upon demand of one party – prior to the fact-finding hearing. This is made  
17 clear by the plain language of NRS 288.200(1), which states, “either party to the dispute, at any time  
18 after April 1, may submit the dispute to an impartial fact finder for the findings and recommendations  
19 of the fact finder.” The word “submit” means “to present or propose to another for review, consideration,  
20 or decision.” *Merriam-Webster Dictionary* (Online Ed.). Nothing was submitted to any fact finder prior  
21 to Clark County determining that it wanted mediation. No factfinder had even been selected.

22 As set forth by the record made before this Board, in prior years, Clark County agreed to waive  
23 mediation as futile and proceed directly to fact-finding. In 2024, after CCDU indicated that no agreement  
24 had been reached after six meetings and that CCDU desired to move to fact finding, Clark County

1 expressed a desire to utilize mediation -- *and CCDU agreed*. As reflected in the Board's decision, Clark  
2 County then proceeded to unreasonably delay that mediation process.<sup>1</sup>

3 The exercise of the statutory right set forth under NRS 288.200 cannot constitute a failure to  
4 bargain in good faith. If CCDU had engaged in surface bargaining throughout the six (6) meetings prior  
5 to declaring impasse, then it would have failed to bargain in good faith. However, the violation would  
6 have been for *the underlying surface bargaining*, and not the resort to the impasse statute itself. As  
7 recognized by the district court, this Board expressly found that CCDU had been bargaining in good  
8 faith throughout the six (6) meetings of the parties. Therefore, there was no basis to find a prohibited  
9 practice based upon the resort to the statutory mechanism and this is why the district court vacated the  
10 finding of failure to bargain in good faith against CCDU.

11 The Board's decision in *In Washoe County* was wrongfully decided to the extent that it utilized  
12 an improper definition of impasse from the private-sector, and imposed requirements not found within  
13 NRS 288.200 -- standards of "futility" whereby the parties must be "at the end of their rope." Whether a  
14 party has bargained in good faith, or failed to do so, must be determined based upon their conduct during  
15 the six meetings required by NRS 288.200. This was the case in *Washoe County* wherein the Board  
16 found "that WSPA engaged in bad faith negotiations with WCSD given WSPA's failure to negotiate  
17 with WCSD over mandatory subjects of bargaining and by brushing aside other proposals regarding  
18 permissive subjects."

19  
20  
21  
22 <sup>1</sup> Nothing within NRS 288.200 prohibits the selection of a factfinder prior to mediation, nor should it. Factfinders  
23 are in high demand and their schedules for the year fill up quickly. The only statutory requirement is that the  
24 mediation take place prior to any fact-finding hearing. In its decision, the Board correctly recognized "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." Given that it frequently takes months to obtain a hearing date with an arbitrator acting as fact  
finder, prudent parties seeking to move the process along will select the factfinder and set a hearing date in the  
event that mediation is not successful. If mediation is successful, any hearing date can easily be canceled.

1 Clark County's Response argues that the Board should revisit the issue of CCDU's bargaining  
2 and nevertheless find CCDU acted in bad faith. However, the district court very clearly found that CCDU  
3 did not act in bad faith when it granted judicial review and set aside the findings of this Board as it  
4 relates to Clark County's allegations of bad faith bargaining. Not only is the Board powerless to change  
5 this ruling of the district court, accepting Clark County's invitation to do so would undermine the  
6 integrity of this Board, as it clearly found with regard to CCDU:

7  
8 Surface bargaining is a strategy by which one of the parties merely goes through  
9 the motions, with no intention of reaching an agreement. In this regard, it is a form  
10 of bad faith bargaining. *City of Reno v. Int'l Ass'n of Firefighters, Local 731*, Item  
11 No. 253-A (EMRB, Feb. 8, 1991). Distinguishing surface bargaining from good  
12 faith bargaining depends on the facts supporting the claim.

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

20 Item 904 at p. 10. An administrative agency is not permitted to search for or find "new facts" to support  
21 a previous conclusion of law which has been vacated by a district court.

22 The term "impasse" under Chapter 288 has a meaning very different than that in the private  
23 sector. As found by the district court, that term in public sector bargaining "only denotes a decision to  
24 proceed to statutory dispute resolution procedures such as fact finding." Thus, Clark County's insistence  
that the Board continue to apply an incorrect definition of the term from the private sector must be  
rejected, and any prior decisions, such as *Washoe County*, must be corrected so that local governments  
and employee organizations are properly apprised of the correct legal standard.

1 **II. THE BOARD IS REQUIRED TO ADDRESS THE AUTHORITIES AND ARGUMENTS**  
2 **MADE BY CCDU AT THE HEARING.**

3 One of the primary arguments made by CCDU at the hearing before this Board was that Clark  
4 County was failing to bargain in good faith by insisting upon CCDU making all of its financial proposals  
5 first before Clark County would counter or make financial proposals of its own. Clark County did not  
6 dispute that it had done so. Indeed, Clark County not only admitted to demanding that CCDU present  
7 all of its proposals first, but it defendant its position as “prudent” so the County “could properly cost out  
8 the financial articles and give a meaningful response.” (Response at p. 8 of 16).

9 Although this argument was presented to the Board, the Board’s Decision did not even address  
10 the subject, much less rule on it. Accordingly, CCDU petitioned the district court for judicial review  
11 regarding this failure by the Board to even address the argument. The court agreed, noting that an  
12 administrative agency must create a record to enable district courts and appellate courts to meaningfully  
13 address the arguments raised in petitions for judicial review, and there was a lack of clarity as to how  
14 the EMRB reached its conclusions that Clark County did not bargain in bad faith when the Board  
15 declined to address the argument advanced by CCDU.

16 Clark County’s Response argues that CCDU is beginning “with the wrong paradigm” as this was  
17 not a “criminal case where one might isolate an action and ask whether violation of some code occurs  
18 based upon a single act.” (Response at p. 8 of 16). But this was not a single act. It was a continuous  
19 course of conduct whereby Clark County refused to make *any* substantive proposals, or counterproposals  
20 to those made by CCDU, until all of CCDU first made all of its substantive proposals. As reflected by  
21 the authorities submitted to the district court on this issue, bargaining requires a willingness to engage  
22 in a “give and take” by both parties. *Lloyd A. Fry Roofing Co. v. NLRB*, 216 F.2d 273 (1954); *Hooks ex*  
23 *rel. NLRB v. Hood River Distillers, Inc.*, 2021 WL 1837396 (D. Ore. 2021). There can be no “give and  
24 take” where one party insists that the other present all of its proposals first, as the County openly

1 admitted to doing here. The Board should take a moment to imagine what the outcome would be if  
2 CCDU insisted upon a likewise position— that Clark County make all of its financial proposals before  
3 CCDU would make its proposals and/or counterproposals. Nothing would be accomplished at the  
4 bargaining table because each side would be insisting that the other put all of its cards on the table first.  
5 This is the antithesis of collective bargaining.

6 Alternatively, Clark County put forward the same argument that it unsuccessfully made to the  
7 district court – that neither *Fallbrook Hospital Corporation v. California Nursing Association*, 360  
8 NLRB 644, 2014 NLRB LEXIS 266 (2014) nor *Hospital of Barstow v. Nurses Association, National*  
9 *Nurses Organizing Committee*, 361 N.L.R.B. 352 (2014) apply “because neither one speaks to a scenario  
10 where an employer waited only on financial articles to let a union first complete its financial proposals,”  
11 and both are distinguishable from the current case because they involved “all proposals” as opposed to  
12 Clark County only requiring all “financial proposals” be made by CCDU first. (Response at p. 9 of 16).

13 However, the fact that Clark County made two, minor “proposals” in the fourth meeting of March  
14 13, 2024 does not take Clark County’s actions outside of the scope of *Fallbrook Hospital* or *Hospital of*  
15 *Barstow*. Clark County’s first proposal, changes to Article 7 Management Rights, was based upon an  
16 intentional and material misrepresentation. Clark County falsely claimed that its proposals simply  
17 “mirrored” the language contained in the management rights statute, NRS 288.150(3). The County’s  
18 claim was simply untrue. When CCDU later confronted Clark County about this misrepresentation, the  
19 County withdrew its proposal. Clark County’s second proposal was only for the term of the agreement  
20 – a relatively innocuous and uncontroversial subject matter.

21 The fact that such de minimis offers were made does not take Clark County outside of the  
22 holdings of *Fallbrook Hospital* and *Hospital of Barstow*. To the contrary, at the hearing before this  
23 Board, Clark County Human Resources Director Curtis Germany admitted that the presentation of such  
24

1 minor proposals was not done in the spirit of good faith bargaining, but rather, it was intended to  
2 antagonize CCDU:

3 Q. So Curtis, Is it typical for you to wait until the sixth meeting to make a initial  
4 financial offer?

5 A. Is it typical?

6 Q. Yeah. Is it typical for you to wait until meeting no .6 to make the first financial  
7 offer?

8 A. It's typical to wait until you get all the financial proposals. And if it happens on  
9 meeting no. 6, that's likely when you would get it. I take that back. **If it were me,**  
10 **I would have probably offered something de minimis that would have set the**  
11 **unit off just so I wouldn't be having this argument down the line.** So if it were  
12 me, I probably would have offered you somewhere in there. I actually will reframe  
13 that, and then I wouldn't be having this discussion.

14 (**Emphasis added** Tr. of November 6, 2024 at pp. 228-229). This is as close to a direct admission of  
15 bad faith bargaining as one is ever likely to see.<sup>2</sup>

16 The district court determined that this Board had an obligation to address the arguments made  
17 by CCDU based upon the authorities of *Fallbrook Hospital* and *Hospital of Barstow* so that the district  
18 court may engage in meaningful judicial review. The Board should send a strong message that  
19 insistence that one party make all of its proposals first, whether financial or otherwise, is not consistent  
20 with the obligation to bargain in good faith. Failure to do so will undermine the “give and take”  
21 recognized as essential to the bargaining process as unions will likewise be free to adopt the same

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22 <sup>2</sup> Mr. Germany’s remarkable testimony also indicates that the regressive proposals were offered to  
23 provide a false impression of good faith bargaining. Had Mr. Germany been Chief Negotiator, he would  
24 have made his empty, regressive proposals earlier in the process, in an attempt to masque the obvious  
bad faith. These are not the words of a party interested the type of productive, good faith negotiation  
required by statute.

1 position taken by Clark County in its FY 2025 negotiations with CCDU requiring the local  
2 government to make all of its proposals first.

3 **III. THE BOARD SHOULD REAFFIRM ITS FINDING OF FAILURE TO BARGAIN IN**  
4 **GOOD FAITH BASED UPON CLARK COUNTY'S DELAYING MEDIATION.**

5 Clark County filed its own cross petition for judicial review with the district court challenging  
6 the Board's finding that the County failed to bargain in good faith in connection with delays to the  
7 mediation process.<sup>3</sup> The district court could not ascertain from the Board's Decision whether this  
8 finding was based upon (1) Clark County's failure to seek selection of a mediator for more than a month  
9 after CCDU acknowledged the County's request for mediation and agreed to the same, (2) the failure of  
10 Clark County to make its representatives available on the dates provided by the mediator within the time  
11 limits of NRS 288.190(3), or (3) both grounds.

12 **A. The Party Requesting Mediation Has The Obligation To Initiate The Selection**  
13 **Process And Contact The Mediator.**

14 The Board's decision contained a timeline relating to the mediation issue which stated as follows:

15 May 9, 2024 – Respondent requested the parties engage in mediation and indicated  
16 that Respondent would “reach out to FMCS for some dates.” If the Complainant  
was amenable to mediation. See Exhibit 20 at p. 00069.

17 May 14, 2024 – Complainant agreed to participate in mediation.

18 June 13, 2024 – Complainant wrote to Respondent and stated that more than one  
19 month had passed and mediation still had not yet been scheduled. See Exhibit 21.

20 June 17, 2024 – Mediator was finally selected.

21 August 1, 2024 – Mediation session held between the parties.

22  
23 <sup>3</sup> Clark County also challenged the Board's finding that it failed to bargain in good faith by failing to timely furnish  
24 the information requested by CCDU pursuant to NRS 288.180(2). The district court affirmed this finding by the  
Board.

1 At the outset, CCDU must emphasize that the conclusion that the mediator was finally selected  
2 on June 17 is not accurate. The Board derived this date from Joint Exhibit “26,” an email from Clark  
3 County’s counsel providing three (3) dates for mediation in July.

4 In fact, the selection of FMCS Commissioner Herman Brown occurred much earlier, when Clark  
5 County counsel Allison Kheel called undersigned counsel in late May and inquired whether Brown was  
6 acceptable. Undersigned counsel agreed during that phone call.<sup>4</sup> This is reflected in Joint Exhibit “24”  
7 which is an email to Allison Kheel dated May 31, 2024 which states in pertinent part “*This email will*  
8 *memorialize our conversation* that you will reach out to FMCS to get the mediation dates for both the  
9 CCPA and CCDU mediation.” Why she did not do so on June 1, as she represented she would, has never  
10 been explained.

11 The County took no action for an additional two (2) weeks. This is reflected in Joint Exhibit “25”  
12 dated June 13, 2024 at 5:06 PM, which confirms that no action had been taken. Ms. Kheel’s email states  
13 in pertinent part, “I will be contacting FMCS first thing tomorrow morning to arrange for a mediator in  
14 both the CCPA and CCDU matters.”

15 Clark County argues that there is “no statutory warrant” to impose the obligation that the party  
16 demanding the mediation timely contact the mediator because there is a mutuality of obligation under  
17 NRS 288.032, the statute defining “collective bargaining.” However, *mediation* is governed by NRS  
18 288.190, not NRS 288.032. A simple review of the *mediation* statute reveals that, prior to March 1, both  
19 parties must agree upon a mediator, but after March 1, “either party involved in negotiations may request  
20 a mediator.” Thus, after March 1, the mediation process is driven by the request of one party, as opposed

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22  
23  
24 <sup>4</sup> In undersigned's experience, the identity of the mediator is of little consequence. Mediation is driven by the parties. Either the parties are going to reach an agreement, or they are not, based upon their bargaining positions. Therefore, a free mediator such as FMCS Commissioner Brown is always preferable to an paid mediator.

1 to both. Whether CCDU believed mediation would be effective was irrelevant; Clark County made the  
2 request and CCDU was required to participate in mediation.

3         However, mediators have to be *contacted* to know that they have been mutually agreed upon.  
4 Under NRS 288.190, the responsibility of contacting the mediator must logically fall upon the party  
5 demanding the mediation. Clark County's decision to delay scheduling the mediation it demanded was  
6 consistent with the delay tactics it employed throughout the negotiation process.

7         **B. Clark County Failed To Bargain In Good Faith When It Refused To Accept  
8 Mediation Dates Because Its Entire Negotiation Team Was Purportedly "Not All  
9 Available."**

9         As set forth in the record made before this Board, Clark County Counsel notified CCPA, CCDU,  
10 and DAIA that FMCS Commissioner Herman Brown was available July 17, 18 and 23, 2024. (Joint  
11 Exhibit "27").<sup>5</sup> Despite these dates not being particularly convenient for undersigned, Clark County was  
12 instructed to secure all three, even if it meant that undersigned counsel could not actually appear at all  
13 of the mediations. (Joint Exhibits "28" and "29"). This was due to the Union's strong desire to avoid  
14 additional delays. Unfortunately, Clark County refused to accept the proposed dates, claiming, "The  
15 County folks were not all available on those days." (Joint Exhibit "30"). On behalf of the Union,  
16 undersigned counsel informed Clark County that this *additional* delay was unacceptable:

17         First and foremost, Clark County has an obligation to set the mediation ASAP.  
18 They do not need everybody from their entire bargaining team at mediation; they  
19 only need one person with authority. The obligation to bargain includes the  
20 obligation to do so expeditiously. That obligation carries over to the mediation  
21 which Clark County is demanding.

22         You may reach out to anybody provided they can do in (SIC) arbitration prior to  
23 July 17, 18 and 23. Otherwise, Clark County will simply have to show up on those  
24 dates with less than its full negotiating team. We are not waiting any longer.

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24 <sup>5</sup> Undersigned still represented the CCPA in 2024.

1 (Joint Exhibit "31").<sup>6</sup> Clark County steadfastly refused responding:

2 The Union cannot tell the County who they can choose to be on its bargaining  
3 team or who from that bargaining team are necessary for mediation. Since we  
4 cannot seem to agree on this, I suggest that we proceed with the statutory process  
for selecting a mediator under NRS 288.190 and request 3 panels of 7 mediators  
(one for each unit), and take turns striking names.

5 (Joint Exhibit "32").

6 Clark County's Response to the "Motion to Set For Hearing" argues that under NRS 288.190(3),  
7 it is the mediator's prerogative to decide what to do about scheduling conflicts. This argument ignores  
8 the plain language of the statute which states:

9 The mediator shall bring the parties together **as soon as possible** and, unless  
10 otherwise agreed upon by the parties, attempt to settle the dispute **within 30 days**  
11 after being notified of the mediator's selection as mediator. The mediator may  
establish the times and dates for meetings and compel the parties to attend but has  
no power to compel the parties to agree.

12 *Id.* (Emphasis added). The statute requires that the parties come together with the mediator "as soon as  
13 possible," and sets an outside deadline of 30 days after notification of selection "unless otherwise agreed  
14 upon by the parties." *Id.*

15 Mediators cannot compel attendance; they have no subpoena or contempt power. Rather, under  
16 the statute, it is incumbent upon the parties to make themselves available "as soon as possible," and  
17 within an outside limit of 30 days. The Union went to great lengths to be available for any of the proposed  
18 dates, even if it meant proceeding without its counsel. The County was interested only in further delays.

19 It is well-established in collective bargaining that parties may not hide behind the busy schedules  
20 of their negotiators. On more than one occasion, undersigned counsel has quoted the holding of the NLRB  
21 to this Board from *Insulating Fabricators, Inc.*, 144 NLRB 1325, 1328 (1963), *enfd.* 338 F.2d 1002 (4th  
22  
23

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24 <sup>6</sup> Undersigned meant "mediation" not "arbitration".

1 Cir. 1964) and *Radiator Specialty Co.*, 143 NLRB 350, 369 (1963) that the “obligation to bargain at  
2 reasonable times requires a party to provide a representative who could conduct negotiations with the  
3 degree of diligence expected and required of it by the statute,” and, “The Act does not permit a party to  
4 hide behind the crowded calendar of his negotiator, whether he be a busy labor attorney or an overworked  
5 company officer.” Here, Clark County did exactly with the NLRB has always ruled impermissible: The  
6 County insisted upon delaying the mediation to allow the attendance of its *entire* bargaining team, when  
7 only one person with authority was actually necessary for mediation. In short, the County sought to, “hide  
8 behind the crowded calendar” of the members of its negotiation team.

9 This Board identified two separate bases in its Decision to support its finding that Clark County  
10 failed to bargain in good faith by delaying the mediation process. The Order of the district court does not  
11 dispute the validity of the finding, it simply determined that the basis was “not sufficiently clear,” and  
12 requires that the Board identify whether its holding was based upon the delay in scheduling the mediation  
13 in the first instance, the refusal to attend the dates provided by FMCS Mediator Herman Brown, or both.  
14 Accordingly, the Board should simply clarify the basis for its finding that the County did not operate in  
15 good faith.

16 DATED this 6<sup>th</sup> day of February 2026.

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**EXHIBIT A**

**EXHIBIT A**



1 PTOB  
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8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 CLARK COUNTY DEFENDERS UNION

Case No.: A-24-908956-J

Dept. No.: 20

11 Petitioner,

12 v.

13 CLARK COUNTY; STATE OF NEVADA  
GOVERNMENT EMPLOYEE-  
14 MANAGEMENT RELATIONS BOARD,

15 Respondents.

16  
17 **PETITIONER CLARK COUNTY DEFENDERS UNION'S**  
18 **OPENING BRIEF**

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**STATEMENT OF THE CASE**

The Clark County Defenders Union filed a Prohibited Practices Complaint against Clark County. ROA 0127-0135. Clark County filed its Answer and Counterclaim. ROA at 051-064. On December 12, 2024, the State of Nevada Employee Management Relations Board entered its “Decision, Findings of Fact and Conclusions of Law” (hereafter “Decision”). ROA at 005-017. On January 27, 2024, the Clark County Defenders Union filed a timely Petition for Judicial Review.

**ISSUES PRESENTED FOR REVIEW**

1. Are employee organizations and/or local governments permitted to declare impasse and proceed under the statutory provisions of NRS 288.190 and 288.200 (hereafter “statutory impasse procedures”) without any additional preconditions if a collective bargaining agreement has not been reached after six meetings?
2. Did the State of Nevada Employee Management Relations Board err and/or exceed its statutory authority in adopting additional preconditions and requirements prior to resorting to statutory impasse proceedings, specifically requirements of “true impasse” and “end of rope” criteria, when these additional requirements are not set forth in statute?
3. Did the State of Nevada Employee Management Relations Board act arbitrarily and capriciously in finding that the Clark County Defenders Union failed to bargain in good faith because it declared impasse and sought to avail itself of the statutory impasse procedures after it failed to reach a collective bargaining agreement with Clark County after six meetings pursuant to NRS 288.200(1), which expressly authorizes “either party to the dispute” to invoke statutory impasse procedures provided that “at least six meetings of negotiation” have taken place?
4. Did the State of Nevada Employee Management Relations Board act arbitrarily and capriciously when it failed to find that Clark County had bargained in bad faith by (1) insisting the Clark County Defenders Union make all of its proposals before the County would make any of its own proposals or counterproposals; (2) by refusing to counter any proposals made by the Clark County Defenders Union; and (3) by making regressive and reductive proposals in the sixth and final meeting of the parties with nothing offered in exchange for the reductions?
5. Does the State of Nevada Employee Management Relations Board’s finding that Clark County did not bargain in bad faith based upon the actions described in paragraph 4 require remand back to the Board for failure to contain adequate findings in support of its conclusion?



1 Clark County wanted session #3 to be in person, as opposed to through videoconferencing  
2 software such as Teams or Zoom. CCDU indicated it would be willing to meet in person if Clark  
3 County was going to have actual substantive proposals to make, as none had been made through the  
4 two prior meetings. On March 12, CCDU President David Westbrook sent an email to Clark County  
5 Chief Negotiator Christina Ramos pointing out Clark County's failure to make *any* proposals or  
6 counterproposals through two meetings. The email states, in relevant part:

7 Dear Christina:

8 As we discussed with you during our last meeting on March 6, 2024, we are  
9 amenable to meeting in-person once we have some substantive proposals or  
10 counterproposals from the county to discuss. The Union provided the County with  
11 2 proposed articles at meeting #1, and after two meetings, the County still has not  
12 repl[ied] to our substantive proposals in any meaningful way: no topical questions,  
no discussion of the terms, and no counterproposals. In our last meeting, the  
County expressly promised to get us "proposals or counterproposals" before the  
next meeting. As of this writing, it is 4:55 PM on March 12, 2024, and we still  
have received no proposals or counterproposals from the County.

13 ROA at 170.

14 Session #3 took place on March 13, 2024, through Microsoft Teams videoconferencing. That  
15 morning, Clark County emailed a signed copy of Article 1 proposed by CCDU during session #1,  
16 but changing the date of the contract. ROA at 176. The County also proposed changes to two articles  
17 – Article 7 "Management Rights" and Article 36 "Terms of Agreement." ROA at 176, 436-437.

18 Article 7 "Management Rights" had always simply referenced the "Management Rights"  
19 statute in NRS 288.150(3). ROA at 631-632. At session #3, the County claimed that the language of  
20 its proposed Article 7 simply mirrored the statutory language. ROA at 436-437, 631. This was *false*,  
21 as the County's proposed language did *not* mirror the statute. *Id.*

22 At the same session, the County also proposed language for Article 36 "Terms of  
23 Agreement" for a 3-year contract. ROA 179, 437. CCDU made a counterproposal accepting the 3-

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1 year term which Clark County requested while adding traditional reopener clauses which had  
2 historically been in the CCDU's collective bargaining agreements. ROA at 182-183, 450.

3 When CCDU inquired at session #3 as to whether Clark County had the cost of the 1%  
4 increase to the salary schedule available, Clark County said it still did not. Clark County further  
5 informed CCDU that it would not be making any financial counterproposals until all of CCDU's  
6 financial proposals had been made. When CCDU inquired as to whether Clark County was prepared  
7 to make non-financial proposals, Clark County responded that it would not even talk about non-  
8 financial proposals because those might affect financial proposals. ROA at 437-439. In sum, Clark  
9 County insisted upon seeing every proposal which CCDU intended to make before the County would  
10 make any counterproposals. ROA at 639-640.

11 Session #4 took place on March 20, 2024. ROA at 445. CCDU requested that all of the non-  
12 financial articles be presented and negotiated at this meeting. Clark County reiterated that it would  
13 not make any counterproposals because financial proposals can sometimes impact non-financial  
14 proposals. ROA at 445-447, 636-640. Clark County *still* did not have the information that CCDU  
15 had requested nearly three months earlier seeking the cost of a 1% increase of the salary schedule  
16 for the bargaining unit. ROA at 447-448.

17 Session #5 took place on April 3, 2024. The parties identified all of the articles from the last  
18 collective bargaining agreement for which no changes were sought, which comprised the vast  
19 majority of the articles in the collective bargaining agreement. ROA at 449. CCDU reiterated that it  
20 would be willing to agree to the 3-year term proposed by Clark County in Article 36 if reopener  
21 clauses were included, but Clark County rejected CCDU's counterproposal because it did not want  
22 any reopeners. ROA at 451.

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1           During session #5, CCDU made three financial proposals. CCDU's first proposal was Article  
2 37 "Bail Reform Pay," to compensate attorneys who now had to appear for bail hearings on  
3 Saturdays, Sundays, and holidays as a result of recent bail reform legislation requiring a bail hearing  
4 within 48 hours of an arrest. ROA at 194, 451-452, 645-646. Second, CCDU proposed Article 31  
5 "Compensation," which contained the same cost-of-living ("COLA") language *proposed by Clark*  
6 *County* and accepted by CCDU in the prior contract. ROA 192, 649-651. However, Clark County  
7 would not agree to CCDU's proposal for Article 31 "Compensation," purportedly because it  
8 calculated the increase of the consumer Price Index from April to April, as opposed to December to  
9 December. ROA at 457-458. Third, CCDU proposed Article 22 "Experienced Attorney Retention,"  
10 otherwise known as Longevity Pay. ROA at 191, 452-453, 645-646.

11           Clark County did not accept any of the proposals in session #5 or make any counteroffers.  
12 Again, the County insisted on seeing all of CCDU's contract proposals *before* offering any financial  
13 proposals or counter proposals of its own. ROA at 458, 651-654. During this meeting, Clark County  
14 also withdrew its proposed Article 7 "Management Rights" after conceding that, contrary to the  
15 County's prior assertions, the proposal did not actually "mirror" the statute, and would actually have  
16 expanded management rights beyond the language of the statute. ROA at 656-657.

17           Session #6 took place on April 17, 2024. ROA at 463, 656. CCDU re-offered its prior  
18 proposal of Article 37 "Bail Reform Pay;" presented a new version of Article 10 "Dispute Resolution  
19 Procedures;" proposed changes to Article 12 "Evaluations/Salary Increases;" proposed changes to  
20 Article 19 "Vacation;" and proposed a new article entitled "Salary Schedule Parity," which would  
21 reestablish pay parity with the Clark County Prosecutors Association. ROA 196-208, 463-465, 657.

22           During the sixth meeting, the County's Chief Negotiator, Christina Ramos, expressly  
23 acknowledged that either party could declare impasse after this meeting and stated that the County  
24

1 wanted to get all its proposals on the table to negotiate. ROA at 465-466, 657, 660-661. Yet, the  
2 only proposals made by Clark County were to *reduce* benefits by eliminating bonus leave, sick leave  
3 sell-back, and severance pay provisions already contained in the collective bargaining agreement.  
4 ROA at 213-218, 467-470, 662-664. The County offered CCDU *nothing* in return for these benefit  
5 reductions. ROA at 472. Further, Clark County made no written counterproposals to the proposals  
6 made by CCDU and were unwilling to discuss oral counters. ROA at 660-661, 664.

7       Upon receipt of the reductive and regressive offers from Clark County, and with no  
8 counterproposals to CCDU's numerous proposals, CCDU's negotiating team went into a caucus  
9 session whether it would be necessary to declare impasse. Following that caucus, CCDU asked Clark  
10 County whether they had any package offers to make or any *quid pro quos* for the proposals to  
11 reduce Union benefits. Clark County responded with a flat, "No." ROA at 665. CCDU then inquired  
12 whether the County intended to make any counteroffers. Clark County again responded, "No." ROA  
13 at 665.

14       Rafael Nones, on behalf of CCDU, specifically asked whether Clark County would be  
15 willing to accept all of the Union's offers in return for all of Clark County's offers. Clark County  
16 again responded, "No." Nones then asked if there was *any* subset of the Union's offers that Clark  
17 County would accept in return for a subset of Clark County's offers. Again, the answer from the  
18 County was, "No." ROA at 761-762. In short, the County unequivocally rejected all of CCDU's  
19 proposed articles, and indicated quite plainly that it had no intention of negotiating further.

20       However, CCDU still did not give up. CCDU made one, last-ditch effort to continue  
21 negotiations by asking whether Clark County would accept the Union's COLA proposal, which the  
22 County had not countered, and which contained the exact same calculations proposed by the County  
23 in years past (and what Clark County would be required to pay anyway if no contract was reached).  
24

1 Clark County again responded, "No." ROA at 762. Further, Clark County *still* did not have the  
2 information requested on January 3 for the cost of a 1% increase in the salary schedule. ROA at 763.

3 At this point, having exhausted all other options, CCDU had no choice but to declare  
4 impasse. ROA at 472. A discussion ensued with Clark County Chief Negotiator Ramos as to whether  
5 the parties should come back and meet again three weeks later, on May 8, 2024. CCDU asked  
6 whether Clark County would have any counteroffers if the Union came back for a seventh meeting  
7 on that day. Ramos only responded with, "Maybe." ROA at 667. The Chief negotiator for the County  
8 also indicated that she was unsure of what authority she had to make counterproposals, as follows:

9 "well, I know -- I have authority, but I have to talk to my team about the parameters  
10 of my authority. I actually don't know how much money I have for your contract  
and I have to go look to see if I can move money around for your contract."

11 ROA at 665, Ln. 20-25; *see also*, ROA 789, Ln. 1-5. That quote was undisputed testimony, to which  
12 the County presented no rebuttal. EMRB panel member, Mr. Eckersley, even invited the County to  
13 offer rebuttal by asking, "No Rebuttal witnesses[?]" but the County offered no response. ROA 818.  
14 It is therefore undisputed that the County's chief negotiator admitted at the sixth meeting that she  
15 could not make counteroffers because she did not know the parameters of her authority.

16 In response, CCDU informed Clark County that if it wanted the Union to come back to the  
17 bargaining table, it should send counterproposals. CCDU informed Clark County that if it sent any  
18 offers, whether they were a package offer, subset of offers, anything at all, the Union would be  
19 willing to return to the bargaining table for another meeting. ROA at 668, 763-764. However, the  
20 County chose not to send any additional proposals or counter proposals following the sixth meeting,  
21 again demonstrating that they had no interest in further negotiations.

22 On April 25, 2024, CCDU filed its Prohibited Practices Complaint against Clark County with  
23 the State of Nevada Government Employee Management Relations Board (hereafter "EMRB" or  
24

1 “the Board”). ROA at 127-135. Six days later, on May 1, 2024, Clark County finally provided the  
2 cost of a 1% increase to the salary schedule, four full months after CCDU requested the information.  
3 ROA at 222.

4 Clark County did not take up CCDU’s offer to return to the bargaining table by making a  
5 promise to have proposals or counterproposals. ROA at 764. Instead, on May 9, 2024, Clark County  
6 Human Resources Director Curtis Germany sent an email to CCDU President, David Westbrook,  
7 stating:

8 Good Morning,

9 The County understands the NRS 288 allows for “either party” to declare impasse  
10 after six meetings and that CCDU was the moving party. Although the County  
11 believes that declaration was premature, I am more interested in reaching an  
12 agreement in having ongoing discussions about what has occurred at the table thus  
13 far or pursuing time-consuming impasse proceedings.

12 In an effort to continue to move this round of negotiations towards a Tentative  
13 Agreement and in the interest of harmonious labor relations, the County would  
14 like to request CCDU participate in FMCS mediation.  
15 Please let us know if you are interested and willing to participate in mediation. If  
16 so, we will reach out to FMCS for some dates.

15 ROA at 224. CCDU President Westbrook responded, reiterating the Union’s willingness to return  
16 to the bargaining table, stating that if Clark County was willing “to replace your words with actions,  
17 we are always available.” ROA at 225.

18 Clark County did not commit to making any additional proposals, but CCDU nonetheless  
19 agreed to Clark County’s request for mediation. ROA at 771. However, nothing further was heard  
20 from Clark County. Accordingly, on June 13, 2024, CCDU President Westbrook emailed Director  
21 Germany:

22 Dear Mr. Germany:

23 On May 9, 2024, you contacted CCDU to request that we participate in an FMCS  
24 mediation. On May 14, 2024 we told you that, despite our concerns that your

1 request for mediation was just a delay tactic, [we] would agree to participate in  
2 mediation. We asked only that the County send someone with legitimate authority  
to reach an agreement, and that the mediation be scheduled expeditiously.

3 A full month has passed and you have taken no steps to schedule an FMCS  
4 mediation. Claim to have a sincere interest reaching an agreement, but once again,  
5 your actions tell a different tale. As I said before, delay always benefits the County,  
and it appears you are once again using delay tactics to deny the members of our  
bargaining unit a fair and equitable contract.

6 If you are still interested in a mediation, please respond to this letter and a timely  
7 fashion. Our attorney has already contacted your attorney to schedule both a  
mediation, and fact-finding. We are simply waiting for your response.

8 Or, conversely, you could do the right thing and except the final proposals we  
9 submitted at our last bargaining session – proposals which you admitted were  
10 “reasonable” and “the most reasonable of any bargaining unit.” The ball is in your  
court.

11 ROA at 229-230. Later that day, at 5:06 p.m., Clark County’s outside counsel Allison Kheel sent an  
12 email to CCDU’s counsel confirming that Clark County had taken no action in over a month to  
13 schedule a mediation. Kheel stated, in pertinent part, “I will be contacting FMCS first thing  
14 tomorrow morning to arrange for a mediator in both the CCPA and CCDU matters.” ROA at 239.<sup>1</sup>

15 On June 17, 2024, Kheel notified CCDU that FMCS Commissioner Herman Brown was  
16 available July 17, July 18, and July 23. Undersigned counsel, on behalf of CCDU, requested earlier  
17 dates and suggested hiring a private mediator to avoid waiting until July. ROA at 247.

18 On June 21, 2024, counsel for CCDU instructed Kheel to reserve July 17, 18, and 23 for  
19 CCDU, DAIA and CCPA. ROA at 254. However, Clark County now refused to secure its own  
20 proposed dates, claiming “[t]he County folks were not all available on those days.” ROA at 258. At  
21 2:03 p.m., counsel for CCDU responded and reminded the County that it “has an obligation to set  
22

23 \_\_\_\_\_  
24 <sup>1</sup>Undersigned counsel also represented the Clark County Prosecutors Association (“CCPA”) as well as the  
Clark County District Attorney Investigators Association (“DAIA”) in their impasses with Clark County.

1 the mediation ASAP,” and that Clark County did not need its entire team—only “one person with  
2 authority”—and further reminded the County of its obligation to move expeditiously. ROA at 25.  
3 Clark County refused, claiming “[t]he Union cannot tell the County who they can choose to be on  
4 its bargaining team or who from that bargaining team are necessary for mediation.” ROA at 262.

5 Ultimately, the County took no action to secure its own proposed dates—nor did it  
6 obtain any other dates. As a result, on July 9, 2024, counsel for CCDU wrote directly to FMCS  
7 Commissioner Brown pointing out that the Union(s) had accepted the County’s proposed dates of  
8 July 17, 18, and 23, but that Clark County was now refusing to participate on such dates. The Unions’  
9 counsel further pointed out that Clark County was now outside of the statutory 30 days to mediate.  
10 ROA at 264. However, due to Clark County’s delay, the July dates were lost. ROA at 267. the  
11 Unions’ counsel requested new dates, emphasizing that Clark County and its counsel should no  
12 longer be permitted to stall or delay the process. ROA at 270.

13 New mediation dates of July 30, 31, and August 1 were obtained. At the mediation, Clark  
14 County still refused to make any counterproposals to CCDU’s proposals made prior to the  
15 declaration of impasse. ROA at 568. Unsurprisingly, the mediation failed. ROA at 570.

16 The Prohibited Practices Complaint filed by CCDU, and Clark County’s Counterclaim, came  
17 before the EMRB for hearing on November 6 and 7, 2024. The Board held that Clark County had  
18 failed to bargain in good faith by its failure to timely provide the cost of a 1% increase to the  
19 bargaining unit salary schedule; the Board also found that Clark County had also failed to bargain  
20 in good faith due to its delays in connection with scheduling and attending mediation under the  
21 statutory impasse processes. However, the Board did not find that Clark County failed to bargain in  
22 good faith for engaging in surface bargaining, even though the County made *only* regressive and  
23 reductive offers, made no substantive counteroffers, gave false information regarding their Article 7  
24

1 "Management Rights" proposal, and its Chief negotiator admitted *at the sixth negotiation session*  
2 that she could not make counter-offers because she did not know the parameters of her bargaining  
3 authority.

4 Incredibly, Director of Human Resources, Curtis Germany, actually admitted, during the  
5 EMRB hearing, that his strategy is to use regressive offers, not for the purpose of bargaining in good  
6 faith, but to antagonize bargaining units:

7 If it were me, I would have probably offered something diminimus [SIC] **that**  
8 **would have set the unit off** just so I wouldn't be having this argument down the  
line.

9 ROA 610-611 (emphasis added).

10 The Board also made the inexplicable finding that CCDU failed to bargain in good faith by  
11 declaring impasse after the *statutorily prescribed* six negotiation sessions, despite the clear language  
12 of NRS 288.200. ROA at 005-017.

13 Thereafter, CCDU filed its timely Petition for Judicial Review with this Court.

#### 14 STANDARD OF REVIEW

15 The scope of judicial review is set forth under NRS 233B.135 (3), which permits a district  
16 court to set aside "in whole or in part" a decision of an administrative agency if the substantial rights  
17 of the petitioner have been prejudiced because the final decision of the agency is:

- 18 (a) In violation of constitutional or statutory provisions;
- 19 (b) In excess of the statutory authority of the agency;
- 20 (c) Made upon unlawful procedure;
- 21 (d) Affected by other error of law;
- 22 (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the  
23 whole record; or
- 24 (f) Arbitrary or capricious or characterized by abuse of discretion.



1           The plain language of NRS 288.200 is dispositive regarding CCDU's legal right to invoke  
2 the statutory impasse procedures after six meetings of negotiations. *Dep't of Bus. & Indus., Fin.*  
3 *Institutions Div. v. TitleMax of Nevada, Inc.*, 135 Nev. 336, 340-41, 449 P.3d 835, 839 (2019)  
4 ("When interpreting a statute, we look first to its plain language. If the language is clear and  
5 unambiguous, we do not look beyond it."); *Taylor v. State, Dep't of Health & Human Servs.*, 129  
6 Nev. 928, 930, 314 P.3d 949, 951 (2013) (providing that an administrative agency's interpretation  
7 of a statute is only entitled to deference if that interpretation is "within the language of the statute").  
8 The EMRB's conclusion that declaring impasse was bad faith because further negotiations may not  
9 have been futile or because CCDU was not "at the end of its rope" is not supported by law or  
10 substantial evidence. To the contrary, over the course of three months, and after the requisite six  
11 meetings, Clark County:

- 12           (1) refused to consider CCDU's counterproposal regarding the duration of the  
13           proposed collective bargaining agreement;
- 14           (2) offered no counterproposals to any of CCDU's proposals;
- 15           (3) refused to sign the cost of living adjustment (COLA) language which Clark  
16           County originally authored and had already implemented;
- 17           (4) made no substantive proposals other than to (a) increase management  
18           rights beyond what was authorized by statute (and even this proposal was  
19           later withdrawn), and (b) to eliminate long-held benefits with nothing  
20           offered in exchange;
- 21           (5) would not consider offering any package proposals whereby the County  
22           would accept some of CCDU's proposals in return for CCDU's acceptance  
23           of some of the County's proposals,
- 24           (6) failed to provide a chief negotiator with full bargaining authority—the  
            County's chief negotiator admitted that she *still* did not know the  
            parameters of her authority *after six meetings*; and
- (7) would not commit to making any proposals or counterproposals even if  
            CCDU agreed to return for a seventh meeting.

1 Given these undisputed facts, the EMRB erred in finding that the County's conduct in this regard  
2 did not amount to bad faith.

3 Finally, the Board's conclusion that Clark County's actions in bad faith were limited only to the  
4 County's failure to provide requested information and its delays in connection with scheduling  
5 mediation, was arbitrary and capricious. Not only did Clark County engage in the bad faith conduct  
6 set forth above, but it also asserted that it would not make any financial proposals, or counter any of  
7 CCDU's proposals, until CCDU first put forth all of its own proposals. The National Labor Relations  
8 Board has held that requiring a union to present *all* of its proposals before making any  
9 counterproposals constitutes bad faith. However, the EMRB's Decision did not address this practice  
10 or explain how it reached its conclusions. This failure to address and/or explain requires remand back  
11 to the Board under basic principles of administrative law. *Highroller Transportation, LLC v. Nevada*  
12 *Transportation Auth.*, 139 Nev. Adv. Op. 51, 541 P.3d 793, 797 (Nev. App. 2023) ("We also  
13 emphasize the importance of a developed record at the agency level to enable district courts and  
14 appellate courts to meaningfully address the arguments raised in petitions for judicial review.").

### 15 ARGUMENT

#### 16 **I. THE BOARD'S FINDING OF BAD FAITH BARGAINING AGAINST CCDU MUST 17 BE REVERSED BECAUSE NRS 288.200 EXPRESSLY AUTHORIZED CCDU TO 18 RESORT TO THE STATUTORY IMPASSE PROCEDURES AFTER SIX 19 MEETINGS.**

19 In this case, the EMRB inexplicably found that CCDU had failed to bargain in good faith by  
20 invoking statutory impasse procedures after six negotiation meetings because the parties were not  
21 truly deadlocked, or "at the end of their rope." ROA at 012-013. The EMRB's Decision stated:

22 [T]here was credible evidence that Respondent [Clark County] was open to  
23 negotiating all of the pending Articles, other than those that had been previously  
24 rejected. Respondent went further and even suggested holding an additional  
negotiating session in early May which would include counterproposals to those  
that had been submitted by Complainant.

1 ROA at 01. This finding is flawed in several respects, both legally and factually. Not only was this  
2 finding entirely unsupported by the testimony at the hearing, but more significantly, the Board's  
3 imposition of additional conditions prior to resorting to statutory impasse procedures, such as the  
4 adoption of a "futility" and "end of the rope" standard from private sector bargaining under the  
5 National Labor Relations Act, is contrary to the plain language of NRS 288.200 and therefore  
6 erroneous as a matter of law.

7 **A. NRS 288.190 and 288.200 expressly authorized CCDU to resort to**  
8 **statutory procedures after specified dates and six meetings.**

9 NRS 288.200(1), entitled "Submission of dispute to fact finder," states in pertinent part:

10 1. If:

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

12 (b) The parties have participated in mediation and by April 1, have not reached  
13 agreement,

14 either party to the dispute, at any time after April 1, may submit the dispute to an  
impartial fact finder for the findings and recommendations of the fact finder. The  
15 findings and recommendations of the fact finder are not binding on the parties  
except as provided in subsection 5. The mediator of a dispute may also be chosen  
16 by the parties to serve as the fact finder.

17 (emphasis added)

18 The plain language of NRS 288.200(1) states that either party may move to fact-finding after  
19 six meetings – provided that such action is taken after April 1 of any given year. The Nevada  
20 Supreme Court has ruled that the plain language of a statute must be reviewed by courts *de novo*,  
21 and an agency's interpretation of unambiguous statutory language—especially when that  
22 interpretation is contrary to the statute's plain language—is given no deference:

23 However, "[a] *de novo* standard of review is applied when [a reviewing] court  
24 addresses a question of law, including the administrative construction of statutes."

1 *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013)  
2 (internal quotation omitted); accord *Bombardier*, 135 Nev. at 18, 433 P.3d at 252  
3 (stating that “[w]e ... review de novo statutory interpretation questions in the  
4 administrative context”); *City of North Las Vegas v. Warburton*, 127 Nev. 682,  
5 686, 262 P.3d 715, 718 (2011) (“Like the district court, we review an  
6 administrative appeals officer’s determination of questions of law, including  
7 statutory interpretation, de novo.”); see NRS 233B.135(3)(a), (b), (d).

8 Some cases recognize an exception to this general rule, saying deference is  
9 appropriate when the agency’s interpretation is “within the language of the  
10 statute,” *Taylor v. State, Dep’t of Health & Hum. Servs.*, 129 Nev. 928, 930, 314  
11 P.3d 949, 951 (2013) (internal quotation omitted), or “reasonably consistent with  
12 the language” of a statute that the agency is “charged with administering,”  
13 *TitleMax of Nev.*, 135 Nev. at 340, 449 P.3d at 839. But this exception is limited  
14 and does not apply when the agency’s interpretation falls outside the statute’s plain  
15 text. See *United States v. State Eng’r*, 117 Nev. 585, 589-90, 27 P.3d 51, 53 (2001)  
16 (stating that courts do not defer to an agency’s interpretation of a statute when “an  
17 alternative reading is compelled by the plain language of the provision”).

18 *Redevelopment Agency of City of Sparks v. Nevada Lab. Comm’r*, 140 Nev. Adv. Op. 44, 551 P.3d  
19 303, 308 (2024); see also *United States v. State Eng’r*, 117 Nev. 585, 589-90, 27 P.3d 51, 53-54  
20 (2001) (“[A]n [administrative] agency’s interpretation of a regulation or statute does not control if  
21 an alternative reading is compelled by the plain language of the provision.” (alterations in original)  
22 (citing to *Southern Cal. Edison*, 102 Cal.Rptr.2d at 698 (citations omitted); see also *Neer v.*  
23 *Oklahoma Tax Comm’n*, 982 P.2d 1071, 1078 (Okla.1999) (administrative construction cannot  
24 override plain statutory language)).<sup>2</sup>

25 “When interpreting a statute,” the courts must “look first to its plain language. If the language  
26 is clear and unambiguous, we do not look beyond it.” *Dep’t of Bus. & Indus., Fin. Institutions Div.*  
27 *v. TitleMax of Nevada, Inc.*, 135 Nev. 336, 340-41, 449 P.3d 835, 839 (2019) (citing to *Robert E. v.*

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<sup>2</sup>See also, *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). In overturning the Chevron doctrine, the Supreme Court of the United States held that “[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority,” ending the practice of court deference to an agency’s interpretation of laws.

1 *Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983)). “[I]t is well established that when the  
2 language of a statute is plain and unambiguous, a court should give that language its ordinary  
3 meaning and not go beyond it.” *State Eng’r*, 117 Nev. at 589, 27 P.3d at 53 (internal quotation marks  
4 omitted).

5 In this case, the plain language of NRS 288.200(1) is not ambiguous. A statute is ambiguous  
6 “when [it] is capable of two or more reasonable but inconsistent interpretations.” *Gallagher v. City*  
7 *of Las Vegas*, 114 Nev. 595, 599, 959 P.2d 519, 521 (1998). The statutory provision that impasse  
8 may be declared if the “parties have failed to reach an agreement after at least six meetings of  
9 negotiations,” NRS 288.200(1)(a), is not susceptible to two reasonable but inconsistent  
10 interpretations. Specifically, “at least six meetings” means just that—a minimum of six meetings.  
11 There is no other reasonable interpretation of this language.

12 Because the plain language of NRS 288.200(1) is unambiguous, the administrative agency’s  
13 reading of the statute “is compelled by the plain language of the provision.” *State Eng’r*, 117 Nev.  
14 at 589-90, 27 P.3d at 53-54. A party cannot be found to act in bad faith by following the letter of the  
15 law and the plain language of a statute. Therefore, the EMRB’s decision that CCDU did not bargain  
16 in good faith by declaring impasse after six negotiation meetings is clearly erroneous, arbitrary and  
17 capricious, and contrary to law and statute. NRS 233B.135(3). Similarly, a party likewise cannot be  
18 found to act in bad faith by failing to adhere to additional requirements that are not set forth in statute  
19 or otherwise noticed. The EMRB is not a super-legislature and cannot be permitted to write new  
20 requirements into a statute.

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1           **B. The EMRB erred in adding non-statutory requirements before a party may**  
2           **invoke statutory impasse procedures.**

- 3           1.     The EMRB improperly added requirements of “futility,” whereby the parties  
4           must be “at the end of their rope,” in order to declare impasse

5           The EMRB could not lawfully change, supplant, modify, or add to the statutory  
6           requirements, and it was legal error to do so. Administrative agencies have only those powers which  
7           the legislature specifically delegates to it, *see Andrews v. Nevada State Board of Cosmetology*, 86  
8           Nev. 207, 467 P.2d 96 (1970), which does not include the power to modify or change a duly enacted  
9           statute. *See also, Clark Cnty. Sch. Dist. v. Clark Cnty. Classroom Tchrs. Ass’n*, 115 Nev. 98, 103,  
10          977 P.2d 1008, 1011 (1999) (“[T]he court may not confer upon an administrative agency power in  
11          excess of that authorized by the legislature.”).

12          The Board committed legal error by replacing the statutory meeting requirements, which  
13          were satisfied, with its own test of “futility” whereby the parties must be “at the end of their rope.”  
14          Nothing within the plain language of NRS 288.200 requires a demonstration of “futility” or that  
15          CCDU be “at the end of its rope” (even though it certainly was). While the statute does also reference  
16          mediation, under NRS 288.190 mediation is permissive and may be waived by the parties, as was  
17          the case in the 2022 and 2023 impasses. ROA at 572. Moreover, it is undisputed that when Clark  
18          County requested mediation after the declaration of impasse, CCDU participated in such  
19          (notwithstanding Clark County’s delays in scheduling).<sup>3</sup> The term “impasse” only appears once in  
20          the provisions of NRS Chapter 288 as applicable to local governments. NRS 288.217(2), which  
21          applies only to licensed teaching professionals, states, “[i]f the parties to a negotiation pursuant to  
22          this section have failed to reach an agreement after at least four sessions of negotiation, either party

23          <sup>3</sup> Clark County’s email of May 8, 2024 concedes the right to declare impasse after six meetings, stating in its  
24          opening sentence “[t]he County understands the NRS 288 allows for ‘either party’ to declare impasse after  
25          six meetings.” ROA at 224.

1 may declare the negotiations to be at an impasse and, after 5 days' written notice is given to the other  
2 party, submit the issues remaining in dispute to an arbitrator.”

3           However, the term does not appear in NRS 288.200, which governs *non-binding* fact finding.  
4 While parties to collective bargaining frequently use the term “statutory impasse” to move  
5 negotiations to fact finding, all the statute requires is the failure to reach an agreement after six  
6 meetings, and that the date be after April 1, as well as participate in mediation if requested by either  
7 party. NRS 288.200(1).

8           The Board’s own decision notes, “[i]n order to show ‘bad faith,’ a complainant must present  
9 ‘substantial evidence of fraud, deceitful action or dishonest conduct,’” citing its prior decisions in  
10 *City of Reno v. Int’l Ass’n of Firefighters, Local 731*, Item No. 253-A (EMRB, Feb. 8, 1991), and  
11 the United States Supreme Court’s decision in *NLRB v. Int’l Union of Marine, Paper & Allied Workers*, 361 U.S. 488  
12 (1970). ROA at 006. In the absence of surface bargaining – something the EMRB expressly found  
13 that CCDU *did not engage in* – the Board’s finding that CCDU was somehow bargaining in bad  
14 faith when it expressed an intent to move to fact finding on April 17, 2024, is contrary to the plain  
15 language of the statute. The only thing CCDU was obligated to do after six meetings was attend  
16 mediation at Clark County’s request, which CCDU did. Nothing more was required by NRS  
17 288.200, and it was legal error for the EMRB to add requirements when they do not exist in statute.

18           Further, basic but long-standing rules of statutory interpretation would still not permit the  
19 EMRB to add additional requirements prior to invoking statutory impasse procedures. “[T]he maxim  
20 *expressio unius est exclusio alterius* (‘the expression of one thing is the exclusion of another’), long  
21 adhered to in this state, instructs us to view the failure to acknowledge any other existing method of  
22 removal as intent to allow no other method.” *Ramsey v. City of N. Las Vegas*, 133 Nev. 96, 102, 392  
23 P.3d 614, 619 (2017) (citing to *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967)

24

1 (“Every positive direction contains an implication against anything contrary to it which would  
2 frustrate or disappoint the purpose of that provision.” (quoting *State ex rel. Keyser v. Hallock*, 14  
3 Nev. 202, 206 (1879) (internal quotations omitted))). Thus, even if NRS 288.200(1) were subject to  
4 interpretation beyond the plain language, it contains three requirements—six meetings, mediation,  
5 and a date deadline—that must be met in order to lawfully invoke statutory impasse. The inclusion  
6 of three specific requirements, under the *expressio* canon “long adhered to in this state,” *id.*, would  
7 preclude the EMRB from interpreting the statute in a contrary way that includes additional  
8 requirements beyond those already expressly included, as the express inclusion of the three listed in  
9 subsection (1) act to the exclusion of all others.

- 10 2. Reliance upon NLRB precedent regarding “Futility” or being at the “End of  
11 Their Rope” was error because of significant differences between private  
12 sector impasse under the National Labor Relations Act and NRS Chapter 288.

13 While the Nevada Supreme Court has held that it can be helpful to look to the National Labor  
14 Relations Board (“NLRB”) precedent for guidance in interpreting NRS Chapter 288, *see e.g.*  
15 *Truckee Meadows Fire Protection Dist. v. International Ass’n of Fire Fighters, Local 2487*, 109  
16 Nev. 367, 849 P.2d 343 (1993), there are significant differences between the National Labor  
17 Relations Act (“NLRA”) and Nevada’s Employee Management Relations Act (“EMRA”), NRS  
18 Chapter 288, such that the NLRB does not control under these circumstances.

19 Where there are differences between the NLRA and the EMRA, Nevada rejects the  
20 corresponding federal precedent. For example, in *City of Mesquite v. Eighth Judicial Dist. Court*,  
21 135 Nev. 240, 445 P.3d 1244 (2019), Nevada rejected the ability to bring a hybrid claim of the sort  
22 authorized under the NLRA. *See Id.* at 1249-50 (“However, the Tansey order did not recognize the  
23 differences between the federal statutory scheme addressed in *Vaca* and the EMRA’s statutory  
24 scheme or our prior decision in *Rosequist* that rejected *Vaca* based on those differences.”). Likewise,

1 in *Cone v. Nevada Service Employees Union Local 1107*, the Supreme Court held, with regard to  
2 Chapter 288:

3 Although appellants cite much precedent, including NLRB opinions, in support of  
4 their position, we reject this authority. Preliminarily, we note that this court is not  
5 bound by an NLRB decision when it determines that the statutes involved do not  
6 fall within the purview of the National Labor Relations Act.

7 116 Nev. 473, 480, 998 P.2d 1178, 1183 (2000).

8 In this case, the Board sought to rely upon its new decision in *Washoe County School District*  
9 *v. Washoe School Principals Association*, Consolidated Case Nos. 2023-24 and 2023-31, Item No.  
10 895 (March 29, 2024) (hereafter “Washoe County”), which issued between the fourth and fifth  
11 negotiating sessions between CCDU and Clark County. As noted by the Board’s Decision in this  
12 case:

13 In *Washoe County* the Board adopted the following standards to determine what  
14 constitutes an impasse. First, an impasse is the point in which the parties are warranted in  
15 assuming that bargaining would be futile. Second, both parties must believe they are  
16 quote at “the end of their rope.” Third, Impasse in negotiations is synonymous with a  
17 deadlock; the parties have discussed the subject, or subjects, in good faith, and, despite  
18 their best efforts to achieve agreement with respect to such, there party is willing to move  
19 from its respective position. Fourth, the bargaining history, the good faith of the parties  
20 in negotiations, the length of the negotiations, the importance of the issue or issues as to  
21 which there is disagreement, the contemporaneous understanding the parties as to the  
22 State of negotiations are all relevant factors [the trier of fact should consider] in deciding  
23 whether an impasse exists and was proper. Fifth, in analyzing these factors, the Board  
24 looks at the totality of the circumstances and one or two factors alone may be sufficient  
to demonstrate the absence of impasse.

ROA at 012-013.

25 *Washoe County*, in turn, looked to NLRB precedent taking the language “the point in which  
26 the parties are warranted in assuming that bargaining would be futile,” being “at the end of their  
27 rope,” and being synonymous with “deadlock” from *Thrifty Payless, Inc. D/B.A Rite Aid and United*  
28 *Food and Commercial Workers Local 8-Golden State*, 371 NLRB 124, (2022). However, the EMRB

1 in *Washoe County* failed to properly recognize the significant differences with regard to “impasse”  
2 in the private sector. *Cone*, 116 Nev. at 480, 998 P.2d at 1183 (“[T]his court is not bound by an  
3 NLRB decision when it determines that the statutes involved do not fall within the purview of the  
4 National Labor Relations Act.”).

5 In *private-sector* bargaining, once impasse is reached the parties may resort to economic  
6 pressure tactics which are *contrary* to the procedures provided in Chapter 288. As explained by the  
7 NLRB, in private-sector bargaining:

8 When such a deadlock is reached between the parties, the duty to bargain about the subject  
9 matter of the impasse merely becomes dormant until changed circumstances indicate that  
10 an agreement may be possible. **Once a genuine impasse is reached, the parties can**  
11 **concurrently exert economic pressure on each other: the union can call for a strike;**  
12 **the employer can engage in a lockout, make unilateral changes in working**  
13 **conditions** if they are consistent with the offers the union has rejected, or hire  
replacements to counter the loss of striking employees.... Thus, a genuine impasse is akin  
to a hiatus in negotiations. In the overall ongoing process of collective bargaining, it is  
merely a point at which the parties cease to negotiate and often resort to forms of  
economic persuasion to establish the primacy of their negotiating position.... In short, a  
genuine impasse is not the end of collective bargaining.

14 *Independent Association of Steel Fabricators, Inc. et al.*, 231 N.L.R.B. 264 (1977) (emphasis added);  
15 see also *N.L.R.B. v. Truck Drivers Local Union No. 449, International Brotherhood of Teamsters,*  
16 *Chauffeurs, Warehousemen and Helpers of America, AFL (Buffalo Linen Supply Co.)*, 353 U.S. 87  
17 (1957); *N.L.R.B. v. Brown, et al. d/b/a Brown Food Stores*, 380 U.S. 278 (1965); *American Ship*  
18 *Building Company v. N.L.R.B.*, 380 U.S. 300 (1965). The usual dispute in such private-sector cases  
19 is whether the employer prematurely declared impasse so as to permit it to unilaterally implement  
20 its proposals.

21 Such concepts are entirely inconsistent with NRS Chapter 288. The Nevada Supreme Court  
22 has held that unilateral changes by an employer are “repugnant to the Employee-Management  
23 Relations Act.” *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 897, 59 P.3d 1212, 1217  
24

1 (2002). Likewise, economic pressure tactics by a union such as a strike are expressly made illegal  
2 for public employees:

3 **NRS 288.700 Legislative findings and declaration; illegality of strikes.**

4 1. The Legislature finds as facts:

5 (a) That the services provided by the State and local government employers are of  
6 such nature that they are not and cannot be duplicated from other sources and are essential  
7 to the health, safety and welfare of the people of the State of Nevada;

8 (b) That the continuity of such services is likewise essential, and their disruption  
9 incompatible with the responsibility of the State to its people; and

10 (c) That every person who enters or remains in the employment of the State or a local  
11 government employer accepts the facts stated in paragraphs (a) and (b) as an essential  
12 condition of the person's employment.

13 2. The Legislature therefore declares it to be the public policy of the State of Nevada  
14 that strikes against the State or any local government employer are illegal.

15 In place of the impasse model under the NLRA, where parties may be negotiating for many  
16 months or even years before resorting to impasse and economic pressure techniques, Nevada has  
17 adopted a statutory scheme which is designed to resolve contracts relatively quickly. Employee  
18 organizations which desire to negotiate a collective bargaining agreement requiring the budgeting  
19 of funds must give notice to the local government employer no later than February 1 of the year in  
20 which an agreement is set to expire. NRS 288.180(1). Following such notice, "[t]he parties shall  
21 promptly commence negotiations." NRS 288.180(3). The parties are expected to reach an agreement  
22 within six meetings. NRS 288.200(1).<sup>4</sup> Thereafter, either party may advance the process to fact-  
23 finding after April 1, subject only to the requirement of mediation upon request for civilian  
24 employees.<sup>5</sup>

<sup>4</sup>In the case of licensed teaching professionals, the parties are expected to reach an agreement in only four (4) meetings. NRS 288.217.

<sup>5</sup>Police and firefighters are not required to mediate. See NRS 288.190 and NRS 288.205. As correctly recognized by the Board, the mediator and fact finder may be the same person. ROA at 011.

1 Even after fact-finding is requested, the statutory process is designed to move extremely  
2 quickly. The parties must mutually agree to a factfinder within 5 days, and if they cannot do so, then  
3 they must obtain a strike list from the American Arbitration Association or Federal Mediation and  
4 Conciliation Service and strike names from such a list within 5 days of receipt. NRS 288.200(2). A  
5 schedule for dates and times for fact-finding hearing must be scheduled “within 10 days after the  
6 selection of the factfinder,” and the fact-finder is obligated to issue his report and recommendation  
7 within 30 days of the conclusion of the hearing. NRS 288.200(4). The entire process—from notice  
8 prior to February 21 to authorization to move to fact-finding after April 1, provided the 6 meetings  
9 have occurred—is designed to obtain a resolution prior to the end of the fiscal year (June 30) when  
10 the prior agreement will expire.

11 As such, the EMRB’s Decision in this case correctly recognized that “the entirety of NRS  
12 Chapter 288 makes it clear that time is of the essence in terms of participating in negotiations,  
13 mediation and fact-finding.” ROA at 011. However, the EMRB’s Decision went astray of this  
14 recognition when it determined that more than six meetings may be necessary before resorting to  
15 NRS 288.200, and that both parties must be at the “end of their rope,” when the statute clearly states  
16 that “either party” may declare impasse. As previously noted by the EMRB, “[t]he duty to bargain  
17 in good faith does not require that the parties actually reach an agreement but does require that the  
18 parties approach negotiations with a sincere effort to do so.” *Nevada Classified School Employees*  
19 *Association Chapter 5 v. Churchill Co.*, Case No. 2019-014, Item No. 863 (2020) citing *Ed. Support*  
20 *Employees Ass 'n v. Clark County Sch. Dist.*, Case No. A1-046113, Item No. 809, 4 (2015), and *City*

1 of *Reno v. Int'l Ass'n of Firefighters, Local 731*, Item No. 253-A, Case No. A1-045472 (1991). Six  
2 meetings should be more than sufficient to reach an agreement, if any agreement is reachable.<sup>6</sup>

3 3. The EMRB's conclusion that CCDU did not bargain in good faith because  
4 additional negotiations would not be "futile" and because CCDU was not "at  
5 the end of its rope" was arbitrary and capricious and not supported by any  
6 evidence.

7 As set forth above, as a matter of law, CCDU could not have bargained in bad faith by  
8 declaring impasse after six meetings because that action is expressly permitted by the plain language  
9 of NRS 288.200(1). However, the EMRB's factual findings in connection with this determination  
10 were unsupported by any evidence, let alone the "substantial" evidence required by the law. *See*  
11 *generally Fathers & Sons & A Daughter Too v. Transp. Servs. Auth.*, 124 Nev. 254, 259, 182 P.3d  
12 100, 104 (2008) (providing that an administrative agency's factual findings must be supported by  
13 substantial evidence).

14 Here, the EMRB concluded:

15 [T]here was credible evidence that Respondent was open to negotiating all of the pending  
16 Articles, other than those that had been previously rejected. Respondent went further and  
17 even suggested holding an additional negotiating session in early May which would include  
18 counterproposals to those that had been submitted by Complainant.

19 ROA at 013.

20 The administrative record establishes the complete opposite. First, the EMRB's claim that  
21 Clark County "was open to negotiating all of the pending Articles, *other than those that had been*  
22 *previously rejected*" meant the parties were at an impasse; the parties need not disagree on every

23 <sup>6</sup>The fact that six sessions is statutorily sufficient is reinforced by the recent passage of Assembly Bill 356  
24 amending collective bargaining for the employees of the Executive Department of the State of Nevada.  
Previously (since 2019), under NRS 288.570 and 288.575, there were no minimum number of meetings for  
the State and its unions, and statutory impasse beginning with mediation could be pursued by either party  
after 120 days; AB 356 eliminated the 120 days and replaced it with the same requirement for six negotiation  
sessions as NRS 288.200. AB 356 was signed into law by Governor Lombardo on June 11, 2025.

1 single proposed article in order to be at an impasse because, even with a disagreement on a limited  
2 number of articles, no agreement can be reached. For example, CCDU was insisting upon restoration  
3 of pay parity with the prosecutors, because it is both reasonable and legal that prosecutors and  
4 defense attorneys be paid in parity. Clark County stated it was 100% not interested in pay parity. Tr.  
5 at 465, 616. If one party insists upon an article, and the other party refuses such, the parties are, by  
6 definition, at impasse and will not be able to settle a contract.

7 Even on something as basic as the duration of the contract, the parties could not reach an  
8 agreement. Clark County proposed a 3-year deal. *See* ROA at 176, 179. CCDU stated they would  
9 agree to this duration provided that it had the same reopeners as in their prior bargaining agreements.  
10 ROA at 035, 450. Clark County took the position it was not interested in any reopeners, despite their  
11 historic inclusion. ROA at 451.

12 The claim that Clark County was open to negotiating all pending Articles, other than those  
13 that it been previously rejected, is simply not consistent with the testimony at the hearing. To the  
14 contrary, during meeting #6, Clark County made its *first and only financial proposal*: cut leave and  
15 severance benefits without offering any benefit in return. ROA at 215-217, 546. After CCDU  
16 caucused, CCDU Treasurer Rafael Nones specifically inquired whether Clark County would be  
17 willing to accept all of CCDU's outstanding offers in exchange for all of Clark County's outstanding  
18 offers, including the benefit reduction. The County's response was a flat, "No." Nones then inquired  
19 if there was *any* subset of the unions offers which Clark County would accept for a subset of the  
20 County's offers. Again, the County's response was, again, "No." ROA at 761-762.

21 In the last-ditch effort to make some progress, Nones asked if Clark County would accept  
22 CCDU's Article 31 COLA proposal, ROA at 192. which used the same floor/ceiling language *Clark*  
23 *County had proposed* in the prior year, and which CCDU was already receiving as carryover  
24

1 language under the evergreen clause from the last contract. ROA at 481. Clark County Chief  
2 Negotiator Christina Ramos even conceded at the EMRB hearing that this COLA proposal fell  
3 within the parameters of her existing authority to accept on the County's behalf. ROA at 530-531.  
4 However, Clark County's response was, yet again, "No." ROA at 762. A distinct pattern was  
5 beginning to emerge.

6 *Significantly, all of this testimony was undisputed at the EMRB hearing.* None of the  
7 County's witnesses (Curtis Germany or Christina Ramos) identified any specific articles that the  
8 County was interested in negotiating. In the absence of *any testimony*, there could not be substantial  
9 evidence, or what the EMRB called "credible evidence," that Clark County was prepared to negotiate  
10 all of the open articles other than those previously rejected. It is notable that the EMRB did not  
11 identify what those purported articles were in its Decision – CCDU submits this was because there  
12 were none, and because the Board's finding on this subject was contrary to the actual testimony  
13 given. Thus, the EMRB's finding that the County was "open to negotiating all pending articles" is  
14 clearly erroneous and not supported by substantial evidence.

15 Additionally, the Board's finding that the County "suggested holding an additional  
16 negotiating session in early May which would include counterproposals to those that had been  
17 submitted by" CCDU was not only devoid of any evidence in the record, but is again also directly  
18 contrary to the undisputed testimony. When the County suggested coming back for seventh meeting  
19 on May 8, 2024, it was actually CCDU who sought assurances that there would be counteroffers  
20 made, and Clark County would not give any such assurances, saying only that there "maybe" a  
21 counteroffer. ROA at 666.

1 It was CCDU who made clear to the County that they would be willing to return for an  
2 additional session if Clark County would commit to making counteroffers. ROA at 667. *This was*  
3 *conceded* by the County's witness, Christina Ramos, who testified before the EMRB:

4 Q. The Defenders told you that they would agree to come back to the bargaining table  
5 if you had any actual financial proposals that were not reductive; correct?

6 A. They did say that.

7 Q. Okay. So they didn't refuse. They said, if you give us actual financial proposals  
8 that are not reductive, we'll come back; correct?

9 A. They did say that.

10 ROA at 476. Ramos conceded that CCDU also waited for over a month for Clark County to make  
11 non-reductive financial proposals in order for CCDU to return to bargaining table, but that Clark  
12 County would not agree to make any such proposals:

13 Q. So in that one month where the Defenders said if you'll make a non-reductive  
14 financial proposal to us, we'll come back to the bargaining table. Within that one  
15 month, you didn't do so; correct?

16 A. Correct.

17 ROA at 477-478.

18 This was further conceded by Clark County Human Resources Director Curtis Germany,  
19 who also testified for Clark County:

20 Q. And what was the reason the County did not continue the negotiation process?

21 A. It was based on the Union not wanting to continue unless we were to come to the  
22 table with nothing that was – there's an email somewhere in there, I believe, that  
23 said, on paraphrasing, that, basically, they would basically come to the table only  
24 if something was not reductive in our proposal.

25 ROA at 614. Germany conceded that it was Clark County which decided not to come back to the  
26 bargaining table with counter proposals, but instead elected to request mediation:

1 Q. But you didn't respond within invitation to come back and a promise that you  
2 would actually be prepared to counter any of our financial proposals, did you?

3 A. I did not. Looks like the last communication in the email stream was May 9 on  
4 69.

5 Q. What you actually said was, "In an effort to continue to move this round of  
6 negotiations towards a tentative agreement and in the interest of our relations, the  
7 County would like to request CCDU participate in FMCS mediation." Correct?

8 A. Yes

9 ROA at 550-551.

10 Thus, the County's own testimony shows that it was Clark County who requested mediation  
11 in place of further negotiations, not CCDU. ROA at 224, 551. Simply put, the EMRB's finding that  
12 Clark County was prepared to return to the bargaining table to "include counterproposals to those  
13 that had been submitted by [CCDU]" is demonstrably false and 100% contrary to the actual  
14 testimony from Clark County's own witnesses at the hearing. It is therefore arbitrary and capricious,  
15 and not supported by substantial evidence.<sup>7</sup> See *Brocas v. Mirage Hotel & Casino*, 109 Nev. 579,  
16 582, 854 P.2d 862, 865 (1993) (stating that the district court's role is "to review the evidence  
17 presented to the agency in order to determine whether the agency's decision was arbitrary or  
18 capricious and was thus an abuse of the agency's discretion"); see also *State v. Dist. Ct. (Armstrong)*,  
19 127 Nev. 927, 932, 267 P.3d 777, 780 (2011) (citing *Jones Rigging and Heavy Hauling v. Parker*,  
20 347 Ark. 628, 66 S.W.3d 599, 602 (2002) (stating that a manifest abuse of discretion "is one  
21 exercised improvidently or thoughtlessly and without due consideration").

22 <sup>7</sup> It must be re-emphasized that even at the mediation, Clark County refused to pass any proposals to CCDU.  
23 Director Germany testified "Did I likely have counterproposals, likely. Did I pass them, probably not." ROA  
24 at 567. This further undermines the EMRB's conclusion that the parties were not at impasse, even from Clark  
County's perspective. Although it is not the correct legal standard in this case, the undisputed facts establish  
that both parties were at "the end of their rope."

1 **II. THE EMRB’S DECISION THAT CLARK COUNTY DID NOT BARGAIN IN BAD**  
2 **FAITH BY REFUSING TO MAKE COUNTERPROPOSALS; BY WAITING UNTIL**  
3 **THE SIXTH MEETING TO MAKE ONLY REDUCTIVE PROPOSALS<sup>8</sup>; FAILING**  
4 **TO PROVIDE ITS NEGOTIATING TEAM WITH TRUE AUTHORITY TO**  
5 **NEGOTIATE; AND BY DEMANDING THAT CCDU SUBMIT ALL OF ITS**  
6 **PROPOSALS FIRST MUST BE REMANDED FOR FAILURE TO ADEQUATELY**  
7 **EXPLAIN THE BOARD’S REASONING.**

8 In a recent published decision by the Nevada Court of Appeals, the Court took care to  
9 “emphasize the importance of a developed record at the agency level to enable district courts and  
10 appellate courts to meaningfully address the arguments raised in petitions for judicial review.”  
11 *Highroller Transportation, LLC v. Nevada Transportation Auth.*, 139 Nev. Adv. Op. 51, 541 P.3d  
12 793, 797 (Nev. App. 2023). In expanding the necessity for such a developed record, the Court  
13 reasoned:

14 In other contexts, the Nevada Supreme Court has consistently required lower courts to  
15 make findings, either in writing or on the record, so it can evaluate the lower court’s  
16 decision and the reasons underlying that decision. *See, e.g., Somee v. State*, 124 Nev. 434,  
17 441-42, 187 P.3d 152, 158 (2008) (requiring the district court to make specific factual  
18 findings because “[w]ithout an adequate record, this court cannot review a district court’s  
19 decision to admit or suppress evidence”); *Davis v. Ewalefo*, 131 Nev. 445, 452, 352 P.3d  
20 1139, 1143 (2015) (“Specific findings and an adequate explanation of the reasons for the  
21 custody determination are crucial to enforce or modify a custody order and for appellate  
22 review. Without them, this court cannot say with assurance that the custody determination  
23 was made for appropriate legal reasons.” (internal quotation marks and citation omitted)).

24 The necessity of a fully developed record applies with no less force in administrative  
agency appeals, such as Highroller’s, where appellate review is strictly confined to the  
agency record.

...  
We again emphasize the need for a fully developed record at the agency level in order to  
properly evaluate arguments made in a petition for judicial review. Though we review  
questions of law, including preemption, de novo, *see Nanopierce Techs.*, 123 Nev. at 370,  
168 P.3d at 79, a sufficient record is still necessary for appellate review of administrative  
decisions. While de novo review entails that “we decide pure legal questions without  
deference to an agency determination,” our review, like the district court’s, is still limited  
to the agency record.

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<sup>8</sup> The terms “reductive” and “regressive” are used interchangeably and intended to be synonymous.

1 *Highroller Transportation, LLC*, 541 P.3d at 802, 805.

2 As set forth above, Clark County would not make any financial proposals, or any  
3 counterproposals to those made by CCDU, through the first five meetings. Clark County insisted  
4 that it would not make *any* such proposals or counterproposals until it had received all of CCDU's  
5 proposals. This was conceded by Clark County at the EMRB hearing. ROA at 438-439, 445, 458.  
6 When the County made its first financial proposals in the sixth and final meeting, the proposals were  
7 reductive (*i.e.*, to cut benefits) without any *quid pro quo* benefit in return. ROA at 467-471, 546.

8 Furthermore, as Curtis Germany admitted during the EMRB hearing, even these offers were  
9 not legitimate attempts to bargain in good faith, but rather intentionally "de minimis" offers designed  
10 to antagonize the Union:

11 Q. So Curtis, Is it typical for you to wait until the sixth meeting to make a initial  
12 financial offer?

13 A. Is it typical?

14 Q. Yeah. Is it typical for you to wait until meeting no .6 to make the first financial  
15 offer?

16 A. It's typical to wait until you get all the financial proposals. And if it happens on  
17 meeting no. 6, that's likely when you would get it. I take that back. **If it were me, I  
18 would have probably offered something diminimus [SIC] that would have set  
19 the unit off just so I wouldn't be having this argument down the line.** So if it  
20 were me, I probably would have offered you somewhere in there. I actually will  
21 reframe that, and then I wouldn't be having this discussion.

22 ROA 610-611. This is as close to a direct admission of bad faith bargaining as one is ever likely to  
23 see.<sup>9</sup>

24 <sup>9</sup> Mr. Germany's remarkable testimony also indicates that the regressive proposals were offered to provide a false impression of good faith bargaining. Had Mr. Germany been Chief Negotiator, he would have made his empty, regressive proposals earlier in the process, in an attempt to masquerade the obvious bad faith. These are not the words of a party interested in the type of productive, good faith negotiation required by statute.

1           The collective-bargaining process requires a willingness to engage in a “give and take” by  
2 both parties. *Lloyd A. Fry Roofing Co. v. NLRB*, 216 F.2d 273 (1954); *Hooks ex rel. NLRB v. Hood*  
3 *River Distillers, Inc.*, 2021 WL 1837396 (D. Ore. 2021) (seeking to discourage “rigid, inflexible  
4 posturing in place of the give-and-take of true bargaining”). Clark County’s insistence that CCDU  
5 make all of its proposals first, and its conduct throughout this bargaining process, is not consistent  
6 with “give and take” bargaining. Had CCDU likewise insisted that Clark County make all of its  
7 proposals before CCDU would make counterproposals, the parties would be staring silently across  
8 the bargaining table at each other for six meetings.

9           It is well recognized that the failure to make proposals or counterproposals during  
10 negotiations is an indicator of bad faith bargaining. The EMRB itself has recognized such, most  
11 recently in *International Union of Operating Engineers Local 501 v. Esmeralda County*, Case No.  
12 2018-014 Item No. 838 (2019). CCDU specifically directed the Board’s attention to precedent from  
13 the NLRB such as *Fallbrook Hospital Corporation v. California Nursing Association*, 360 NLRB  
14 644, 2014 NLRB LEXIS 266 (2014) and *Hospital of Barstow v. Nurses Association, National Nurses*  
15 *Organizing Committee*, 361 N.L.R.B. 352 (2014), wherein the NLRB held that the employer failed  
16 to bargain in good faith by requiring the union to submit all of its proposals before it would do so—  
17 exactly what Clark County did here. ROA at 825-826. The NLRB’s remedial order in *Fallbrook*  
18 *Hospital* specifically directed the employer to cease and desist from “[r]efusing to bargain  
19 collectively with the Union by failing and refusing to submit any proposals or counterproposals until  
20 the Union submits all of its proposals.” 2014 NLRB LEXIS 266 at p. 12.

21           However, the EMRB refused to even address the argument. Instead, it issued a conclusory  
22 determination that Clark County did not engage in “surface bargaining” or “regressive bargaining.”  
23 ROA at 007-008. The EMRB’s summary statement that Clark County did not engage in regressive  
24

1 bargaining is contrary to Clark County's own witnesses, who affirmed that the County declined to  
2 participate in a seventh meeting because they would not have any "not reductive" proposals for  
3 CCDU. ROA at 614 ([Curtis Germany]: "[B]asically, they would basically come to the table only if  
4 something was not reductive in our proposal.").

5 With regard to surface bargaining, the EMRB stated that Clark County "did provide  
6 responses to most of the proposals submitted by [CCDU] aside from those from the final negotiating  
7 sessions where impasse was declared..." This is simply not true. Clark County did not respond to  
8 any of the proposals made by CCDU throughout the first five meetings, based upon its insistence  
9 that CCDU make all of its proposals first. Then, in the sixth meeting, the County's Chief Negotiator,  
10 Christina Ramos, admitted that she *couldn't* make any counteroffers because she did not know the  
11 parameters of her own authority to bargain:

12 "well, I know -- I have authority, but I have to talk to my team about the parameters  
13 of my authority. I actually don't know how much money I have for your contract  
and I have to go look to see if I can move money around for your contract."

14 ROA at 665, Ln. 20-25; *see also*, ROA 789, Ln. 1-5. Ms. Ramos's admission proves that, through  
15 six meetings, the people with *actual* authority to bargain were never in the same room as the Clark  
16 County Defenders Union. The County engaged in surface bargaining from start to finish.

17 Further, the County only made two proposals during the first five meetings combined: Article  
18 7: Management Rights, which was later withdrawn by the County after its claim that the Article  
19 mirrored the statute was discovered to be false, and a request for a 3-year contract term. *See* ROA at  
20 436-437. CCDU agreed to a 3-year term with reopeners, but Clark County would neither accept the  
21 proposal for 3 years with reopeners, *nor offer any counter*. ROA at 449-451.

22 The EMRB's assertion that Clark County "did provide responses to most of the proposals  
23 submitted by [CCDU] aside from those from the final negotiating sessions where impasse was  
24

1 declared..." can also be demonstrated as false by a simple review of the Board's written Decision.  
2 On page 6 of that Decision, the Board laid out, meeting by meeting, what proposals were made.  
3 ROA at 010. Aside from the Management Rights proposal, which was withdrawn, and the 3-year  
4 term proposal, which Clark County declined to counter, the only "response" Clark County ever gave  
5 to CCDU's proposals was a simple and definitive, "No."

6 The EMRB's treatment of Clark County's regressive bargaining was even more bizarre. The  
7 Board correctly recognized that regressive bargaining occurs where an employer makes "an initial  
8 contract proposal that is less favorable to employees than the status quo." As noted by the Board:

9 However, regressive proposals are indicative of bad faith if left unexplained or if the  
10 explanation appears dubious. *Mid-Continent Concrete* at 260. "What is important is  
11 whether they are 'so illogical' as to warrant the conclusion that the Respondent by  
12 offering them demonstrated an intent to frustrate the bargaining process and thereby  
13 preclude the reaching of any agreement." *Barry-Wehmiller Co.*, 271 NLRB 471, 473  
14 (1984), quoting *Hickinbotham Bros. Ltd.*, 254 NLRB 96, 103 (1981). The Board adopts  
15 the paragraph above for the purposes of defining regressive bargaining and how to apply  
16 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  
20 process. Rather, the Board finds that the proposals reflected the relative strength of the  
21 parties and were primarily meant to help establish Respondent's bargaining position.

22 ROA at 008 (emphasis added).

23 It is a fundamental aspect of judicial review of administrative agency actions that agencies  
24 must provide the "essential facts upon which the administrative decision was based." *United States*  
*v. Dierckman*, 201 F.3d 915, 926 (7th Cir. 2000); *see also, Highroller Transportation, LLC*, 541  
P.3d at 802, 805. Agencies must explain what justifies their determinations with actual evidence  
beyond a "conclusory statement." *Allied-Signal, Inc. v. Nuclear Reg. Comm'n*, 988 F.2d 146, 152  
(D.C. Cir. 1993). As also explained by the Ninth Circuit:

1           Because the “grounds upon which an administrative order must be judged are those upon  
2           which the record discloses that its action was based,” the agency must explain its  
3           reasoning. Consequently, to ensure our appellate review is meaningful, we require the  
4           ALJ to “specifically identify the testimony [from a claimant] she or he finds not to be  
5           credible and ... explain what evidence undermines the testimony.” That means “[g]eneral  
6           findings are insufficient.” *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir.1995); see *Holohan*,  
7           246 F.3d at 1208 (concluding “that the ALJ’s credibility determination was erroneous”  
8           because it was based on the ALJ’s characterization of “the ‘record in general’”).

9           *Treichler v. Commissioner of Social Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (internal  
10          citations omitted). Thus, every relevant jurisdiction, including Nevada, the Ninth Circuit, and the  
11          U.S. Supreme Court, recognizes the importance of a developed agency record to permit meaningful  
12          review via petitions for judicial review.

13                 Despite recognizing that the Clark County’s financial proposals, which were made for the  
14                 first time in the *sixth meeting*, were in fact regressive, the EMRB declined to find bad faith.  
15                 Furthermore, the EMRB provided no explanation as to how it reached the conclusion that these  
16                 regressive proposals were not illogical, and/or made to frustrate the bargaining process. Clark  
17                 County’s proposal for Article 20 “Sick Leave” was to eliminate the “bonus leave” earned by  
18                 bargaining unit members who use 40 hours or less of sick leave during a year, and to further eliminate  
19                 the ability to sell back up to two work weeks of unused sick leave. ROA at 215-217. Clark County’s  
20                 proposal for Article 27 “Severance Pay” was to completely eliminate a benefit which public  
21                 defenders have possessed even before they organized as a Union. ROA at 218. The County offered  
22                 nothing in return for these regressive proposals; to the contrary, the undisputed testimony was that  
23                 Clark County refused to even *consider* accepting any of CCDU’s proposals, even if CCDU accepted  
24                 Clark County’s regressive proposals in exchange. ROA at 761-762.

               The EMRB’s Decision claimed that the regressive proposals made after two months of  
bargaining sessions, “reflected the relative strength of the parties and were primarily meant to help

1 establish Respondent's bargaining position." ROA at 008. Again, there is no explanation as to how  
2 the Board reached such a bizarre conclusion, as there was no testimony, no discussion, and no  
3 argument by the parties to support this. It is, indeed, a random factual assertion drawn from nothing.  
4 *City Council v. Irvine*, 102 Nev. 277, 279, 721 P.2d 371, 372 (1986) (concluding that "[a] city board  
5 acts arbitrarily and capriciously when it denies a license without any reason for doing so"). "[T]he  
6 essence of the abuse of discretion, of the arbitrariness or capriciousness of governmental action in  
7 denying a license application, is most often found in an apparent absence of any grounds or reasons  
8 for the decision. 'We did it just because we did it.'" *Id.* at 280, 721 P.2d at 372-73.

9       What were the "relative strengths of the parties" and how was such determined by the Board?  
10 There was no documentation or testimony presented at the hearing addressing this subject by either  
11 party.<sup>10</sup> Logically, if the regressive proposals really were meant to "establish" Clark County's  
12 bargaining position, they would have been made presented in the *first* meeting, not the *sixth* meeting,  
13 after two months of bargaining sessions.

14       The EMRB's Decision failed to provide the "fully developed record" necessary to evaluate  
15 the Board's decision that the County did not engage in reductive bargaining and/or surface  
16 bargaining based on identifiable evidence or testimony in the record. *See Highroller Transportation,*  
17 *LLC v. Nevada Transportation Auth., supra*, 139 Nev. Adv. Op. 51 at 541 (Nev. App. 2023). For  
18 example, the Board recognized that the County's proposals were regressive, but did not explain why  
19 this regressive tactic did not constitute bad faith. The EMRB refused to address NLRB precedent  
20 that requiring a Union to make all of its proposals first constitutes bad faith bargaining. And even  
21

22 \_\_\_\_\_  
23 <sup>10</sup>Given the fact that CCDU was already guaranteed a COLA even if no new contract were reached by virtue  
24 of the evergreen application for the COLA language, ROA at 482, CCDU was arguably in the stronger  
position.

1 though the EMRB heard undisputed testimony from the County's Chief Negotiator that she did not  
2 have the authority to bargain, the EMRB did not explain its finding that this did not constitute bad  
3 faith, surface bargaining.

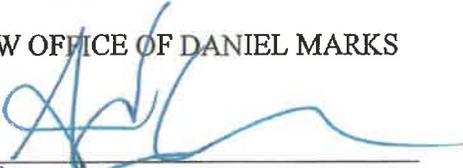
4 The findings of the Board relating to Clark County's bargaining conduct must be reversed  
5 and remanded for further findings. While this reversal does not necessarily require the court to  
6 remand with instructions to the Board to find Clark County acted in bad faith; it does require a  
7 remand with instructions to clearly identify the evidence behind its findings sufficient for this court  
8 to engage in meaningful judicial review, and to address the applicable law.<sup>11</sup>

9 **CONCLUSION**

10 For all of the reasons set forth above, the Petition for Judicial Review must be GRANTED

11 DATED this 26<sup>th</sup> day of June 2025.

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24 <sup>11</sup>As set forth above, the Board can and should depart from NLRB precedent where such precedent is contrary to Nevada statutes.

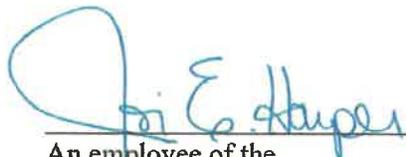
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**CERTIFICATE OF SERVICE BY ELECTRONIC MEANS**

I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 26<sup>th</sup> day of June 2025, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically transmitted a true and correct copy of the above and foregoing PETITIONER CLARK COUNTY DEFENDERS UNION'S OPENING BRIEF by way of Notice of Electronic Filing provided by the court mandated E-file & Serve system, to the e-mail address on file for:

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8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 CLARK COUNTY DEFENDERS UNION

11 Petitioner,

12 v.

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

16 Respondent.

17 CLARK COUNTY,

18 Cross-Petitioner,

19 v.

20 CLARK COUNTY DEFENDERS UNION;  
21 STATE OF NEVADA GOVERNMENT  
22 EMPLOYEE-MANAGEMENT RELATIONS  
23 BOARD,

24 Cross-Respondents.

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

**RESPONDENT CLARK COUNTY  
DEFENDERS UNION'S REPLY  
BRIEF IN SUPPORT OF PETITION  
FOR JUDICIAL REVIEW**

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1 ARGUMENT

2 **I. THE EMRB'S FINDING OF BAD FAITH AGAINST THE UNION WAS**  
3 **EXCLUSIVELY BASED UPON THE UNION MOVING BARGAINING TO FACT-**  
4 **FINDING AFTER THE STATUTORY SIX (6) MEETINGS.**

5 As set forth in the Clark County Defenders Union's ("CCDU") Opening Brief, after six  
6 meetings CCDU announced that it would be moving the bargaining process to fact-finding under  
7 NRS 288.200 by declaring "impasse." This was after Clark County had made *no significant* proposals  
8 through those six meetings. The only "proposals" made by Clark County through the six meetings,  
9 which took place over three months, were to (1) agree to the date of the contract; (2) a "management  
10 rights" proposal which Clark County then later withdrew after it was discovered to have not matched  
11 the statute (as claimed by Clark County); and (3) to reduce benefits by eliminating bonus leave, sick  
12 leave sell back, and severance pay provisions. The County's proposal to eliminate benefits (which  
13 had been in the collective bargaining agreement for years) were proposed with no equal counter  
benefit to the CCDU.<sup>1</sup>

14 CCDU specifically inquired whether Clark County had any package offers to make or any *quid*  
15 *pro quos* for the County's proposal to reduce Union benefits. (ROA at 665). Clark County responded  
16 with a flat, "No." (ROA at 665). CCDU then inquired whether the County intended to make any  
17 counteroffers. (ROA at 665). Clark County again responded, "No." (ROA at 665). CCDU specifically  
18 asked whether Clark County would be willing to accept all of the Union's offers in return for all of  
19 Clark County's offers. (ROA at 761). Clark County again responded, "No." (ROA at 761). CCDU  
20 then asked if there was *any* subset of the Union's offers that Clark County would accept in return for  
21

22 \_\_\_\_\_  
23 <sup>1</sup> Clark County's Answering Brief misleadingly claims it made "over 20 proposals" counting "17 proposals for  
24 current language articles". (Brief at p. 21). The County misrepresents the record. These were not proposals by  
Clark County. These 17 articles were *mutually* agreed by the parties as "no-change" articles. Mature bargaining  
relationship where there has been a collective bargaining agreement in effect for many years, only a handful of  
articles are opened during any given bargaining cycle.

1 a subset of Clark County’s offers. (ROA at 761-762). The answer from the County was, “No.” (ROA  
2 at 761-762). Again, all of these exchanges occurred over the course of the statutorily mandated six  
3 meetings *before* CCDU declared impasse.

4 As set forth in CCDU’s Opening Brief, the plain language of NRS 288.200(1) permits either  
5 party to move the negotiations to the statutory fact-finding process after six meetings. CCDU  
6 exercised this statutory right to move negotiations to impasse proceedings as allowed by NRS  
7 288.200(1). Although CCDU was permitted by statute to move to impasse proceedings, the EMRB  
8 held that this legally permitted action was improper and in bad faith. The EMRB found that the  
9 CCDU’s statutorily permitted invocation of the impasse process was bad faith because CCDU was  
10 not at the “end of its rope” in the negotiation process. The EMRB’s finding created a new standard  
11 by which parties must bargain and created new standards beyond what is statutorily provided. (ROA  
12 at 012-013). Because the EMRB found CCDU’s conduct was improper, despite that conduct being  
13 expressly permitted by statute, the EMRB’s decision was in error. *See Republican Nat’l Comm. v.*  
14 *Aguilar*, 558 P.3d 805 (Nev. 2024) (Herndon, J., Concurring) (“And we cannot read into the statute  
15 exceptions that do not exist. To do so contravenes our well-established principles of statutory  
16 construction and interpretation.”).

17 NRS 288.200(1) does not impose a requirement for parties to be “at the end of their rope” prior  
18 to utilizing the impasse proceedings as asserted in the EMRB’s Order. (ROA at 013). Because the  
19 plain language of the statute does not support the EMRB’s decision, Clark County’s Answering Brief  
20 attempts to gaslight the court into believing that the EMRB’s Order “is not based upon CCDU’s  
21 invocation of the fact-finding process.” The County attempts to convince this Court to pay no  
22 attention to the EMRB’s erroneous decision (because the County knows its erroneous) by discussing  
23 private-sector impasse proceedings, which have no bearing on the parties in this case. (County  
24 Answering Brief at pp. 9-16).

1           However, as set forth in CCDU's Opening Brief, and conceded in Clark County's Answering  
2 Brief, the term "impasse" does not even appear in those sections of NRS Chapter 288 applicable to  
3 local governments other than NRS 288.217(2), which applies only to licensed teaching professionals.  
4 As pointed out in the Opening Brief, the term "statutory impasse" refers to the process of moving  
5 negotiations to fact finding, something which the plain language of the statute permits if "[t]he parties  
6 have failed to reach an agreement after at least six meetings of negotiations."<sup>2</sup>

7           As the CCDU discussed in its Opening Brief, the EMRB's reliance on NLRA private sector  
8 concepts of impasse was error. Impasse under the NLRA allows either party to resort to economic  
9 pressure techniques such as lockouts and strikes, which are not permitted under NRS Chapter 288.  
10 Private-sector definitions of impasse are inapplicable to NRS 288's process. Additionally, Clark  
11 County's own Answering Brief highlights that private-sector impasse "is to suspend the obligation  
12 of the parties to sit down and negotiate." (Answering Brief at pp. 12-13 citing *Serramonte*  
13 *Oldsmobile, Inc. v. NLRB*, 86 F.3d 227, 232 (D.C. Cir. 1996)).

14           Under Chapter 288 there is never a suspension of the process as the statutory obligation to  
15 bargain in good faith "includes the entire bargaining process, *including mediation and fact-finding*,  
16 provided for in this chapter." NRS 288.270(1)(e). This was recognized by the California Court of  
17 Appeals in *Moreno Valley Unified School Dist. v. PERB*, 142 Cal. App. 3d 191 (1983) which noted  
18 with regard to public sector bargaining that "impasse under the EERA is, unlike NLRA impasse, a  
19 continuation of mutual dispute resolution efforts", and "'impasse' under such a 'statutory scheme  
20 denotes a continuation of the labor management dispute resolution process, while 'impasse' under  
21

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22 <sup>2</sup> While the Nevada Supreme Court has never used the phrase "statutory impasse" to refer to NRS 288.200 et  
23 seq., this is the term used by courts in other states to refer to the statutory fact finding and interest arbitration  
24 process. See e.g. *Moreno Valley Unified Sch. Dist. v. Public Employment Relations Bd.*, 142 Cal. App. 3d 191,  
204, 191 Cal. Rptr. 60, 69 (1983); *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).

1 federal law indicates a halt to that process". 142 Cal. App. 3d at 199. The County's reliance on  
2 private-sector impasse is highly misleading and inapposite, and any reliance on these proceedings by  
3 the EMRB is improper and in contravention to statute.

4 Contrary to the claim in Clark County's Answering Brief, the basis for the EMRB's ruling was  
5 that CCDU engaged in a "rush to impasse" by moving to the negotiations to fact finding after six  
6 meetings. However, CCDU never suspended any processes under the private-sector concept of  
7 impasse. To the contrary, after the declaration of statutory impasse, it was Clark County Human  
8 Resources Director Curtis Germany who requested mediation:

9 The County understands the NRS 288 allows for "either party" to declare impasse  
10 after six meetings and that CCDU was the moving party. Although the County  
11 believes that declaration was premature, I am more interested in reaching an  
12 agreement in having ongoing discussions about what has occurred at the table thus  
13 far or pursuing time-consuming impasse proceedings.

12 In an effort to continue to move this round of negotiations towards a Tentative  
13 Agreement and in the interest of harmonious labor relations, the County would  
14 like to request CCDU participate in FMCS mediation.

14 Please let us know if you are interested and willing to participate in mediation. If  
15 so, we will reach out to FMCS for some dates.

15 (ROA at 224). CCDU *agreed*. Thereafter, it was Clark County which failed to move the process by  
16 contacting the mediator to obtain dates, and then refusing to participate on the dates provided by the  
17 mediator within the 30 days mandated under NRS 288.190(3). (ROA at 010-011).

18 If CCDU had not bargained in good faith *throughout the six meetings*, and then after six  
19 meetings declared impasse to move matters to fact-finding, this would support a charge of failure to  
20 bargain in good faith. However, the violation in such a scenario is not a "rush to impasse;" it is  
21 "surface bargaining." As explained by the EMRB:

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. In this regard, it is a form of bad  
24 faith bargaining. *City of Reno v. Int'l Ass'n of Firefighters, Local 731*, Item No. 253-A

1 (EMRB, Feb.8, 1991). Distinguishing surface bargaining from good faith bargaining  
2 depends on the facts supporting the claim.

3 (ROA at 012).

4 However, the EMRB specifically found *there was no surface bargaining by CCDU*. (ROA at  
5 012) (“The Board finds that given the facts and circumstances presented to the Board, there was no  
6 surface bargaining undertaken by either party.”). Thus, Clark County’s argument which attempts to  
7 claim that the EMRB’s finding of bad faith was premised upon something other than the exercise of  
8 the statutory right to move to fact finding after six meetings is a complete misrepresentation of the  
9 EMRB’s order.

10 As set forth in the Opening Brief, the bargaining process under Chapter 288 is designed to  
11 move quickly. Notice of intent to bargain is given by February 1. NRS 288.180(1). Disputes may be  
12 submitted to a mediator “any time before March 1” if both parties agree, and any time after March 1  
13 at the insistence of either party. NRS 288.190(1). Provided that the requisite six meetings have taken  
14 place, and mediation has occurred (or been mutually waived), either party may advance the  
15 bargaining to fact-finding at *any time* after April 1. NRS 288.200(1).

16 The fallacy in Clark County’s argument is best illustrated by its *deliberate mis-citation* to the  
17 record where it claims on p. 17 of its Answering Brief that the EMRB found “The County remained  
18 open to negotiating all of the remaining Articles.” That is not what the EMRB found. What the EMRB  
19 actually said was “The County remained open to negotiating all of the remaining Articles, *other than*  
20 *those that had been previously rejected*.” (ROA at 013 *emphasis added*).

21 Where, as here, the Union has presented proposals such as restoration of longevity and pay  
22 parity with prosecutors, and the County has “rejected” the same and has made no counteroffers, if the  
23 requisite six meetings have occurred, there is no alternative but to declare statutory impasse so as  
24 move to fact finding. This does not mean the end of discussions on other outstanding proposals. After

1 such a declaration, the parties must participate in mediation if either side requests. NRS 288.190.  
2 Even if mediation is unsuccessful, as it was in this case, the parties may still talk and negotiate and  
3 reach an agreement at any point up through and including the fact-finding hearing. That is what  
4 occurred after declaration of impasse in 2023. (ROA at 616). But where one party requests a  
5 provision, and the other will not agree *or make any counteroffer*, there is no alternative to statutory  
6 impasse, as the Act “does not compel either party to agree to a proposal or require the making of a  
7 concession,” nor “require endless pointless meetings.” (County Answering Brief at p. 12).

8 The concepts of “futility” and being “at the end of the rope” are not requirements under the  
9 statute. The plain language of NRS 288.200 permits the advancement to fact finding after six  
10 meetings *with no other pre-conditions*. The EMRB’s attempts to borrow such concepts as “futility”  
11 and being “at the end of the rope” from private-sector bargaining was plainly erroneous. In the  
12 private-sector impasse means resorting to economic coercion, whereas under NRS 288 no such threat  
13 looms. Therefore, interpreting NRS 288 to include more requirements than required by statute is not  
14 only contrary to well established law, but it also creates an unworkable standard.

15 **II. CLARK COUNTY WOULD NOT COMMIT TO MAKING ANY COUNTER-OFFERS**  
16 **AFTER DECLARATION OF STATUTORY IMPASSE, AND THE COUNTY**  
17 **IGNORES THAT MEDIATION IS PART OF STATUTORY IMPASSE**  
18 **PROCEDURES.**

19 As set forth in CCDU’s Opening Brief, the EMRB attempted to support its finding of bad faith  
20 against CCDU for advancing the negotiations to fact finding after six meetings (without “futility” or  
21 being “at the end of the rope”) by relying on the fact that Clark County suggested an additional  
22 negotiating session “in early May which would include counterproposals to those that had been  
23 submitted by Complainant.” (ROA at 13). However, the EMRB misunderstands the record. As set  
24 forth in CCDU’s Opening Brief, it was undisputed that CCDU said it would return IF Clark County  
would commit to making counterproposals. (ROA at 667). Clark County would not commit to making

1 any counterproposals. Thus, it was Clark County's own conduct that precluded the occurrence of this  
2 additional session, not CCDU.

3 This is further reflected in the undisputed testimony at the EMRB hearing. The County's Chief  
4 Negotiator, Christina Ramos, testified before the EMRB:

5 Q. The Defenders told you that they would agree to come back to the  
6 bargaining table if you had any actual financial proposals that were not  
reductive; correct?

7 A. They did say that.

8 Q. Okay. So they didn't refuse. They said, if you give us actual financial  
9 proposals that are not reductive, we'll come back; correct?

10 A. They did say that.

11 (ROA at 476).<sup>3</sup> Ramos conceded that CCDU also waited for over a month for Clark County to make  
12 non-reductive financial proposals in order for CCDU to return to bargaining table, but that Clark  
13 County would not agree to make any such proposals:

14 Q. So in that one month where the Defenders said if you'll make a non-  
15 reductive financial proposal to us, we'll come back to the bargaining table.  
16 Within that one month, you didn't do so; correct?

17 A. Correct.

18 (ROA at 477-478).

19 This was further conceded by Clark County Human Resources Director, Curtis Germany, who  
20 also testified for Clark County:

21 Q. And what was the reason the County did not continue the negotiation  
22 process?

23 <sup>3</sup> Clark County's Answering Brief claims that "reductive" bargaining "is a made-up concept." (Brief at pp. 24-  
24 25). It is not. A reductive proposal is one which seeks to reduce employee pay or benefits. The term is used  
synonymously with "regressive" bargaining. While such proposals are not prohibited per se, such are not going  
to be accepted by any union in the absence of a quid pro quo given by the employer, or in the alternative a  
demonstration of compelling need.

1           A.    It was based on the Union not wanting to continue unless we were to come  
2           to the table with nothing that was – there’s an email somewhere in there, I  
3           believe, that said, on paraphrasing, that, basically, they would basically  
4           come to the table only if something was not reductive in our proposal.

5           (ROA at 614). Germany conceded that it was Clark County which decided not to come back to the  
6           bargaining table with counter proposals, but instead elected to request mediation:

7           Q.    But you didn’t respond within invitation to come back and a promise that  
8           you would actually be prepared to counter any of our financial proposals,  
9           did you?

10          A.    **I did not.** Looks like the last communication in the email stream was May  
11          9 on 69.

12          Q.    What you actually said was, “In an effort to continue to move this round  
13          of negotiations towards a tentative agreement and in the interest of our  
14          relations, the County would like to request CCDU participate in FMCS  
15          mediation.” Correct?

16          A.    Yes

17          (ROA at 550-551) (emphasis added). Thus, The EMRB’s finding on this issue—that CCDU acted  
18          in bad faith because it did not agree to return for an additional negotiation session—was directly  
19          contradicted by the undisputed record, and thus arbitrary and capricious and not supported by  
20          substantial evidence.

21          Clark County’s Answering Brief argues that its additional proposals were made at mediation  
22          through Mediator Herman Brown:

23          Q: Did you pass written counter-proposals since you’ve had our for months?

24          A: I – we gave our proposal to Herman.

1 (Answering Brief at p. 7 citing ROA 569). However, mediation is as much a part of the statutory impasse  
2 process as fact finding.<sup>4</sup> This is conceded in Clark County’s Answering Brief at p. 7 “Mediation like fact  
3 finding, is a statutory process that either party can invoke, and if invoked after March 1<sup>st</sup> then the other  
4 party is required to participate. NRS 288.190(1).”

5 As demonstrated by the record, the County never made any counterproposals to the CCDU for  
6 consideration. The parties never returned to the bargaining table; rather *both* proceeded through  
7 impasse procedures under NRS 288. Even though the CCDU stated several times that it *would* come  
8 back to the bargaining table if the County was prepared to actually negotiate, the County never took  
9 steps to present any proposals to the CCDU.<sup>5</sup> Simply, the record and substantial evidence does not  
10 support the EMRB’s proposal. As such, the EMRB’s finding is arbitrary and capricious and must be  
11 vacated.

12 **III. THE BOARD’S FAILURE TO PROPERLY ANALYZE ALL ARGUMENTS**  
13 **PRESENTED REQUIRES THIS COURT TO REMAND FOR A COMPLETE ORDER.**

14 As set forth in CCDU’s Opening Brief, administrative agencies are required to make specific  
15 findings sufficient so as to permit a reviewing court to understand and evaluate the reasons underlying  
16 the decision. *Highroller Transportation, LLC v. Nevada Transportation Auth.*, 139 Nev. Adv. Op.  
17 51, 541 P.3d 793, 797 (Nev. App. 2023). Clark County does not dispute this principle of law.

18 \_\_\_\_\_  
19 <sup>4</sup> The EMRB found that Clark County failed to bargain in good faith by delaying the mediation for almost four  
(4) months. (ROA at 010-011).

20 <sup>5</sup> The County’s Answering Brief argues that it was negotiating when it proposed “no-change” articles. The  
21 County argues that “prior collective bargaining agreements are not merged into future negotiations or  
22 agreements,” and are not vested rights but “must be proposed and renewed each time a new agreement is  
23 formed.” (Answering Brief at pp. 25-27). This argument ignores the fact that under the “status quo” doctrine,  
24 once a collective bargaining agreement expires the employer is required to maintain the status quo as set forth  
in the prior agreement until such time as a new agreement is reached. *Litton Financial Printing Div. v. NLRB*,  
501 U.S. 190 (1991). Moreover, if no agreement is reached to alter the status quo, the issue will ultimately be  
decided by binding interest arbitration under NRS 288.200 and 288.215.

1           It is likewise undisputed that Clark County would not make any financial proposals, or counter  
2 CCDU's proposals, until CCDU made all of its proposals. This was conceded by Clark County at the  
3 EMRB hearing. (ROA at 438-439, 445, 458). Director of Human Resources Curtis Germany claimed  
4 that it was "typical" for the County to engage in this practice. (ROA at 610-611).

5           However, as noted in CCDU's Opening Brief, both the EMRB and the NLRB have specifically  
6 recognized that such a practice is indicative of bad faith bargaining. *International Union of Operating*  
7 *Engineers Local 501 v. Esmeralda County*, Case No. 2018-014 Item No. 838 (2019); and *Fallbrook*  
8 *Hospital Corporation v. California Nursing Association*, 360 NLRB 644, 2014 NLRB LEXIS 266  
9 (2014) and *Hospital of Barstow v. Nurses Association, National Nurses Organizing Committee*, 361  
10 N.L.R.B. 352 (2014). This was specifically argued to the EMRB. (ROA at 825-827). The EMRB  
11 refused to even address the argument, instead substituting conclusory statements that Clark County  
12 did not engage in surface or regressive bargaining. (ROA at 007-008). The EMRB's failure to address  
13 CCDU's specific allegation of bad faith against the County, which is also supported by substantial  
14 evidence and *conceded in the County's own testimony*, violates the EMRB's own precedent as  
15 announced in *Highroller Transportation, LLC*, *supra*.

16           Clark County's Answering Brief argues that *Hospital of Barstow* supports its position that the  
17 County's actions were not bad faith when it required the CCDU to present all of its articles before  
18 making any offers. Clark County highlights "that federal courts have found that there are situations  
19 in which an employer may be justified in not making proposals" and that "the making of proposals  
20 or counterproposals is one factor that may [be] weighed in the scale with other circumstances."  
21 (Answering Brief at pp. 21-22).

22           However, this narrow and specific characterization of *Hospital of Barstow* misrepresents the  
23 ultimate finding by NLRB. The NLRB in *Hospital of Barstow* held that requiring the union to make  
24 all of its financial proposals first is a prohibited practice. Neither the County in its responsive brief

1 nor the EMRB's decision address the CCDU's argument that the County bargained in bad faith when  
2 it required to see all of CCDU's proposals first.

3 Clark County argues, in the alternative, that “[n]either *Hospital of Barstow* nor *Fallbrook*  
4 *Hospital* speak to the situation before the EMRB nor to the question of whether an employer must  
5 make financial proposals before a union completes its initial financial proposals.” (Answering Brief  
6 at 22). The County is again mischaracterizing the record and/or the case law in an effort to mislead  
7 this Court into believing that the County did not act in bad faith. However, Clark County openly  
8 admitted that it refused to make *any* proposals or counterproposals until CCDU made *all* of its  
9 proposals – *both financial and non-financial*; and, indeed, that it was “typical” for the County to  
10 engage in this conduct. This was also admitted to before the EMRB by Clark County's Chief  
11 Negotiator Christina Ramos. (ROA at 446-447).

12 The insistence of the employer that the Union present all proposals before the employer will  
13 bargain is bad faith bargaining. *Hospital of Barstow*, supra; *Fallbrook Hospital*, supra. Bargaining  
14 requires a willingness to engage in a “give and take” by both parties. *Lloyd A. Fry Roofing Co. v.*  
15 *NLRB*, 216 F.2d 273 (1954); *Hooks ex rel. NLRB v. Hood River Distillers, Inc.*, 2021 WL 1837396  
16 (D. Ore. 2021). There is no such give and take where one party insists the other make all of its  
17 proposals first, as the County openly admitted to doing here. Imagine if the union insisted upon a  
18 likewise position—nothing would be accomplished at the bargaining table because each side would  
19 be insisting that the other put all of its cards on the table first.

20 Notably, the EMRB did not hold that *Hospital of Barstow* nor *Fallbrook Hospital* are  
21 inapplicable. The EMRB simply ignored the issue completely, thereby preventing CCDU from  
22 gaining meaningful judicial review. *Highroller Transportation, LLC*, supra (“The necessity of a fully  
23 developed record applies with no less force in administrative agency appeals”). The EMRB must  
24

1 address the issue and, regardless of how it resolves the claim, it must explain its reasoning in a manner  
2 that will permit judicial review.

3 The EMRB's conclusions that there was likewise no surface bargaining or regressive  
4 bargaining by Clark County likewise fails to meet the requirements of *Highroller Transportation,*  
5 *LLC* and other case law requiring an "adequate explanation of the reasons" for an administrative  
6 decision, particularly when Clark County openly acknowledged to engaging in this practice. 541 P.3d  
7 at 802. By way of example pointed out in CCDU's Opening Brief, in response to CCDU's charge of  
8 regressive bargaining based upon making no financial offers until the final meeting, and then only to  
9 reduce benefits, the EMRB refused to find regressive bargaining by characterizing the County's  
10 behavior as being reflective of "the relative strength of the parties" and "were primarily meant to help  
11 establish Respondent's bargaining position." ROA at 008.

12 As pointed out in the Opening Brief, there was no testimony, no discussion, and no arguments  
13 made by any party in support of such a bizarre, *sua sponte* conclusion. The EMRB does not explain  
14 whether through evidence presented, case law, or statute, how it determined that Clark County's  
15 relative bargaining strength exceeded that of CCDU.<sup>6</sup> Clark County did not demonstrate or argue  
16 strength of position; however, Clark County demonstrated that it had no intent of ever bargaining in  
17 good faith with the CCDU when it made no proposals through the first five meetings and then only  
18 making a reductive proposal at the sixth and final meeting with no counteroffers, no willingness to  
19 counteroffer, and no quid quo pro for the reductions.

20  
21  
22 \_\_\_\_\_  
23 <sup>6</sup> The provisions in NRS 288.215(10), requiring any interest arbitration award to be "retroactive to the expiration  
24 date of the last contract," ensures that the bargaining power of the union is equalized with that of the employer.  
See *In re Triborough Bridge and Tunnel Authority and American Federation of State, County and Municipal*  
*Employees, District Council 37, Local 1396*, 49 Lab. Arb. Rep. (BNA) 1212, 1968 Lab. Arb. LEXIS 13, \*41-  
42 (Feinberg, Stockman, Wolf, Arbs.).

1 For meaningful judicial review of administrative agency actions the agency must first  
2 adequately address, decide, and explain in its written order all issues raised. Blanket assertions of  
3 “substantial evidence” in the record and bare contentions or conclusory statements, as are present in  
4 the EMRB’s order, are insufficient for meaningful judicial review. The adoption of the modern  
5 approach to judicial review of administrative agency actions under *Highroller Transportation, LLC.*,  
6 supra requires the EMRB to explain how it reached its conclusion(s). For this reason, reversal and  
7 remand is necessary.

8 **IV. CONCLUSION**

9 For all of the reasons set forth above the decision of the EMRB that the Clark County  
10 Defenders Union failed to bargain in good faith by declaring statutory impasse so as to move  
11 negotiations to fact-finding after six meetings must be reversed. The plain language of the statute  
12 permits either party to advance negotiations to fact-finding after six meetings.

13 Likewise, the EMRB's determination that Clark County did not engage in surface bargaining  
14 or regressive bargaining must be reversed and remanded back to the Board to explain how it reached  
15 the conclusions that it did based upon the evidence in the record.

16 DATED this 29<sup>th</sup> day of September 2025.

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**CERTIFICATE OF SERVICE BY ELECTRONIC MEANS**

I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 29<sup>th</sup> day of September 2025, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically transmitted a true and correct copy of the above and foregoing RESPONDENT CLARK COUNTY DEFENDERS UNION'S REPLY BRIEF IN SUPPORT OF PETITION FOR JUDICIAL REVIEW by way of Notice of Electronic Filing provided by the court mandated E-file & Serve system, to the e-mail address on file for:

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