

BEFORE THE STATE OF NEVADA GOVERNMENT
EMPLOYEE-MANAGEMENT RELATIONS BOARD

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5 NYE COUNTY SUPPORT
6 STAFF ORGANIZATION
7 and JOANNE BAUMGARTEN,

Case No. 2024-039

Panel:

Complainants,

8 vs.

9 NYE COUNTY SCHOOL
10 DISTRICT,

Respondent.

FILED
November 27, 2024
State of Nevada
E.M.R.B.
2:01 p.m.

11
12 **COMPLAINT**

13 COME NOW, Complainants Nye County Support Staff Organization (“Organization” or
14 “NCSO”) and Joanne Baumgarten, by and through their attorneys, Dyer Lawrence, LLP, and bring
15 this Complaint as follows:

16 **I. JURISDICTION**

17 1. This dispute is filed pursuant to NRS 288.110(2) and NRS 288.270(1), and seeks
18 relief for violations of NRS Chapter 288.

19 **II. BACKGROUND**

20 2. NCSO is, and was at all times mentioned herein, an employee organization as
21 defined by NRS 288.040, and pursuant to NRS 288.160 recognized by Respondent Nye County
22 School District (“District” or “NCSD”) as the exclusive representative for certain classified support
23 employees of the District. NCSO’s mailing address is P.O. Box 1340, Pahrump, Nevada 89041.

24 3. Respondent District is a local government employer as defined by NRS 288.060. The
25 District’s address is 484 S. West Street, Pahrump, NV 89048.

26 4. The Organization and the District engage in collective bargaining pursuant to
27 NRS Chapter 288.

28 ///

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Carson City, Nevada 89703
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1 12. The first underlying grievance (#222351) was based upon a District job vacancy for
2 the position of RCMS Secretary posted on or about March 16, 2023. The position of RCMS
3 Secretary is equivalent to Secretary-Registrar in terms of pay, but not job duties and responsibilities.

4 13. Three (3) District employees, including Ms. Baumgarten and Amanda Cardinal,
5 applied for the position and were interviewed by a panel of seven (7) District employees on
6 April 4 and 5, 2023, respectively. At the time, Ms. Cardinal was a relatively new District employee
7 and a Clerical Aide at RCMS.

8 14. Article 9-11 of the Master Contract negotiated pursuant to NRS Chapter 288 between
9 the District and the Union, states, “[v]oluntary transfers **shall be granted** on the following criteria
10 and scoring rubric: Interview Questions, Evaluations, Job Classification Seniority.”

11 15. In accordance with Article 9-11, the District prepared a summary of the candidates’
12 scores. Ms. Baumgarten received a combined score of **62.928** (37.928/10/15) and Ms. Cardinal
13 received a combined score of **54.214** (44.214/10/0).

14 16. However, by email dated April 7, 2023, former RCMS Principal Erin Jerabek
15 informed former District Human Resources Director Brenda Slusser and NCSO President Cheryl
16 Tibbits that she “selected Ms. Cardinal based on my choice in applicants.” Oddly, Ms. Jerabek
17 concludes her email with, “[w]hile I do believe that the situation I have been placed in was unfair,
18 I do believe I have selected the better applicant.”

19 17. From April 18 through 26, 2023, the parties met four (4) times to attempt to resolve
20 the dispute informally as required by Article 5-3 of the Master Contract, but were unsuccessful.

21 18. Thus, on May 1, 2023, NCSO timely filed the formal grievance at Step 1 of the
22 Grievance and Arbitration Procedure specified in Article 5 of the Master Contract.

23 19. By letter dated May 12, 2023, former Director Slusser denied the grievance asserting
24 that “Mrs. Jerabek vigorously contends that she followed the contract language” and that
25 Ms. Baumgarten “is not the right fit for this position.” Former Director Slusser also requested to
26 skip Step 2 (Superintendent’s level) of the grievance procedure, which was acceptable to NCSO.

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1 20. On about July 13, 2023, the parties participated in mediation (Step 3) with Federal
2 Mediation and Conciliation Service (FMCS) Mediator Herman Brown, which was not successful.
3 So, by letter dated July 13, 2023, NCSO timely demanded binding arbitration (Step 4).

4 21. The parties mutually selected Ken Perea, Esq., to serve as the impartial arbitrator and
5 he conducted an arbitration on December 8, 2023, via Zoom from his office in California, with the
6 parties, Ms. Baumgarten and legal counsel participating from the NCSD administrative office in
7 Pahrump, Nevada.

8 22. Arbitrator Perea subsequently issued his final and binding Award dated
9 February 12, 2024, granting Ms. Baumgarten's grievance and her voluntary transfer to the position
10 of Secretary at RCMS on a date mutually acceptable to the parties. Arbitrator Perea determined that
11 while the District has a general right to transfer employees, the specific process in Article 9-11 of
12 the Master Contract controls. Thus, since Ms. Baumgarten scored the highest of all candidates on
13 the three (3) criteria in Article 9-11, the District violated the Master Contract when denying her
14 voluntary transfer to the vacant position of RCMS Secretary. Arbitrator Perea also directed the
15 district to make Ms. Baumgarten whole for any differences between Secretary and her previous
16 position, Secretary-Registrar.

17 23. Initially, the District transferred Ms. Baumgarten to the position of RCMS Secretary
18 and Ms. Cardinal to the position of Secretary-Registrar at RCMS and reassigned some of the job
19 duties between the two (2) positions.

20 24. However, approximately four (4) months later, on or about June 4, 2024, new RCMS
21 Principal April Sutton presented Ms. Baumgarten with an overall "satisfactory" performance
22 evaluation as RCMS Secretary, but then informed Ms. Baumgarten that she is being transferred from
23 RCMS Secretary back to Secretary-Registrar, **contrary to Arbitrator Perea's Award**, and that
24 Ms. Cardinal was being transferred from Secretary-Registrar back to RCMS Secretary.¹ Principal
25 Sutton indicated that she spoke to NCSD Assistant Superintendent Laura Weir, who authorized the
26 transfers.

27 _____
28 ¹ The District did not provide Ms. Baumgarten and HCSSO written notice of an involuntary
transfer and the reasons therefore as required by Article 9-12 of the Master Contract.

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25. Further, Principal Sutton provided Ms. Baumgarten with copies of new job descriptions for both positions, designating Ms. Baumgarten as “Secretary-Registrar” and Ms. Cardinal as “School & Principal’s Secretary.”

26. The District also updated the RCMS website staff directory to designate Ms. Baumgarten as “Registrar” and Ms. Cardinal as “Secretary” and directed Ms. Baumgarten and Ms. Cardinal to switch offices with each other. The District subsequently moved Ms. Baumgarten’s office to the rear of the school in a former storage closet.

27. In light of the District’s blatant disregard of Arbitrator Perea’s final and binding Award directing the District to transfer Ms. Baumgarten to the position of RCMS Secretary, and the expiration of the 90-day deadline for the District to attempt to vacate the Award pursuant to NRS 38.241, on or about July 3, 2024, Complainants filed a Petition to Confirm Arbitrator’s Award (“Petition”) pursuant to NRS 38.239 in the Fifth Judicial District Court so that its binding terms could be enforced by the Court.

28. NRS 38.239 regarding confirmation of an arbitrator’s award states:

After a party to an arbitral proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time **the court shall issue a confirming order unless the award is modified or corrected pursuant to NRS 38.237 or 38.242 or is vacated pursuant to NRS 38.241.** [Emphasis supplied.]

29. Although the Award had not been modified, corrected or vacated pursuant to NRS 38.237, NRS 38.242 and NRS 38.241, respectively, the Court refused to issue an order confirming the Award and, instead, dismissed Complainants’ Petition on or about October 22, 2024.

30. The Court has not yet issued a written order dismissing the Petition, but Complainants will be appealing the dismissal given the plain and unambiguous language in NRS 38.239.

31. While the litigation was pending in District Court, NCSD terminated Ms. Baumgarten’s employment by notice dated August 16, 2024, for various petting allegations.

32. The Organization filed a timely grievance challenging Ms. Baumgarten’s termination.

33. Principal Sutton denied the grievance at Step 1 by memorandum dated September 9, 2024.

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1 34. By letter dated September 23, 2024, the Organization requested to advance the
2 grievance in light of Principal Sutton's denial.

3 35. However, by email dated September 24, 2024, the District notified NCSO that the
4 grievance was "null and void" because it was not timely advanced within seven (7) days of the Step 1
5 response.

6 36. The Organization requested reconsideration based underlying circumstances that
7 prevented NCSO's timely response, which was denied by the District on September 24, 2024.

8 **FIRST CAUSE OF ACTION**
9 **Interfering with, restraining or coercing employees in violation of NRS 288.270(1)(a).**

10 37. Complainants reiterate paragraphs 1 through 36 as though fully set forth herein.

11 38. NCSO and the District are parties to the Master Contract that provides employees
12 with full freedom of association that is free from interference, restraint or coercion by the District,
13 or its agents (Article 3-2), final and binding arbitration (Article 5-4), no reprisals taken by the District
14 against any participant in the grievance procedure (Article 5-5(1)) and to comply with Nevada
15 Revised Statutes 288.270 with regards to nondiscrimination (Article 11-1). Ms. Baumgartner
16 exercised her rights under NRS Chapter 288 to join NCSO and to file a grievance under Article V
17 of the parties' Master Contract. Despite these contractual and statutory rights, the District
18 improperly transferred Ms. Baumgarten back to the position of RCMS Registrar in violation of
19 Arbitrator Perea's final and binding Award and subsequently terminated Ms. Baumgarten's
20 employment for a few petty allegations. The District has blatantly interfered with, restrained and
21 coerced Ms. Baumgarten in the exercise of her rights under NRS Chapter 288.

22 39. Respondent's conduct constitutes interference, restraint and coercion of an employee
23 exercising her rights guaranteed under NRS Chapter 288, which is a prohibited labor practice in
24 violation of NRS 288.270(1)(a).

25 **SECOND CAUSE OF ACTION**
26 **Dominating, interfering or assisting in the formation or administration of any employee**
27 **organization in violation of NRS 288.270(1)(b).**

28 40. Complainants reiterate paragraphs 1 through 39 as though fully set forth herein.

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1 term or condition of employment to discourage membership in NCSO by transferring and then
2 terminating Ms. Baumgarten.

3 45. Respondent's conduct constitutes unlawfully discriminating in regard to hiring, tenure
4 or any term or condition of employment to encourage or discourage membership in any employee
5 organization, which is a prohibited labor practice in violation of NRS 288.270(1)(c).

6 **FOURTH CAUSE OF ACTION**

7 **Discharging or otherwise discriminating against any employee because the employee has**
8 **formed, joined or chosen to be represented by any employee organization in violation of**
9 **NRS 288.270(1)(d).**

10 46. Complainants reiterate paragraphs 1 through 45 as though fully set forth herein.

11 47. NCSO and the District are parties to the Master Contract that provides employees
12 with full freedom of association that is free from interference, restraint or coercion by the District
13 or its agents (Article 3-2), final and binding arbitration (Article 5-4), no reprisals taken by the District
14 against any participant in the grievance procedure (Article 5-5(1)) and to comply with Nevada
15 Revised Statutes 288.270 with regards to nondiscrimination (Article 11-1). Ms. Baumgarten
16 exercised her rights under NRS Chapter 288 to join NCSO and to file a grievance under Article V
17 of the parties' Master Contract. Despite these contractual and statutory rights, the District ultimately
18 rejected Arbitrator Perea's final and binding Award, transferred Ms. Baumgarten back to RCMS
19 Registrar and subsequently terminated her employment for no legitimate reason. The District has
20 blatantly discharged or otherwise discriminated against Ms. Baumgarten because she joined and
21 chose to be represented by NCSO by improperly transferring and then terminating Ms. Baumgarten.

22 48. Respondent's conduct constitutes unlawfully discharging or otherwise discriminating
23 against an employee because the employee has formed, joined or chosen to be represented by an
24 employee organization, which is a prohibited labor practice in violation of NRS 288.270(1)(d).

25 **FIFTH CAUSE OF ACTION**

26 **Discriminate because of religion, sex, sexual orientation, gender identity or expression, age,**
27 **physical or visual handicap, national origin or because of political or personal reasons or**
28 **affiliations in violation of NRS 288.270(1)(f).**

49. Complainants reiterate paragraphs 1 through 48 as though fully set forth herein.

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1 50. NCSO and the District are parties to the Master Contract that provides employees
2 with full freedom of association that is free from interference, restraint or coercion by the District
3 or its agents (Article 3-2), final and binding arbitration (Article 5-4), no reprisals taken by the District
4 against any participant in the grievance procedure (Article 5-5(1)) and to comply with Nevada
5 Revised Statutes 288.270 with regards to nondiscrimination (Article 11-1). Ms. Baumgarten
6 exercised her rights under NRS Chapter 288 to join NCSO and to file a grievance under Article V
7 of the parties' Master Contract. Despite these contractual and statutory rights, the District transferred
8 Ms. Baumgarten back to RCMS Registrar and subsequently terminated her employment for no
9 legitimate reason. The District has blatantly discriminated against Ms. Baumgarten based upon her
10 political or personal reasons or his race, color, religion, sex, sexual orientation, gender identity or
11 expression, age, physical or visual handicap, national origin or because of political or personal
12 reasons or affiliations by transferring and then terminating Ms. Baumgarten.

13 51. Respondent's conduct constitutes unlawful discrimination of an employee covered
14 by the Master Contract and NRS Chapter 288, which is a prohibited labor practice in violation of
15 NRS 288.270(1)(f).

16 WHEREFORE Complainants pray for relief as follows:

- 17 1. For a hearing by the EMRB;
- 18 2. For a finding in favor of Complainants and against Respondent;
- 19 3. For a determination that Respondent has engaged in prohibited labor practices in
20 violation of NRS 288.270(1)(a), (b), (c), (d) and (f);
- 21 4. For an Order reinstating Joanne Baumgarten to NCSD employment as the School
22 Secretary at RCMS with full back pay and benefits retroactive to August 16, 2024;
- 23 5. For an Order directing the District to cease and desist from violating NRS
24 Chapter 288;
- 25 6. For an award of attorney's fees and costs incurred by Complainants in bringing this
26 action; and,

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7. For such other and further relief as the EMRB deems necessary and proper in this matter.

DATED this 27th day of November, 2024.

DYER LAWRENCE, LLP



By: Thomas J. Donaldson, Esq.
Nevada State Bar No. 5283
Attorneys for Complainants

Dyer Lawrence, LLP
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

CERTIFICATE OF SERVICE

Pursuant to NAC 288.200(2), I certify that I am an employee of DYER LAWRENCE, LLP,
and that on the 27th day of November, 2024, I deposited for mailing, postage prepaid, by **certified**
U.S. Mail, a true and correct copy of the within COMPLAINT addressed to:

Bryan Wulfenstein, Board President
Nye County School District
484 S. West Street
Pahrump, NV 89048

Joe Gent, Superintendent
Nye County School District
484 S. West Street
Pahrump, NV 89048


Brooke Robinson

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1 **REBECCA BRUCH, ESQ.**
2 Nevada Bar No. 7289
3 **LEMONS, GRUNDY & EISENBERG**
4 6005 Plumas Street, Third Floor
5 Reno, Nevada 89519
6 (775) 786-6868; (775) 786-9716 (fax)
7 rb@lge.net
8 *Attorney for Respondent*

FILED
January 6, 2025
State of Nevada
E.M.R.B.
3:34 p.m.

7 GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD
8 STATE OF NEVADA

9 NYE COUNTY SUPPORT
10 STAFF ORGANIZATION
11 AND JOANNE BAUMGARTEN,
12 COMPLAINANTS,
13 vs.
14 NYE COUNTY SCHOOL
15 DISTRICT,
16 RESPONDENT.

Case No.: 2024-039
Dept. No.:

**RESPONDENT'S ANSWER TO
COMPLAINT**

15 Respondent NYE COUNTY SCHOOL DISTRICT (“NYE COUNTY”) by and
16 through its attorney of record, REBECCA BRUCH, ESQ. of LEMONS, GRUNDY &
17 EISENBERG, hereby responds to Complainants Complaint as follows:

18 **I. JURISDICTION**

19 1. Answering Respondent admits the averments contained in Paragraph 1.

20 **II. BACKGROUND**

- 21 2. Answering Respondent admits the averments contained in Paragraph 2.
- 22 3. Answering Respondent admits the averments contained in Paragraph 3.
- 23 4. Answering Respondent admits the averments contained in Paragraph 4.
- 24 5. Answering Respondent admits the averments contained in Paragraph 5.
- 25 6. Answering Respondent admits the averments contained in Paragraph 6.
- 26 7. Answering Respondent admits the averments contained in Paragraph 7.
- 27 8. Answering Respondent admits the averments contained in Paragraph 8.
- 28 9. Answering Respondent admits the averments contained in Paragraph 9.

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III. FACTS

10. Answering Respondent denies the averments that Joanne Baumgarten ("Ms. Baumgarten") started with the District on a part-time basis in 2005. Answering Respondent admits the remaining averments contained in Paragraph 10.

11. Answering Respondent admits the averments contained in Paragraph 11.

12. Answering Respondent admits the averments that the first underlying grievance (#222351) was based upon a District job vacancy for the position of RCMS Secretary posted on or about March 16, 2023. Answering Respondent denies the remaining averments contained in Paragraph 12.

13. Answering Respondent admits the averments that Three (3) District employees, including Ms. Baumgarten and Amanda Cardinal, applied for the position and were interviewed by a panel of seven (7) District employees on April 4 and 5, 2023, respectively. Answering Respondent denies the remaining averments contained in Paragraph 13.

14. Answering Respondent denies the averments contained in Paragraph 14.

15. Answering Respondent admits the averments contained in Paragraph 15.

16. Answering Respondent admits the averments contained in Paragraph 16.

17. Answering Respondent admits the averments contained in Paragraph 17.

18. Answering Respondent admits the averments contained in Paragraph 18.

19. Answering Respondent admits the averments contained in Paragraph 19.

20. Answering Respondent admits the averments contained in Paragraph 20.

21. Answering Respondent admits the averments contained in Paragraph 21.

22. Answering Respondent admits the averments contained in Paragraph 22.

23. Answering Respondent admits the averments contained in Paragraph 23.

24. Answering Respondent denies the averments contained in Paragraph 24.

25. Answering Respondent denies the averments contained in Paragraph 25.

26. Answering Respondent denies that the District also updated the RCMS website staff directory to designate Ms. Baumgarten as "Registrar". Answering

1 Respondent admits that Ms. Cardinal was designated as "Secretary" and directed Ms.
2 Baumgarten and Ms. Cardinal to switch offices with each other. Answering Respondent
3 denies the remaining averments contained in in Paragraph 26.

4 27. Answering Respondent denies the averments contained in Paragraph 27.

5 28. Answering Respondent admits the averments contained in Paragraph 28.

6 29. Answering Respondent denies the averments contained in Paragraph 29.

7 30. Answering Respondent admits that the Court has not yet issued a written
8 order dismissing the Petition. For the remaining averments contained in Paragraph 30,
9 Answering Respondent is without knowledge or information sufficient to form a belief
10 as to the truth of the averments contained in Paragraph 30 and therefore denies each,
11 every and all of the same.

12 31. Answering Respondent admits that while the litigation was pending in
13 District Court, NCSD terminated Ms. Baumgarten's employment by notice dated August
14 16, 2024. Answering Respondent denies the remaining averments contained in
15 Paragraph 31.

16 32. Answering Respondent denies the averments contained in Paragraph 32.

17 33. Answering Respondent admits the averments contained in Paragraph 33.

18 34. Answering Respondent admits the averments contained in Paragraph 34.

19 35. Answering Respondent admits the averments contained in Paragraph 35.

20 36. Answering Respondent admits the averments contained in Paragraph 36.

21 **FIRST CAUSE OF ACTION**

22 **Interfering with, restraining or coercing employees in violation of**
23 **NRS 288.270(1)(a).**

24 37. Answering Respondent adopts by reference and incorporates herein each,
25 every and all of its admissions, denials and averments to Paragraph 1 through 36 of the
26 Complaint as if the same were set forth in full at this point.

27 38. Answering Respondent admits the averments that NCSSO and the District
28 are parties to the Master Contract that provides employees with full freedom of

1 association that is free from interference, restraint or coercion by the District or its agents
2 (Article 3-2), final and binding arbitration (Article 5-4), no reprisals taken by the District
3 against any participant in the grievance procedure (Article 5-5(1)) and to comply with
4 Nevada Revised Statutes 288.270 with regards to nondiscrimination (Article 11-1). Ms.
5 Baumgarten exercised her rights under NRS Chapter 288 to join NCSSO and to file a
6 grievance under Article V of the parties' Master Contract. Answering Respondent denies
7 the remaining averments contained in Paragraph 38.

8 39. Answering Respondent denies the averments contained in Paragraph 39.

9 **SECOND CAUSE OF ACTION**

10 **Dominating, interfering or assisting in the formation or administration of any**
11 **employee organization in violation of NRS 288.270(l)(b).**

12 40. Answering Respondent adopts by reference and incorporates herein each,
13 every and all of its admissions, denials and averments to Paragraph 1 through 39 of the
14 Complaint as if the same were set forth in full at this point.

15 41. Answering Respondent admits the averments that NCSSO and the District
16 are parties to the Master Contract that provides employees with organization rights free
17 from interference, restraint or coercion by the District or its agents (Article 3-2), final
18 and binding arbitration (Article 5-4), no reprisals taken by the District against any
19 participant in the grievance procedure (Article 5-5(1)) and to comply with Nevada
20 Revised Statutes 288.270 with regards to nondiscrimination (Article 11-1). Arbitrator
21 Perea issued his final. and binding Award dated February 12, 2024, determining that the
22 District's denial of Ms. Baumgarten's voluntary transfer from Registrar to Secretary at
23 RCMS was in violation of Article IX of the Master Contract. Answering Respondent
24 denies the remaining averments contained in Paragraph 41.

25 42. Answering Respondent denies the averments contained in Paragraph 42.

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1 **THIRD CAUSE OF ACTION**

2 **Discriminate in regard to hiring, tenure or any term or condition of employment**
3 **to encourage or discourage membership in any employee organization in violation**
4 **of NRS 288.270(1)(c).**

5 43. Answering Respondent adopts by reference and incorporates herein each.
6 every and all of its admissions, denials and averments to Paragraph 1 through 42 of the
7 Complaint as if the same were set forth in full at this point.

8 44. Answering Respondent admits the averments that NCSSO and the District
9 are parties to the Master Contract that provides employees with full freedom of
10 association that is free from interference, restraint or coercion by the District or its agents
11 (Article 3-2), final and binding arbitration (Article 5-4), no reprisals taken by the District
12 against any participant in the grievance procedure (Article 5-5(1)) and to comply with
13 Nevada Revised Statutes 288.270 with regards to nondiscrimination (Article 11-1). Ms.
14 Baumgarten exercised her rights under NRS Chapter 288 to join NCSSO and to file a
15 grievance under Article V of the parties' Master Contract. Answering Respondent denies
16 the remaining averments contained in Paragraph 44.

17 45. Answering Respondent denies the averments contained in Paragraph 45.

18 **FOURTH CAUSE OF ACTION**

19 **Discharging or otherwise discriminating against any employee because the**
20 **employee has formed, joined or chosen to be represented by any employee**
21 **organization in violation of NRS 288.270(1)(d).**

22 46. Answering Respondent adopts by reference and incorporates herein each,
23 every and all of its admissions, denials and averments to Paragraph 1 through 45 of the
24 Complaint as if the same were set forth in full at this point.

25 47. Answering Respondent admits the averments that Answering Respondent
26 admits the averments that NCSSO and the District are parties to the Master Contract that
27 provides employees with full freedom of association that is free from interference,
28 restraint or coercion by the District or its agents (Article 3-2), final and binding arbitration

1 (Article 5-4), no reprisals taken by the District against any participant in the grievance
2 procedure (Article 5-5(1)) and to comply with Nevada Revised Statutes 288.270 with
3 regards to nondiscrimination (Article 11-1). Ms. Baumgarten exercised her rights under
4 NRS Chapter 288 to join NCSSO and to file a grievance under Article V of the parties'
5 Master Contract. Answering Respondent denies the remaining averments contained in
6 Paragraph 47.

7 48. Answering Respondent denies the averments contained in Paragraph 48.

8 **FIFTH CAUSE OF ACTION**

9 **Discriminate because of religion, sex, sexual orientation; gender identity or**
10 **expression, age, physical or visual handicap, national origin or because of political**
11 **or personal reasons or affiliations in violation of NRS 288.270(1)(1).**

12 49. Answering Respondent adopts by reference and incorporates herein each,
13 every and all of its admissions, denials and averments to Paragraph 1 through 45 of the
14 Complaint as if the same were set forth in full at this point.

15 50. Answering Respondent admits the averments that Answering Respondent
16 admits the averments that Answering Respondent admits the averments that Answering
17 Respondent admits the averments that NCSSO and the District are parties to the Master
18 Contract that provides employees with full freedom of association that is free from
19 interference, restraint or coercion by the District or its agents (Article 3-2), final and
20 binding arbitration (Article 5-4), no reprisals taken by the District against any participant
21 in the grievance procedure (Article 5-5(1)) and to comply with Nevada Revised Statutes
22 288.270 with regards to nondiscrimination (Article 11-1). Ms. Baumgarten exercised her
23 rights under NRS Chapter 288 to join NCSSO and to file a grievance under Article V of
24 the parties' Master Contract. Answering Respondent denies the remaining averments
25 contained in Paragraph 50.

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1 51. Answering Respondent denies the averments contained in Paragraph 51.
2 WHEREFORE Respondent's response to Complainants pray for relief as
3 follows:

- 4 1. Answering Respondent denies the averments contained in Paragraph 1.
- 5 2. Answering Respondent denies the averments contained in Paragraph 2.
- 6 3. Answering Respondent denies the averments contained in Paragraph 3.
- 7 4. Answering Respondent denies the averments contained in Paragraph 4.
- 8 5. Answering Respondent denies the averments contained in Paragraph 5.
- 9 6. Answering Respondent denies the averments contained in Paragraph 6.
- 10 7. Answering Respondent denies the averments contained in Paragraph 7.

11

AFFIRMATIVE DEFENSES

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FIRST AFFIRMATIVE DEFENSE

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All or part of the allegations asserted in the Complaint are untimely.

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SECOND AFFIRMATIVE DEFENSE

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Complainants' Complaint fails to state a claim upon which relief can be

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granted.

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THIRD AFFIRMATIVE DEFENSE

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Complainants' Complaint and each cause of action therein is barred by the

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doctrine of waiver.

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FOURTH AFFIRMATIVE DEFENSE

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Complainants' Complaint and each cause of action therein is barred by the

22

doctrine of estoppel.

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FIFTH AFFIRMATIVE DEFENSE

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The Complainant has failed to exhaust its administrative remedies.

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SIXTH AFFIRMATIVE DEFENSE

26

At all times mentioned in the Complaint, Respondent acted in good faith

27

in the belief that its actions were legally justified or excused.

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1 CERTIFICATE OF SERVICE

2 I certify that I am an employee of LEMONS, GRUNDY & EISENBERG, 6005
3 Plumas Street, Third Floor, Reno, Nevada 89519; over the age of 18 years, and not a
4 party to the within action; that I emailed a copy of the foregoing document via electronic
5 mail and U.S. Mail to the following recipients:

6
7 Thomas J. Donaldson
8 Dyer Lawrence, LLP
9 1817 N. Stewart Street, Ste. 35
10 Carson City, NV 89706

11 DATED this 6th day of January, 2023.

12 /s/Yagmur Ozdemir
13 Yagmur Ozdemir, Assistant
14 to Rebecca Bruch, Esq.

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BEFORE THE STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

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NYE COUNTY SUPPORT
STAFF ORGANIZATION
and JOANNE BAUMGARTEN.

Case No. 2024-039

Panel:

Complainants,

vs.

NYE COUNTY SCHOOL
DISTRICT,

Respondent.

COMPLAINANTS' PRE-HEARING STATEMENT

COME NOW Complainants NYE COUNTY SUPPORT STAFF ORGANIZATION (“NCSO” or “Organization”) and JOANNE BAUMGARTEN, by and through counsel, and pursuant to NAC 288.250 submit the following Pre-Hearing Statement in the above-captioned action before the Nevada Government Employee-Management Relations Board (“Board” or “EMRB”) against Respondent NYE COUNTY SCHOOL DISTRICT (“NCSD” or “District”). Complainants reserve the right to supplement or amend this Statement based upon new or additional information.

I. ISSUES OF FACT

A. Whether, historically, the District and HCSSO have treated the job positions of Secretary and Secretary-Registrar at Rosemary Clarke Middle School (RCMS) and other schools as separate positions?

B. Whether on or about June 4, 2024, the District disregarded the Impartial Arbitrator’s Findings and Award (“Award”) dated February 12, 2024, issued by arbitrator Kenneth Perea, Esq., which granted Ms. Baumgarten’s underlying grievance and transferred her from Secretary-Registrar to Secretary at RCMS, when the District unilaterally transferred Ms. Baumgarten back to RCMS Secretary-Registrar?

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II. ISSUES OF LAW

A. Whether the District's improper transfer of Ms. Baumgarten back to the position of RCMS Secretary-Registrar on or about June 4, 2024, in violation of Arbitrator Perea's final and binding Award dated February 12, 2024, or subsequent termination of Ms. Baumgarten's employment on August 16, 2024, constitutes interference, restraint or coercion of an employee exercising her rights guaranteed under NRS Chapter 288 and, hence, a prohibited labor practice in violation of NRS 288.270(1)(a)?

B. Whether the District's improper transfer of Ms. Baumgarten back to the position of RCMS Secretary-Registrar on or about June 4, 2024, in violation of Arbitrator Perea's final and binding Award dated February 12, 2024, or subsequent termination of Ms. Baumgarten's employment on August 16, 2024, constitutes unlawful domination, interference or assistance in the formation or administration of an employee organization and, hence, a prohibited labor practice in violation of NRS 288.270(1)(b)?

C. Whether the District's improper transfer of Ms. Baumgarten back to the position of RCMS Secretary-Registrar on or about June 4, 2024, in violation of Arbitrator Perea's final and binding Award dated February 12, 2024, or subsequent termination of Ms. Baumgarten's employment on August 16, 2024, constitutes unlawfully discriminating in regard to hiring, tenure or any term or condition of employment to encourage or discourage membership in any employee organization and, hence, a prohibited labor practice in violation of NRS 288.270(1)(c)?

D. Whether the District's improper transfer of Ms. Baumgarten back to the position of RCMS Secretary-Registrar on or about June 4, 2024, in violation of Arbitrator Perea's final and binding Award dated February 12, 2024, or subsequent termination of Ms. Baumgarten's employment on August 16, 2024, constitutes unlawfully discharging or otherwise discriminating against an employee because the employee has formed, joined or chosen to be represented by an employee organization and, hence, a prohibited labor practice in violation of NRS 288.270(1)(d)?

E. Whether the District's improper transfer of Ms. Baumgarten back to the position of RCMS Secretary-Registrar on or about June 4, 2024, in violation of Arbitrator Perea's final and binding Award dated February 12, 2024, or subsequent termination of Ms. Baumgarten's

1 employment on August 16, 2024, constitutes unlawful discrimination of an employee covered by the
2 parties' 2023-2025 Master Contract and NRS Chapter 288 and, hence, a prohibited labor practice
3 in violation of NRS 288.270(1)(f)?

4 F. Are Complainants the prevailing parties and, hence, entitled to an award of reasonable
5 attorney's fees and costs in accordance with NRS 288.110(6)?

6 III. MEMORANDUM OF POINTS & AUTHORITIES

7 A. Facts

8 NCCSSO is, and was at all times mentioned herein, an employee organization, as defined by
9 NRS 288.040, and the exclusive recognized bargaining agent, as defined by NRS 288.027, for the
10 bargaining unit consisting of all non-substitute Bus Drivers, Bus Aides, School Secretaries, Clerical
11 Aides, Health Aides, Para-professionals, Custodians, Day Site Maintenance/Custodians, Educational
12 and Certified Occupational Therapists Assistants, Computer Technicians, Library Aides, Campus
13 Monitors, Educational Interpreters and Licensed Practical Nurses employed by the NCSD. The
14 District is a school district created under the authority of NRS 386.010 and a local government
15 employer as defined by NRS 288.060.

16 The Organization and the District engage in collective bargaining pursuant to
17 NRS Chapter 288. As a result of the parties' collective bargaining, the Organization and the District
18 are currently parties to the 2023-2025 Master Contract, which was ratified and accepted by the
19 parties in September, 2023, and on file with the Board. Article 3-2 of the parties' Master Contract
20 concerning Organization Rights provides:

21 The Employer agrees that the individual Employee will have full freedom of
22 association, self Organization, and the designation of representatives of their own
23 choosing in negotiating terms and conditions of their employment, and that they will
be free from interference, restraint or coercion by the Employer, or its agents, in the
carrying out of said activities.

24 Further, Article 5-4 of the parties' Master Contract regarding the Formal [Grievance and Arbitration]
25 Procedure states:

26 The decision and award in writing of the arbitrator on the merits of any grievance
27 adjudicated within the arbitrator's jurisdiction and authority as specified in this
28 [Master Contract] shall be **final and binding** on the grievant, the Organization and
the [School] Board. [Emphasis added.]

1 Also, Article 5-5(1) of the parties' Master Contract concerning the Grievance and Arbitration
2 Procedure provides:

3 No reprisals shall be taken either by the grievant, Organization, or the [School]
4 Board, or the [School] Board's agents against any participant in the grievance
procedure by reason of such participation.

5 In addition, Article 9-11 of the parties' Master Contract regarding Voluntary Transfer states:

6 When the Nye County School District declares that a vacancy exists or that a new
7 position has been created within the NCSO bargaining unit, bargaining unit
members may apply for transfer to the vacancy or new position. Posting of said job
8 openings will be for five (5) work days, in all attendance areas.

9 **Voluntary transfers shall be granted** on the following criteria and scoring rubric:

10 Interview Questions	Evaluations	Job Classification Seniority
11 A total of 10 questions shall be utilized.	Immediate previous two years' satisfactory= 1 point	Less than one year= 0 points 1 year=1 point
12 Each question shall use a Likert scale of 1-6 and be 13 scored 1=lowest & 6=highest	Immediate previous four years' satisfactory=2 points	2-4 years=2 points 5-9 years=3 points 10+ years=4 points
14 No multiplier will be utilized. If 15 interview committee is used, committee scores will be 16 averaged for one combined score.	Final score multiplier of 5 on rubric	Final score multiplier of 5 on rubric

17 Job Classification Seniority shall be used if the combined score of one or more
18 applicants is equal. Should the District or its agents deny a request for transfer, it
shall, within seven (7) working days, provide the Employee and the Organization a
19 written statement of its decision. The Organization shall receive all rubric scores
upon written request. With principal/supervisor approval, in-district interviews
20 during scheduled work hours shall not require the use of personal leave.

- 21 a. All appropriate information pertaining to any positions that voluntary transfer
22 applicants may transfer into will be made available prior to interview by
applicant's request to Human Resources with respect to FERPA and HIPAA
guidelines.
- 23 b. **All voluntary transfers are final.** An Employee who accepts a voluntary
24 transfer within the same job classification will be ineligible for transfer
25 consideration within the same job classification for the remainder of the
school year, except in cases where the scheduled hours in the new position
26 would increase by at least one (1) hour or increase benefits. This does not
apply to District-initiated transfers or layoffs.
- 27 c. Employees transferring between job classifications within the NCSO
bargaining unit shall not suffer a reduction in hourly compensation.

28 Emphasis added.

1 Further, Article 9-12 of the parties' Master Contract concerning Involuntary Transfer provides:

2 An involuntary transfer shall be made only in the case of an emergency or to prevent
3 undue disruption of the operation of the District. **The District shall notify, in**
4 **writing, the affected Employee and the Organization of the specific reasons for**
5 **such transfer at the time of notification of transfer.** If the Employee objects to
6 such transfer for the reason given, the dispute may be resolved through the grievance
7 procedure beginning with Step 2.

8 If the dispute is ultimately resolved in favor of the transfer, or, the Organization does
9 not process the grievance through arbitration, the Employee will, if he/she requests,
10 be released by the District from his/her employment. An involuntary transfer shall not
11 result in the loss of compensation, seniority, or fringe benefits. Reasonable moving
12 expenses necessitated by an involuntary transfer shall be borne by the District.

13 Emphasis added. Finally, Article 11-1 of the parties' Master Contract concerning Nondiscrimination
14 states:

15 The parties agree to comply with Nevada Revised Statutes 288.270 with regards to
16 nondiscrimination.

17 Ms. Baumgarten started with the District on a part-time basis in 2005. In 2011, she accepted
18 a full-time Aide position and promoted to Secretary at Pahrump Valley High School in 2014. In
19 approximately 2020, Ms. Baumgarten transferred to RCMS as Secretary-Registrar. All of
20 Ms. 'Baumgarten's performance evaluations, including the latest one (1) she received on
21 June 4, 2024, are rated overall satisfactory and the only prior minor disciplinary actions that she
22 received were a Verbal Warning dated April 26, 2023, Written Reprimand dated July 28, 2023, and
23 a Written Reprimand dated May 9, 2024.

24 **1. Grievance #222351 voluntary transfer.**

25 Over the years, the District and the Organization have treated the job positions of Secretary
26 and Secretary-Registrar at RCMS and other schools as separate positions. The two (2) positions are
27 equivalent in terms of pay and benefits, but not job duties and responsibilities.

28 On or about March 16, 2023, the District posted a job vacancy for the position of RCMS
Secretary. Three (3) District employees, including Ms. Baumgarten and Amanda Cardinal, applied
for the position and were interviewed by a panel of seven (7) District employees on
April 4 and 5, 2023, respectively. At the time, Ms. Baumgarten was the Secretary-Registrar at
RCMS and Ms. Cardinal, who was a relatively new District employee, was a Clerical Aide at RCMS.

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1 As set forth above, Article 9-11 of the parties' Master Contract states, "[v]oluntary transfers
2 **shall be granted** on the following criteria and scoring rubric: Interview Questions, Evaluations, Job
3 Classification Seniority." In accordance with Article 9-11, the District prepared a summary of the
4 candidates' scores. Ms. Baumgarten received a combined score of **62.928** (37.928/10/15) and
5 Ms. Cardinal received a combined score of **54.214** (44.214/10/0). However, by email dated
6 April 7, 2023, former RCMS Principal Erin Jerabek informed former District Human Resources
7 Director Brenda Slusser and NCSO President Cheryl Tibbits that she "selected Ms. Cardinal based
8 on my choice in applicants." Oddly, Ms. Jerabek concludes her email with, "[w]hile I do believe that
9 the situation I have been placed in was unfair, I do believe I have selected the better applicant."

10 From April 18 through 26, 2023, the parties met four (4) times to attempt to resolve the
11 dispute informally as required by Article 5-3 of the Master Contract, but were unsuccessful. Thus,
12 on May 1, 2023, NCSO timely filed the formal grievance at Step 1 of the Grievance and Arbitration
13 Procedure specified in Article 5 of the Master Contract.

14 By letter dated May 12, 2023, former Director Slusser denied the grievance asserting that
15 "Mrs. Jerabek vigorously contends that she followed the contract language" and that
16 Ms. Baumgarten "is not the right fit for this position." Former Director Slusser also requested to
17 skip Step 2 (Superintendent's level) of the grievance procedure, which was acceptable to NCSO.

18 On about July 13, 2023, the parties participated in mediation (Step 3) with Federal Mediation
19 and Conciliation Service (FMCS) Mediator Herman Brown, which was not successful. So, by letter
20 dated July 13, 2023, NCSO timely demanded binding arbitration (Step 4).

21 The parties mutually selected Kenneth Perea, Esq., to serve as the impartial arbitrator and he
22 conducted an arbitration on December 8, 2023, via Zoom from his office in California, with the
23 parties, Ms. Baumgarten and legal counsel participating from the NCSO administrative office in
24 Pahrump, Nevada.

25 Arbitrator Perea subsequently issued his final and binding Award dated February 12, 2024,
26 granting Ms. Baumgarten's grievance and her voluntary transfer to the position of Secretary at
27 RCMS on a date mutually acceptable to the parties. Arbitrator Perea determined that while the
28 District has a general right to transfer employees, the specific process in Article 9-11 of the Master

1 Contract controls. Thus, since Ms. Baumgarten scored the highest of all candidates on the three (3)
2 criteria in Article 9-11, the District violated the Master Contract when denying her voluntary transfer
3 to the vacant position of RCMS Secretary. Arbitrator Perea also directed the district to make
4 Ms. Baumgarten whole for any differences between Secretary and her previous position,
5 Secretary-Registrar.

6 Initially, the District transferred Ms. Baumgarten to the position of RCMS Secretary and
7 Ms. Cardinal to the position of Secretary-Registrar at RCMS and reassigned some of the job duties
8 between the two (2) positions. However, approximately four (4) months later, on or about
9 June 4, 2024, new RCMS Principal April Sutton presented Ms. Baumgarten with an overall
10 “satisfactory” performance evaluation as RCMS Secretary, but then informed Ms. Baumgarten that
11 she is being transferred from RCMS Secretary back to Secretary-Registrar, **contrary to Arbitrator**
12 **Perea’s Award**, and that Ms. Cardinal was being transferred from Secretary-Registrar back to
13 RCMS Secretary.¹ Principal Sutton indicated that she spoke to NCSA Assistant Superintendent
14 Laura Weir, who authorized the transfers.

15 Further, Principal Sutton provided Ms. Baumgarten with copies of new job descriptions for
16 both positions, designating Ms. Baumgarten as “Secretary-Registrar” and Ms. Cardinal as “School
17 & Principal’s Secretary.” The District also updated the RCMS website staff directory to designate
18 Ms. Baumgarten as “Registrar” and Ms. Cardinal as “Secretary” and directed Ms. Baumgarten and
19 Ms. Cardinal to switch offices with each other. The District subsequently moved Ms. Baumgarten’s
20 office to the rear of the school in a former storage closet.

21 In light of the District’s blatant disregard of Arbitrator Perea’s final and binding Award
22 directing the District to transfer Ms. Baumgarten to the position of RCMS Secretary, and the
23 expiration of the 90-day deadline for the District to attempt to vacate the Award pursuant to
24 NRS 38.241, on or about July 3, 2024. Complainants filed a Petition to Confirm Arbitrator’s Award
25 (“Petition”) pursuant to NRS 38.239 in the Fifth Judicial District Court in Case No. CV24-0330Z
26 so that its binding terms could be enforced by the Court.

27
28 ¹ The District did not provide Ms. Baumgarten and NCSSO written notice of an involuntary
transfer and the reasons therefore as required by Article 9-12 of the Master Contract.

1 NRS 38.239 regarding confirmation of an arbitrator’s award states:

2 After a party to an arbitral proceeding receives notice of an award, the party
3 may make a motion to the court for an order confirming the award at which time **the**
4 **court shall issue a confirming order** unless the award is modified or corrected
pursuant to NRS 38.237 or 38.242 or is vacated pursuant to NRS 38.241. [Emphasis
supplied.]

5 Although the Award had not been modified, corrected or vacated pursuant to NRS 38.237,
6 NRS 38.242 and NRS 38.241, respectively, the Court refused to issue an order confirming the Award
7 and, instead, dismissed Complainants’ Petition on or about October 22, 2024. Oddly, the Court has
8 not yet issued a written order dismissing the Petition, but Complainants will be appealing the
9 dismissal given the plain and unambiguous language in NRS 38.239.

10 **2. Grievance #JB082924.**

11 While the litigation was pending in District Court, NCSO terminated Ms. Baumgarten’s
12 employment by notice dated August 16, 2024, for various petting allegations. The Organization filed
13 a timely grievance challenging Ms. Baumgarten’s termination. Principal Sutton denied the grievance
14 at Step 1 by memorandum dated September 9, 2024.

15 By letter dated September 23, 2024, the Organization requested to advance the grievance in
16 light of Principal Sutton’s denial. However, by email dated September 24, 2024, the District notified
17 NCSSO that the grievance was “null and void” because it was not timely advanced within seven (7)
18 days of the Step 1 response. The Organization requested reconsideration based underlying
19 circumstances that prevented NCSSO’s timely response, which was denied by the District on
20 September 24, 2024, resulting in Complainants timely initiating the above-captioned mater on
21 November 27, 2024.

22 **B. Argument.**

23 Laws granting employees the rights to organize and collectively bargain with their employers,
24 such as NRS Chapter 288, are intended to promote peace in labor relations. *See Truckee Meadows*
25 *Fire Protection Dist. v. International Ass’n of Firefighters, Local 2487*, 109 Nev. 367. 376-77, 849
26 P.2d 343, 350 (1993). The EMRB is concerned with the chilling effect which an employer’s actions
27 may have on rights of the employees that are guaranteed under NRS Chapter 288. *Esmeralda Cty.*
28 *Classroom Teachers Ass’n v. Esmeralda Cty. Brd. of School Trustees*, EMRB Case No. AI-045497.

1 Item No. 273 (1991) (*citing* NRS 288.270(1)). Pursuant to NRS 288.110(2), the EMRB has
2 exclusive jurisdiction of unfair labor practice complaints. *Reno v. Reno Police Protective Ass'n*, 118
3 Nev. 889, 59 P.3d 1212 (2002). The EMRB can restore parties to their previous status. *Nevada*
4 *Serv. Employees Union v. Orr*, 121 Nev. 675 (2005). In fact, the very first decision of the EMRB
5 concerned whether an employee was improperly discharged from his employment because of union
6 activity. *Laborers' Int'l Union of North America, Local Union No. 169 v. Washoe Medical Center*,
7 Item No. 1, EMRB Case No. 1 (1970). Moreover, through NRS 288.270(1), an employee
8 organization is protected from actions which would undercut its ability to fulfill its statutory role as
9 exclusive bargaining agent and defender of collective bargaining agreements. *Nevada Service*
10 *Employees Union, SEIU Local 1107, AFL-CIO, v. Clark Cty.* EMRB Case No. A1-045759, Item
11 No. 540B (2005).

12 The District's unlawful actions concerning Ms. Baumgarten "violate the spirit, if not the
13 letter, of NRS Chapter 288." *Id.* Thus, in the words of the EMRB, Complainants "express here our
14 sincere hope that in the future [the District] will scrupulously honor the dictates and goals our
15 Legislature has expressed by enacting [NRS] Chapter 288." *Id.*

16 **1. The District violated NRS 288.270(1)(a).**

17 Whenever an employee organization desires to negotiate concerning any matter which is
18 subject to negotiation pursuant to NRS Chapter 288, it shall give written notice of that desire to the
19 local government employer. NRS 288.180(1). In Nevada, NRS chapter 288 "imposes a reciprocal
20 duty on employers and bargaining agents to negotiate in good faith concerning the mandatory
21 subjects of bargaining listed in NRS 288.150." *Education Support Employees Assoc. and Police*
22 *Officer Assoc. of the Clark County School Dist.*, EMRB Case No. A1-046113, Item No. 809
23 (October 20, 2015). Further, it is a prohibited practice for a local government employer or its
24 designated representative willfully to interfere, restrain or coerce any employee in the exercise of any
25 right guaranteed under NRS Chapter 288. NRS 288.270(1)(a). *See Carson City Sheriff's Employees*
26 *Ass'n vs. Sheriff and County of Carson City*, Case No. A1-045319, Items #87, #88 and #89 (1978,
27 1979) (Sheriff committed prohibited practices of interference, restraint, coercion of employees in the
28 exercise of rights guaranteed under 288 and interfering in internal administration of association).

1 Here, NCSSO and the District mutually agreed in Article 5-4 of the parties' Master Contract
2 that an arbitrator's award on the merits of any grievance "shall be final and binding on the grievant,
3 the Organization and the [School] Board." Additionally, the Organization and the District mutually
4 agreed in Article 5-5(1) of the parties' Master Contract that "[n]o reprisals shall be taken either by
5 the grievant, Organization, or the [School] Board, or the [School] Board's agents against any
6 participant in the grievance procedure by reason of such participation." Finally, "[a]ll voluntary
7 transfers are final" in accordance with Article 9-11(b) of the Master Contract.

8 While the District initially complied with and implemented Arbitrator Perea's final and
9 binding Award dated February 12, 2024, by transferring Ms. Baumgarten to the position of RCMS
10 Secretary (and Ms. Cardinal to the position of Secretary-Registrar at RCMS), approximately four (4)
11 months later, on or about June 4, 2024, new RCMS Principal April Sutton presented
12 Ms. Baumgarten with an overall "satisfactory" performance evaluation as RCMS Secretary, but then
13 informed Ms. Baumgarten that she was being transferred unilaterally from RCMS Secretary back
14 to Secretary-Registrar, **contrary to Arbitrator Perea's Award**, and that Ms. Cardinal was being
15 transferred from Secretary-Registrar back to RCMS Secretary.² Principal Sutton indicated that she
16 spoke to NCSD Assistant Superintendent Laura Weir, who authorized the transfers.

17 Indeed, Principal Sutton provided Ms. Baumgarten with copies of new job descriptions for
18 both positions, designating Ms. Baumgarten as "Secretary-Registrar" and Ms. Cardinal as "School
19 & Principal's Secretary." The District also updated the RCMS website staff directory to designate
20 Ms. Baumgarten as "Registrar" and Ms. Cardinal as "Secretary" and directed Ms. Baumgarten and
21 Ms. Cardinal to switch offices with each other. The District subsequently moved Ms. Baumgarten's
22 office to the rear of the school in a former storage closet and then terminated her employment
23 without just cause.

24 Therefore, the District blatantly interfered with and restrained Ms. Baumgarten in the
25 exercise of her lawful rights under NRS Chapter 288 and the parties' Master Contract by

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28 ² The District did not provide Ms. Baumgarten and NCSSO written notice of an involuntary
transfer and the reasons therefore as required by Article 9-12 of the Master Contract.

1 disregarding Arbitrator Perea’s final and binding Award, not making her resulting voluntary transfer
2 final and then terminating her employment without just cause.

3 **2. The District violated NRS 288.270(1)(b).**

4 It is a prohibited practice for a local government employer or its designated representative
5 willfully to dominate, interfere or assist in the formation or administration of any employee
6 organization. NRS 288.270(1)(b). It is not necessary to show that such acts were “willful” or that
7 the employer “intended” to interfere with employee rights in order to establish that a prohibited
8 practice was committed. *Clark Cty. Classroom Teachers Ass’n vs. Clark County School District, et*
9 *al.*, EMRB Case No. A1-045435, Item #237 (1989).

10 Here, the District and its designated representatives willfully and intentionally interfered with
11 NCSSO’s representation of Ms. Baumgarten and processing her grievances by disregarding
12 Arbitrator Perea’s final and binding Award, not making Ms. Baumgarten’s voluntary transfer final
13 and subsequently terminating Ms. Baumgarten without just cause.

14 **3. The District violated NRS 288.270(1)(c).**

15 It is a prohibited practice for a local government employer or its designated representative
16 willfully to discriminate in regard to hiring, tenure or any term or condition of employment to
17 encourage or discourage membership in any employee organization. NRS 288.270(1)(c).

18 Here, after receiving and implementing a final and binding Award from Arbitrator Perea,
19 four (4) months later, the District unilaterally transferred Ms. Baumgarten back to RCMS Secretary-
20 Registrar for no legitimate reason. Then, two (2) months later, terminated Ms. Baumgarten’s District
21 employment without just cause. Clearly, the District made an example out of Ms. Baumgarten so
22 that other NCSSO members “thought twice” about challenging the District’s actions or filing a
23 grievance.

24 **4. The District violated NRS 288.270(1)(d).**

25 It is a prohibited practice for a local government employer or its designated representative
26 willfully discharge or otherwise discriminate against any employee because the employee has signed
27 or filed an affidavit, petition or complaint or given any information or testimony under Chapter 288,
28 or because the employee has formed, joined or chosen to be represented by any employee

1 organization. NRS 288.270(1)(d). Due to employee's union activities and the personal animus
2 against the employee, employer discriminated against employee for personal reasons and because
3 of employee's union affiliation. *Esmeralda Cty. Classroom Teachers Ass'n vs. Esmeralda County*
4 *School District, et al.*, EMRB Case No. A1-045497, Item #273 (1991).

5 Here, the District has no legitimate reason for disregarding Arbitrator Perea's final and
6 binding Award and not making Ms. Baumgarten's resulting transfer final as required by the parties'
7 Master Agreement. Then, without just cause, the District subsequently terminated Ms. Baumgarten's
8 employment. Again, the only logical explanation for the District's improper actions is the fact that
9 Ms. Baumgarten was a member of NCSSO and exercised her rights under NRS Chapter 288 and the
10 Master Contract.

11 **5. The District violated NRS 288.270(1)(f).**

12 It is a prohibited practice for a local government employer or its designated representative
13 willfully to discriminate because of race, color, religion, sex, sexual orientation, gender identity or
14 expression, age, physical or visual handicap, national origin or because of political or personal
15 reasons or affiliations. NRS 288.270(1)(f).

16 Here, NCSSO and the District are parties to the Master Contract that provides employees
17 with full freedom of association that is free from interference, restraint or coercion by the District
18 or its agents (Article 3-2), final and binding arbitration (Article 5-4), no reprisals taken by the District
19 against any participant in the grievance procedure (Article 5-5(1)), final voluntary transfers (Article
20 9-11(b)) and to comply with Nevada Revised Statutes 288.270 with regards to nondiscrimination
21 (Article 11-1). Ms. Baumgarten exercised her rights under NRS Chapter 288 to join NCSSO and
22 to file a grievance under Article V of the parties' Master Contract. Despite these contractual and
23 statutory rights, the District transferred Ms. Baumgarten back to RCMS Registrar and subsequently
24 terminated her employment for no legitimate reason.

25 The District has blatantly discriminated against Ms. Baumgarten based upon her political or
26 personal reasons or his race, color, religion, sex, sexual orientation, gender identity or expression,
27 age, physical or visual handicap, national origin or because of political or personal reasons or
28 affiliations by transferring and then terminating Ms. Baumgarten in violation of NRS 288.270(1)(f).

CERTIFICATE OF SERVICE

Pursuant to NAC 288.200(2), I certify that I am an employee of DYER LAWRENCE, LLP, and that on the 3rd day of February, 2025. I sent via electronic mail a true and correct copy of the within COMPLAINANTS' PRE-HEARING STATEMENT addressed to:

Rebecca Bruch
Lemons, Grundy & Eisenberg
6005 Plumas Street, 3rd Floor
Reno, NV 89519
Rb@lge.net

/s/ Kelly Gilbert
Kelly Gilbert

1 **REBECCA BRUCH, ESQ.**
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8 *Attorney for Respondent*

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GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD
STATE OF NEVADA

9 NYE COUNTY SUPPORT
10 STAFF ORGANIZATION
11 AND JOANNE BAUMGARTEN.

Case No.: 2024-039

COMPLAINANTS.

**RESPONDENT NYE COUNTY SCHOOL
DISTRICT'S PREHEARING STATEMENT**

12 VS.

13 NYE COUNTY SCHOOL
14 DISTRICT.

RESPONDENT.

15 Respondent NYE COUNTY SCHOOL DISTRICT ("NCS D") by and through its
16 attorney of record, REBECCA BRUCH, ESQ. of LEMONS, GRUNDY & EISENBERG,
17 hereby submits its Prehearing Statement pursuant to NAC §288.250. Respondent
18 reserves the right to supplement or to amend this Prehearing Statement as new or
19 additional information becomes available.

20 **A. STATEMENT OF ISSUES OF FACT AND LAW**

- 21 1. Pursuant to NRS 288.270(1)(a), whether NCS D interfered with, or coerced Ms.
22 Baumgarten related to her rights when NCS D changed Ms. Baumgarten's duties
23 and transferred her to the Secretary-Registrar position as a result of the change in
24 duties after a new principal was assigned to Rosemary Clark Middle School
25 ("RCMS").
26 2. Whether NCS D's change of duties and job title related to Ms. Baumgarten
27 constituted dominating, interfering with or assisting in the formation or
28 administration of any employee organization in violation of NRS 288.270(1)(b).

1 when a new principal was assigned to RCMS.

- 2 3. Whether NCSD discriminated against Ms. Baumgarten in regard to hiring, tenure
3 or any term or condition of employment to encourage or discourage membership
4 in the employee organization in violation of NRS 288.270(1)(c) when her job
5 duties were changed after a new principal was assigned to RCMS.
- 6 4. Whether Ms. Baumgarten's change in duties and/or job title were causally
7 connected to her participation in formation, membership, or exercising her right to
8 representation pursuant to NRS 288.270(1)(d).
- 9 5. Whether Ms. Baumgarten's change in duties and/or job title were based on or
10 causally connected to any protected category or activity in violation of NRS
11 288.270(1)(f).

12 **B. MEMORANDUM OF POINTS AND AUTHORITIES**

13 **1. Facts**

14 Ms. Baumgarten began working part-time for NCSD in 2005 as a clerical aide at
15 Floyd Elementary School. In 2001, she accepted a full-time position as a clerical aide.
16 In 2014, she was promoted to secretary at Pahrump Valley High School. She was then
17 assigned to RCMS as Secretary-Registrar in approximately 2021.

18 All of Ms. Baumgarten's performance evaluations rated her work as satisfactory
19 until 2023 and 2024 when she received a verbal warning and two written reprimands,
20 which are well-documented.

21 On March 16, 2023, RCMS posted a job vacancy for school secretary. The
22 position had been vacant prior to the posting. Three District employees applied for the
23 position, including Ms. Baumgarten and two other employees. On April 7, 2023, then-
24 principal Erin Jerabek notified the administration that she had chosen another candidate
25 for the Secretary position. Ms. Baumgarten's overall rating was the highest, albeit with
26 some contentions that her seniority was improperly considered in the rating. The
27 collective bargain agreement states: "Job Classification seniority shall be used if the
28 combined score of one or more applicants is equal." There was no tie, but nevertheless,

1 Ms. Baumgarten's seniority was mistakenly considered in the final rubric. That mistake
2 resulted in Ms. Baumgarten's score being the highest of the three candidates.

3 From April 18, 2023, through April 26, 2023, the parties met four times to attempt
4 to informally resolve the dispute. On May 1, 2023, the Union filed a formal grievance.
5 The grievance was denied, based on NCSD's contention that it followed the contract
6 language, and that Ms. Baumgarten was "not the right fit for the position." The parties
7 agreed to bypass Step 2, the Superintendent level of the grievance process. On July 13,
8 2023, a mediation was conducted but was not successful. An impartial arbitrator was
9 selected, and an arbitration was scheduled.

10 On approximately February 1, 2024, April Sutton was assigned as the new
11 principal at RCMS. She replaced the previous principal, Ms. Jerbiak, who had not chosen
12 Ms. Baumgarten to fill the Secretary position.

13 On December 8, 2023, an arbitration was held. The Union argued that the terms
14 of the Master Contract are clear and unambiguous, and that the applicant with the highest
15 contractual rubric was legally entitled to the position. NCSD argued that the scoring
16 rubric was to be used to assess the candidates' strengths and weaknesses, but it had a
17 management right to transfer an employee or not.

18 On February 12, 2024, the arbitrator issued his Findings and determined that the
19 criteria for his determination are those specified in the Master Contract, and no others
20 outside of its specific terms. He determined that Ms. Baumgarten was the candidate with
21 the highest calculated score, and she should have been awarded the position. He expressly
22 disregarded the fact that the other candidate scored higher in the area of her responses to
23 the interview questions, noting that criteria alone cannot override the other terms of the
24 contract. He ordered that the Secretary position at RCMS be transferred to Ms.
25 Baumgarten, and that the timing of the transfer be worked out between the parties. Ms.
26 Baumgarten needed to be made whole for any potential differences in salary or benefits.
27 The arbitrator retained jurisdiction regarding the remedy awarded.

28 On February 16, 2024, Ms. Baumgarten was moved to the Secretary position

1 pursuant to the arbitrator's Findings. She was provided with the job duties for the
2 Secretary and the Secretary-Registrar on approximately February 14, 2024. By that time,
3 Ms. Sutton had been recently appointed as the new principal.

4 Now that there were two "secretary" positions filled, some of the job duties were
5 reassigned and redistributed between the two positions. On approximately June 4, 2024,
6 Ms. Sutton presented Ms. Baumgarten with a satisfactory performance evaluation in her
7 position as Secretary but informed her that she was being transferred from the position
8 designated as "Secretary" to the position designated as "Secretary-Registrar." Both
9 positions now had new job duties, which were provided to Ms. Baumgarten at that time.

10 NCSD had not challenged the arbitrator's findings, and the time to do so had
11 expired. Ms. Baumgarten did not challenge the change in job duties.

12 On or about July 3, 2024, Ms. Baumgarten filed a Petition to Confirm the
13 arbitrator's award pursuant to NRS 38.241 in the Fifth Judicial District Court. The Court
14 suggested that it did not have jurisdiction over this matter, and the parties should reach
15 out to the arbitrator to discuss whether he had retained jurisdiction. Accordingly, the
16 parties did as the Court instructed.

17 On August 16, 2024, Ms. Baumgarten was terminated for cause. She did not
18 timely grieve the termination. She missed the deadline by approximately five days. She
19 requested that the deadline be waived. NCSD declined the request, and the grievance
20 was determined to be null and void. Ms. Baumgarten was advised of that determination
21 on September 24, 2024.

22 On approximately September 23, 2024, the arbitrator declined to take jurisdiction
23 over the current dispute, noting:

- 24 • The current issue concerned specific duties which were assigned to Ms.
25 Baumgarten.
- 26 • The issue adjudicated before the arbitrator concerned Ms. Baumgarten's
27 entitlement to the Secretary position under the collective bargaining
28 agreement.

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- The issues now in dispute concerning the duties assigned are different than the one over which the arbitrator retained jurisdiction. He declined to take jurisdiction over the current dispute.

On approximately October 22, 2024, the Court held a hearing regarding Ms. Baumgarten's Petition, and verbally dismissed Ms. Baumgarten's complaint. In that hearing she made the following findings, which were reduced to a draft Proposed Order prepared by the Nye County District Attorney, Brian Kunzi, who also functions as general counsel for NCSD:

1. The negotiated agreement at issue provides that a "[v]oluntary transfer shall be granted" upon criteria and a specified scoring rubric, which was determined by arbitration not have been followed by the District.

2. The arbitration award dated February 12, 2024, found that the District had a general right to transfer employees but the District failed to follow the proper procedures and therefore violated the agreement by not transferring the grievant to the vacant RCMS secretary position.

3. The District transferred the grieving employee from her then RCMS secretary position to the other vacant secretary position and the school principal reassigned job duties between the two RCMS secretary positions, which reassignment was not protested by the Petitioners. A later change in assigned job duties was made without protest by the Petitioners. A third reassignment of job duties resulted in the filing of this action.

4. The Court requested the parties to consider contacting the Arbitrator for clarification of the scope of the award and whether the award provided for any restrictions on the District's authority to control the assignment of job duties.

1 5. The Arbitrator concluded that the arbitration in issue “concerned whether
2 Ms. Baumgarten was procedurally entitled, under the collective bargaining agreement,
3 to be assigned to her current position rather than to another employee who was assigned
4 to that position.” The Arbitrator concluded that the current dispute regarding the
5 assignment of job duties was “different from the [dispute] over which the Impartial
6 Arbitrator retained jurisdiction.
7

8 6. NRS 288.150 and Article VXII of the negotiated agreement both provide
9 that the directing of employees, assigning work, establishing work standards, the
10 content of the work day, and the means and methods of offering the services provided
11 by the District are not subject to negotiation and thereby outside the jurisdiction of the
12 arbitration at issue.
13

14 7. The subject arbitration pertained only to the requirements regarding the
15 manner and method of transferring employees from one position to another and did not
16 restrict the District’s rights to manage the assignment of job duties between the two
17 RCMS secretary positions.
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20 As of the writing of this Prehearing Statement, the Court has not issued a written
21 order.

22 On November 27, 2024, Ms. Baumgarten filed this Complaint.

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1 **2. Legal Arguments**

2 Ms. Baumgarten’s complaint before this tribunal is another act of desperation to
3 once again try to accomplish through a back door what she could not accomplish through
4 a front door. all the while ignoring the seriousness of her poor performance in the
5 Secretary and Secretary-Registrar position.

6 **(a) First Cause of Action: Interfering with, restraining or coercing employees**
7 **in violation of NRS 288.270(1)(a).**

8 Under NRS 288.270(1)(a), it is a prohibited practice for a local government
9 employer to willfully interfere, restrain or coerce any employee in the exercise of any
10 right guaranteed under Chapter 288. This Board has stated that under NRS
11 288.270(1)(a), “the test is whether the employer engaged in conduct, which may
12 reasonably be said, tends to interfere with the free exercise of employee rights under the
13 Act.” *Nevada Service Employees Union v. Clark County Water Reclamation District*,
14 Case No. 2024-030, Item No. 905 (December 17, 2024), citing to *AFSCME, Local 4041*
15 *v. State of Nevada, Dept of Corrections*, Case No. 2020-002, Item No. 862B (EMRB,
16 April 15, 2021). Moreover, there are three elements to a claim of interference with a
17 protected right: (1) the employer's action can be reasonably viewed as tending to interfere
18 with, coerce, or deter; (2) the exercise of protected activity [by NRS Chapter 288]; **and**
19 (3) the employer fails to justify the action with a substantial and legitimate business
20 reason. *Id.*, citing to *Billings and Brown v. Clark County*, Item No. 751 (EMRB, May 2,
21 2012); *Medeco Sec. Locks, Inc. v. NLRB*, 142 F.3d 733, 745 (4th Cir. 1988); *Reno Police*
22 *Protective Ass'n v. City of Reno*, 102 Nev. 98, 101, 715 P.2d 1321, 1323 (1986)(emphasis
23 added). Furthermore, the Board must balance the employee's protected right against any
24 substantial and legitimate business justification that the employer may give for the
25 infringement. *Id.* Finally, “the expression of any views, argument, or opinion shall not be
26 evidence of an unfair labor practice, so long as such expression contains no threat of
27 reprisal or force or promise of benefit” *AFSCME, supra*.

28 An aggrieved employee must make a prima facie showing sufficient to support an

1 inference that protected conduct was a motivating factor in employer's decision. and once
2 that is established. the burden of proof shifts to the employer to demonstrate by a
3 preponderance of the evidence that the same action would have been taken even in the
4 absence of protected conduct after which the aggrieved employee may offer evidence that
5 the employer's "legitimate" explanation is pretextual. *Reno Police Protective Ass'n v.*
6 *City of Reno*, 102 Nev. 98 at 101 (1986).

7 Ms. Baumgarten asks the Board to conclude that the fact that she belonged to the
8 Union, she filed a grievance and her job duties were changed satisfies her burden to show
9 a prima facie case. She is less than candid in her efforts to establish a prima facie case
10 when she states. "...and subsequently terminated Ms. Baumgarten's employment for a
11 few petty allegations." *See Complaint. p. 6, ll. 19-20.* Ms. Baumgarten failed to provide
12 any of the "petty allegations" in her Complaint.

13 If this matter moves forward. NCSD will provide evidence. among other things.
14 of the following:

15 (1) NCSD has full management rights to change employee job duties. See
16 NRS 288.150 and Article XVII of the collective bargaining agreement
17 (all statutory and inherent managerial rights, prerogatives, and functions
18 are retained and vested exclusively in the Board of Trustees of the Nye
19 County School District, including, but not limited to... classify, transfer
20 assign... to determine... content of the workday, and workload
21 factors...)

22 (2) Ms. Baumgarten failed under any theory to satisfy even the bare
23 minimum requirement of a prima facie showing how NCSD interfered
24 with the exercise of her rights as a member of the Union, namely, she
25 belongs to a protected class: she was qualified for the position and was
26 performing satisfactorily, and that similarly-situated employees in the
27 same protected class received more favorable treatment. *McDonnell*
28 *Douglas v. Green*, 411 U.S. 792 (1973)

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(3) NCSD will articulate based on objective facts, that the termination was for far more than "...a few petty allegations..."

(4) NCSD would have taken the same action against Ms. Baumgarten, even if she is able to present credible evidence that alleged "protected conduct" was a motivating factor in the decision to change her job duties or terminate her. *See Bisch v. Las Vegas Metropolitan Police Department*, 302 P.3d 1108 (Nev. 2013); *N.L.R.B. v. United Sanitation Service*, 737 F.2d 936 (11th Cir. 1984)

Ms. Baumgarten provides no admissible evidence, or even allegations that meet the requirements of Rule 11 in the Nevada Rules of Civil Procedure. She does not establish a causal connection between the action(s) taken and the reason for the action(s). Ms. Baumgarten's First Cause of Action fails.

(b) Second Cause of Action: Dominating, interfering or assisting in the formation or administration of any employee organization in violation of NRS 288.270(1)(b).

NCSD would reiterate its legal arguments above. Ms. Baumgartner fails to establish a prima facie case. She makes a leap between the arbitrator's determination that she was entitled to be transferred to the Secretary position to a conclusion that the new principal's decision to revise and organize duties, and subsequent termination for poor performance is "dominating, interfering or assisting in the formation or administration of any employee organization in violation of NRS 288.270(1)(b). Her conclusory hypothesis at p. 7, ll.8-12 of the Complaint that "The District has blatantly dominated, interfered and assisted in the formation or administration of NCSSO by failing to comply with the final and binding Award and then terminating Ms. Baumgarten" is not only conclusory, but it is factually inaccurate.

NCSD did comply with the Findings of the arbitrator on the issues before him. When he was asked by the parties at the direction of the District Court Judge where the Petition was filed to clarify the scope of his Findings he stated: "The issue which was

1 adjudicated in the Impartial Arbitrator's earlier Award, however, concerned whether Ms.
2 Baumgarten was procedurally entitled, under the parties' collective bargaining
3 agreement, to be assigned to her current position rather than to another employee who
4 was assigned to that position..." He went on to state. "It therefore appears that the issue
5 now in dispute concerning duties assigned to the position in question is different than the
6 one over which the Impartial Arbitrator retained jurisdiction in his earlier Award."

7 Contrary to Ms. Baumgarten's contentions in ¶41, NCSA did comply with the
8 arbitrator's award. Her Second Cause of Action fails.

9 **(c) Third Cause of Action: Discriminate in regard to hiring, tenure or any**
10 **term or condition of employment to encourage or discourage membership**
11 **in any employee organization in violation of NRS 288.270(1)(c)**

12 Ms. Baumgarten again reiterates that she is a member of the Union with certain
13 protection. She claims she exercised her rights to join the Union and file a grievance.
14 There is no dispute about those facts. Like Ms. Baumgarten's arguments related to her
15 First and Second Causes of Action, Ms. Baumgartner again pivots to an argument that
16 her change in duties and title, and then her subsequent termination "for a few petty
17 allegations" establishes prima facie evidence that she was discriminated in regard to
18 hiring, tenure or any term or condition of employment to encourage or discourage
19 membership in any employee organization in violation of NRS 288.270(1)(c).

20 In order for a plaintiff to establish a prima facie case of discrimination and shift
21 the burden to the employer in state prohibited-labor-practice claims, it is not enough for
22 the employee to simply put forth evidence that is capable of being believed, and instead,
23 this evidence must actually be believed by the factfinder, and only upon meeting this
24 burden of persuasion does the burden of proof shift to the employer. *Bisch v. Las Vegas*
25 *Metro Police Dept.*, 2013, 302 P.3d 1108, 129 Nev. 328. Just because she says it does
26 not make it so.

27 Ms. Baumgarten must show a prima facie case of discrimination. The elements
28 to establish her initial burden are: she belongs to a protected class: she was qualified for

1 the position and/or performing satisfactorily; that she was subjected to an adverse
2 employment action; and that similarly-situated employees not in her protected class
3 received more favorable treatment. *See, e.g., Apeche v. White Pine County*, 96 Nev. 723,
4 726 (1980). She did not identify the protected class to which she belongs; she did not
5 show that she was qualified for the position, in spite of the fact that she was written up at
6 least three times and eventually terminated for performance issues; she did not identify
7 similarly-situated employees outside of her protected class (whatever that is) who
8 supposedly received more favorable treatment.

9 In Nevada, the courts have adopted the analytical framework from the Second
10 Circuit Court of Appeals in *Ruiz v. County of Rockland*, 609 F.3d 486, 493-94 (2010), in
11 evaluating whether similarly-situated employees received more favorable treatment. A
12 court must look at all relevant factors, depending on the context of the case, and such
13 factors may include: (1) whether the employees were subject to the same performance
14 evaluation standards; (2) whether the employees engaged in comparable conduct; (3)
15 whether the employees dealt with the same supervisor; (4) whether the employees were
16 subject to the same disciplinary standards; and (5) whether the employees had comparable
17 experience, education, and qualifications, if the employer took these factors into account
18 in making its decision. *City of North Las Vegas v. State Local Government Employee-*
19 *Management Relations Board*, 127 Nev. 631, 643 (2011).

20 Further, as reiterated by the arbitrator, the scope of the claim before him had to do
21 with Ms. Baumgarten's entitlement to the Secretary position, not her duties in that
22 position or any other position. Ms. Baumgarten did not timely file a grievance related to
23 her termination for discrimination or any other reason.

24 Subjects reserved to the local government employer without negotiation include...
25 the right to hire, direct, assign or transfer an employee, but exclude the right to assign or
26 transfer an employee as a form of discipline. Her assertion that she was a member of the
27 Union, and she filed a grievance, along with an unrelated claim that the revision in duties
28 and job titles establish a violation of NRS 288.270(1)(c) does not establish a viable claim.

1 and her Third Cause of Action fails.

2 **(d) Fourth Cause of Action: Discharging or otherwise discriminating against**
3 **any employee because the employee has formed, joined or chosen to be**
4 **represented by any employee organization in violation of NRS**
5 **288.270(1)(d).**

6 Ms. Baumgarten's claims torture the procedural and legal status of the revision of
7 her duties and the change in job title. She claims that she belonged to the Union and thus
8 was entitled to certain protection. Her claim that "the District ultimately rejected the
9 arbitrator's final and binding Award" misrepresents the undisputed facts of this case and
10 is disingenuous.

11 Pursuant to NRS 288.270(1)(d), which is the only subsection that covers retaliatory
12 conduct, a local government employer is prohibited from "discharging or otherwise
13 discriminating against any employee because the employee" either (1) "signed or filed an
14 affidavit, petition or complaint or [gave] any information or testimony" under Chapter
15 288, or (2) formed, joined or participated in an employee organization. Ms. Baumgarten's
16 allegations check none of the boxes required under this statute. She does not even try to
17 make an effort to tie the verbiage of the statute with the facts of the case. As in all of the
18 other causes of action, she "throws some spaghetti against the wall to see what might
19 stick."

20 The EMRB's administrative authority extends only to those claims that fall within
21 the scope of Chapter 288. NRS 288.110(2)("The Board may hear and determine any
22 complaint arising out of the interpretation of, or performance under, the provisions of this
23 chapter" by a local government employer). *Stegmaier v. City of Reno*, United States
24 District Court, D. Nevada (April 22, 2016), 2016 WL 16115929 (internal citations and
25 quotations omitted).

26 Ms. Baumgarten did not timely grieve her termination from NCSD, and even if
27 she had, the revised duties of her position and the position of the second "Secretary" are
28 not the subject of mandatory bargaining.

1 After Ms. Sutton was appointed as the new principal, it was her prerogative to
2 develop the job duties and divide them as she saw appropriate. She did so for the first
3 time shortly after starting in her new position. When those duties were revised the first
4 time, Ms. Baumgarten did not grieve that action. Ms. Sutton revised the duties again in
5 June of 2024. It was not until Ms. Baumgarten was terminated, and she failed to timely
6 file a grievance, that she tried to make an end-run around her procedural misstep and the
7 requirements and the provisions of the collective bargaining agreement. In this
8 Complaint, she unsuccessfully argues that the changes that were made by Ms. Sutton four
9 months after she made the initial change in duties constituted a rejection of the arbitrator's
10 Findings. The arbitrator's Findings, as he clarified, had nothing whatsoever to do with
11 the change in duties or the termination.

12 Ms. Baumgarten's Fourth Cause of Action fails.

13 **(e) Fifth Cause of Action: Discriminate because of religion, sex, sexual**
14 **orientation, gender identity or expression, age, physical or visual**
15 **handicap, national origin or because of political or personal reasons or**
16 **affiliations in violation of NRS 288.270(1)(f).**

17 Ms. Baumgarten's claims in her Fifth Cause of Action are the most egregious and
18 frivolous misrepresentations of the facts of all her claims. She repeats that she is a
19 member of the Union, she filed grievance, and despite her right to join the Union and file
20 a grievance, NCSD transferred her back to the RCMS Registrar position and subsequently
21 terminated her. She then calls on NCSD defend the claims by some version of "eenie
22 meenie miney mo." Is she claiming violation based on her race? Her color? Her religion?
23 Her sex? Her sexual orientation? Her gender identity or expression? Her age or physical
24 or visual handicap? Her national origin? Or because of political or personal reasons or
25 affiliations? Whatever the basis of the claim, she says her transfer and subsequent
26 termination are discriminatory. She provides no other information. That paucity of
27 information in and of itself is enough of a shortfall to warrant dismissal of the Fifth Cause
28 of Action. Notwithstanding that fatal deficiency, if she had identified the category under

1 which she is claiming protection, she still fails. If her claim is for any category except
2 political affiliation or personal reasons, the burden-shifting analysis is the same as
3 discussed above.

4 If Ms. Baumgarten's argument is that the action taken was based on her political
5 affiliation or personal reasons, the Board is left to determine in the context of this case
6 and within the Board's jurisdiction under NRS 288.270(1)(f), the meaning of "personal
7 reasons or affiliations. See *Steven B. Kilgore v. City of Henderson and Henderson Police*
8 *Department*, Item No. 550H, EMRB Case No. A1-045763, at 9 (2005). In the EMRB
9 case of *Williams v. Las Vegas Metropolitan Police Department*, Item No. 619 (2006), 1,
10 the Board applied the definition of "personal reasons" as anything not related to merit or
11 fitness for duty.

12 In the Baumgarten case, we have no idea what she is claiming. What we do know
13 is that Ms. Baumgarten's duties and title were changed when a new principal was
14 appointed, which she did not grieve. We also know that four months later, the new
15 principal again made changes to the duties of the Secretary and Secretary-Registrar, and
16 subsequently terminated Ms. Baumgarten for a substantial list of reasons, which she calls
17 "petty," including but not limited to:

- 18 • Failure to properly process eighth grade students for eligibility for transfer to high
19 school, resulting in at least 13 students having to be returned to middle school after
20 being improperly advanced.
- 21 • Failure to properly manage documents related to the 13 students, including putting
22 the files in a desk drawer for the summer.
- 23 • Failure to follow up after the return to school to ensure the student retention was
24 processed correctly.
- 25 • Failure to properly process seventh-grade students for transfer to eighth grade.
- 26 • Improper processing of 21 student enrollments with missing immunizations.
- 27 • Two students were improperly enrolled with the wrong birthday, which prevented
28 records from being entered.

- 1 • Failure to complete the registration checklist with every student registration and
- 2 turning them in weekly, pursuant to directions given to her on May 9, 2024.
- 3 • Observed to be sleeping during secretary training.
- 4 • Failure to answer phone when the front office or health office calls her.
- 5 • Left a parent and child unattended in her office, causing significant issues for the
- 6 school.

7 In dismissing the Complainant’s discrimination complaint under NRS
8 288.270(1)(f) pursuant to *Nevada Service Employees Union v. Clark County Water*
9 *Reclamation District*, Case No. 2024-030, Item No. 905 (2024), the Board cited to *Reno*
10 *Police Protective Ass’n v. City of Reno*, 102 Nev. 98 (1986):

11
12 [a]n aggrieved employee must make a prima facie showing sufficient
13 to support the inference that protected conduct was a motivating factor
14 in the employer's decision. Once this is established, the burden shifts to
15 the employee to demonstrate by a preponderance of the evidence that
16 the same action would have taken place even in the absence of the
protected conduct. The aggrieved employee may then offer evidence
that the employer's proffered “legitimate” explanation is pretextual and
thereby conclusively restore the inference of unlawful motivation.

17 Based on that analysis, the Board found that the Complainant failed to plead
18 sufficient facts necessary to sustain a prima facie claim of discrimination. The Board then
19 noted: “The Board would like to remind practitioners of the need to ensure that
20 Complaints are fully supported so as to not waste the resources and time of the Board and
21 opposing parties.” That observation could easily be made in this matter.

22 Ms. Baumgarten’s Fifth Cause of Action fails.

23 **3. Conclusion**

24 By Ms. Baumgarten’s conclusory logic, once the arbitrator found that she should
25 be placed in the Secretary position at RCMS, she had a legal right to remain in that
26 position forever, and no changes to her duties would be allowed. That conclusion has no
27 basis in fact or in law. She cites no authority for such a conclusion. Accordingly, Ms.
28 Baumgarten’s Complaint should be dismissed in its entirety.

1 **C. RELATED PROCEEDINGS**

2 Respondent is not aware of any other pending or anticipated proceedings.

3 **D. LIST OF WITNESSES AND BRIEF SUMMARY OF EXPECTED**
4 **TESTIMONY**

5 1. April Sutton, principal of RCMS Middle School. Ms. Sutton was appointed to be
6 the principal of RCMS after Ms. Baumgarten was put into the Secretary position
7 pursuant to the arbitrator's Award. She was involved in assessing and evaluating
8 job duties of the Secretary and Secretary-Registrar in order to ensure that the
9 school functioned and excelled under her leadership. She is expected to testify
10 about her determination of those needs and the efficiency and proficiency of her
11 staff as well, including the Secretary and Secretary-Registrar. She is also expected
12 to testify about the issues related to the subsequent revision and redistribution of
13 duties between the Secretary and Secretary-Registrar, as well as Ms. Baumgarten's
14 termination.

15 2. Michelle Wright, Human Resources Director at Nye County School District, is
16 expected to testify as to all the procedures and processes that occurred related to
17 the hiring of a Secretary at RCMS, including Ms. Baumgarten's application
18 process. She is also expected to testify to all events which culminated in Ms.
19 Baumgarten's termination.

20 NCSD reserves the right to supplement its witness list and reserves the right to
21 cross-examine all witnesses called by Ms. Baumgarten. NCSD reserves the right
22 to call rebuttal witnesses as necessary.

23 **E. TIME NEEDED FOR PRESENTATION OF RESPONDENT'S CASE**

24 Respondent estimates it will require approximately six to eight hours to present
25 testimony supporting its position. This does not include cross-examination of
26 Complainant's witnesses or rebuttal witnesses, nor the amount of time required for
27 presentation of Complainant's case in chief.

28 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding

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document does not contain the Social Security Number of any person.

DATED this 3rd day of February, 2025

LEMONS, GRUNDY & EISENBERG

By: /s/ Rebecca Bruch
REBECCA BRUCH, ESQ. (SBN7289)
6005 Plumas St., Third Floor
Reno, Nevada 89519
*Attorney for Respondent NYE COUNTY
SCHOOL DISTRICT*

