

BEFORE THE GOVERNMENT

EMPLOYEE-MANAGEMENT RELATIONS BOARD

LANDER COUNTY CLASSROOM
TEACHERS ASSOCIATION,

Appellant,
vs.

CASE NO. 2025-014

LANDER COUNTY SCHOOL
DISTRICT,

APPEAL OF UNIT DETERMINATION

Respondent.

COMES NOW the Lander County Classroom Teachers Association (hereinafter
"LCCTA" or the "Association"), by and through its attorneys, Dyer Lawrence, LLP and Francis
C. Flaherty, pursuant to NRS 288.170(5) and hereby files its appeal of a unit determination made
by the Lander County School District ("LCSD" or the "District")

JURISDICTION

I

Nevada's Government Employee-Management Relations Board ("EMRB" or the
"Board") has jurisdiction in this matter pursuant to NRS 288.110(2) and NRS 288.170(5).

PARTIES

II

The District is a "local government employer," as that term is defined by NRS 288.060.

III

The Association is an "employee organization," as that term is defined by NRS 288.040.

FACTS

IV

The District has recognized the Association as the "bargaining agent," as that term in
defined in NRS 288.133, of the "bargaining unit," as that term is defined in NRS 288.134,
consisting of all LCSD employees licensed by the Nevada Department of Education ("NDOE"),

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1 excluding administrative employees of the District (the "Teacher Unit"). LCSD Classroom
2 Teachers are in the Teacher Unit.

3 **V**

4 In NAC 391.0897, NDOE requires that to serve as a substitute teacher, an individual must
5 possess a valid NDOE license with an endorsement as a substitute teacher.

6 **VI**

7 The District employs substitute teachers as needed to fill in for LCSD Classroom
8 Teachers. The District utilizes substitute teachers on both a short- and a long-term basis as the
9 need arises. The District uses substitute teachers to provide instruction in the classroom when
10 regularly assigned teachers are absent and for teaching positions for which there is no contract
11 teacher, *i.e.*, "LCSD Classroom Teacher."

12 **VII**

13 The District employs substitute teachers on a long-term basis to fill vacancies created by
14 the prolonged absence of an LCSD Classroom Teacher and/or to fill vacancies where the District
15 has not yet been able to hire a permanent LCSD Classroom Teacher for a position ("Long-Term
16 Substitute Teachers").

17 **VIII**

18 The District and the Association have engaged in discussions regarding inclusion of
19 Long-Term Substitute Teachers in the Teacher Unit. The Association's position is that Long-
20 Term Substitute Teachers have the requisite community of interest with LCSD Classroom
21 Teachers and other NDOE licensed LCSD employees in the Teacher Unit and should be placed
22 in the Teacher Unit. The District's position is to the contrary. The Association sought to
23 negotiate inclusion of Long-Term Substitute Teachers in the Teacher Unit. On April 28, 2025,
24 the District informed the Association:

25 Finally, the District has asserted a management right in connection with all
26 language proposed by the Association addressing the inclusion of long term
27 substitute teachers, and will not negotiate rights or benefits for long term
28 substitute teachers in connection with this negotiation because they are not
included in the Association's bargaining unit.

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IX

Pursuant to NRS 288.150, the Association and the District have negotiated the "Master Contract" between the District and the Association, which governs the terms and conditions of NDOE-licensed LCSD employees in the Teacher Unit.

X

The Master Contract contains provisions governing numerous mandatory subjects of bargaining set forth in NRS 288.150, including but not limited to: salary and other forms of direct monetary compensation; sick leave; insurance benefits; total hours of work required of an employee on each workday or workweek; total number of days' work required of an employee in a work year; and, teacher preparation time.

XI

The District makes contributions to Nevada's Public Employees' Retirement System ("PERS") on behalf of LCSD Classroom Teachers. The District also makes contributions to PERS on behalf of Long-Term Substitute Teachers.

XII

LCSD Classroom Teachers and the District execute individual employment contracts. Long-Term Substitute Teachers and the District also execute individual employment contracts. The individual employment contracts of LCSD Classroom Teachers and Long-Term Substitute Teachers are substantively identical.

XIII

The annual salary of LCSD Classroom Teachers is determined utilizing the "Certified Salary Schedule." The annual salary of Long-Term Substitute Teachers is determined utilizing the Certified Salary Schedule. The Certified Salary Schedule is appended to the Master Contract as Schedule A.

XIV

LCSD Classroom Teachers are credited with 112.5 hours of sick leave per year. LCSD Classroom Teachers may utilize sick leave in the manner set forth in Article 15.1.1 of the Master Contract. Long-Term Substitute Teachers are credited with 112.5 hours of sick leave per year.

1 Long-Term Substitute Teachers may utilize sick leave in the manner set forth in Article 15.1.1 of
2 the Master Contract.

3 **XV**

4 LCSD Classroom Teachers are scheduled to work 37.5 hours per work week. Long-Term
5 Substitute Teachers are are scheduled to work 37.5 hours per work week. LCSD Classroom
6 Teachers have a duty-free lunch of not less than 30 minutes without interruption. Long-Term
7 Substitute Teachers have a duty-free lunch of not less than 30 minutes without interruption.

8 **XVI**

9 The total number of days an LCSD Classroom Teacher is required to work per work year
10 is 151 days. The total number of days a Long-Term Substitute Teacher is required to work per
11 work year is 151 days.

12 **XVII**

13 LCSD Classroom Teachers are scheduled for no more than 58 hours of instruction
14 biweekly and are provided not less than 45 consecutive minutes during the work day for
15 preparation and planning. Long-Term Substitute Teachers are scheduled for no more than 58
16 hours of instruction biweekly and are provided with not less than 45 consecutive minutes during
17 the work day for preparation and planning.

18 **XVIII**

19 LCSD Classroom Teachers are expected to be available to parents and students for
20 consultation outside regular school hours at mutually convenient times. Long-Term Substitute
21 Teachers are expected to be available to parents and students for consultation outside regular
22 school hours at mutually convenient times.

23 **XIX**

24 LCSD Classroom Teachers are required to participate in open house night and
25 Parent-Teacher conference nights. Long-Term Substitute Teachers are required to participate in
26 open house night and Parent-Teacher conference nights.

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2 LCSD Classroom Teachers are required to prepare lesson plans for substitute teachers in
3 the event they are temporarily absent. Long-Term Substitute Teachers are required to prepare
4 lesson plans for substitute teachers in the event they are temporarily absent.

5 XXI

6 The District contributes \$1,000 per month to its health insurance PPO Fund for every
7 full-time LCSD Classroom Teacher enrolled in its health insurance PPO Plan and contributes up
8 to a maximum \$1,200 per month to cover the monthly employee only cost when the cost of a
9 full-time LCSD Classroom Teacher's monthly participation in the PPO Plan exceeds \$1,000. The
10 District contributes \$1,000 per month to its health insurance PPO Fund for every full-time Long-
11 Term Substitute Teacher enrolled in its health insurance PPO Plan and contributes up to a
12 maximum \$1,200 per month to cover the monthly employee only cost when the cost of a full-
13 time Long-Term Substitute Teacher's monthly participation in the PPO Plan exceeds \$1,000.

14 XXII

15 LCSD Classroom Teachers are supervised by LCSD school principals and/or assistant
16 principals. Long-Term Substitute Teachers are supervised by LCSD school principals and/or
17 assistant principals.

18 XXIII

19 LCSD Classroom Teachers and Long-Term Substitute Teachers work in the same LCSD
20 schools and interact with each other on a daily basis.

21 XXIV

22 The District requires LCSD Classroom Teachers to create a positive learning environment
23 to facilitate the personal, social, and intellectual development of students. In order to respond to
24 the individual needs and abilities of students, an LCSD Classroom Teacher must work closely
25 with other LCSD staff and the administration of the District. The District requires Long-Term
26 Substitute Teachers to create a positive learning environment to facilitate the personal, social,
27 and intellectual development of students in the absence of an LCSD Classroom Teacher. In order

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1 to respond to the individual needs and abilities of LCSD students, a Long-Term Substitute
2 Teacher must work closely with other LCSD staff and the administration of the District.

3 XXV

4 The qualifications to be an LCSD Classroom Teacher are: a high school diploma or
5 equivalent; a bachelors degree from an accredited college/university; a current Nevada teaching
6 certificate, on file in the District office; and, a desire to continue career improvement. The
7 qualifications to be a Long-Term Substitute Teacher are: a high school diploma or equivalent; a
8 bachelors degree from an accredited college/university; a current Nevada teaching certificate, on
9 file in the District office; and, a desire to continue career improvement.

10 XXVI

11 The essential functions of a Long-Term Substitute Teacher are: facilitating the personal,
12 social, and intellectual development of students; maintaining a positive learning environment and
13 responding to the individual needs of students; ensuring that all activities conform to District
14 guidelines; communicating effectively with members of the District and community; working
15 effectively with community organizations; reacting to change productively and handling other
16 tasks as assigned; supporting the value of an education; and, supporting the philosophy and
17 mission of the District. The essential functions of an LCSD Classroom Teacher include:
18 facilitating the personal, social, and intellectual development of students; maintaining a positive
19 learning environment and responding to the individual needs of students; ensuring that all
20 activities conform to District guidelines; communicating effectively with members of the District
21 and community; working effectively with community organizations; reacting to change
22 productively and handling other tasks as assigned; supporting the value of an education; and,
23 supporting the philosophy and mission of the District. Long-Term Substitute Teachers must be
24 able to work in noisy and crowded environments. LCSD Classroom Teachers must be able to
25 work in noisy and crowded environments.

26 XXVII

27 The general responsibilities of a Long-Term Substitute Teacher are: implementing
28 effective lessons in the absence of the LCSD Classroom Teacher; motivating students through

1 effective communication and evaluative feedback; demonstrating awareness of the needs of
2 students and providing for individual differences; setting high expectations for student
3 achievement and behavior; establishing and maintaining a positive climate for learning through
4 appropriate classroom management; seeing that District policies are observed during all
5 activities; obtaining advance approval of the regular LCSD Classroom Teacher and Principal for
6 all activities; adhering to all District health and safety policies, including all precautions of the
7 LCSD Bloodborne Pathogens Exposure Control Plan; and, other duties as assigned by the
8 Principal, or other LCSD Administrative Staff. The general responsibilities of an LCSD
9 Classroom Teacher include: implementing effective lessons; motivating students through
10 effective communication and evaluative feedback; demonstrating awareness of the needs of
11 students and providing for individual differences; setting high expectations for student
12 achievement and behavior; establishing and maintaining a positive climate for learning through
13 appropriate classroom management; seeing that District policies are observed during all
14 activities; obtaining advance approval of the Principal for all activities; adhering to all District
15 health and safety policies, including all precautions of the LCSD Bloodborne Pathogens
16 Exposure Control Plan; and, other duties as assigned by the Principal, or other LCSD
17 Administrative Staff.

18 APPEAL

19 **XXVIII**

20 The preceding paragraphs are restated and incorporated herein.

21 **XXIX**

22 The primary criterion for determining whether Long-Term Substitute Teachers are
23 appropriately included within the Teacher Unit is the community of interest among Long-Term
24 Substitute Teachers, LCSD Classroom Teachers and other NDOE-licensed LCSD employees in
25 the Teacher Unit.

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1 **XXX**

2 The community of interest among Long-Term Substitute Teachers, LCSD Classroom
3 Teachers and other NDOE-licensed LCSD employees in the Teacher Unit requires their inclusion
4 in the Teacher Unit.

5 **REQUESTED RELIEF**

6 **WHEREFORE, the Association prays for an Order from this Board that Long-**
7 **Term Substitute Teachers are in the Teacher Unit.**

8 **RESPECTFULLY SUBMITTED** this 21st day of July, 2025.

9 DYER LAWRENCE, LLP

10
11 By: 

12 Francis C. Flaherty
13 Nevada Bar No. 5303

14 Attorneys for Appellant, LCCTA
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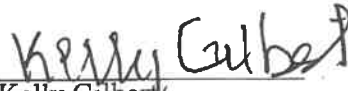
Dyer Lawrence, LLP
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

CERTIFICATE OF SERVICE

Pursuant to NAC 288.080(4) and NAC 288.200(2), I certify that I am an employee of Dyer Lawrence, LLP, and that on the 21st day of July, 2025, I sent via certified mail a true and correct copy of the within APPEAL OF UNIT DETERMINATION addressed to the following:

Sondra Torgerson
President
Board of School Trustees
Lander County School District
450 E. 6th Street
P.O. Box 1300
Battle Mountain NV 89820
USPS Tracking No. 9589 0710 5270 2370 1806 86

Russ Klein
Superintendent
Lander County School District
450 E. 6th Street
P.O. Box 1300
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Kelly Gilbert

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

Lander County School District (Respondent)

**Answer to Appellant's Appeal of
Unit Determination**

FILED
August 18, 2025
State of Nevada
E.M.R.B.
3:35 p.m.

1 S. Jordan Walsh, Esq.
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10 Attorneys for Respondent
11 LANDER COUNTY SCHOOL DISTRICT

12 BEFORE THE GOVERNMENT

13 EMPLOYEE-MANAGEMENT RELATIONS BOARD

14 LANDER COUNTY CLASSROOM
15 TEACHERS ASSOCIATION,

16 Appellant,

17 v.

18 LANDER COUNTY SCHOOL DISTRICT,

19 Respondent.

RESPONDENT'S ANSWER TO
APPELLANT'S APPEAL OF UNIT
DETERMINATION

Case 2025-014

20 Respondent, the Lander County School District (the "District"), by and through its counsel
21 of record, Littler Mendelson, P.C., answers Appellant's, Lander County Classroom Teachers
22 Association's ("LCCTA"), Appeal of Unit Determination pursuant as follows:

23 I.

24 The District denies the allegations of Paragraph I.

25 PARTIES

26 II.

27 The District admits the allegations of Paragraph II.

28 III.

The District admits the allegations of Paragraph III.

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FACTS

IV.

The District admits that it has recognized the Association as the “bargaining agent,” as the term is defined in NRS 288.133. The District denies all other allegations of Paragraph IV.

V.

The District admits the allegations of Paragraph V.

VI.

The District admits the allegations of Paragraph VI.

VII.

The District denies the allegations of Paragraph VII .

VIII.

The District denies the allegations of Paragraph VIII.

IX.

The District denies the allegations of Paragraph IX.

X.

The District admits the allegations of Paragraph X.

XI.

The District admits the allegations of Paragraph XI.

XII.

The District denies the allegations of Paragraph XII.

XIII.

The District denies the allegations of Paragraph XIII.

XIV.

The District admits the allegations of Paragraph XIV.

XV.

The District admits the allegations of Paragraph XV.

XVI.

The District admits the allegations of Paragraph XVI.

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XVII.

The District admits the allegations of Paragraph XVII.

XVIII.

The District admits the allegations of Paragraph XVIII.

XIX.

The District admits the allegations of Paragraph XIX.

XX.

The District admits the allegations of Paragraph XX.

XXI.

The District admits the allegations of Paragraph XXI.

XXII.

The District admits the allegations of Paragraph XXII.

XXIII.

The District admits the allegations of Paragraph XXIII.

XXIV.

The District admits the allegations of Paragraph XXIV.

XXV.

The District denies the allegations of Paragraph XXV.

XXVI.

The District denies the allegations of Paragraph XXVI.

XXVII.

The District denies the allegations of Paragraph XXVII.

APPEAL

XXVIII.

In response to Paragraph XXVIII of the Appeal, the District repeats and realleges its responses set forth fully herein.

XXIX.

Paragraph XXIX of the Appeal states legal conclusions to which no response is required.

1 To the extent that a response is required, the District denies all allegations and conclusions
2 contained in Paragraph XXIX.

3 **XXX.**

4 Paragraph XXX of the Appeal states legal conclusions to which no response is required. To
5 the extent that a response is required, the District denies all allegations and conclusions contained
6 in Paragraph XXIX.

7 **REQUESTED RELIEF**

8 WHEREFORE, the District prays for relief as follows:

9 That the Nevada Government-Employee Management Relations Board issue an Order
10 establishing that long-term substitute teachers do not have a community of interest with fully
11 licensed "Teachers" as defined by the Master Contract, and on this basis deny the Association's
12 Appeal..

13
14 Dated: August 18, 2025

LITTLER MENDELSON, P.C.

15
16 /s/ S. Jordan Walsh, Esq.

17 S. Jordan Walsh, Esq.

18 Attorneys for Respondent
19 LANDER COUNTY SCHOOL DISTRICT
20
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1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a party to
3 the within action. My business address is 501 W. Broadway, Suite 900, San Diego, CA 92101-
4 3577. On August 18, 2025, I served the within document(s):

5 **RESPONDENT'S ANSWER TO APPELLANT'S APPEAL OF UNIT DETERMINATION**

- 6 ☒ By **Email** - by e-mailing a copy of the document(s) listed above to the person(s) at the e-
7 mail address(es) set forth below.
- 8 ☒ By **United States Mail** – a true copy of the document(s) listed above for collection and
9 mailing following the firm's ordinary business practice in a sealed envelope with postage
10 thereon fully prepaid for deposit in the United States mail at Las Vegas, Nevada addressed
11 as set forth below.

12 Francis C. Flaherty
13 Dyer Lawrence, LLP
14 2805 Mountain Street
15 Carson City, NV 89703
16 fflaherty@dyerlawrence.com
17 Attorney for Appellant

18 I am readily familiar with the firm's practice of collection and processing correspondence
19 for mailing and for shipping via overnight delivery service. Under that practice it would be
20 deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an
21 overnight delivery service pick-up box or office on the same day with postage or fees thereon fully
22 prepaid in the ordinary course of business.

23 I declare under penalty of perjury that the foregoing is true and correct. Executed on August
24 18, 2025, at San Diego, CA.

25 /s/ Erin J. Melwak

26 Erin J. Melwak
27 Littler Mendelson
28

Lander County Classroom Teachers Association(Appellant)

Prehearing Statement

BEFORE THE GOVERNMENT
EMPLOYEE-MANAGEMENT RELATIONS BOARD

LANDER COUNTY CLASSROOM
TEACHERS ASSOCIATION,

Appellant,

CASE NO. 2025-014

vs.

LANDER COUNTY SCHOOL
DISTRICT,

APPELLANT'S PREHEARING
STATEMENT

Respondent.

COMES NOW, Appellant, Lander County Classroom Teachers Association ("LCCTA" or the "Association"), by and through its undersigned counsel and pursuant to NAC 288.250 and files this Prehearing Statement.

A.

ISSUES OF LAW AND FACT

1. The certain issue of fact and law for determination by Nevada's Government Employee-Management Relations Board ("EMRB" or "Board") that gave rise to the instant Appeal of Unit Determination ("Appeal") is whether there is a sufficient community of interest among current LCCTA Bargaining Unit employees and long-term substitutes who fill vacant Classroom Teacher or other LCCTA Bargaining Unit positions in the Lander County School District ("LCSD" or "District") for one-half or more of the Contracted School Year, who may also be referred to in this Prehearing Statement at the hearing of this matter as "Interim Educators," to include those employees (Interim Educators) in the LCCTA Bargaining Unit.
2. As briefly discussed and highlighted in Section B(1) below, there may be an additional issue of fact and law for the Board's determination, *i.e.*, whether there is a sufficient community of interest among current LCCTA Bargaining Unit

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employees and School Social Workers, Speech Pathologists and School Psychologists to include those employees in the LCCTA Bargaining Unit.

B.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Facts

(A) Background

The District has recognized the Association as the bargaining agent for the bargaining unit comprised of all LCSD employees: (1) licensed by the Nevada Department of Education ("NDOE"); and, (2) eligible for membership in LCCTA, but not NDOE licensed administrative staff. See Articles 1.2 and 2.1 of the Master Contract between the District and the Association (the "Master Contract"). The Association also asserts that the LCCTA Bargaining Unit includes teachers, counselors, school nurses, social workers, speech pathologists and school psychologists.

The District has long utilized substitutes to cover LCSD Classroom Teacher and other LCCTA Bargaining Unit position absences. And when an LCSD Classroom Teacher or other LCCTA Bargaining Unit position absence is prolonged, the District utilizes long-term substitutes. The District also utilizes long-term substitutes when it cannot find an NDOE licensed employee to fill a vacant LCSD Classroom Teacher or other LCCTA Bargaining Unit position. The District is required to make PERS contributions for Interim Educators, *i.e.*, long-term substitutes who: fill vacant LCSD Classroom Teacher or other LCCTA Bargaining Unit positions; and/or, who cover the absence of an LCSD Classroom Teacher or other LCCTA Bargaining Unit position for one-half or more of the Contracted School Year (as defined in the Master Contract).

Notably, the District's reliance on long-term substitutes to fill LCSD Classroom Teacher and other LCCTA Bargaining Unit position vacancies has increased in recent years. In the 2024 - 2025 school year, LCSD had seventy-one (71) positions in the LCCTA Bargaining Unit. Twenty-three (23) of those LCCTA Bargaining Unit positions (32%), were filled by long-term substitutes. For the 2025 - 2026 school year, there were sixty-nine (69) LCCTA Bargaining Unit

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1 positions at LCSD, and twenty-two (22) of those LCCTA Bargaining Unit positions were filled
2 by long-term substitutes, which again is 32% of LCCTA Bargaining Unit positions.

3 **(B) The Grievance and the District's Motion to Dismiss**

4 The District filed a motion to dismiss the Appeal ("Motion"), which the Board has
5 denied. In its Motion, the District falsely claimed that on April 26, 2024, "the District
6 specifically told LCCTA that long-term substitute teachers were not included in the bargaining
7 unit." Motion at 5:21-27; *see also* Motion at 2:25 - 3:13. In support of its claim, the District
8 provided the Board with Exhibits 3 and 4 in support of its Motion. However, those exhibits
9 provided by the District are simply not relevant to the District's claim that the Appeal is time-
10 barred. An examination of the proposed MOU (Motion EX 3) and the District's email response
11 to that proposed MOU (Motion EX 4) shows that both documents are completely devoid of even
12 a single or stray reference to inclusion of long-term substitutes in the LCCTA Bargaining Unit.

13 *Rather, the documents address a dispute regarding inclusion of social workers and*
14 *school psychologists in the LCCTA Bargaining Unit, which LCCTA asserts has been resolved*
15 *by their inclusion. To the surprise of LCCTA, in its reply in support of its Motion, the District*
16 *asserts that School Social Workers, Speech Pathologists and School Psychologists are not in*
17 *the LCCTA Bargaining Unit. LCSD Reply in Support of LCSD Motion to Dismiss Appeal at 5*
18 *n.1.*

19 Long-term substitutes who fill vacant LCSD Classroom Teacher or other LCCTA
20 Bargaining Unit positions and/or who cover the absence of an LCSD Classroom Teacher or other
21 LCCTA Bargaining Unit position for one-half of the Contracted School Year or more are eligible
22 for membership in LCCTA. On September 12, 2024, LCCTA filed a grievance alleging a
23 violation of the Master Contract in connection with the involuntary transfer of Natalee Payne, an
24 Interim Educator covering the absence of an LCSD Classroom Teacher for one-half of the 2024 -
25 2025 Contracted School Year and also filling a vacant LCSD Classroom Teacher position for the
26 other half of the 2024 - 2025 Contracted School Year.

27 The District denied the grievance on various grounds. Although the grievance did not
28 cite the definition of "Teacher" nor the Recognition Article in the Master Agreement, nor even

1 raise or highlight Ms. Payne's status as an Interim Educator, in denying the grievance, the
2 District asserted that Ms. Payne and all other long-term substitutes were not part of the LCCTA
3 Bargaining Unit, which is contrary to LCCTA's position. On October 9, 2024, LCCTA informed
4 the District that it wished to mediate the grievance, and the District agreed to do so. Mediation
5 took place on January 10, 2025, and part of the mediation outcome was an agreement to continue
6 discussion of the issue—whether to include long-term substitutes who fill vacant LCSD
7 Classroom Teacher or other LCCTA Bargaining Unit positions and/or who cover the absence of
8 an LCSD Classroom Teacher or other LCCTA Bargaining Unit position for one-half of the
9 Contracted School Year or more in the LCCTA Bargaining Unit (Interim Educators)—during the
10 parties' negotiations for a successor agreement to the Master Contract.

11 But despite the agreement at mediation, at the very first negotiation meeting between
12 LCCTA and the District on March 12, 2025, the District informed LCCTA that it was asserting
13 its management rights, and it would NOT negotiate or discuss inclusion of Interim Educators in
14 the LCCTA Bargaining Unit. And on April 28, 2025, the District's Negotiations Team emailed a
15 memorandum to the Association's Negotiations Team formally informing the Association as
16 follows:

17 Finally, the District has asserted a management right in connection with all
18 language proposed by the Association addressing the inclusion of long term
19 substitute teachers, and will not negotiate rights or benefits for long term
20 substitute teachers in connection with this negotiation because they are not
21 included in the Association's bargaining unit.

22 Therefore, having received "unequivocal notice" that the District would engage in no
23 further discussion regarding inclusion of Interim Educators in the LCCTA Bargaining Unit, on
24 July 21, 2025, the Association timely filed its appeal of the District's determination of the
25 bargaining unit pursuant to NRS 288.170(5).

26 As alluded to above, the Board denied the District's Motion to Dismiss, finding that there
27 are factual disputes that must be resolved.

28 **(C) The Unit and Long-Term Substitutes/Interim Educators**

In NAC 391.0897, the Nevada Department of Education ("NDOE") requires that to serve
as a substitute teacher, an individual must possess a valid NDOE license with an endorsement as

1 a substitute teacher. The District employs substitute teachers as needed to fill in for LCSD
2 Classroom Teachers. The District utilizes substitute teachers on both a short- and a long-term
3 basis as the need arises. The District uses substitute teachers to provide instruction in the
4 classroom when regularly assigned teachers are absent and for teaching positions for which there
5 is no contract teacher, *i.e.*, "LCSD Classroom Teacher."

6 The District employs substitute teachers on a long-term basis to fill vacancies created by
7 the prolonged absence of an LCSD Classroom Teacher and/or to fill vacancies where the District
8 has not yet been able to hire a permanent LCSD Classroom Teacher for a position ("Long-Term
9 Substitute Teachers" or "Interim Educators").

10 The District and the Association have engaged in discussions regarding inclusion of
11 Long-Term Substitute Teachers in the Teacher Unit. The Association's position is that Long-
12 Term Substitute Teachers who are Interim Educators have the requisite community of interest
13 with LCSD Classroom Teachers and other NDOE licensed LCSD employees in the Teacher Unit
14 and should be placed in the Teacher Unit. The District's position is to the contrary. The
15 Association sought to negotiate inclusion of Long-Term Substitute Teachers in the Teacher Unit.
16 But on April 28, 2025, the District informed the Association it was asserting its management
17 right not to do so.

18 Pursuant to NRS 288.150, the Association and the District have negotiated the "Master
19 Contract" between the District and the Association, which governs the terms and conditions of
20 NDOE-licensed LCSD employees in the Teacher Unit. The Master Contract contains provisions
21 governing numerous mandatory subjects of bargaining set forth in NRS 288.150, including but
22 not limited to: salary and other forms of direct monetary compensation; sick leave; insurance
23 benefits; total hours of work required of an employee on each workday or workweek; total
24 number of days' work required of an employee in a work year; and, teacher preparation time.

25 The District makes contributions to Nevada's Public Employees' Retirement System
26 ("PERS") on behalf of LCSD Classroom Teachers. The District also makes contributions to
27 PERS on behalf of Interim Educators. LCSD Classroom Teachers and the District execute
28 individual employment contracts. Interim Educators and the District also execute individual

1 employment contracts. The individual employment contracts of LCSD Classroom Teachers and
2 Interim Educators are substantively identical.

3 The annual salary of LCSD Classroom Teachers is determined utilizing the "Certified
4 Salary Schedule." The annual salary of Interim Educators is determined utilizing the Certified
5 Salary Schedule. The Certified Salary Schedule is appended to the Master Contract. LCSD
6 Classroom Teachers are credited with 112.5 hours of sick leave per year. LCSD Classroom
7 Teachers may utilize sick leave in the manner set forth in Article 15.1.1 of the Master Contract.
8 Interim Educators are credited with 112.5 hours of sick leave per year. Interim Educators may
9 utilize sick leave in the manner set forth in Article 15.1.1 of the Master Contract.

10 LCSD Classroom Teachers are scheduled to work 37.5 hours per work week. Interim
11 Educators are scheduled to work 37.5 hours per work week. LCSD Classroom Teachers have a
12 duty-free lunch of not less than 30 minutes without interruption. Interim Educators have a
13 duty-free lunch of not less than 30 minutes without interruption.

14 The total number of days an LCSD Classroom Teacher is required to work per work year
15 is 151 days. The total number of days an Interim Educators is required to work per work year is
16 151 days. LCSD Classroom Teachers are scheduled for no more than 58 hours of instruction
17 biweekly and are provided not less than 45 consecutive minutes during the work day for
18 preparation and planning. Interim Educators are scheduled for no more than 58 hours of
19 instruction biweekly and are provided with not less than 45 consecutive minutes during the work
20 day for preparation and planning.

21 LCSD Classroom Teachers are expected to be available to parents and students for
22 consultation outside regular school hours at mutually convenient times. Interim Educators are
23 expected to be available to parents and students for consultation outside regular school hours at
24 mutually convenient times. LCSD Classroom Teachers are required to participate in open house
25 night and Parent-Teacher conference nights. Interim Educators are required to participate in
26 open house night and Parent-Teacher conference nights.

27 ///

28 ///

1 LCSD Classroom Teachers are required to prepare lesson plans for substitute teachers in
2 the event they are temporarily absent. Interim Educators are required to prepare lesson plans for
3 substitute teachers in the event they are temporarily absent.

4 The District contributes \$1,000 per month to its health insurance PPO Fund for every
5 full-time LCSD Classroom Teacher enrolled in its health insurance PPO Plan and contributes up
6 to a maximum \$1,200 per month to cover the monthly employee only cost when the cost of a
7 full-time LCSD Classroom Teacher's monthly participation in the PPO Plan exceeds \$1,000. The
8 District contributes \$1,000 per month to its health insurance PPO Fund for every full-time
9 Interim Educator enrolled in its health insurance PPO Plan and contributes up to a maximum
10 \$1,200 per month to cover the monthly employee only cost when the cost of an Interim
11 Educator's monthly participation in the PPO Plan exceeds \$1,000.

12 LCSD Classroom Teachers are supervised by LCSD school principals and/or assistant
13 principals. Interim Educators are supervised by LCSD school principals and/or assistant
14 principals. LCSD Classroom Teachers and Interim Educators work in the same LCSD schools
15 and interact with each other on a daily basis.

16 The District requires LCSD Classroom Teachers to create a positive learning environment
17 to facilitate the personal, social, and intellectual development of students. In order to respond to
18 the individual needs and abilities of students, an LCSD Classroom Teacher must work closely
19 with other LCSD staff and the administration of the District. The District requires Interim
20 Educators to create a positive learning environment to facilitate the personal, social, and
21 intellectual development of students in the absence of an LCSD Classroom Teacher. In order to
22 respond to the individual needs and abilities of LCSD students, an Interim Educator must work
23 closely with other LCSD staff and the administration of the District.

24 The qualifications to be an LCSD Classroom Teacher are: a high school diploma or
25 equivalent; a bachelors degree from an accredited college/university; a current Nevada teaching
26 certificate, on file in the District office; and, a desire to continue career improvement. The
27 qualifications to be an Interim Educators are: a high school diploma or equivalent; a bachelors //

28 //

1 degree from an accredited college/university; a current Nevada teaching certificate, on file in the
2 District office; and, a desire to continue career improvement.

3 *The essential functions of an Interim Educators are:* facilitating the personal, social, and
4 intellectual development of students; maintaining a positive learning environment and
5 responding to the individual needs of students; ensuring that all activities conform to District
6 guidelines; communicating effectively with members of the District and community; working
7 effectively with community organizations; reacting to change productively and handling other
8 tasks as assigned; supporting the value of an education; and, supporting the philosophy and
9 mission of the District. *The essential functions of an LCSD Classroom Teacher include:*
10 facilitating the personal, social, and intellectual development of students; maintaining a positive
11 learning environment and responding to the individual needs of students; ensuring that all
12 activities conform to District guidelines; communicating effectively with members of the District
13 and community; working effectively with community organizations; reacting to change
14 productively and handling other tasks as assigned; supporting the value of an education; and,
15 supporting the philosophy and mission of the District. Interim Educators must be able to work in
16 noisy and crowded environments. LCSD Classroom Teachers must be able to work in noisy and
17 crowded environments.

18 *The general responsibilities of an Interim Educator are:* implementing effective lessons
19 in the absence of the LCSD Classroom Teacher; motivating students through effective
20 communication and evaluative feedback; demonstrating awareness of the needs of students and
21 providing for individual differences; setting high expectations for student achievement and
22 behavior; establishing and maintaining a positive climate for learning through appropriate
23 classroom management; seeing that District policies are observed during all activities; obtaining
24 advance approval of the regular LCSD Classroom Teacher and Principal for all activities;
25 adhering to all District health and safety policies, including all precautions of the LCSD
26 Bloodborne Pathogens Exposure Control Plan; and, other duties as assigned by the Principal, or
27 other LCSD Administrative Staff. *The general responsibilities of an LCSD Classroom Teacher*
28 *include:* implementing effective lessons; motivating students through effective communication

1 and evaluative feedback; demonstrating awareness of the needs of students and providing for
2 individual differences; setting high expectations for student achievement and behavior;
3 establishing and maintaining a positive climate for learning through appropriate classroom
4 management; seeing that District policies are observed during all activities; obtaining advance
5 approval of the Principal for all activities; adhering to all District health and safety policies,
6 including all precautions of the LCSD Bloodborne Pathogens Exposure Control Plan; and, other
7 duties as assigned by the Principal, or other LCSD Administrative Staff.

8 **2. Law**

9 **A. Nevada Revised Statutes**

10 Subsections 1 and 5 of NRS 288.170 provide:

11 1. Each local government employer which has recognized one or more
12 employee organizations shall determine, after consultation with the recognized
13 organization or organizations, which group or groups of its employees constitute
14 an appropriate unit or units for negotiating. *The primary criterion for that*
15 *determination must be the community of interest among the employees*
16 *concerned.*

17 * * * *

18 5. If any employee organization is aggrieved by the determination of a
19 bargaining unit, it may appeal to the Board. Subject to judicial review, the
20 decision of the Board is binding upon the local government employer and
21 employee organizations involved. *The Board shall apply the same criterion as*
22 *specified in subsection 1.*

23 (Emphasis added).

24 NRS 288.110(4) provides:

25 The Board may not consider any complaint or appeal filed more than 6 months
26 after the occurrence which is the subject of the complaint or appeal.

27 **B. Nevada Administrative Code**

28 NAC 288.270 provides:

The submission of an appeal made pursuant to NRS 288.160 or 288.170 must
follow the same form outlined for complaints except that the terms "appeal" and
"appellant" must be substituted for "complaint" and "complainant."

And NAC 288.375(3) provides:

The Board may dismiss a matter for any of the following reasons:

* * * *

1 3. If the complainant, within a reasonable time, fails to prosecute its
2 complaint.

3 **C. Nevada Supreme Court**

4 Interpreting and applying NRS 288.110(4), the Nevada Supreme Court observed:

5 claims accrue when the violation or injury occurs. With regard to the NLRA,
6 several federal circuit courts apply the "unequivocal notice" rule, which means
7 that the limitations period begins to run "when the victim of an unfair labor
8 practice receives unequivocal notice of a final adverse decision."

9 *City of North Las Vegas v. EMRB*, 127 Nev. 631, 639, 261 P. 3d 1071, 1076 (2011) (quoting
10 *NLRB v. Public Serv. Elec. & Gas Co.*, 157 F.3d 222, 227 (3rd Cir. 1998)). The supreme court
11 then concluded that likewise, it "interpret[s] the NRS Chapter 288 limitations period to start
12 running when the alleged victim receives unequivocal notice of a final adverse decision." *Id.*,
13 261 P.3d at 1077 (citing *Cone v. Nev. Serv. Emples. Union/SEIU Local 1107*, 116 Nev. 473, 477
14 n.2, 998 P.2d 1178, 1181 n.2 (2000)).

15 In the *City of North Las Vegas* case, the supreme court also held that the doctrine of
16 equitable tolling applied to the NRS 288.110(4) limitations period. The court noted that it had
17 previously recognized equitable tolling for discrimination claims addressed to the Nevada Equal
18 Rights Commission. 127 Nev. at 640, 261 P. 3d at 1077 (citing *Copeland v. Desert Inn Hotel*, 99
19 Nev. 823, 826, 673 P.2d 490, 492 (1983). The court held:

20 the following factors, among any other relevant considerations, should be
21 analyzed when determining whether equitable tolling will apply: [1] the
22 claimant's diligence, [2] knowledge of the relevant facts, [3] reliance on
23 misleading authoritative agency statements and/or misleading employer conduct,
24 and [4] any prejudice to the employer.

25 *Id.* (numbering added).

26 **D. EMRB Precedent**

27 In *Douglas Cty. Prof. Educ. Ass'n v. Douglas Cty. Sch. Dist.*, the Board explained:

28 In considering the criteria for testing community of interest, the Board, in
past decisions, has utilized all or part of the *following factors*, depending on the
particular employees and situations at issue: *sharing an identity of career paths,*
desires of the affected employees, similarity in the qualifications, skills and
training, commonality of supervision, similarity in the kind of work performed,
similarity in employment benefits, hours of work and other terms and
conditions of employment, uniformity in personnel policy, geographic

1 *proximity, common objectives in providing services, the employee's*
2 *organizational structure, the frequency of contact among the employees.*

3 Item No. 230, Case No. A1-045442 (Sep. 29, 1989) at 4:15-24 (emphasis added) (citing Item
4 Nos. 4, 11, 21, 43, 96 and 185).

5 In *Nye Cty. Law Enforcement Ass'n v. Nye Cty.*, the Board stated:

6 *A community of interest[] includes, among other considerations, similarity in*
7 *duties, skills, working conditions, job classifications, employee benefits, and the*
8 *amount of interchange or transfer or employees, integration of an employer's*
9 *operations and supervision of employees. In addition the Board generally favors*
10 *larger wall-to-wall bargaining units in order to minimize the practical difficulties*
11 *on a local government employer that result from a proliferation of bargaining units*
12 *and to serve as a safeguard for employees against the diluted effectiveness*
13 *caused by smaller and fragmented bargaining units.*

14 Item No. 805, Case No. A1-046123 (June 22, 2015) at 6:1-10 (emphasis added) (citing
15 *Operating Eng'rs Local 501 v. Las Vegas Convention and Visitors Auth.*, Item No. 96, Case No.
16 A1-045-323 (May 5, 1980) and *In the Matter of IAFF Local 731 and City of Reno*, Item No. 4
17 (Mar. 6, 1972)).

18 **3. Argument**

19 **A. The District has Delegated Determination of the Unit to the Association**

20 The District has recognized the Association as "the exclusive representative of all
21 certified personnel as defined in [Art.] 1.2" of the collectively bargained Master Contract
22 between LCCTA and LCSD . Article 1.2 of the Master Contract defines "Teacher" as follows:
23 "all licensed staff members *including* counselors and school nurses, *eligible for membership in*
24 *the Lander County Classroom Teachers Association* excluding the administrative staff."
25 (Emphasis added). Thus, by use of the term "all" and "including," the parties have broadly
26 defined the term "Teacher" to include all LCSD employees licensed by NDOE, excluding
27 therefrom only "administrative staff," who are precisely and narrowly defined in Art. 1.14 of the
28 Master Contract as follows: "The term 'Administrative Staff' as used in this contract shall mean
the Superintendent, Principal, or others that may be added to the system, not to include
Teachers."

Thus, the first component of the definition of "Teacher" is broad and inclusive, and the
second component is an LCSD employee who is "eligible for membership in the Lander County

1 Classroom Teachers Association.” LCCTA has determined that Long-Term Substitutes who are
2 Interim Educators are eligible for membership in the Association, and numerous Interim
3 Educators have become dues-paying members of LCCTA. Notably, the dues of Interim
4 Educators are collected in the same manner as that of LCSD Classroom Teachers—via payroll
5 deduction as set forth in Art. 16.1 of the Master Contract. Therefore, the District has already
6 agreed that any NDOE licensed employee, excluding “administrative staff” who the Association
7 determines is eligible for membership therein, is in fact covered by the Master Contract and a
8 member of the LCCTA Bargaining Unit. This delegation to the Association is consistent with
9 one of the Recitals in the Preamble to the Master Contract, wherein the District and the
10 Association acknowledged that “the members of the teaching profession are particularly qualified
11 to assist in the improvement of education standards.”

12 **B. There is Strong Community of Interest Among LCSD Long-Term Substitute**
13 **Teachers Who are Interim Educators and the Other NDOE Licensed LCSD**
Employees in the LCCTA Bargaining Unit

14 As detailed in Section B(2)(D) *supra*, the Board has utilized the following factors to
15 determine a community of interest:

- 16 - sharing an identity of career paths
- 17 - desires of the affected employees
- 18 - similarity in the qualifications, skills and training
- 19 - commonality of supervision/supervision of employees
- 20 - similarity in the kind of work performed
- 21 - similarity in employment benefits, hours of work and other terms and conditions
22 of employment
- 23 - uniformity in personnel policy
- 24 - geographic proximity
- 25 - common objectives in providing services
- 26 - the employee's organizational structure
- 27 - the frequency of contact among the employees
- 28 - similarity in duties, skills, working conditions, job classifications, employee
benefits

- the amount of interchange or transfer of employees
- integration of an employer's operations

And as noted, the Board has stated that it favors larger wall-to-wall bargaining units in order to minimize the practical difficulties on a local government employer that result from a proliferation of bargaining units and to serve as a safeguard for employees against the diluted effectiveness caused by smaller and fragmented bargaining units. *Douglas Cty. Prof. Educ. Ass'n v. Douglas Cty. Sch. Dist.*, Item No. 230, Case No. A1-045442 (Sep. 29, 1989) at 4:15-24 (emphasis added) (citing Item Nos. 4, 11, 21, 43, 96 and 185); *Nye Cty. Law Enforcement Ass'n v. Nye Cty.*, Item No. 805, Case No. A1-046123 (June 22, 2015) at 6:1-10 (emphasis added) (citing *Operating Eng'rs Local 501 v. Las Vegas Convention and Visitors Auth.*, Item No. 96, Case No. A1-045-323 (May 5, 1980) and *In the Matter of IAFF Local 731 and City of Reno*, Item No. 4 (Mar. 6, 1972)).

An examination of the facts set forth in Section B(1)(C) *supra* demonstrate that application of the Board's factors strongly militates for inclusion of Long-Term Substitute Teachers who serve as Interim Educators in the LCCTA Bargaining Unit. Regarding current LCCTA Bargaining Unit members and Long-Term Substitute Teachers who serve as Interim Educators:

- All must possess an NDOE issued license
- The District employs substitute teachers on a long-term basis to fill vacancies created by the prolonged absence of an LCSD Classroom Teacher and/or to fill vacancies where the District has not yet been able to hire a permanent LCSD Classroom Teacher for a position, *i.e.*, an Interim Educator.
- The District makes PERS contributions on behalf of LCSD Classroom Teachers and on behalf of Long-Term Substitute Teachers who serve as Interim Educators.
- Both LCSD Classroom Teachers and Long-Term Substitute Teachers who serve as Interim Educators execute individual employment contracts. The individual employment contracts of LCSD Classroom Teachers and Long-Term Substitute Teachers who serve as Interim Educators are substantively identical.
- The annual salaries of LCSD Classroom Teachers and Long-Term Substitute Teachers who serve as Interim Educators are all determined utilizing the Certified Salary Schedule from the Master Contract.
- Both LCSD Classroom Teachers and Long-Term Substitute Teachers who serve as Interim Educators are credited with 112.5 hours of sick leave per year, and all

1 may only utilize sick leave in the manner set forth in Article 15.1.1 of the Master
2 Contract.

- 3 - Both LCSD Classroom Teachers and Long-Term Substitute Teachers who serve
4 as Interim Educators are scheduled to work 37.5 hours per work week.
- 5 - Both LCSD Classroom Teachers and Long-Term Substitute Teachers who serve
6 as Interim Educators have a duty-free lunch of not less than 30 minutes without
7 interruption.
- 8 - The total number of days that both LCSD Classroom Teachers and Long-Term
9 Substitute Teachers who serve as Interim Educators are required to work per work
10 year is 151 days.
- 11 - LCSD Classroom Teachers and Long-Term Substitute Teachers who serve as
12 Interim Educators are all scheduled for no more than 58 hours of instruction
13 biweekly and are provided not less than 45 consecutive minutes during the work
14 day for preparation and planning.
- 15 - Both LCSD Classroom Teachers and Long-Term Substitute Teachers who serve
16 as Interim Educators are expected to be available to parents and students for
17 consultation outside regular school hours at mutually convenient times.
- 18 - Both LCSD Classroom Teachers and Long-Term Substitute Teachers who serve
19 as Interim Educators are required to participate in open house night and
20 Parent-Teacher conference nights.
- 21 - LCSD Classroom Teachers and Long-Term Substitute Teachers who serve as
22 Interim Educators all are required to prepare lesson plans for substitute teachers in
23 the event they are temporarily absent.
- 24 - The District contributes \$1,000 per month to its health insurance PPO Fund for
25 every full-time LCSD Classroom Teacher and for every full-time Long-Term
26 Substitute Teacher who serves as Interim Educator enrolled in its health insurance
27 PPO Plan and contributes up to a maximum \$1,200 per month to cover the
28 monthly employee only cost when the cost of a full-time LCSD Classroom
Teacher's or full-time Long-Term Substitute Teacher who serves as an Interim
Educator's monthly participation in the PPO Plan exceeds \$1,000.
- Both LCSD Classroom Teachers and Long-Term Substitute Teachers who serve
as Interim Educators are supervised by LCSD school principals and/or assistant
principals.
- LCSD Classroom Teachers and Long-Term Substitute Teachers who serve as
Interim Educators work in the same LCSD schools and interact with each other on
a daily basis.
- The District requires LCSD Classroom Teachers and Long-Term Substitute
Teachers who serve as Interim Educators to create a positive learning environment
to facilitate the personal, social, and intellectual development of students. In
order to respond to the individual needs and abilities of students, both LCSD
Classroom Teachers and Long-Term Substitute Teachers who serve as Interim
Educators must work closely with other LCSD staff and the administration of the
District.

1 - The job qualifications for LCSD Classroom Teachers and Long-Term Substitute
2 Teachers who serve as Interim Educators are identical: a high school diploma or
3 equivalent; a bachelors degree from an accredited college/university; a current
4 Nevada teaching certificate, on file in the District office; and, a desire to continue
5 career improvement.

6 - The essential job functions of a LCSD Classroom Teachers and Long-Term
7 Substitute Teachers who serve as Interim Educators are identical: facilitating the
8 personal, social, and intellectual development of students; maintaining a positive
9 learning environment and responding to the individual needs of students; ensuring
10 that all activities conform to District guidelines; communicating effectively with
11 members of the District and community; working effectively with community
12 organizations; reacting to change productively and handling other tasks as
13 assigned; supporting the value of an education; and, supporting the philosophy
14 and mission of the District. Also, both LCSD Classroom Teachers and Long-
15 Term Substitute Teachers who serve as Interim Educators must be able to work in
16 noisy and crowded environments.

17 - The general responsibilities of a LCSD Classroom Teachers and Long-Term
18 Substitute Teachers who serve as Interim Educators are nearly identical:
19 implementing effective lessons in the absence of the LCSD Classroom Teacher;
20 motivating students through effective communication and evaluative feedback;
21 demonstrating awareness of the needs of students and providing for individual
22 differences; setting high expectations for student achievement and behavior;
23 establishing and maintaining a positive climate for learning through appropriate
24 classroom management; seeing that District policies are observed during all
25 activities; adhering to all District health and safety policies, including all
26 precautions of the LCSD Bloodborne Pathogens Exposure Control Plan; and,
27 other duties as assigned by the Principal, or other LCSD Administrative Staff.
28 The only difference between the general responsibilities of an LCSD Classroom
Teacher and a Long-Term Substitute Teacher who serves as an Interim Educator
is that while the LCSD Classroom Teacher must obtain the advance approval of
the Principal for all activities, the Interim Educator must obtain the advance
approval of *both* the regular LCSD Classroom Teacher *and* the Principal for all
activities.

19 Thus, an application of the criteria correctly and historically utilized by the Board to
20 determine a community of interest to the facts of this case strongly supports the inclusion of
21 Long-Term Substitutes who serve as Interim Educators in the LCCTA Bargaining Unit, and the
22 Board should find accordingly.

23 **C. *The Appeal Is Timely***

24 **1. District's "Forever Barred" Argument Should Be Rejected**

25 In its motion to dismiss ("Motion"), the District argued that "*for as long as anyone at the*
26 *District can remember,*" long-term substitutes "have never been included in the LCCTA
27 bargaining unit," and that "the District's decision regarding the makeup of the LCCTA
28 bargaining unit pursuant to NRS 288.170(1) is *decades old.*" Motion at 2:14-21 and 5:8-9

1 (emphasis added). Like NRS Chapter 288 itself, NRS 288.170(1) and (5) were enacted in 1969,
2 over 56 years ago. 1969 Nev. Stat. 1378-79. By way of example, in 1969 there was no internet
3 as we know it today, and personal computers had not yet found their way into the workplace.
4 But per the District's logic, because information technology employees had not been included in
5 bargaining units in 1969, and thus were "never in the unit," employee organizations seeking
6 inclusion of such employees in a unit due to a requisite community of interest would simply be
7 out of luck. The District's position is plainly nonsensical.

8 The District's reliance on *Clark County Classroom Teachers Association v. Clark County*
9 *School District*, EMRB Item 210 (1998), as set forth in its Motion is of no avail. For starters, the
10 decision itself consists of four, short paragraphs and provides no analysis or exploration of the
11 facts. But even the scant facts provided suggest that the union in that case was apparently
12 seeking inclusion of school administrators in the same bargaining unit as teachers, and that those
13 employees had been determined to be in a separate unit 19 years earlier. A likely significant
14 factor in the outcome of that case was that upon enactment of NRS 288.170 in 1969, the
15 following language was already in the statute:

16 A principal, assistant principal or other school administrator below the rank of
17 superintendent, associate superintendent or assistant superintendent shall not be a
18 member of the same negotiating unit with public school teachers unless the school
19 district employs fewer than five principals but may join with other officials of the
20 same specified ranks to negotiate as a separate negotiating unit.

19 1969 Nev. Stat. 1378. Thus, Item 210 offers little, if any, meaningful guidance to the Board in
20 this case.

21 The testimony of Katherine Vezina at the hearing of this matter will establish that the
22 District's use of long-term substitutes to fill vacant LCSD Classroom Teacher and other LCCTA
23 Bargaining Unit positions has dramatically increased over the last two school years, and long-
24 term substitutes now constitute a remarkable 32% of LCSD employees filling LCCTA
25 Bargaining Unit positions. Nothing in NRS 288.170 suggests that the Nevada Legislature
26 contemplated bargaining units to be "set in stone" upon their initial determination. The more
27 logical interpretation of that statute, consistent with sound public policy is that bargaining units
28 ///

1 may expand or contract depending upon changes in employer operations, technology and other
2 factors in the workplace and the workforce.

3 In light of changes to the LCSD workforce and the composition of the LCCTA
4 Bargaining Unit, LCCTA timely broached with the District the subject of inclusion of long-term
5 substitutes who fill vacant LCSD Classroom Teacher or other LCCTA Bargaining Unit positions
6 for one-half or more of the Contract Year, *i.e.*, Interim Educators, in the LCCTA Bargaining
7 Unit. In the spring of 2025, it became apparent to LCCTA that the District was not willing to
8 include such long-term substitutes in the unit and that any attempt at further discussion would be
9 futile. Having received unequivocal notice, LCCTA then filed the instant Appeal to this Board
10 on July 21, 2025, well within the 6-month limitations period.

11 2. **Equitable Tolling: The Limitations Period was Tolloed by the Grievance,**
12 **Mediation and Contract Negotiations**

13 At the earliest, the instant dispute ripened on September 26, 2025, when in response to
14 the grievance LCCTA filed regarding the involuntary transfer of Natalie Payne—an Interim
15 Educator covering the absence of an LCSD Classroom Teacher for one-half of the 2024 - 2025
16 Contracted School Year and also filling a vacant LCSD Classroom Teacher position for the other
17 half of the 2024 - 2025 Contracted School Year as an Interim Educator—the District asserted that
18 Ms. Payne and all other long-term substitutes were not part of the LCCTA Bargaining Unit. The
19 District made this assertion despite the fact that LCCTA did not highlight Ms. Payne's status as
20 an Interim Educator in the grievance, nor did it otherwise introduce the issue regarding inclusion
21 of Interim Educators in the LCCTA Bargaining Unit anywhere in the grievance. Less than two
22 weeks later, on October 9, 2024, LCCTA informed the District that it wished to mediate the
23 grievance and the District agreed to do so. Thus, as of October 9, 2024, the 6-month limitation
24 period in NRS 288.110(4) would have been tolled.

25 Mediation took place on January 10, 2025, and part of the mediation outcome was an
26 agreement to continue discussion of the issue—whether to include those certain long-term
27 substitutes (Interim Educators) in the LCCTA Bargaining Unit—during the parties' negotiations
28

1 for a successor agreement to the Master Contract.¹ Thus, the NRS 288.110(4) 6-month
2 limitations period would have remained tolled after the conclusion of mediation pending contract
3 negotiations in late winter or early spring.

4 When the District agreed to mediate the grievance, LCCTA had no reason to believe that
5 the District would not engage in the mediation process in good faith. Likewise, when the
6 outcome of the mediation process was an agreement to discuss the issue—whether to include
7 those certain long-term substitutes (Interim Educators) in the LCCTA Bargaining Unit—during
8 the parties’ negotiations for a successor agreement to the Master Contract, LCCTA again had no
9 reason to believe that the District would not engage in such discussions in good faith.

10 Thus, if this Board concludes that LCCTA received unequivocal notice on September 26,
11 2024, it should utilize the four (4) equitable tolling factors enunciated by the Nevada Supreme
12 Court in *Copeland* and applied in *City of North Las Vegas*, and the NRS 288.110(4) limitations
13 period should be tolled from October 9, 2025, until at least March 12, 2025, when despite the
14 promise made at mediation, the District informed LCCTA at the very first contract negotiations
15 meeting that it would *not* discuss whether to include Interim Educators in the LCCTA
16 Bargaining Unit.

17 **a. LCCTA Was Diligent**

18 When it became apparent on March 12, 2025 that LCSD was not going to discuss
19 inclusion of Interim Educators in the LCCTA Bargaining Unit during contract negotiations, *i.e.*,
20 when it received “unequivocal notice,” LCCTA timely filed (July 21, 2025) the instant Appeal to
21 this Board of the District’s determination of the bargaining unit. Thus, analysis of this factor
22 supports application of equitable tolling.

23 **b. Knowledge of the Relevant Facts**

24 The facts as asserted by both the District and the Association demonstrate that both
25 parties were aware of the issue at hand—inclusion of Interim Educators in the LCCTA Bargaining
26

27 ¹ LCCTA is mindful that what transpires in mediation is confidential; however, the
28 outcome of mediation—the agreement of the parties reached during mediation—is not
confidential and is proper for consideration by the Board.

1 Unit. In its Motion, the District makes no argument that LCCTA's position regarding the
2 inclusion issue was not known to it. However, what was *not* known to LCCTA is that when the
3 District agreed to mediate the September 2024 grievance, and when at the conclusion of
4 mediation in January 2025 the District agreed to continue discussion of inclusion of Interim
5 Educators in upcoming contract negotiations, the District made those promises in bad faith.
6 Thus, analysis of this factor supports application of equitable tolling.

7 **c. LCCTA Relied on Misleading Statements by and Conduct of LCSD**

8 As stated *supra*, LCCTA had no reason to believe that the District would not participate
9 in good faith in mediation of the grievance, which included the issue of inclusion of Interim
10 Educators in the LCCTA Bargaining Unit. Likewise, when the District committed at the
11 conclusion of mediation that it would further discuss the issue with LCCTA during contract
12 negotiations, LCCTA had no reason to believe that the District's commitment was an empty
13 promise, made in bad faith. Thus, LCCTA did rely on misleading statements by LCSD, and
14 analysis of this factor supports the application of equitable tolling.

15 **d. LCSD is Not Prejudiced**

16 LCSD has presented no evidence or argument that it is any way prejudiced by application
17 of equitable tolling. Certainly LCSD is not surprised by the fact that LCCTA seeks inclusion of
18 those certain long-term substitutes (Interim Educators) in the LCCTA Bargaining Unit. Nor has
19 the District pointed out any changes it made to its operations based on LCCTA's alleged failure
20 to pursue this matter "decades ago." Thus, analysis of this factor also supports application of
21 equitable tolling.

22 **C.**

23 **OTHER PENDING PROCEEDINGS**

24 As discussed in Section B(1)(B) *supra*, on September 12, 2024, LCCTA filed a grievance
25 alleging a violation of the Master Contract in connection with the involuntary transfer of Natalee
26 Payne, an Interim Educator covering the absence of an LCSD Classroom Teacher for one-half of
27 the 2024 - 2025 Contracted School Year and also filling a vacant LCSD Classroom Teacher
28 position for the other half of the 2024 - 2025 Contracted School Year.

1 The District denied the grievance on various grounds, including an assertion that Ms.
2 Payne and all other long-term substitutes were not part of the LCCTA Bargaining Unit. On
3 October 9, 2024, LCCTA informed the District that it wished to mediate the grievance and the
4 District agreed to do so. Mediation took place on January 10, 2025, and part of the mediation
5 outcome was an agreement to continue discussion of the issue—whether to include Interim
6 Educators in the LCCTA Bargaining Unit—during the parties’ negotiations for a successor
7 agreement to the Master Contract.

8 Despite the agreement at mediation, at the very first negotiation meeting between LCCTA
9 and the District on March 12, 2025, the District informed LCCTA that it was asserting its
10 management rights, and it would NOT negotiate or discuss inclusion of Interim Educators in the
11 LCCTA Bargaining Unit. Therefore, having received “unequivocal notice” that the District
12 would engage in no further discussion regarding inclusion of Interim Educators in the LCCTA
13 Bargaining Unit, on July 21, 2025, the Association timely filed the instant Appeal of the
14 District’s determination of the bargaining unit pursuant to NRS 288.170(5).

15 Although, the grievance was moved to arbitration, neither party has pressed for a hearing
16 date. And in its reply in support of its motion to dismiss the Appeal, the District’s takes the
17 position that LCCTA has abandoned the grievance.

18 **D.**

19 **WITNESSES**

20 At this time, the Association anticipates calling the following witnesses:

21 **Milena Parker:**

22 Ms. Parker is an LCSD School Social Worker, licensed by NDOE, has been the President
23 of LCCTA since April 16, 2024 and is a percipient witness to the facts in dispute. Ms. Parker
24 will testify regarding those facts and may authenticate exhibits during the hearing.

25 **Katherine Vezina:**

26 Ms. Vezina is an LCSD Classroom Teacher, licensed by NDOE. Ms. Vezina previously
27 worked for the District as an Interim Educator. Ms. Vezina was elected Secretary of the
28 Association on May 3, 2024 and currently serve in that capacity. Ms. Vezina is a percipient

1 witness to the facts in dispute, she will testify regarding those facts and she may authenticate
2 exhibits during the hearing.

3 Any Other Individual Identified by the District as a Witness or Called by the
4 District to Testify.

5 E.

6 TIME ESTIMATE

7 The Association estimates that four (4.0) hours will be needed to present its position.

8 F.

9 SUPPLEMENTATION

10 The Association may supplement this Prehearing Statement as needed.

11 RESPECTFULLY SUBMITTED this 12th day of November, 2025.

12 DYER LAWRENCE, LLP

13 By: 
14 Francis C. Flaherty
15 SBON: 5303
16 Sue S. Matuska
17 SBON: 6051

18 Attorneys for Appellant, LCCTA
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CERTIFICATE OF SERVICE

Pursuant to NAC 288.080(4) I certify that I am an employee of Dyer Lawrence, LLP, and that on the 12th day of November, 2025, I sent via electronic mail a true and correct copy of the within Appellant's Prehearing Statement addressed to the following:

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Kelly Gilbert

Lander County School District (Respondent)

Prehearing Statement

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November 13, 2025
State of Nevada
E.M.R.B.
12:21 p.m.

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11 LANDER COUNTY SCHOOL DISTRICT

BEFORE THE GOVERNMENT

EMPLOYEE-MANAGEMENT RELATIONS BOARD

12 LANDER COUNTY CLASSROOM
13 TEACHERS ASSOCIATION,

Appellant,

v.

15 LANDER COUNTY SCHOOL DISTRICT,

Respondent.

Case No. 2025-014

**THE LANDER COUNTY SCHOOL
DISTRICT'S PRE-HEARING
STATEMENT**

18 The Lander County School District (the "District") hereby submits the following Pre-
19 Hearing Statement in accordance with Nevada Administrative Code ("NAC") 288. 250 in
20 connection with the Lander County Classroom Teachers Association's ("LCCTA" or the
21 "Association") Appeal of Unit Determination pursuant to NAC 288.375(3) (the "Appeal").

ISSUES OF FACT AND LAW TO BE DECIDED BY THE BOARD.

23 1. Whether the Local Government Employee-Management Relations Board (the
24 "EMRB" or the "Board") has jurisdiction to hear the Appeal.

25 2. Whether a community of interest exists between long-term substitute teachers and
26 licensed educators included within the LCCTA's bargaining unit.

27 ///

28 ///

1 **MEMORANDUM POINTS AND AUTHORITIES**

2 **I. Introduction**

3 As an initial matter, the Board lacks jurisdiction to hear the Appeal because the Appeal is
4 untimely. On this basis, the Appeal should be denied.

5 Additionally, as shown below, long-term substitute teachers lack a community of interest
6 with traditional licensed educators, and it would be inappropriate to include them in the same
7 bargaining unit.¹

8 **II. Statement of Facts**

9 a. The LCCTA's Bargaining Is Limited to Licensed Teachers, Nurses, and Counselors.

10 The District and the LCCTA are subject to a collective bargaining agreement, with a term
11 beginning July 1, 2023 and ending June 30, 2025 (the "Master Contract").² For as long as any
12 anyone at the District can remember, it has recognized the LCCTA as the bargaining unit, pursuant
13 to NRS 288.133, for all "Teachers," defined as "all Nevada licensed staff members including
14 counselors and school nurses, eligible for membership in the Lander County Classroom Teachers'
15 Association excluding the administrative staff." All other staff, staff that do not fit this definition,
16 have traditionally been represented by a second bargaining agent, the Lander County Classified
17 Employee Association.³

18 For as long as anyone at the District can remember, the District has employed long-term
19 substitute teachers to fill vacant teaching positions. While long-term substitute teachers have
20 regularly worked alongside Teachers, and enjoy many of the benefits offered to Teachers, long-
21 term substitute teachers have never been included in the LCCTA's bargaining unit, their
22 classification is not included in the Master Contract, and the salary and benefits they received are
23 not negotiated as part of the Master Contract.

24
25 ¹ While the District strongly disagrees that licensed staff and long-term substitute teachers share a
26 community of interest, it has repeatedly offered to meet with its long-term substitute teachers for
27 the purpose of establishing their own bargaining unit, or otherwise including them in the
28 "Classified" bargaining unit, a unit which currently represents all non-licensed District staff.

² The District and the LCCTA are in the final stages of ratification and approval of a successor
agreement.

³ Excluding supervisory staff, including building administrators – i.e. building principals.

1 The District's original decision to exclude long-term substitute teachers from the LCCTA's
2 bargaining unit occurred long before the current administrative staff were employed.

3 This fact was reiterated by the District on April 26, 2024, when District Superintendent, Mr.
4 Russell Klein, emailed the LCCTA's representative, Mr. Allen Gumm, to say that: "the contract
5 limits its application to a bargaining unit comprised of licensed teachers, counselors, and school
6 nurses. This is how this contract has been interpreted for years, if not decades." At that time, Mr.
7 Klein also pointed out that any challenges to the District's decision would be untimely pursuant to
8 NRS 288 because the contract has been limited to that list of classifications for years.

9 Mr. Gumm did not respond to Mr. Klein's email, and the LCCTA did not challenge Mr.
10 Klein's position that the bargaining unit was limited to Teachers. In fact, the LCCTA neither
11 grieved Mr. Klein's position under the Master Contract, nor did it appeal the decision to the EMRB
12 pursuant to NRS 288.170(5).

13 b. The LCCTA's September 2024 Grievance.

14 In August 2024, the District entered into a contract with a long-term substitute teacher to
15 fill a vacant teaching position, while the Teacher normally assigned to an elementary school
16 classroom was on leave. Shortly after signing the contract with the long-term substitute teacher, the
17 District learned that the Teacher wished to return from leave at the start of the school year. The
18 Teacher was allowed to return to the elementary classroom.

19 Upon learning about the elementary classroom Teacher's wish to return to work, Mr. Klein
20 contacted the long-term substitute teacher to inform her that her services were no longer needed in
21 the elementary classroom. At that time, Mr. Klein asked the long-term substitute if she would be
22 agreeable to filling a vacancy in another building instead. The long-term substitute teacher agreed,
23 and was placed in a classroom in the middle school. When moving the long-term substitute from
24 the elementary school classroom to the middle school classroom, the District did not follow the
25 transfer requirements set forth under the Master Contract.

26 On September 12, 2024, the LCCTA grieved the District's placement of the long-term
27 substitute teacher in a middle school classroom, alleging that the District's action constituted
28 various contractual and legal violations (the "Grievance"). Included in these allegations was an

1 argument that the District violated the Master Contract when it moved the long-term substitute
2 teacher because it failed to comply with the contract's transfer rules.

3 On September 26, 2024, the District responded to the Grievance, denying the Grievance.
4 The District reiterated that long-term substitute teachers are not part of the LCCTA bargaining unit
5 and not subject to the Master Contract.

6 On October 1, 2024, the LCCTA responded to the District's denial by challenging its
7 determination that long-term substitute teachers are not in the LCCTA's bargaining unit.

8 On October 2, 2024, the District responded to the LCCTA's statement challenging the
9 District's position that long-term substitute teachers are not included in the bargaining unit. At that
10 time, the District expressly stated that long-term substitute teachers are not included in the
11 bargaining unit, have never been included in the bargaining unit, and do not share a community of
12 interest with Teachers in the bargaining unit.

13 Thereafter, the LCCTA requested to mediate the grievance, and the parties engaged in
14 FMCS Mediation on January 10, 2025.

15 Mediation was unsuccessful, and the LCCTA demanded to arbitrate the grievance pursuant
16 to the Master Contract's Grievance Procedure. The LCCTA has taken no action to actually arbitrate
17 the Grievance following its demand to arbitrate.

18 c. The District Refused to Negotiate Regarding Long-Term Substitute Teachers This
19 Spring.

20 Starting in February 2025, the District and the LCCTA began negotiations for a successor
21 agreement to the Master Contract. During negotiations, the LCCTA asked the District to add long-
22 term substitute teachers to the Master Contract. The District reiterated that it had already
23 determined that long-term substitute teachers were not part of the LCCTA's bargaining unit, as
24 they lacked a community of interest with the licensed staff, and refused to negotiate their inclusion
25 in the Master Contract.

26 d. The District Moved to Dismiss the Appeal Pursuant to NRS 288.110(4).

27 On July 21, 2025, the LCCTA submitted the Appeal, seeking to add long-term substitutes
28 to the LCCTA bargaining unit, to the EMRB.

1 On August 18, 2025, the District moved to dismiss the Appeal on the basis that the Appeal
2 was brought well outside of the EMRB's established 6-month statute of limitations, and is,
3 therefore, untimely.

4 In response to the District's Motion to Dismiss, the LCCTA alleged that its Appeal was not
5 untimely because during mediation the District agreed to negotiate with the LCCTA regarding the
6 inclusion of long-term substitute teachers in the Master Contract.

7 On October 22, 2025, the EMRB denied the District's Motion to Dismiss on the basis that
8 a factual dispute exists between the parties.

9 **III. Argument**

10 a. The Appeal is Untimely and Should be Dismissed by the Board.

11 Pursuant to NRS 288.110(4), "The Board may not consider any complaint or appeal filed
12 more than 6 months after the occurrence which is the subject of the complaint or appeal." (emphasis
13 added). The Board has long held that, pursuant to NRS 288.110(4), it lacks subject matter
14 jurisdiction over appeals concerning challenged actions that occurred more than six months before
15 the filing of the appeal. *See Clark Co. Classroom Teachers Ass'n, et al v. Clark Co. School Dist.*,
16 Item No. 210, Case No. A1-0454228 at pg. 2 (July 20, 1998).

17 Where the Board lacks subject matter jurisdiction because an appeal or complaint is brought
18 outside the six-month window, the Board may properly dismiss the appeal or complaint. *See Las*
19 *Vegas Police Protective Ass'n Metro, Inc. v. Las Vegas Metropolitan Police Dept.*, Item No. 589,
20 Case No. A1-045807 at pg. 2 (November 4, 2024).

21 Here, the Parties seem to agree that the District's decision concerning the make-up of the
22 bargaining unit occurred years before the LCCTA filed the Appeal. The Parties also seem to agree
23 that the District informed the LCCTA on both April 26, 2024 and September 26, 2024 that only
24 "Teachers," as defined by the Master Contract, were included in the bargaining unit. As such, the
25 Parties agree that the District's written determinations concerning the composition of the LCCTA's
26 bargaining unit occurred well outside NRS 288.110(4)'s 6-month statute of limitations.

27 While the LCCTA appears to acknowledge that the Appeal is untimely, they try to attempt
28 to circumvent this jurisdictional defect by asserting that the District agreed to negotiate over the

1 inclusion of long-term substitute teachers in the Master Contract during the January 10, 2025
2 mediation. Relying on this alleged agreement, the LCCTA now contends that they did not have a
3 final decision from the District concerning long-term substitute teachers not being included in the
4 bargaining until March 2025. This argument fails as a matter of law. Under Nevada law, statements
5 made during mediation are inadmissible and cannot be used to establish or contradict the position
6 of a party. *See* NRS 48.105(1); NRS 48.109(2). Accordingly, the Board may not rely on an alleged oral
7 agreement made during mediation to toll the appeal deadline or to override the District's prior position.
8 LCCTA's reliance on inadmissible mediation communications cannot cure the untimeliness of its appeal.

9 ***i. The Basis for the Factual Dispute Concerning the Timeliness of the Appeal***
10 ***is Inadmissible and Should Not Be Relied on By the EMRB.***

11 As an initial matter, what happens during mediation is confidential and may not be relied on as evidence
12 in future proceedings. "Settlement negotiation testimony is typically inadmissible." *See* NRS 48.105(1);
13 NRS 48.109(2). *Acuity v. Swanson*, 540 P.3d 420, 2023 Nev. Unpub. LEXIS 948 *7 (2023) "The
14 proceedings of [a] mediation session must be regarded as settlement negotiations, and no admission,
15 representation or statement made during the session, not otherwise discoverable or obtainable, is admissible
16 as evidence or subject to discovery." NRS § 48.109(2); *see also Clarendon Nat. Ins. Co. v. Nat'l Fire &*
17 *Marine Ins. Co.*, 512 F. App'x 671, 673 (9th Cir. 2013). Similarly, NRS § 48.105 limits the admissibility of
18 offers to compromise and evidence of conduct or statements made in compromise negotiations. Such
19 testimony is typically only admissible if it is offered for another purpose, such as proving bias or proving an
20 effort to obstruct a criminal investigation. NRS 48.105(2); *see also Acuity v. Swanson*, 540 P.3d 420 (Nev.
21 2023). "Evidence related to settlement negotiations is inadmissible 'either to prove or disprove the validity
22 or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction.'" *Clarendon*
23 *Nat'l Ins. Co. v. Nat'l Fire & Marine Ins. Co.*, 512 F. App'x at 673 (relying on Fed. R. Evid. 408; and Nev.
24 Rev. Stat. § 48.109(2))

25 Here, the LCCTA introduced statements alleging that during mediation the District agreed to
26 negotiate the inclusion of long-term substitute teachers in the LCCTA's Master Contract, these statements
27 were introduced solely for the self-serving purpose to contradict the District's position that the Appeal is
28 untimely by arguing that the District did not issue a final determination regarding long-term substitute

1 teachers until after the January 10th mediation. This purpose neither constitutes proving bias or establishing
2 an effort by the District to obstruct a criminal investigation, as such the LCCTA's use of statements allegedly
3 made during mediation is improper and inadmissible.

4 Nevada law is clear that the LCCTA cannot rely on affidavits concerning statements allegedly made
5 by the District during mediation to support their argument that the Appeal is timely. Allowing the LCCTA
6 (or any party) to rely on such statements would set a dangerous precedent for all future mediations as it
7 would actively discourage parties from having open and honest communication during mediation which is
8 essential for reaching fair agreements. As such, the Board should strike the LCCTA's statements regarding
9 the District's alleged agreement to negotiate regarding long-term substitute teachers as inadmissible, and
10 should refrain from relying on these inadmissible statements moving forward.

11 Even if the Board allows the LCCTA to improperly rely on affidavits concerning statements
12 allegedly made during mediation, which it should not, the District disagrees with the LCCTA's recount of
13 what happened during mediation. Instead, as noted in the Declaration of Russell Klein, attached to the
14 District's Reply in Support of its Motion to Dismiss, the District firmly holds that it has consistently refused
15 to negotiate the inclusion of long-term substitute teachers into the LCCTA's bargaining unit. Furthermore,
16 the District asserts that during mediation it refused to negotiate the inclusion of long-term substitute teachers
17 into the Master Contract, even though the LCCTA repeatedly requested that the District negotiate the topic
18 during mediation – ultimately resulting in the conclusion of mediation.

19 *ii. The LCCTA Cannot Resurrect Its Appeal Outside the Statute of Limitations.*

20 Finally, the LCCTA's attempt to resurrect its right to appeal the District's determination regarding
21 the LCCTA bargaining unit outside of the appeals period, fails as a matter of law. As noted above, pursuant
22 to NRS 288.110(4), once the LCCTA became aware of the District's decision to exclude long-term substitute
23 teachers from the LCCTA bargaining unit, the LCCTA had six (6) months to file its appeal of that decision
24 with the EMRB. The District holds that this period ended years ago. However, even if the LCCTA were to
25 argue that they did not fully understand that long-term substitute teachers were excluded from the bargaining
26 unit until the District's April 26, 2024 decision stating in no uncertain terms that only "Teachers" as defined
27 by the Master Contract were included in the bargaining unit, the Appeal was filed well outside the 6-month
28 limitation period, and is untimely.

1 In *Las Vegas Police Protective Association Metro, Inc. v. Las Vegas Metropolitan Police*
2 *Department*, the Board established that a party cannot resurrect a cause of action outside the statute of
3 limitations by attempting to trigger a new 6-month period. Item No. 599, EMRB Case No. A1-045817 at pg.
4 2 (2005). This decision establishes that once a statute of limitations has run on a claim brought pursuant to
5 NRS Chapter 288 has run, the party brining the action cannot restart the clock on their cause of action by
6 reasserting the same issue that gave rise to the underlying cause of action to their employer. *See id.*

7 Here, the LCCTA, like *Las Vegas Police Protective Association Metro, Inc.*, is inappropriately
8 attempting to restart the clock. While the officer in *Las Vegas Police Protective Association Metro, Inc.*,
9 wrote a letter to try and restart the clock on his cause of action, the LCCTA has submitted false and
10 inadmissible evidence of a mediation agreement to attempt to restart its statute of limitations to appeal the
11 long-standing District decision to exclude long-term substitute teachers from the bargaining unit. Not only
12 does the LCCTA's action inappropriately attempt to use communications allegedly made during mediation
13 to support its case, the LCCTA attempts to restart a clock that has long-since run out in order to resurrect its
14 Appeal. This action is inappropriate and should not relied on by the Board to find that a true factual dispute
15 exists.

16 b. There is No Community of Interest Between Long-Term Substitute Teachers and Licensed
17 Educators.

18 Under NRS 288.028, a "bargaining unit" is defined as "a group of local government
19 employees recognized by the local government employer as having sufficient community of interest
20 appropriate for representation by an employee organization for the purpose of collective
21 bargaining." *See also Nye Cnty Mgmt. Emps. Ass'n v. Nye Cnty.*, Item No. 844-A, EMRB Case No.
22 20018-012 at pg. 2:19-21 (2019). Under NRS 288.170, the "primary criterion" for determining the
23 composition of a bargaining unit "must be the community of interest among the employees
24 concerned." When determining whether a community of interest exists the Board considers the
25 following factors: similarities in duties, skills, working conditions, job classifications, employee
26 benefits, and the amount of interchange or transfer of employees, integration of an employer's
27 operations and supervision of employees. *Nye Cnty Mgmt. Emps. Ass'n*, Item No. 844-A, EMRB
28 Case No. 20018-012 at pg. 2:22-24 (citing *Ny Cnty. Law Enforcement Ass'n v. Nye Cnty.*, Item No.

1 805, EMRB Case No. A1-046123 (2015)); *Int'l Brotherhood of Electrical Workers Local 1245 v.*
2 *Truckee Meadows Water Auth.*, Item No. 825, EMRB Case No. 2017-002 (2017). The Board also
3 considers factors like: the desires of the affected employees, geographic proximity, common
4 objectives in providing services, personnel policy, and the frequency of contract among employees.
5 *See Nye Cnty Mgmt. Emps. Ass'n*, Item No. 844-A, EMRB Case No. 20018-012 at pg. 2:27-28, 3:1.
6 Here, the factors weigh against the Board finding a community of interest, as explained in greater
7 detail below.

8 While the Board “generally favors larger, wall-to-wall units to minimize the practical
9 difficulties on a local government employer that result from a proliferation of bargaining units and
10 to serve as a safeguard for employees against the diluted effectiveness caused by smaller and
11 fragmented bargaining units,” wall-to-wall units are not mandatory and must still satisfy the
12 community of interest standard. *See IBEW Local 1245 v. Truckee Meadows Water Authority*, Item
13 No. 825 (2017); *see also Pac. Sw. Airlines v. N.L.R.B.*, 587 F.2d 1032, 1042 (9th Cir. 1978).

14 *i. Working Conditions at the District Do Not Weigh In Favor of Finding a*
15 *Community of Interest.*

16 Like all District employees (including members of the LCCTA bargaining unit, members
17 of the Classified bargaining unit, as well as unrepresented employees), long-term substitute teachers
18 work at the District’s school sites – an early education building, an elementary school, a middle
19 school, a high school, a remote school located in Austin, NV. Therefore, their working conditions
20 are the same as any other employee working at the same location.

21 Because all employees at the District experience substantially similar working conditions
22 based on their worksite, this factor should have little bearing on the Board’s determination
23 regarding the existence of a community of interest.

24 *ii. The Duties and Skills Assigned to Long-Term Substitute Teachers Do Not*
25 *Weigh In Favor of Finding a Community of Interest.*

26 Long-term substitute teachers differ from licensed teachers in several material respects. In
27 Nevada public schools, long-term substitute teachers do not hold the same Nevada professional
28 teaching license as permanent classroom teachers and are engaged on a temporary basis to fill short-

1 term vacancies. *See* NAC 391.0897 (providing the specific qualifications to serve as a substitute
2 teacher – e.g., a substitute teacher may serve with 60 semester credits or an associate degree and
3 may be hired for limited periods).

4 In fact, NRS 391.091 specifically distinguishes between licensed teachers and substitute
5 teachers, indicating a legislative intent to distinguish between the two classifications, holding them
6 apart and subjecting them to separate standards. This separation even applies to student teachers
7 who are actively seeking licensure. *See* NRS 391.096.

8 Because they are not fully licensed teachers, long-term substitute teachers are not assigned
9 the same level of responsibility as licensed teachers at the District. While long-term substitute
10 teachers admittedly work in the same environment, work similar hours, and fill a similar function
11 in a classroom setting as regular licensed teachers, they are not required to maintain the same
12 licensure standards, they are not required to obtain additional training, and they are closely observed
13 by their site administrators, to ensure they are providing adequate care, structure, and educational
14 support to students in their classes.

15 Therefore, the duties and skills assigned to long-term substitute teachers differ from those
16 assigned to fully licensed teachers in a significant manner, and undermine a finding that the two
17 classifications share a community of interest.

18 *iii. The Benefits Enjoyed By Long-Term Substitute Teachers Do Not Weigh In*
19 *Favor of Finding a Community of Interest.*

20 Long-term substitute teachers do not enjoy the same benefits as licensed teachers.
21 Specifically, long-term substitute teachers are hired on a year-to-year or semester-to-semester basis,
22 whereas fully licensed teachers have a three-year probationary period at the beginning of their
23 careers, and then enjoy tenure thereafter. As a result of this tenure, fully licensed teachers enjoy
24 protections against transfers, reductions in force, along with career advancement – including
25 receiving step increases and lane movement based on their years of service and educational
26 attainment.

27 On the other hand, Long-term substitute teachers, unlike fully licensed teachers, are paid
28 based on a unilateral salary decision made by the District. Similarly, long-term substitute teachers,

1 unlike Licensed Educators, do not enjoy step and lane movement on the Licensed Educator salary
2 schedule.

3 While it is true that long-term substitute teachers enjoy some of the same benefits Licensed
4 Educators, the same is true of most District employees – regardless of their membership in the
5 LCCTA. For example, all employees receive similar sick leave, cost of living increases, bonuses,
6 and health insurance. As such, the benefits enjoyed by long-term substitute teachers more closely
7 align with those provided to the District’s unrepresented staff.

8 Similarly, long-term substitute teachers are not subject to the same evaluation system as
9 Licensed Educators in the LCCTA. *See* NRS Chapter 391 (discussing evaluation, tenure, and
10 discipline provisions which apply to licensed teachers and do not extend to substitutes). This is
11 extremely important when considering a long-term substitute teacher’s role at the District. Because
12 they are not subject to the same Nevada state regulated evaluation system. Specifically, they are
13 not evaluated for the following critical aspects of a licensed teacher’s role at the District: student
14 educational success, classroom control, lesson planning, personal development, etc. They are not
15 subject to these evaluations because long-term substitute teachers are intended to be a temporary
16 role, and although the District is currently recovering from a large-scale turnover of its licensed
17 teaching staff during and immediately following the COVID-19 pandemic, it is actively and
18 successfully hiring licensed staff, working with long-term substitute to obtain their teaching
19 licenses, and reducing the number of long-term substitute teachers filling vacancies in its programs
20 – the number of long-term substitute teachers has already declined from 19 last school year to 12
21 currently, and is expected to drop to just 3 within the next two years.

22 Finally, unlike Licensed Educators covered by the Master Contract, who are permanently
23 placed in a grade level or specialty class, long-term substitute placements are based on the District’s
24 immediate staffing needs. As such, placements are by definition temporary and subject to change
25 from time to time at the discretion of the District. This allows the District to act swiftly to fill both
26 expected and unexpected vacancies, ensuring that classroom coverage is optimized when a licensed
27 teacher is unavailable.

28

1 These significant differences between the classifications undermine any finding that a
2 community of interest exists between long-term substitute teachers and fully licensed teachers.

3 *iv. The Job Classifications and Amount of Interchange or Transfer of Employees*
4 *Do Not Weigh In Favor of Finding a Community of Interest.*

5 While the District does hire long-term substitute teachers to fill vacancies on a temporary
6 basis, the classifications at issue, licensed teachers and long-term substitute teachers, are not
7 interchangeable. The District's goal is always to hire a licensed teacher to fill the vacant role. As
8 such, when a licensed teacher is hired to fill a vacancy, a long-term substitute will be removed from
9 the vacant assignment and either let go or reassigned to another vacant position.

10 Long-term substitute teachers are treated differently than licensed teachers based on their
11 classification because the classification distinction is the result of licensure differences. Licensed
12 Teachers are recognized by the State of Nevada as being able to be fully responsible for planning
13 their lessons and supervising their classrooms, the rigor and breadth of study associated with
14 teaching licensure ensures their qualification to oversee a classroom. Long-term substitute teachers,
15 by definition, lack this licensure, and are therefore, not permitted to be assigned the same duties or
16 responsibilities in connection with the supervision of a classroom. *See NRS 391.096.*

17 Therefore, although both licensed teachers and long-term substitute teachers are hired to
18 head a classroom, their roles are very different. Long-term substitute teachers are hired on an as-
19 needed and temporary basis, do not have the same responsibilities over their classroom, and their
20 day-to-day are directly monitored and approved by the District. Licensed Teachers, on the other
21 hand, expect to remain employed to oversee a particular classroom indefinitely, and enjoy much
22 more control and discretion over their day-to-day classroom activities. As such, the two
23 classifications fill very different roles at the District, and this factor weighs heavily against a finding
24 of a community of interest.

25 *v. Geographic Proximity of Employees Does Not Weigh In Favor of Finding a*
26 *Community of Interest*

27 Long-term substitute teachers, like all District employees (including members of the
28 LCCTA bargaining unit, members of the Classified bargaining unit, and unrepresented employees),

1 work side-by-side at the District's school sites. For instance, teachers, school site administrators,
2 counselors, classroom aids, para pros, and long-term substitute teachers regularly work side-by-
3 side at their worksites and in site classrooms. Each classification has a different role and set of
4 duties which help to ensure the smooth operation of the site/classroom. However, only teachers and
5 counselors – fully licensed roles pursuant to NRS Chapter 391 - are members of the LCCTA
6 bargaining unit.

7 Because all classifications of District employees work together to help classrooms and
8 school sites function, the factors of geographic proximity should have little bearing on the Board's
9 determination regarding the existence of a community of interest.

10 *vi. The Application of the District's Personnel Policies Does Not Weigh In Favor*
11 *of Finding a Community of Interest.*

12 Long-term substitute teachers, like all District employees, including members of the
13 LCCTA bargaining unit, members of the Classified bargaining unit, and unrepresented employees,
14 are required to comply with the District's personnel policies. As such, this factor should have little
15 bearing on a finding regarding the existence of a community of interest.

16 *vii. The Frequency of Contact Between Licensed Educators and Long-Term*
17 *Substitute Teachers Does Not Weigh In Favor of Finding a Community of*
18 *Interest.*

19 As noted above, long-term substitute teachers, like a large number of District employee
20 classifications, work side-by-side in the classroom/school setting. As such, long-term substitute
21 teachers regularly and frequently interact with members of the LCCTA and Classified bargaining
22 units.

23 That said, this regular interaction is of little consequence to a finding of a community of
24 interest because all District employees who operate within the District's schools and facilities
25 regularly interact with each other due to the nature of educational work and the composition of
26 modern classrooms. As such, the fact that long-term substitute teachers regularly work with
27 members of the LCCTA should have little bearing on a determination as to whether a community
28 of interest exists.

1 viii. *The Common Objectives Between Licensed Educators and Long-Term*
2 *Substitute Teachers Do Not Weigh In Favor of Finding a Community of*
3 *Interest.*

4 Like all District employees, the objective of a long-term substitute teacher at the District is
5 to assist in providing students with the highest level of educational support possible. As such, long-
6 term substitute teachers, like all District employees, actively work to support students and assist in
7 providing educational resources to those students, ensuring District students receive appropriate
8 instruction and educational support.

9 That said, this objective is shared by all District staff, and all staff members – regardless of
10 their membership in the LCCTA, work together and independently to achieve this objective. As
11 such, this objective should have little bearing on a finding that long-terms substitute teachers share
12 a community of interest with Licensed Educators.

13 ix. *The Desires of Affected Employees Do Not Weigh In Favor of Finding a*
14 *Community of Interest.*

15 While the Appeal clearly indicates that the LCCTA wishes to incorporate long-term
16 substitute teachers into its bargaining unit, the LCCTA has presented no allegations or evidence to
17 support a finding that the District's long-term substitute teachers actually wish to join the
18 bargaining unit. In fact, to date, the District has not received any information suggesting that a
19 majority of employees in long-term substitute teaching roles actually wish to join the LCCTA. This
20 fact also weighs heavily against a finding that a community of interest exists, as there has been no
21 showing that the long-term substitute teachers actually want to join the LCCTA unit, or any other
22 unit for that matter.

23 **IV. Conclusion**

24 Based on the foregoing, the District respectfully requests that the LCCTA's Appeal be
25 dismissed as untimely and for failure to assert any probable basis for appeal, which deprives the
26 Board of jurisdiction over the Appeal. Should the Board determine that it does have jurisdiction,
27 the District requests that the Board find that based on the factors set forth above, long-term
28

1 substitute teachers and Licensed Educators do not share a community of interest, and therefore
2 dismiss the Appeal on its merits.

3 **PENDING OR ANTICIPATED PROCEEDINGS**

4 There are no pending or anticipated proceedings related to this Appeal.

5 **WITNESSES EXPECTED TO TESTIFY**

6 1. Russell Klein, Superintendent. Respondent identifies Mr. Klein as a witness pursuant to
7 NAC 288.250 because he both manages human resources related matters for the District, including
8 staffing classrooms, responded to the LCCTA's request to expand the bargaining unit in April 2024,
9 responded to the LCCTA September 12, 2024 Grievance, and participated in the January 10, 2025
10 mediation.

11 2. Sondra Torgerson, Member of the Lander County School District Board of Trustees.
12 Respondent identifies Ms. Torgerson as a witness pursuant to NAC 288.250 because she is the most
13 senior management side representative, and has sixteen years of teaching and administrative
14 experience at the District.

15 3. Any witnesses identified by Appellant.

16 **TIME FOR THE HEARING**

17 Respondent anticipates it should take no longer than one and one-half hours (1 ½) to present
18 its case in chief, exclusive of time spent on cross examination and rebuttal.

19
20 Dated: November 13, 2025

LITTLER MENDELSON, P.C.

21 /s/ S. Jordan Walsh, Esq.

22 S. Jordan Walsh, Esq.

23 Attorney for Respondent
24 LANDER COUNTY SCHOOL DISTRICT
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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 501 W. Broadway, Suite 900, San Diego, CA 92101-3577. On November 13, 2025, I served the within document(s):

THE LANDER COUNTY SCHOOL DISTRICT'S PRE-HEARING STATEMENT

☒ By **Email** - by e-mailing a copy of the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

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Attorneys for Appellant

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 13, 2025, at San Diego, CA.

/s/ Erin J. Melwak
Erin J. Melwak
Littler Mendelson