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STATE OF NEVADA
EMPLOYEES

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8 STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD
9

10 NYE COUNTY MANAGEMENT EMPLOYEE
11 ASSOCIATION

Case No. 2024-002

12 Complainant,

**PROHIBITED PRACTICES
COMPLAINT**

13 v.

14 NYE COUNTY

15 Respondent.

16
17 Complainant, Nye County Management Employee Association ("NCMEA") by and through
18 undersigned counsel Adam Levine, Esq. complains and alleges as follows:

19 1. NCMEA is an employee organization within the meaning of NRS 288.040 recognized
20 by the Board as the exclusive bargaining representative for certain civilian (i.e. non-law enforcement or
21 firefighter) supervisory employees of Nye County, Nevada.

22 2. Respondent Nye County is a local government employer within the meaning of NRS
23 288.060.

24 3. NCMEA and Nye County have been in a collective bargaining relationship for decades.

1 4. NCMEA and Nye County were parties to a collective bargaining agreement from July 1,
2 2019 through June 30, 2022. Prior to February 1, 2022 NCMEA gave the County notice of a desire to
3 negotiate a successor bargaining agreement.

4 5. There were only three (3) articles the parties wished to reopen/revisit – Article 11-
5 Probationary Period, Article-21 Holidays, and Article 26-Wages. The parties met on March 11, April
6 12, and June 13 of 2022. By the third meeting on June 13, 2022 of the parties had agreed upon language
7 for all of the open Articles.

8 6. The proposed new three (3) year collective bargaining agreement for July 1, 2022
9 through June 30, 2025, after being ratified by NCMEA, was placed on the agenda for ratification by the
10 Nye County Board of County Commissioners (“BOCC”) on July 5, 2022. The BOCC declined to ratify
11 the Agreement.

12 7. The parties returned to the bargaining table for three (3) additional sessions on July 26,
13 September 22, and October 25 of 2022. During these meetings the County would not make any
14 additional proposals. NCMEA made several proposals during these meetings. Nye County would
15 neither accept these proposals, nor make any counterproposals.

16 8. On November 7, 2022 impasse was declared by the NCMEA. Fact-finder David Gaba
17 was mutually selected as a Fact-finder by the parties under NRS 288.200 and the hearing scheduled by
18 mutual agreement for September 5, 2023.¹

19 9. On September 1, 2023 Nye County sought to continue the hearing raising concerns
20 about the composition of the bargaining unit. Nye County sought this continuance despite the fact that
21 it knew it had waived all such concerns through a Settlement Agreement negotiated with NCMEA back
22

23 ¹ The delay of almost a year in setting the Fact-Finding hearing was not attributable to Nye County. The
24 original Fact-Finder mutually selected by the parties was entirely unresponsive to scheduling emails
resulting in the parties mutually agreeing to replace that Fact-Finder with Mr. Gaba.

1 in 2014. After being made aware of the Settlement Agreement, Fact-finder Gaba denied the requested
2 continuance and the hearing went forward as scheduled.

3 10. After receipt of the hearing transcripts, Fact-finder Gaba received the NCMEA's Post-
4 Hearing Brief on November 8, 2023. However, Nye County requested a continuance of its due date to
5 submit its Post-Hearing Brief until November 27, 2023 based upon a representation of the workload of
6 its outside counsel. In the interests of maintaining good labor relations, NCMEA agreed to the
7 continuance requested by Nye County.

8 11. Nye County did not file its Brief on November 27, 2023. Instead, on that date Nye
9 County filed a motion with Gaba for to stay all briefing and the issuance of the Fact-finder's
10 Recommendations pending resolution of the County's Petition for a Declaratory Order Clarifying the
11 Bargaining Unit in EMRB Case No. 2023-033 also filed that same day.

12 12. Fact-Finder Gaba denied Nye County's motion, and Nye County was given until
13 November 29, 2023 to submit its Brief.

14 13. On December 10, 2023 Fact-Finder Gaba issued his "Written Findings and
15 Recommendations For Resolution Of Impasse Issues Pursuant To The Nevada Revised Statute Chapter
16 288 *et seq.*" (hereafter "Findings and Recommendations") which recommended that the parties adopt a
17 collective bargaining agreement including the terms agreed-upon as of June 13, 2022 which were
18 subsequently rejected by the Nye County BOCC.

19 14. Under NRS 288.200(8) the Nye County BOCC was required to hold a public meeting
20 and 45 days with regard to the Findings and Recommendations. On January 17, 2024 the Nye County
21 BOCC held such a public hearing but refused to take any action with regard to the Findings and
22 Recommendations, including a refusal to agree to such so as to end the impasse.

23 15. Under NRS 288.200(6), if the parties do not agree to make the recommendations
24 binding, either party may request the submission of the findings and recommendations to a second fact

1 finder to serve as an interest arbitrator to issue a decision which is final and binding. On January 18,
2 2024 NCMEA submitted the matter to final and binding interest arbitration by requesting an interest
3 arbitration panel from FMCS.

4 16. Nye County, through its Counsel, would not make itself available to strike names from
5 the FMCS list. After multiple phone calls and text messages by NCMEA counsel, on February 1, 2024
6 Nye County through its counsel sent an email stating "The County does not believe that it makes sense
7 to proceed to binding fact-finding in light of the pending EMRB case."

8 17. The fact-finding, and binding fact-finding, provisions of NRS 288.200 are part of the
9 collective bargaining process. The actions of Nye County as set forth above in attempting to delay the
10 fact-finding process, and its refusal to move forward with a binding fact finding, constitute a failure to
11 bargain in good faith in violation of NRS 288.270(1)(a) and (e).

12 WHEREFORE, NCMEA requests the following relief from the Board:

- 13 1. Issue findings that one or more prohibited practices were committed by Nye County.
- 14 2. Issue an Order requiring the Nye County to participate in the binding fact finding
15 process provided under NRS 288.200 without any further delay;
- 16 3. Issue an Order requiring Nye County to post on the bulletin boards in all buildings and
17 facilities where NCMEA employees work the findings of the prohibited practices and the appropriate
18 statements that Nye County will not interfere, restrain or coerce any employees in the exercise of any
19 rights guaranteed under Chapter 288, and that it will bargain in good faith;
- 20 4. Issue an order for costs and award attorney's fees in favor of NCMEA; and

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13 STATE OF NEVADA
14 EMPLOYEE-MANAGEMENT RELATIONS BOARD

15 NYE COUNTY MANAGEMENT
16 EMPLOYEE ASSOCIATION,

Case No.: 2024-002

17 Complainant,

18 vs.

19 NYE COUNTY,

20 Respondent.

21 ANSWER TO COMPLAINT

22 Respondent, Nye County (the "County"), by and through its counsel, Fisher &
23 Phillips LLP, hereby submits its Answer to the Nye County Management Employee
24 Association, ("NCMEA") "Prohibited Practices Complaint" filed February 2, 2024
25 ("Complaint") and hereby admits, denies and alleges as follows:

26 1. Answering Paragraph 1 of the Complaint, the County admits the
27 allegations contained therein.

28 2. Answering Paragraph 2 of the Complaint, the County admits the
allegations contained therein.

3. Answering Paragraph 3 of the Complaint, the County admits the
allegations contained therein.

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1 4. Answering Paragraph 4 of the Complaint, the County admits the
2 allegations contained therein.

3 5. Answering Paragraph 5 of the Complaint, the County denies the
4 allegations contained therein.

5 6. Answering Paragraph 6 of the Complaint, the County admits the
6 allegations contained therein.

7 7. Answering Paragraph 7 of the Complaint, the County admits that the
8 parties met several times to negotiate a successor CBA. The County denies every other
9 allegation in Paragraph 7 of the Complaint.

10 8. Answering Paragraph 8 of the Complaint, the County admits the
11 allegations contained therein.

12 9. Answering Paragraph 9 of the Complaint, the County admits that on or
13 about September 1, 2023, it sought to continue the hearing over concerns about the
14 composition of the bargaining unit and the Fact Finder denied the request to continue the
15 hearing. The County denies every other allegation in Paragraph 9 of the Complaint.

16 10. Answering Paragraph 10 of the Complaint, the County admits the
17 allegations contained therein.

18 11. Answering Paragraph 11 of the Complaint, the County admits the
19 allegations contained therein.

20 12. Answering Paragraph 12 of the Complaint, the County admits the
21 allegations contained therein.

22 13. Answering Paragraph 13 of the Complaint, the County admits the
23 allegations contained therein.

24 14. Answering Paragraph 14 of the Complaint, the County admits that on
25 January 24, 2024, it held a Public Meeting as required by NRS 288.200 (8). The County
26 denies every other allegation in Paragraph 14 of the Complaint.

27 15. Answering Paragraph 15 of the Complaint, the County admits the
28 allegations contained therein.

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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of February, 2024, I filed and served by electronic means the foregoing **ANSWER TO COMPLAINT**, as follows:

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By: /s/ Sarah Griffin
An employee of Fisher & Phillips LLP

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E.M.R.B.

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8 STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD
9

10 NYE COUNTY MANAGEMENT EMPLOYEE
ASSOCIATION

Case No. 2024-002

11 Complainant,

PRE HEARING STATEMENT

12 v.

13 NYE COUNTY

14 Respondent.
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18 COMES NOW Complainant Nye County Management Employee Association (“NCMEA”), by
19 and through undersigned counsel, Adam Levine, Esq. of the Law Office of Daniel Marks and hereby
20 submits pursuant to NAC 288.250 its Pre-Hearing Statement.

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1 **I. STATEMENT OF THE ISSUES OF FACT AND LAWS TO BE DETERMINED BY**
2 **THE BOARD.**

3 The issues of law and fact be determined by the Board are whether Nye County violated NRS
4 288.270(1)(a) and (e) when it refused to accept a statutory Fact-finder's recommendation under NRS
5 288.200 and then refused to participate in the binding fact-finding process under NRS 288.200(6).

6 **II. POINTS AND AUTHORITIES**

7 The background and history of this dispute is set forth in the Answer to Petition for Declaratory
8 Order Clarifying The Bargaining Unit filed in Case No. 2023-003 on January 9, 2024 which is
9 incorporated in its entirety by reference. Simply put, Nye County settled its dispute regarding the
10 inclusion of Directors in the bargaining unit in 2014. It subsequently entered into two (2) successor
11 bargaining agreements (July 1, 2018 – June 30, 2019 and July 1, 2019 – June 30, 2022) including such
12 Directors.

13 In February 2022 NCMEA and Nye County began negotiations for a successor bargaining
14 agreement. At no time was the issue of the Directors raised at the bargaining table. After the Nye
15 County Board of County Commissioners rejected the tentatively agreed to contract negotiated by its
16 County Manager, the parties went back to the bargaining table and no issues relating to the Directors
17 were raised. After NCMEA declared impasse the parties *mutually* selected a fact finder for statutory
18 impasse proceedings under NRS 288.200.

19 Only days before the scheduled Fact-finding hearing, Nye County attempted to back out by
20 repudiating its decade-old Settlement Agreement. After the mutually selected Fact-finder would not
21 permit Nye County to do so, and after he issued his Recommendations to resolve the impasse, Nye
22 County refused to do either one (1) of the two (2) things it was obligated to do: accept the Fact-finder's
23 Recommendations so as to settle the contract, or participate in a second binding Fact-finding (i.e.
24 interest arbitration) pursuant to NRS 288.200(6).

1 It is a prohibited practice for a local government employer willfully to refuse to bargain
2 collectively in good faith with the exclusive representative as required in NRS 288.150. NRS
3 288.270(1)(e). "A party's conduct at the bargaining table must evidence a sincere desire to come to an
4 agreement. The determination of whether there has been such sincerity is made by drawing inferences
5 from conduct of the parties as a whole." *City of Reno v. Int'l Ass'n of Firefighters, Local 731*, Item No.
6 253-A (1991), quoting *NLRB v. Ins. Agent's Int'l Union*, 361 U.S. 488 (1970). The Act imposes a
7 reciprocal duty on employers and bargaining agents to negotiate in good faith concerning the
8 mandatory subjects of bargaining listed in NRS 288.150. NRS 288.270(1)(e) deems it a prohibited
9 labor practice for a local government employer to bargain in bad faith with a recognized employee
10 organization. *O'Leary v. Las Vegas Metropolitan Police Dep't*, Item No. 803, EMRB Case No. A1-
11 046116 (May 15, 2015); see also *Serv. Employees Int'l Union, Local 1107 v. Clark County*, Item No.
12 713A, EMRB Case No. A1-045965 (Oct. 5, 2010).

13 The duty to bargain in good faith does not require that the parties actually reach an agreement,
14 but does require that the parties approach negotiations with a sincere effort to do so. *Ed. Support*
15 *Employees Ass'n v. Clark County Sch. Dist.*, Case No. A1-046113, Item No. 809, 4 (2015), citing *City*
16 *of Reno v. Int'l Ass'n of Firefighters, Local 731*, Item No. 253-A, Case No. A1-045472 (1991).

17 In *Stationary Engineers Local 39, Int'l Union of Operating Engineers AFL-CIO v. City of Elko*,
18 Case No. A1-045505 Item No. 295 (August 18, 1992) the Board held that the failure of a local
19 government employer to participate in the Fact-finding process under NRS 288.200 constituted a
20 failure to bargain in good faith as required by NRS 288.270(1)(e). In fact, it was considered such a
21 serious violation so as to warrant the imposition of both costs and attorney's fees.

22 There was no reason for Nye County to attempt to stall the non-binding Fact-finding process.
23 When that attempt failed, and the Fact-Finder issued his Recommendations, there was no reason not to
24 participate in the process to select an interest arbitrator if Nye County did not wish to accept the

1 Recommendations. Even if Nye County wished to engage in a spurious challenge to a Settlement
2 Agreement it had abided by for a decade, and through two (2) prior collective bargaining agreements,
3 there was no reason not to go to interest arbitration. If that challenge to the Settlement Agreement
4 failed, there would be a contract in place. If the challenge somehow succeeded, the Directors could
5 have been carved out at that time and there would be a contract in place for the remaining members of
6 the bargaining unit.

7 This was nothing more than a stall tactic by a County which in public meetings has expressed
8 its disdain for unions.

9 **III. LIST OF WITNESSES**

- 10 1. Darrin Tuck and Brady Adam are Officers of the NCMEA and will be offering
11 testimony relating to the negotiation process.
- 12 2. Timothy Sutton is the County Manager of Nye County and will be called to give
13 testimony relating to the negotiations process and Nye County's attempt to avoid the
14 statutory impasse procedures without agreeing to a collective bargaining agreement.
- 15 3. Bruce Jabbour, Frank Carbone, Donna Cox, Ron Boskovich, and Deborah Strickland are
16 County Commissioners who will be called to solicit testimony regarding the County's
17 failure to ratify a collective bargaining agreement negotiated by its County Manager,
18 and its refusal to take any action(s) in connection with the Fact-Finder's
19 Recommendations including actions to proceed to binding interest arbitration.

20 NCMEA reserves the right to supplement this List of Witnesses.

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1 **IV. ESTIMATION OF TIME**

2 Complainant estimates that one (1) full day (8 hours) will be needed to present Complainant's
3 case in chief.

4 DATED this 6th day of May 2024.

5 LAW OFFICE OF DANIEL MARKS

6 /s/Adam Levine, Esq.

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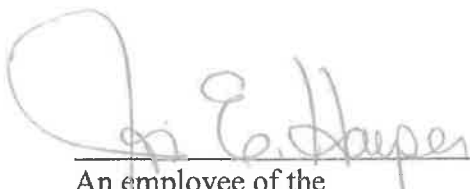
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS and that on
3 the ^{17th} 9 day of May 2024, I filed by electronic means the foregoing PREHEARING STATEMENT,
4 as follows:

5 Employee-Management Relations Board
6 3300 W. Sahara Ave., Suite 260
7 Las Vegas, Nevada 89102
8 emrb@business.nv.gov

9 I also did deposit in the United States Post Office, at Las Vegas, Nevada, in a sealed envelope
10 with first class postage fully prepaid thereon, a true and correct copy of the above and foregoing, to the
11 address(es) as follows:

12 **FISHER & PHILLIPS LLP**
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4521

10 **STATE OF NEVADA**
11 **EMPLOYEE-MANAGEMENT RELATIONS BOARD**

12 NYE COUNTY MANAGEMENT
13 EMPLOYEE ASSOCIATION,

Case No.: 2024-002

14 Complainant.

**NYE COUNTY'S PREHEARING
STATEMENT**

15 vs.

16 NYE COUNTY,

17 Respondent.

18 Respondent Nye County ("County" or "Respondent"), by and through its counsel
19 of record, Fisher & Phillips, L.L.P. hereby submits its Prehearing Statement pursuant to
20 NAC § 288.250 in support of its Answer to Petitioner Nye County Management
21 Employees Association's ("NCMEA") Prohibited Practices Complaint under NRS §
22 288.270.

23 **I. INTRODUCTION AND FACTUAL BACKGROUND**

24 The County is a local government employer as defined by NRS § 288.060.
25 NCMEA is an employee organization as defined by NRS § 288.040. The County and
26 NCMEA are parties to a now expired collective bargaining agreement ("CBA") with a
27 term of July 1, 2019, through June 30, 2022.¹ In February 2022, the NCMEA notified
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¹ The Board may take official notice of the CBA, on file with the Board, pursuant to NAC 288.332.

1 the County that it wished to negotiate a successor CBA. NCMEA's President, Darrin
2 Tuck, a County Utility Superintendent, acted as Chief Negotiator for NCMEA, and
3 County Manager, Tim Sutton, acted as Chief Negotiator for the County. During the
4 negotiations for a successor CBA, the parties initially reached a Tentative Agreement
5 ("TA") on June 13, 2022.

6 However, on July 5, 2022, the Board of County Commissioners ("BOCC") voted
7 to not adopt the TA, expressing several concerns about the TA, including that NCMEA's
8 bargaining unit (the "Bargaining Unit") contained both County Department Heads
9 ("Department Directors") and employees that work directly under the direction of those
10 same Department Directors.² Notably, Mr. Tuck holds the Position of Facilities
11 Superintendent and is in the same Bargaining Unit with his Department Head, the
12 Director of Public Works. Also, NCMEA's Vice-President, Brad Adams, is the County's
13 Director of Management Information Services. He is in the Bargaining Unit with the
14 employees that work under his direction, the County Network Engineer, and Database
15 Manager.

16 On August 17, 2022, Mr. Sutton sent a text message to Mr. Tuck and other
17 members of NCMEA, informing NCMEA that the County's position was that the
18 composition of the Bargaining Unit was not proper because it included Department
19 Directors in the same unit as positions that were under the direction of those same
20 Department Directors. Mr. Sutton further informed NCMEA that he had reached out to
21 outside counsel to discuss the appropriate next steps. The parties were unable to reach
22 an agreement for a successor CBA. NCMEA declared an impasse on November 7, 2022.

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25 ² The following is a list of the Subject Positions/Department Heads over which the BOCC was concerned,
followed in parenthesis by the positions within the Bargaining Unit which directly report to the Department
Head:

- 26 (1) Director of Planning (Principal Planner; Assistant Planning Director);
27 (2) Director of Natural Resources (Geoscientist III);
28 (3) Director of Management Information Services/Director of IT (Network Engineer; Database
Manager);
(4) Director of Human Services (Human Services Manager; Program Supervisor);
(5) Director of Public Works (Utilities Superintendent; Assistant Public Works Director);
(6) Director of Facility Operations (B&G Facility Manager).

1 After NCMEA declared impasse, the parties selected a factfinder for non-binding
2 factfinding. The factfinding proceeding was delayed due to the selected factfinder not
3 responding to the parties' emails to schedule the factfinding hearing. The parties then
4 selected David Gaba as the factfinder ("Factfinder Gaba"). The factfinding hearing was
5 scheduled for September 5, 2023. On September 1, 2023, the County's counsel emailed
6 Factfinder Gaba to request that the hearing be postponed. The County made this request,
7 in part, because approximately six-weeks earlier, the EMRB issued its decision in *Nye*
8 *Cnty v. Nye Cnty. Ass'n of Sheriff's Supervisors, et al.*, Item No. 887, Case No. 2022-009,
9 (July 19, 2023) ("NCASS"), wherein the Board determined that the County did not engage
10 in bad faith negotiations when it refused to negotiate with NCASS based on its position
11 that NCASS' bargaining unit was unlawful under NRS § 288.140(4) because it included
12 a supervisory employee under NRS § 288.138(b). The NCASS decision also prompted the
13 County to reevaluate the composition of NCMEA's bargaining unit. The County
14 requested additional time to consider its options before commencing with the September
15 5, hearing. Factfinder Gaba denied the County's request.

16 The parties proceeded to the non-binding factfinding hearing on September 5,
17 2024. The County objected to the hearing on the basis that the impasse proceedings were
18 an extension of the bargaining process, and the County could not be forced to negotiate
19 and bargain with an unlawful Bargaining Unit, and renewed its motion to continue the
20 hearing, which was again denied by Factfinder Gaba. On November 27, 2023, the County
21 filed its Complaint and Petition for a Declaratory Order ("Petition") in Case No. 2023-
22 033, *Nye Cnty. v. Nye Cnty. Mgmt. Emps. Ass'n.*, which is currently pending before the
23 Board. The County's Petition seeks an order from the Board declaring that NCMEA's
24 Bargaining Unit is unlawful under NRS § 288.170(3) to the extent it includes both the
25 Department Directors and employees that work under the direction of those Department
26 Directors.

27 Factfinder Gaba issued his Written Findings and Recommendations for
28 Resolution of Impasse Issues on December 10, 2023. At the non-binding factfinding

1 hearing on September 5, 2023, the parties stipulated that Factfinder Gaba lacked the
2 authority to make any findings or recommendations with respect to the lawfulness of
3 NCMEA's Bargaining Unit and/or the legal effect of the 2014 Settlement Agreement.
4 On December 10, 2023, Factfinder Gaba issued his non-binding recommendations, in
5 which he recommended that the parties adopt the terms of the 2022 TA.

6 After Factfinder Gaba issued his non-binding findings, the County, via counsel,
7 informed NCMEA that it did not believe it was appropriate to proceed to interest
8 arbitration under NRS § 288.200(6) until after the EMRB resolved the County's Petition
9 in Case No. 2023-033. On February 2, 2024, NCMEA filed the instant Prohibited
10 Practices Complaint against the County claiming the County violated NRS §§
11 288.270(1)(a) and (e) by engaging in bad-faith bargaining when it attempted to delay the
12 factfinding proceedings and refused to proceed with binding interest arbitration following
13 Factfinder Gaba's Written Recommendations.

14 The County requests that the Board enter an order finding that the County did not
15 engage in bad-faith bargaining when it declined to proceed with binding factfinding until
16 the Board resolves the County's Petition regarding the Department Directors' inclusion
17 in NCMEA's Bargaining Unit.

18 **II. ISSUES FOR CONSIDERATION**

19 1. Did the County engage in a prohibited labor practice, in violation of NRS
20 § 288.270(1)(a) and (e), by continuing to negotiate to impasse with the Union while
21 evaluating the appropriateness of the Bargaining Unit prior to filing its Petition for a
22 Declaratory Order?

23 2. Did Nye County engage in a prohibited labor practice, in violation of NRS
24 § 288.270(1)(a) and (e), by refusing to proceed to binding factfinding while the Petition
25 to determine the appropriate Bargaining Unit was pending?

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1 **III. MEMORANDUM OF POINTS AND AUTHORITIES**

2 **A. The County Did Not Engage In Any Prohibited Labor Practice**

3 Contrary to NCMEA’s arguments, it is not a prohibited practice for the County to
4 refuse to negotiate with a union for an agreement to violate a law or statute. *See National*
5 *Maritime Union*, 78 NLRB 971, 981 (1948) (“[W]hat the Act does not permit is the
6 insistence, as a condition precedent to entering into a collective bargaining agreement,
7 that the other party to the negotiations agree to a provision or take some action which is
8 unlawful or inconsistent with the basic policy of the Act.”); *see also Great Atl. & Pac.*
9 *Tea Co.*, 81 NLRB 1052, 1061 (1949) (providing that “[n]either party may require that
10 the other agree to contract provisions which are unlawful”). Illegal subjects are not
11 mandatory subjects of bargaining under NRS § 288.150 and, thus, it is not a prohibited
12 practice for a local government employer to refuse to bargain collectively in good faith
13 over such subjects. *See* NRS § 288.270(1)(e); *NCASS*, Item No. 887, at 8.

14 NCMEA cannot insist that the County bargain with an illegal Bargaining Unit.
15 Once the County had filed its Petition for clarification of the Bargaining Unit in Case No.
16 2023-033, they had no additional duty to bargain with an illegal unit. The Board’s recent
17 decision in *NCASS*, Item No. 887, reinforces this argument. In that case, the County
18 agreed to include the position of Administrative Captain for the Nye County’s Sheriff’s
19 Office, in the *NCASS* bargaining unit for the July 1, 2020, through June 30, 2022,
20 Collective Bargaining Agreement that was ratified by the County and *NCASS*. However,
21 after several months of negotiating a successor CBA, the County determined that the
22 Administrative Captain position could not legally be included in the *NCASS* bargaining
23 unit due to the position being a statutory supervisor under NRS § 288.138(b). The County
24 then filed a unit clarification Petition with the Board. *NCASS* filed a counterclaim against
25 the County, claiming the County engaged in a prohibited practice under NRS § 288.270
26 when it refused to negotiate with *NCASS* until the EMRB resolved whether *NCASS* was
27 a lawful bargaining unit.
28

1 In granting the County's petition and determining that the Administrative Captain
2 position could not be part of the NCASS bargaining unit, the Board found that the County
3 did not engage in a prohibited practice under NRS § 288.270, when it refused to negotiate
4 with NCASS based on Boruchowitz's inclusion in the bargaining Unit:

5 Thus, Boruchowitz may not lawfully be a member of Petitioner NCASS.
6 If Boruchowitz cannot be a member of Petitioner NCASS, logically he
7 cannot be its President nor can he represent the organization in collective
8 bargaining. In sum, the position taken by Petitioner was reasonable and
accordingly no bad faith negotiations took place nor does a unilateral
change exist.

9 NCASS, Item No. 887, at 8.³

10 The facts of the present dispute are analogous to those in NCASS. In this case, the
11 County informed NCMEA's president as early August 18, that it intended to challenge
12 the composition of NCMEA's Bargaining Unit and that it specifically objected to the
13 Department Directors' inclusion in the Bargaining Unit. Nevertheless, while seeking a
14 legal opinion, the County continued to negotiate in good-faith between August and
15 November of 2022, when impasse was declared. The County raised its concerns to
16 NCMEA prior to the factfinding, and the County even filed a motion with Factfinder
17 Gaba seeking to stay or postpone the non-binding factfinding until after the Board had
18 resolved its Petition for clarification of the unit. The Factfinder denied the motion and
19 the County could not seek injunctive relief (as this Board does not have the power to issue
20 injunctions). Thus, the County had no choice but to proceed with the non-binding
21 factfinding subject to the County's objections.

22 Following Factfinder Gaba issuance of his non-binding recommendations, the
23 County informed the NCMEA that it would not proceed to binding factfinding until its
24 unit clarification Petition is resolved. As binding factfinding is part of the collective
25 bargaining process, the refusal to further participate in the collective bargaining process
26

27 ³ Additionally, the Board in NCASS did not find that the County was estopped from filing its petition for
28 clarification of the bargaining unit merely because it previously (mistakenly) agreed to include the
Administrative Captain position in the NCASS bargaining unit. See generally, *Nye Cnty. v. Nye Cnty.
Ass'n of Sheriff's Supervisors*, Case No. 2022-009, No. 887 (2023).

1 until the legality of NCMEA’s bargaining unit is resolved (and the County can be assured
2 that it is negotiating with a legal unit) is justified and is not a prohibited practice.⁴

3 Also, from a logical standpoint, if the County were to prevail in its Petition to
4 remove the Department Directors from the Bargaining Unit, the entire scope of the CBA
5 and the potential economic considerations for the County’s proposals, as well as the
6 availability of potential trade-offs in bargaining, all could be different. This could easily
7 change the County’s final proposal in binding factfinding. Thus, it would be unfair and
8 prejudicial to require the County to proceed to binding factfinding prior to having the
9 composition of the Bargaining Unit resolved. It is for these reasons that it was not
10 improper to refuse to proceed to binding factfinding with the NCMEA. Therefore, the
11 Board should find no prohibited practice or bad faith bargaining occurred here and deny
12 the Union’s Complaint.

13 **IV. PENDING RELATED PROCEEDINGS**

14 A related proceeding to this matter is the County’s Complaint and Petition for
15 Declaratory Order (“Petition”) in Case No. 2023-033, wherein the County is seeking an
16 order from the Board declaring NCMEA’s bargaining to be unlawful under NRS §
17 288.170(3). These matters are related because the County’s defense to NCMEA’s
18 Complaint centers on its position that NCMEA’s Bargaining Unit is unlawful under NRS
19 § 288.170(3), and the County maintains that it is not a prohibited practice to refuse to
20 negotiate with an unlawful Bargaining Unit.

21 Based on the above considerations, given the County’s defense to NCMEA’s
22 Complaint hinges, in part, on the Board’s determination that NCMEA’s Bargaining Unit
23

24
25 ⁴ Additionally, it is worth noting that the Union’s argument here is directly contradictory with its position
26 expressed in the Petition, Case No. 2023-033. In its defense of the Petition in Case No. 2023-033, the
27 Union is taking the position that the settlement agreement and three subsequent CBAs recognizing the
28 seven disputed Department Heads as part of the Bargaining Unit, operate as a waiver by the County or
otherwise precludes the County from challenging the appropriateness of the NCMEA Bargaining Unit. In
contrast, in this case the Union is claiming that the County should proceed with bargaining and impasse
proceedings with the NCMEA (and potentially be forced through binding factfinding to enter into a new,
illegal CBA) while the Board is resolving the appropriateness of the Bargaining Unit, and doing so would
not act as waiver or estoppel.

1 is illegal, pursuant to NAC § 288.250(1)(c), the County urges the Board to stay this matter
2 pending its resolution of the County's Petition in Case No. 2023-033.

3 **V. THE COUNTY'S ANTICIPATED WITNESSES**

4 Tim Sutton, County Manager for Nye County, will testify regarding the issues
5 raised in the Complaint, as well as the related timing and history of negotiations as well
6 as any matters concerning the issues raised in the County's Petition in Case No. 2023-
7 033, and that the Subject Positions are all Department Directors of the County, as well as
8 the organizational structure of the County.

9 **VI. ESTIMATED TIME TO PRESENT NYE COUNTY'S POSITION**

10 Nye County anticipates that presentation of its evidence and witnesses in response
11 to the Complaint (subject to the need for potential additional rebuttal) will take three
12 hours and, collectively with consideration of the Union's opposition, will likely require a
13 full eight-hour day.

14 DATED this 13th day of May, 2024.

15 FISHER & PHILLIPS LLP

16
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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May, 2024, I filed and served by electronic means the foregoing **NYE COUNTY'S PREHEARING STATEMENT**, as follows:

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