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8  
9 Before the State of Nevada  
10 Government Employee-Management  
11 Relations Board

12 CLARK COUNTY PROSECUTORS  
13 ASSOCIATION,

14 Complainant,

15 v.

16 CLARK COUNTY,

17 Respondent.  
18

Case No. 2024-019

**SECOND AMENDED PROHIBITED  
PRACTICE COMPLAINT**

19  
20 **INTRODUCTION**

21 This is a second amended prohibited practice complaint pursuant to Nevada Revised  
22 Statutes (“NRS”) 288.270(1)(a)-(c) and (e) based on Clark County’s (“Respondent” or “the  
23 County”) failure to bargain in good faith, attempt to interfere with the administration of  
24 Complainant, CLARK COUNTY PROSECUTORS ASSOCIATION (“CCPA” or  
25 “Complainant”), and interference with the rights of an employee to engage in protected activity  
26

27 CCPA’S SECOND AMENDED PROHIBITED PRACTICES COMPLAINT  
28

1 under the Employee-Management Relations Act (the “EMRA” or the “Act”). CCPA asserts that  
2 the County repeatedly refused to bargain in good faith with CCPA in relation to two reopeners  
3 for the 2021 – 2024 Collective Bargaining Agreement (“CBA”) as well as refusing to bargain in  
4 good faith over the successor CBA. CCPA, by and through its undersigned counsel, respectfully  
5 submits this Complaint and complains and alleges as follows:

6 **JURISDICTION AND PARTIES**

7 1. CCPA is an employee organization within the meaning of NRS 288.040,  
8 recognized by Clark County as the exclusive bargaining representative for all Deputy District  
9 Attorneys of Clark County, Nevada.<sup>1</sup>

10 2. At all times relevant herein, the County is and was a “Government Employer”  
11 pursuant to NRS 288.060.

12 3. The Board has jurisdiction of this matter pursuant to NRS 288.110 to hear and  
13 determine “any controversy concerning prohibited practices.”

14 4. NRS 288.270 provides in relevant part:

15 It is a prohibited practice for a local government employer or its  
16 designated representative willfully to:

17 (a) Interfere, restrain, or coerce any employee in the exercise of any right  
guaranteed under this chapter.

18 (b) Dominate, interfere or assist in the formation or administration of any  
19 employee organization.

20 ...

21 (e) Refuse to bargain collectively in good faith with the exclusive  
22 representative as required in NRS 288.150. Bargaining collectively includes  
23 the entire bargaining process, including mediation and fact-finding,  
24 provided for in this chapter.

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25  
26 <sup>1</sup> Subsequent to recognition, the Nevada Legislature passed an amendment to NRS 288.140 which resulted in the  
exclusion of the Clark County District Attorney Civil Division Deputy District Attorneys from the bargaining unit.

1 **FACTUAL ALLEGATIONS**

2 5. The Respondent and Complainant have been in a collective bargaining  
3 relationship since 2006. Prior to 2006, Deputy District Attorneys were part of Respondent’s  
4 Management Plan (“MPLAN”).

5 6. CCPA and the County have reached an agreement for the July 1, 2025 – June 30,  
6 2026, CBA, currently set for ratification by the Clark County Board of County Commissioners  
7 the week of August 18, 2025.

8 7. This Complaint concerns the County’s bad-faith conduct in both reopener  
9 negotiations and in negotiations for a successor agreement to the July 1, 2021 – June 30, 2024,  
10 CBA.

11 8. Specifically, the 2021 – 2024 CBA contained “reopener clauses” for cost-of-living  
12 adjustments (“COLAs”) for July 1, 2022, and July 1, 2023. In other words, the parties agreed to  
13 bargain in good faith for the 2022 and 2023 COLAs (hereinafter “2022 Reopener” and “2023  
14 Reopener” respectively).

15 9. CCPA sent notice to the County prior to February 1, 2022, for the 2022 Reopener  
16 pursuant to NRS 288.180 and the CBA.

17 10. Ground rules for the 2022 Reopener negotiations were signed on March 15, 2022.  
18 The ground rules adopted the impasse procedures of NRS 288 in connection with the re-opener.

19 11. The parties held at least six (6) bargaining sessions for the 2022 Reopener but  
20 could not reach agreement. As such, impasse was declared. The parties followed the impasse  
21 procedures as required by Chapter 288 of the Nevada Revised Statutes.

22 12. On November 8, 2022, a Fact-Finding pursuant to NRS 288.200 was held which  
23 resulted in a recommendation, on December 27, 2022, of a 4% COLA retroactive to July 1, 2022.

24 13. CCPA immediately indicated it would accept the recommendation of the Fact-  
25 Finder. Respondent refused to accept the recommendation. Instead, it brought the Fact Finder’s  
26

1 Recommendation before the Clark County Board of County Commissioners ("BCC") pursuant to  
2 NRS 288.153 where the BCC refused to take any action to either accept or reject the  
3 recommendation.

4 14. As a consequence of the BCC refusing to take any action, CCPA was forced to  
5 request binding fact finding (hereafter "interest arbitration") pursuant to NRS 288.200(6) and/or  
6 NRS 288.215 for the 2022 Reopener.

7 15. While the 2022 Reopener matter was proceeding through impasse procedures,  
8 CCPA sent notice to the County prior to February 1, 2022, for the 2023, pursuant to NRS 288.180  
9 and the CBA.

10 16. On February 23, 2023, the parties met and agreed that new ground rules were not  
11 necessary and began negotiations for the 2023 Reopener.

12 17. During the 2023 Reopener negotiations, the interest arbitration over the 2022  
13 Reopener was set for May 25, 2023.

14 18. The night before interest arbitration on the 2022 Reopener, the County indicated  
15 that they would now accept the 2022 COLA recommendation of the Fact-Finder, and an article  
16 adopting 4% COLA was signed on May 25, 2023.

17 19. Like the 2022 Reopener negotiations, the parties were unable to come to an  
18 agreement for the 2023 Reopener and impasse was declared. As such, the parties pursued the  
19 impasse procedures of Chapter 288, the CBA, and the 2022 Reopener ground rules.

20 20. The Fact-Finding for the 2023 Reopener was set for February 29, 2024, before  
21 Arbitrator Katherine Thomson.

22 21. While the 2023 Reopener was proceeding through impasse, CCPA sent notice of  
23 intent to seek a successor CBA to the 2021-2024 CBA ("Successor CBA") prior to February 1,  
24 2024, pursuant to NRS 288.180.

1           22.     On February 26, 2024, the parties met and signed ground rules agreeing to the  
2 impasse procedures in NRS Chapter 288 for the Successor CBA.

3           23.     Arbitrator Thomson requested the parties exchange updated offers for the 2023  
4 Reopener prior to the Fact-Finding date.

5           24.     On February 29, 2024, prior to the 2023 Reopener Fact-Finding hearing,  
6 Respondent conveyed an offer which provided:

7                   1. EFFECTIVE JULY 1, 2023, OR UPON APPROVAL BY THE CLARK  
8 COUNTY BOARD OF COMMISSIONERS WHICHEVER IS LATER, THE  
9 SALARY SCHEDULES FOR ALL EMPLOYEES COVERED IN APPENDIX  
10 A WILL BE ADJUSTED BY THE ANNUAL PERCENTAGE INCREASE OF  
FOUR- AND ONE-HALF PERCENT (4.50%), WHICH WILL RESULT IN AN  
INCREASE TO THE SALARY SCHEDULES IN APPENDIX A.

11                   2. EFFECTIVE JULY 1, 2023, OR UPON APPROVAL BY THE CLARK  
12 COUNTY BOARD OF COMMISSIONERS, THE SALARY SCHEDULES FOR  
13 ALL EMPLOYEES COVERED IN APPENDIX A WILL BE ADJUSTED BY  
AN ADDITIONAL 0.50%, REPRESENTING A TOTAL COST OF LIVING  
ALLOWANCE (COLA) OF 5.00%.

14  
15           25.     During the 2023 Reopener Fact-Finding hearing of February 29, 2024,  
16 Respondent's counsel, Alison Kheel, affirmed the County's final offer was not retroactive and  
17 stated the reason:

18                   [T]he main incentive for settling contracts on time is the fact that wage increases  
19 will not be made retroactive. If the factfinder awards wage increases retroactively,  
20 it is essentially telling the Union that they have no incentive to actively participate  
in negotiations, and that delays caused by insisting to impasse ... is perfectly  
21 acceptable behavior.

22           26.     Ms. Kheel further asserted "The factfinder should not deprive the County of its  
23 main tool to incentivize timely settlement by recommending a retroactive COLA."

24           27.     At the February 29, 2024, 2023 Reopener Fact-Finding hearing, Clark County  
25 Chief Financial Officer Jessica Colvin testified it was an executive team decision to not offer

1 retroactivity as an "incentive" to prevent bargaining units from utilizing the impasse procedures  
2 of NRS Chapter 288:

3 I think consistent with what Ms. Shell said, is we're trying to timely negotiate ten  
4 different -- sometimes -- it's not usually always all ten, but there's a large number  
5 of contracts each year that we're trying to negotiate. Or in any one year. And trying  
6 to make sure they're done timely, an incentive of that is to -- so that people can  
7 have -- employees can have their cost-of-living increase in time. I think we've  
8 heard from units as, there's nothing to lose by going to arbitration. We're going to  
9 get your offer or we're going to get a better offer, so what's to lose by going? So  
10 the only thing really at stake, especially for a reopener when there's no other article  
11 on the table for the County to negotiate with, the only -- the only incentive is to  
12 apply it effective of when the award is provided, rather than retroactive to July 1.  
13 Otherwise, why wouldn't the Union go to fact-finding every time? If they can  
14 always hold out for -- they have the potential to get a better offer. Because our  
15 offer hasn't changed. They know they're -- that a for sure, they're going to get our  
16 offer. It's just the timing of when that's going to be.

17 28. Notwithstanding the Board's recent Order *IN THE MATTER OF CLARK*  
18 *COUNTY, PETITION FOR DECLARATORY ORDER*, Case No. 2024-016, Item 907 (EMRB,  
19 March 17, 2025) allowing final offers to contain limits to retroactivity, these statements by the  
20 County's representatives regarding the 2023 Reopener proposal specifically show an *intent* to  
21 "interfere, restrain or coerce" CCPA from asserting its right as guaranteed to it by the Act to  
22 proceed through impasse procedures outlined in NRS 288.200 *et. seq.*

23 29. In addition to being a clear attempt to "interfere, restrain or coerce" CCPA from  
24 exercising its rights under the Act, the County's action violates its duty to bargain in good faith,  
25 which include participation through statutory impasse proceedings.

26 30. Despite this conduct, CCPA continued to try to negotiate with the County in good  
27 faith on the Successor CBA to begin July 1, 2024. To that end, CCPA opened a number of articles  
28 seeking financial compensation.

31. The County made no counter-offers to CCPA's successor CBA proposals, except  
to reject one proposal outright.



1 the pending Fact-Finding decision for the 2023 Reopener provides them too much uncertainty to  
2 engage in bargaining on financial articles.

3 37. The County's unilateral refusal to negotiate and basing its refusal on the pending  
4 Fact-Finding decision for the 2023 Reopener is a prohibited act.

5 38. On May 6, 2024, the same day the county refused to negotiation further for the  
6 successor CBA, it filed a Petition for Declaratory Order before the Board seeking "clarification"  
7 on five (5) issues, three (3) of which arise out of the current bargaining disputes between CCPA  
8 and the County with the Board rendering its decision on March 17, 2025. *See* IN THE MATTER  
9 OF CLARK COUNTY, PETITION FOR DECLARATORY ORDER, Case No. 2024-016, Item  
10 907.

11 39. The Board's decision found, *inter alia*, that "a party may not simply defer  
12 negotiations on a successor agreement, even on subjects that are derivative of unsettled terms  
13 from the prior agreement[,]” allowing final offers to limit retroactivity, and that fact-finding does  
14 apply to reopener negotiations. *Id.*

15 40. In response to the receipt of the Petition, on May 13, 2024, CCPA spoke with the  
16 County's lead negotiator, Christina Ramos, inquiring if the County intended the current pending  
17 Petition to apply to the 2023 Reopener. Ms. Ramos indicated that she had nothing to do with the  
18 Petition, stated she did not believe the County would take the position it did in its Petition, but  
19 she would confirm that information by the end of the business day and advise CCPA.

20 41. Ms. Ramos failed to follow-up and advise CCPA.

21 42. On May 15, 2024, CCPA drafted an email requesting Ms. Ramos respond  
22 regarding whether Clark County intended its newly filed Petition to apply to the 2023 Re-opener.  
23 On May 17, 2024, Ms. Ramos responded that her counsel did not understand the question.

24 43. The County's Petition for Declaratory Order was a transparent attempt to  
25 circumvent the agreement of the parties to utilize the statutory impasse procedures under the Act  
26

1 for the 2023 Reopener.

2 44. In prior impasse proceedings between the CCPA and the County, both parties  
3 waived mediation.

4 45. Prior to May 29, 2024, Clark County never conveyed to CCPA that it would be  
5 seeking mediation for the successor CBA. Regardless, mediation appeared impossible, as Clark  
6 County had refused to negotiate in the first instance.

7 46. To avoid further delays and move the impasse proceedings along expeditiously,  
8 CCPA requested an FMCS strike list for fact finders, as required by NRS 288.200. The strike list  
9 was received by the County and CCPA by May 17, 2024.

10 47. NRS 288.200(2) requires the parties to select a fact finder within five (5) days of  
11 receipt of the strike list.

12 48. The County did not even provide the strike list to its outside counsel within the  
13 five (5) days required.

14 49. By May 29, 2024, the FMCS strike list was with the County's outside counsel.

15 50. On May 29, 2024, the County's outside counsel informed CCPA's outside counsel  
16 via email regarding the strike list and strongly suggested (without stating directly) that the County  
17 would not agree to select a fact finder or set any future hearing dates. For the first time, the County  
18 asked for mediation.

19 51. CCPA's outside counsel responded that same day, May 24, 2024, by email that  
20 CCPA would be happy to engage in mediation, but that mediation should not delay the striking  
21 from the FMCS list and the scheduling of a fact finding at a future date (in the event mediation  
22 failed). As pointed out by CCPA's outside counsel, if the mediation proved unsuccessful,  
23 cancelling the scheduled fact finding would be a simple matter.

24 52. While the County was intentionally delaying and frustrating the process for a  
25 Successor CBA, the Fact-Finder issued a decision recommending six percent (6%) retroactive to  
26

1 July 1, 2023 for the 2023 Reopener on June 3, 2024. CCPA immediately conveyed their  
2 acceptance of that recommendation. The matter was presented to the BCC on July 16, 2024, but  
3 the BCC took no action, requiring CCPA to seek interest arbitration pursuant to NRS 288.200(6)  
4 and/or NRS 288.215.

5 53. On June 13, 2024, CCPA emailed Director Germany to remind him that the  
6 County had still not taken any steps to schedule the mediation they had requested for the  
7 Successor CBA.

8 54. That same day, June 13, 2024, the County's outside counsel confirmed in writing  
9 that the County would not agree to strike names to select a fact finder or schedule any non-binding  
10 fact finding hearing prior to the completion of mediation. This confirmed CCPA's suspicion that  
11 the County was using the mediation to delay fact finding.

12 55. Despite being at impasse, the parties met again on June 17, 2024. At that meeting,  
13 the County rejected all monetary proposals from CCPA and passed across an article on COLA  
14 which read:

15  
16 (THE LANGUAGE PROPOSED, EVEN IF TENTATIVELY AGREED UPON,  
17 BY THE CLARK COUNTY BOARD OF COMMISSIOERS, WHICHEVER IS  
18 LATER, AND FOR EACH SUCCESSIVE FISCAL YEAR BEGINNING JULY  
19 1 THEREAFTER, THE SALARY SCHEDULES FOR ALL EMPLOYEES  
20 COVERED IN APPENDIX A WILL BE ADJUSTED BY THE ANNUAL  
21 PERCENTAGE INCREASE TO CPI-U ALL ITEMS IN WEST-SIZE CLASS  
22 B/C, ALL URBAN CONSUMERS, NOT SEASONALLY ADJUSTED (SERIES  
23 ID CUURN400SA0) FROM THE IMMEDIATELY PRECEDING  
24 COMPLETED FULL CALENDAR YEAR. THE ADJUSTED PERCENTAGE  
25 INCREASE IN SALARY SCHEDULES SHALL BE A MINIMUM OF 2% AND  
26 A MAXIMUM OF 3.0%. IN THE EVENT THAT THE ANNUAL  
27 PERCENTAGE INCREASE TO CPI-U ALL ITEMS IN WEST-SIZE CLASS  
28 B/C, ALL URBAN CONSUMERS, NOT SEASONALLY ADJUSTED (SERIES  
ID CUURN400SA0), IS EQUAL TO OR GREATER THAN 5%, THE  
ADJUSTED PERCENTAGE INCREASE IN SALARY SCHEDULES SHALL  
BE 4.5%. IN THE EVENT THAT THE ANNUAL PERCENTAGE INCREASE  
TO CPI-U ALL ITEMS IN WEST-SIZE CLASS B/C, ALL URBAN  
CONSUMERS, NOT SEASONALLY ADJUSTED (SERIES ID  
CUURN400SA0), IS EQUAL TO OR LESS THAN 0%, THE ADJUSTED

1 PERCENTAGE INCREASE IN SALARY SCHEDULES SHALL BE 1%. THE  
2 ADJUSTED PERCENTAGE INCREASE IS BASED ON U.S. BUREAU OF  
LABOR STATISTICS DATE (<https://data.bls.gov/timeseries/cuurn400sa0>).

3 **CALCULATED AS FOLLOWS:**

4	2023 ANNUAL CPI	188.941
5	LESS 2022 ANNUAL CPI	181.312
	ANNUAL INCREASE	7.63
6	DIVIDED BY 2022 CPI	181.312
	ANNUAL PERCENTAGE INCREASE IN CPI	4.2%
7	SALARY SCHEDULE ADJUSTMENT	3.0%

8 56. The language of the County’s proposal demonstrates it was not bargaining in good  
9 faith. Rather than making a concrete offer, the County merely suggested what it might offer in  
10 the future, contingent on whether the BCC accepted the Fact-Finder’s recommendation or the  
11 outcome of binding arbitration on the 2023 Reopener. The BCC’s failure to act on the Fact-  
12 Finder’s recommendation for the 2023 Reopener resulted in many additional and unnecessary  
13 months of delay without good-faith bargaining by the County.

14 57. On the same day as the County made its non-proposal, June 17, 2024, its outside  
15 counsel notified CCPA’s outside counsel that the FMCS mediator mutually agreed to by the  
16 parties, Commissioner Brown, only had dates available on July 17, 18, ad 23, 2024.

17 58. Although the dates were inconvenient for CCPA’s outside counsel, on June 21,  
18 2024, CCPA communicated a willingness to accept the proposed dates and mediate without the  
19 assistance of outside counsel.

20 59. Later that day, on June 21, 2024, the County’s outside counsel notified CCPA that  
21 none of the proposed dates would work for the County because, “The County folks were not all  
22 available on those days.” CCPA’s outside counsel reminded the County’s outside counsel of the  
23 County’s obligation to schedule the mediation as soon as possible, and that the County’s entire  
24 bargaining team need not be present, because mediation only requires one person with authority  
25 to reach an agreement.

1           60.     Ultimately, mediation was held for a Successor CBA by a different mediator but  
2 failed to result in an agreement requiring CCPA to proceed to non-binding Fact-Finding.

3           61.     That the other employee bargaining groups DAIA, CCDU, IAFF, CC LAW  
4 ENFORCEMENT, SEIU had contracts ending on June 30, 2024, without reaching a successor  
5 CBA by the end-date.

6           62.     On June 26, 2024, County Manager Kevin Schiller emailed all County employees  
7 stating the County intended to provide a three percent (3%) COLA to all employees effective July  
8 1, 2024—even though the bargaining units referenced in ¶ 61 above had not yet reached successor  
9 agreements, and their soon-to-expire CBAs contained no provision for a July 1, 2024, COLA.  
10 The only exceptions were DAIA and CCPA, which were excluded from the increase, as reflected  
11 in the chart below graphic:

<b>Employee Group</b>	<b>7/1/2024 COLA</b>
DAIA	0%
Defenders	3%
IAFF (Rank&File/Batt Chief)	3%
Non-Union (incl former IUEC)	3%
CC Law Enforcement	3%
Prosecutors	0%
SEID (Sup/Non-Sup)	3%

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20           63.     Interest arbitration for the 2023 Reopener was scheduled for September 23, 2024.  
21 Yet, on the eve of the hearing, and consistent with its prior conduct, the County agreed to accept  
22 the Fact-Finder’s recommendation for a six percent (6%) COLA, retroactive to July 1, 2024. This  
23 last-minute reversal rendered the months of delay entirely unnecessary and is further evidence of  
24 the County’s bad-faith bargaining.



**CERTIFICATE OF SERVICE**

I hereby certify that on August 13, 2025, I have mailed in portable document format as required by NAC 288.070(d)(3), a true and correct copy of **CLARK COUNTY PROSECUTORS ASSOCIATION’S SECOND AMENDED PROHIBITED PRACTICES COMPLAINT** as addressed below and sent certified mail pursuant to NAC 288.200(2). I also have filed the document with the Nevada Government Employee-Management Relations Board via its email address at [emrb@business.nv.gov](mailto:emrb@business.nv.gov):

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/s/ Michelle Wade  
An employe of REESE RING VELTO

**Clark County (Respondent)**

**Answer to Second Amended Complaint**

FILED  
October 28, 2025  
State of Nevada  
E.M.R.B.  
4:37 p.m.

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

10 CLARK COUNTY PROSECUTORS  
11 ASSOCIATION,

Case No.: 2024-019

12 Complainant,

13 vs.

14 CLARK COUNTY,

15 Respondent.

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**ANSWER TO SECOND AMENDED COMPLAINT**

18 Respondent, Clark County (the "County"), by and through its counsel, Fisher &  
19 Phillips LLP, hereby submits its Answer to the Clark County Prosecutors Association,  
20 (the "CCPA") "Second Amended Complaint For Prohibited Practices" filed August 13,  
21 2025 ("SAC") and hereby admits, denies and alleges as follows:

22 1. Answering Paragraph 1 of the SAC, the County admits that the CCPA is  
23 an employee organization within the meaning of NRS 288.040, recognized by the County  
24 as the exclusive bargaining representative for the Deputy District Attorneys in the  
25 criminal division of the Clark County District Attorney's office, and denies every other  
26 allegation contained therein.

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

1           3.       Answering Paragraph 3 of the SAC, the County admits that this matter is  
2 styled as a prohibited practices complaint under the statutes indicated, and the County  
3 admits the Employee Management Relations Board (“EMRB” or “Board”) has  
4 jurisdiction, but denies any wrongdoing or liability to Complainant under these statutes  
5 or otherwise and denies that Complainant is entitled to any damages, attorneys’ fees  
6 and/or relief of any kind.

7           4.       Answering Paragraph 4 of the SAC, the County admits that NRS §  
8 288.270 is a statute the content of which speaks for itself, and the County denies the  
9 allegations to the extent they are inconsistent therewith. The County denies every other  
10 allegation contained in Paragraph 4 of the SAC.

11          5.       Answering Paragraph 5 of the SAC, the County admits the allegations  
12 contained in the first sentence. The County further admits that prior to 2006, Deputy  
13 District Attorneys were covered by the Clark County Management Employees Benefit  
14 Plan (“MPlan”) and denies every other allegation contained therein.

15          6.       Answering Paragraph 6 of the SAC, the County admits that the CCPA and  
16 the County have reached agreement on a CBA effective July 1, 2025 – June 30, 2026,  
17 which has been ratified by the Clark County Board of County Commissioners (“BOCC”)  
18 on August 19, 2025. The County denies every other allegation contained in Paragraph 6  
19 of the SAC.

20          7.       Answering Paragraph 7 of the SAC, the County admits that the CCPA and  
21 the County have negotiated over Article 36 - Compensation effective for the period of  
22 July 1, 2022 – June 30, 2023 and July 1, 2023 – June 30, 2024, and negotiated for an  
23 agreement effective July 1, 2024 – June 30, 2025. The County denies every other  
24 allegation contained in Paragraph 7 of the SAC.

25          8.       Answering Paragraph 8 of the SAC, the County asserts that the CBA is a  
26 document the content of which speaks for itself, and denies every other allegation to the  
27 extent they are inconsistent therewith.

28

1           9.       Answering Paragraph 9 of the SAC, the County admits that the CCPA  
2 sent notice to the County prior to February 1, 2022, to negotiate Article 36 -  
3 Compensation, and denies every other allegation contained therein.

4           10.       Answering Paragraph 10 of the SAC, the County admits that on March  
5 15, 2022, the parties signed ground rules, which is a document the content of which  
6 speaks for itself and denies every other allegation to the extent they are inconsistent  
7 therewith.

8           11.       Answering the first and second sentences of Paragraph 11 of the SAC, the  
9 County admits that the parties met several times to negotiate but could not reach an  
10 agreement, and the Union declared impasse. The County admits the allegations  
11 contained in the third sentence of Paragraph 11 of the SAC.

12           12.       Answering Paragraph 12 of the SAC, the County admits the allegations  
13 contained therein.

14           13.       Answering Paragraph 13 of the SAC, the County admits that on February  
15 7, 2023, it held a Public Meeting as required by NRS 288.200(8) and NRS Chapter 241,  
16 and the Clark County Board of County Commissioners (“BOCC”) took no action on the  
17 Recommendation. The County denies every other allegation in Paragraph 13 of the SAC.

18           14.       Answering Paragraph 14 of the SAC, the County admits that the CCPA  
19 requested binding fact finding and denies every other allegation contained therein.

20           15.       Answering Paragraph 15 of the SAC, the County admits that prior to  
21 February 1, 2023, the CCPA sent notice to the County to negotiate to determine if a Cost  
22 of Living Adjustment (“COLA”) would be awarded, and denies every other allegation  
23 contained therein.

24           16.       Answering Paragraph 16 of the SAC, the County admits that no ground  
25 rules were signed for the 2023 reopener negotiations, and denies every other allegation  
26 contained therein.

27           17.       Answering Paragraph 17 of the SAC, the County admits the allegations  
28 contained therein.

1           18.     Answering Paragraph 18 of the SAC, the County admits the allegations  
2 contained therein.

3           19.     Answering Paragraph 20 of the SAC, the County admits the allegations  
4 contained therein.

5           20.     Answering Paragraph 19 of the SAC, the County admits the allegations  
6 contained therein.

7           21.     Answering Paragraph 21 of the SAC, the County admits the allegations  
8 contained therein.

9           22.     Answering Paragraph 22 of the SAC, the County admits that the parties  
10 met and signed ground rules on April 26, 2024, which is a document the content of which  
11 speaks for itself, and the County denies every other allegation contained in Paragraph 22  
12 of the SAC.

13          23.     Answering Paragraph 23 of the SAC, the County admits the allegations  
14 contained therein.

15          24.     Answering Paragraph 24 of the SAC, the County admits that on February  
16 27, 2024, prior to the Fact Finding Hearing, the County conveyed its Fact Finding  
17 Proposal as Exhibit 8, which is a document the content of which speaks for itself, and the  
18 County denies every other allegation contained in Paragraph 24 of the SAC.

19          25.     Answering Paragraph 25 of the SAC, the County admits its Fact Finding  
20 Proposal was not retroactive, and asserts that the entire Fact Finding Hearing was  
21 transcribed by a certified court reporter in a transcript which is a document the content  
22 of which speaks for itself, and the County denies the allegations to the extent they are  
23 inconsistent therewith.

24          26.     Answering Paragraph 26 of the SAC, the County admits that the entire  
25 Fact Finding Hearing was transcribed by a certified court reporter in a transcript which  
26 is a document the content of which speaks for itself, and the County denies the allegations  
27 to the extent they are inconsistent therewith.

28

1           27.     Answering Paragraph 27 of the SAC, the County admits that the entire  
2 Fact Finding Hearing was transcribed by a certified court reporter in a transcript which  
3 is a document the content of which speaks for itself, and the County denies the allegations  
4 to the extent they are inconsistent therewith.

5           28.     Answering Paragraph 28 of the SAC, the County denies the allegations  
6 contained therein.

7           29.     Answering Paragraph 29 of the SAC, the County denies the allegations  
8 contained therein.

9           30.     Answering Paragraph 30 of the SAC, the County admits that the parties  
10 negotiated over the successor CBA, and the CCPA opened a number of articles seeking  
11 financial compensation, and the County denies every other allegation contained therein.

12          31.     Answering Paragraph 31 of the SAC, the County denies the allegations  
13 contained therein.

14          32.     Answering Paragraph 32 of the SAC, the County admits it proposed the  
15 removal of severance pay. The County denies every other allegation contained therein.

16          33.     Answering Paragraph 33 of the SAC, the County admits that chief  
17 negotiator Christina Ramos stated that one of its reasons for its proposal was that no other  
18 bargaining unit receives severance pay. The County denies every other allegation  
19 contained therein.

20          34.     Answering Paragraph 34 of the SAC, the County denies the allegations  
21 contained therein.

22          35.     Answering Paragraph 35 of the SAC, the County asserts that the Closing  
23 Brief is a document the content of which speaks for itself and denies the allegations to  
24 the extent they are inconsistent therewith.

25          36.     Answering Paragraph 36 of the SAC, the County denies the allegations  
26 contained therein.

27          37.     Answering Paragraph 37 of the SAC, the County denies the allegations  
28 contained therein.

1           38.     Answering Paragraph 38 of the SAC, the County admits that it filed a  
2     Petition for Declaratory Order with the EMRB on May 6, 2024, which is a document the  
3     content of which speaks for itself, and the County denies the allegations to the extent  
4     they are inconsistent therewith. The County denies every other allegation contained  
5     therein.

6           39.     Answering Paragraph 39 of the SAC, the County admits that a decision  
7     on its Petition for Declaratory Order was issued by the EMRB on March 17, 2025, which  
8     is a document the content of which speaks for itself, and the County denies the allegations  
9     to the extent they are inconsistent therewith. The County denies every other allegation  
10    contained therein.

11          40.     Answering Paragraph 40 of the SAC, the County admits that the CCPA  
12    had a conversation with lead negotiator Christina Ramos on May 13, 2024, during which  
13    time she stated that she could not respond at that time. The County denies every other  
14    allegation contained therein.

15          41.     Answering Paragraph 41 of the SAC, the County denies the allegations  
16    contained therein.

17          42.     Answering Paragraph 42 of the SAC, the County admits that e-mail  
18    correspondence was exchanged on May 15, 2024 and May 17, 2024, which are  
19    documents the contents of which speak for themselves, and the County denies the  
20    allegations to the extent they are inconsistent therewith.

21          43.     Answering Paragraph 43 of the SAC, the County denies the allegations  
22    contained therein.

23          44.     Answering Paragraph 44 of the SAC, the County admits both parties  
24    waived mediation in the 2022 and 2023 impasse proceedings. The County denies every  
25    other allegation contained therein.

26          45.     Answering Paragraph 45 of the SAC, the County denies the allegations  
27    contained therein.

28

1           46.     Answering Paragraph 46 of the SAC, the County admits that the CCPA  
2 requested a strike list from FMCS for Fact Finders on May 17, 2024. The County denies  
3 every other allegation contained therein.

4           47.     Answering Paragraph 47 of the SAC, NRS 288.200(2) is a statute the  
5 content of which speaks for itself, and denies the allegations to the extent they are  
6 inconsistent therewith. The County denies every other allegation contained in Paragraph  
7 47 of the SAC.

8           48.     Answering Paragraph 48 of the SAC, the County admits that it declined  
9 to strike names from the FMCS list. The County denies every other allegation in  
10 Paragraph 48 of the SAC.

11          49.     Answering Paragraph 49 of the SAC, the County admits the allegations  
12 contained therein.

13          50.     Answering Paragraph 50 of the SAC, the County admits that outside  
14 counsel for the County contacted outside counsel for the CCPA to state that “negotiations  
15 that reach impasse must first proceed to mediation before they can proceed to non-  
16 binding Fact Finding.” The County denies every other allegation contained therein.

17          51.     Answering Paragraph 51 of the SAC, the County admits that the CCPA  
18 sent an e-mail on May 29, 2024 agreeing to mediation, and the e-mail is a document the  
19 content of which speaks for itself, and denies the allegations to the extent they are  
20 inconsistent therewith. The County denies every other allegation contained in Paragraph  
21 51 of the SAC.

22          52.     Answering Paragraph 50 of the SAC, the County admits that on June 3,  
23 2024, the Fact-Finder issued a non-binding recommendation recommending a six percent  
24 (6%) COLA retroactive to July 1, 2023 which is a document the content of which speaks  
25 for itself, and denies the allegations to the extent they are inconsistent therewith. The  
26 County further admits that the CCPA immediately conveyed their acceptance of that  
27 recommendation to the County. The County further admits that on July 16, 2024, the  
28 BOCC conducted a public hearing pursuant to NRS 288.200, to receive a report on the

1 Non-binding Fact Finding recommendation for the 2023 Fiscal Reopener. The County  
2 denies every other allegation contained therein.

3 53. Answering Paragraph 53 of the SAC, the County denies the allegations  
4 contained therein.

5 54. Answering Paragraph 54 of the SAC, the County admits the allegations  
6 of the first sentence and denies every other allegation contained therein.

7 55. Answering Paragraph 55 of the SAC, the County admits it met on June  
8 17, 2024 and passed a proposal which is a document the content of which speaks for  
9 itself, and the County denies the allegations to the extent they are inconsistent therewith.  
10 The County denies every other allegation contained therein.

11 56. Answering Paragraph 56 of the SAC, the County denies the allegations  
12 contained therein.

13 57. Answering Paragraph 57 of the SAC, the County admits that on June 17,  
14 2024, outside counsel for Clark County notified the CCPA that the earliest dates  
15 Commissioner Brown had available were July 17, 18 and 23 of 2024, and that counsel  
16 for the County would be “reaching out to my clients now to see if any of these dates work  
17 for them.” The County denies every other allegation contained therein.

18 58. Answering Paragraph 58 of the SAC, the County admits that the CCPA’s  
19 counsel sent an e-mail on June 21, 2024, which is a document the content of which speaks  
20 for itself, and the County denies the allegations to the extent they are inconsistent  
21 therewith. The County denies every other allegation contained therein.

22 59. Answering Paragraph 59 of the SAC, the County admits that it sent an e-  
23 mail to the CCPA on June 21, 2024 stating “The County folks were not all available on  
24 those days, but I think they were willing to consider private mediation” which is a  
25 document the content of which speaks for itself, and the County denies the allegations to  
26 the extent they are inconsistent therewith. The County denies every other allegation  
27 contained therein.

28

1           60.    Answering Paragraph 60 of the SAC, the County admits that the  
2 mediation for the CBA effective July 1, 2024 – June 30, 2025, did not result in an  
3 agreement. The County denies every other allegation contained therein.

4           61.    Answering Paragraph 61 of the SAC, the County denies the allegations  
5 contained therein.

6           62.    Answering Paragraph 62 of the SAC, the County admits that County  
7 Manager Kevin Schiller sent e-mail correspondence to all County employees on June 26,  
8 2024, which is a document the content of which speaks for itself, and the County denies  
9 the allegations to the extent they are inconsistent therewith. The County denies every  
10 other allegation contained therein.

11          63.    Answering Paragraph 63 of the SAC, the County admits it reached  
12 agreement with the CCPA on Article 36 – Compensation for the period of July 1, 2023  
13 – June 30, 2024 on September 23, 2024, which is a document the content of which speaks  
14 for itself, and the County denies the allegations to the extent they are inconsistent  
15 therewith. The County denies every other allegation contained therein.

16          64.    Answering Paragraph 64 of the SAC, the County admits it reached  
17 agreement with the CCPA for the CBA covering the period of July 1, 2024 – June 30,  
18 2025 on April 3, 2025, which was ratified by the BOCC on May 6, 2025, which is a  
19 document the content of which speaks for itself, and the County denies the allegations to  
20 the extent they are inconsistent therewith. The County denies every other allegation  
21 contained therein.

22          65.    Answering Paragraph 65 of the SAC, the County denies the allegations  
23 contained therein.

24          66.    Answering the Paragraphs starting with WHEREFORE and all  
25 subparagraphs of the SAC, the County denies any wrongdoing and denies that any  
26 remedy or relief is appropriate. To the extent not expressly admitted in the paragraphs  
27 above, the County denies each and every remaining allegation in the SAC.

28

1 **AFFIRMATIVE DEFENSES**

2 **FIRST DEFENSE**

3 The claims, allegations and events are barred by the statute of limitations as they  
4 occurred more than six months prior to the filing of the Complaint.

5 **SECOND DEFENSE**

6 The legal and factual issue in this case have already been addressed in Clark  
7 County's Petition for a Declaratory Order in Case Number 2024-016, therefore the claims  
8 are barred by the principle of *res judicata*.

9 **THIRD DEFENSE**

10 The SAC fails to allege facts sufficient to state the basis for a claim of regressive  
11 bargaining.

12 **FOURTH DEFENSE**

13 Any claims arising from scheduling the mediation have been waived by the CCPA  
14 or the CCPA is estopped from bringing these claims due to the CCPA's intervening  
15 request for a private mediator and/or a mediator with earlier dates.

16 **FIFTH DEFENSE**

17 The SAC fails to allege a claim upon which relief can be granted.

18 WHEREFORE, Respondent, Clark County, prays:

- 19 1. The SAC be dismissed;  
20 2. The County be awarded its reasonable costs and attorney fees; and  
21 3. Such other relief as the Board deems appropriate.

22 DATED this 28th day of October, 2025.

23 FISHER & PHILLIPS LLP

24  
25 By: /s/ Allison L. Kheel, Esq.  
26 Mark J. Ricciardi, Esq.  
27 Allison L. Kheel, Esq.  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 28th day of October, 2025, I filed and served by electronic means the foregoing **ANSWER TO SECOND AMENDED COMPLAINT**, as follows:

Employee-Management Relations Board  
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*Attorneys for Complainant,  
Clark County Prosecutors Association*

By: /s/ Darhyl Kerr  
An employee of Fisher & Phillips LLP

**Clark County (Respondent)**

**Motion to Dismiss Second Amended Complaint**

**FISHER & PHILLIPS LLP**  
300 S Fourth Street, Suite 1500  
Las Vegas, Nevada 89101

FILED  
October 28, 2025  
State of Nevada  
E.M.R.B.  
4:37 p.m.

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STATE OF NEVADA  
EMPLOYEE-MANAGEMENT RELATIONS BOARD

10 CLARK COUNTY PROSECUTORS 11 ASSOCIATION,  12 Complainant,  13 vs. 14 CLARK COUNTY, 15 Respondent.	Case No.: 2024-019
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**RESPONDENT’S MOTION TO DISMISS COMPLAINANT’S SECOND  
AMENDED COMPLAINT**

19 Respondent, Clark County (the “County”), by and through its counsel, Fisher &  
20 Phillips LLP, hereby moves the Employee-Management Relations Board (“EMRB” or  
21 the “Board”) for an order dismissing the Clark County Prosecutors Association’s (the  
22 “CCPA” or “Complainant”) Second Amended Complaint (hereinafter “Complaint” or  
23 “SAC”). This Motion is based on NAC § 288.240(3), NAC § 288.375, NRS § 288.270,  
24 and the pleadings on file with the Board and the following Memorandum of Points and  
25 Authorities, and any oral argument permitted by the Board.

26 ///  
27 ///

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 The CCPA and the County have been parties to several successive Collective  
4 Bargaining Agreements (“CBAs”). On August 13, 2025, the Union filed the instant  
5 Complaint against the County, alleging prohibited practices under NRS § 288.270(1)(a)  
6 and (e), including failure to bargain in good faith and attempted interference in the  
7 administration of the CCPA in violation of NRS § 288.270(1)(b), and discrimination  
8 discouraging Union membership in violation of NRS § 288.270(c). These claims  
9 generally fall into one of two categories of incorrect assertions — (1) claims which are  
10 based on the CCPA’s inability to understand the definition of an illegal regressive  
11 proposal in bargaining (something the County never made); and (2) claims which attempt  
12 to point to the County’s permissible actions and adherence to the statutory impasse  
13 procedures as somehow providing evidence of bad faith bargaining. These arguments are  
14 absurd.

15 At one point, the CCPA even alleges that the County’s failure to agree to and  
16 implement the **non-binding** Fact Finder’s recommendations is evidence of bad faith  
17 bargaining. SAC ¶ 13. However, since NRS § 288.200(8) only requires the County to  
18 present the Recommendations to the Board of County Commissioners (“BOCC”) in a  
19 public meeting and the Complaint expressly acknowledges that the Recommendations  
20 were in fact presented at that meeting, the Complaint fails to allege a violation of the  
21 Employee Management Relations Act (the “Act”). SAC ¶ 13. The CCPA is simply  
22 complaining because the County is not rolling over and giving in to its every demand.

23 The CCPA also appears to be operating under the misconception that every CBA  
24 must result in more for the Union than it had under the previous CBA. But this Board  
25 has previously held that “regressive proposals are not per se unlawful; they may be  
26 justified by changes in the economy of the industry and the relative strength of the  
27 participants.” *Clark County Defenders Union v. Clark County, et al*, Case No. 2024-  
28 014, EMRB Item No. 904, \*4 (EMRB Dec. 12, 2024) (hereinafter “Item No. 904”). The

1 Board explained that to show bad faith, the regressive proposal must be “so illogical” that  
2 the only thing the proposal can indicate is an intent to frustrate the bargaining process.  
3 *Id.* at \*4. Simply because the Complaint alleges that the County proposed to remove a  
4 benefit that was only enjoyed by MPlan employees is insufficient to demonstrate bad  
5 faith, as the logical justification for that action is contained within the same allegation.  
6 SAC ¶ 33. The Union fails to allege further facts which might meet this burden and thus  
7 the claim should be dismissed.

8 The Petition for Declaratory Order in Case 2024-016, resulted in a final order on  
9 March 17, 2025. *Clark County Prosecutors Association v. Clark County*, Case No. 2024-  
10 016, EMRB Item No. 907 (EMRB Mar. 15, 2025) (hereinafter “Item No. 907”). While  
11 not a prohibited practices complaint, Item No. 907 addressed most of the factual  
12 allegations contained in the Complaint or otherwise indicated that the actions  
13 subsequently taken by the County are permissible. *See* Item No. 907. While the CCPA  
14 may not like that the County’s actions have been deemed permissible under the Act by  
15 this Board, such is a matter that must be fixed by the Legislature. Nowhere in the 65  
16 paragraphs of the Complaint does the CCPA allege an improper action by the County  
17 which would violate the Act. Therefore, the Complaint fails to state a claim upon which  
18 relief may be granted, and the Complaint should be dismissed with prejudice.

## 19 **II. STATEMENT OF FACTS**

20 For the purposes of this Motion only, the County and the Board must accept the  
21 Union’s material factual allegations as true. The Union asserts that the facts of the matter  
22 support a finding of bad faith negotiations and regressive bargaining, but this is  
23 inaccurate. The Complaint covers events occurring throughout three separate rounds of  
24 CBA negotiations: (1) Reopener Negotiations for the contract year of July 1, 2022 –  
25 June 30, 2023 (“2022 Reopener”) limited to Article 36 – Compensation; (2) Reopener  
26 Negotiations for the contract year of July 1, 2023 – June 30, 2024 (“2023 Reopener”);  
27 and (3) Full Contract negotiations for the Period of July 1, 2024 – June 30, 2025 (“2024  
28 Contract”). SAC ¶¶ 9-12, 15-20, and 36-38. However, because many of these rounds of

1 negotiations resulted in impasse proceedings, the events of one negotiation often overlaps  
2 with the next round of negotiations.

3         The Complaint seems to fixate on a few key events, which are briefly summarized  
4 here. First the Union seems to take issue with several statements made during the Fact  
5 Finding for the 2023 Reopener explaining the County’s position that a non-retroactive  
6 offer is the primary tool that the County has to incentivize the Union to quickly settle  
7 negotiations. SAC ¶¶ 24-28. The Complaint even acknowledges that the Board’s  
8 Decision in Case 2024-016, Item No. 907, allowed “final offers to contain limits to  
9 retroactivity.” SAC ¶ 28.

10         The second focus of the Complaint is on the County’s proposals during the 2024  
11 Contract negotiations to eliminate certain benefits from the CBA such as severance pay  
12 and bonus leave. SAC ¶¶ 32-35. Even assuming *arguendo* that the “County believed  
13 that only MPLAN employees deserve these benefits,” there are no additional facts  
14 showing how such a statement is evidence of an attempt to “interfere, restrain or coerce”  
15 the CCPA. SAC ¶ 33. While the CCPA repeatedly calls these proposals regressive,  
16 there are no facts alleged to support a finding of bad faith as the justification for the  
17 proposal appears in the same paragraph as the allegation. SAC ¶¶ 32-35.

18         The third focus of the Complaint is the County’s refusal to negotiate wages in the  
19 2024 Contract because the 2023 Reopener had not been settled and the amount was  
20 unknown. SAC ¶¶ 36-40. This matter was considered by the Board in Case No. 2024-  
21 016, and while the Board held that “a party may not simply defer negotiations on a  
22 successor agreement, even on subjects derivative of unsettled terms from the prior  
23 agreement,” the Board did not find this to be evidence of bad faith bargaining. SAC ¶  
24 39. Case No. 2024-016 was designated as a matter of statewide significance and multiple  
25 amicus briefs were filed debating this legal issue.<sup>1</sup> This demonstrates that the County’s  
26 alleged refusal to negotiate wages (which the County denies) would have been  
27

28  

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<sup>1</sup> The Board may take judicial notice of matters of public record for purposes of a motion to dismiss.

1 speculative and thus insufficient to demonstrate the level of intent necessary for a finding  
2 of bad faith.

3         The fourth focus of the Complaint appears to claim that the County’s decision to  
4 file a Petition for Declaratory Order (SAC ¶ 43) and/or the County’s decision to exercise  
5 its statutory option to mediate the matter (SAC ¶¶ 44-54) is somehow evidence of bad  
6 faith. However, the Complaint fails to allege any additional facts showing how the  
7 County’s decisions to avail itself of procedures deemed legal and permissible under the  
8 Act otherwise constitutes bad faith bargaining.

9         Finally, the Complaint challenges the County’s decision to settle the 2023  
10 Reopener for 6% which is the amount recommended by the Non-Binding Fact Finding,  
11 claiming this resulted in months of delay which is evidence of bad faith. SAC ¶ 63.  
12 However, this allegation also acknowledges that the matter resolved after it was  
13 presented to the BOCC and before the Binding Fact Finding Hearing. SAC ¶¶ 52 and  
14 63. Therefore, the agreement was the result of confidential settlement negotiations which  
15 cannot be introduced as evidence of negotiations.

16 **III. ARGUMENT**

17 **A. Applicable Standard Of Review**

18         The EMRB has the power to dismiss, without hearing, any complaint (or claim)  
19 where “no probable cause exists to support the Complainant’s allegation that Respondent  
20 has committed a prohibited labor practice” in violation of NRS Chapter 288. *Asch v.*  
21 *Clark County Sch. District et al.*, Item No. 314, Case No. A1-045541 (May 19, 1993).  
22 Indeed, NAC 288.375 specifically allows the Board to dismiss a matter if “no probable  
23 cause exists for the complaint.” NAC 288.375(1). In reviewing the pleadings to  
24 determine whether “probable cause exists,” the Board applies the same standard as a  
25 motion to dismiss under NRCP 12(b)(5). Therefore, the Board must dismiss the  
26 complaint if it finds, after accepting all the allegations of the complaint as true and  
27 drawing every reasonable inference in the complainant’s favor, that there is no set of  
28

1 facts which can be proven which would entitle the complainant to recovery. *See Pankopf*  
2 *v. Peterson*, 124 Nev. 43, 45 (2008) (citation omitted).

3 In this case, even if the Board accepts all the facts pled by Complainant in the  
4 Complaint as true, the Complaint still fails to state a claim for violation of NRS §  
5 288.270(1) upon which relief can be granted.

6 **B. The Complaint Fails To Allege Facts Sufficient To Support A Finding**  
7 **of Bad Faith Bargaining**

8 The Complaint raises several events which it alleges support its claim of failure  
9 to bargain in good faith in violation of NRS § 288.270(1)(a) and (e). SAC ¶¶ 64-65.  
10 Item No. 904 set forth the standard for proving bad faith bargaining, stating:

11 . . . The requirement to bargain in good faith includes the entire bargaining  
12 process, including mediation, and fact finding. NRS 288.270(1)(e) and  
13 (2)(b).

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

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

25 Item 904 at \*2. To state a claim for bad faith bargaining in violation of the Act, the  
26 Complaint must allege facts constituting “substantial evidence of fraud, deceitful action  
27 or dishonest conduct.” *Id.* None of the actions outlined in the Complaint show the  
28 County as doing more than availing itself of legal options and impasse proceedings.

1 As the Complaint contains only conclusory statements of intent and no factual  
2 allegations that the County engaged in fraud, deceit or dishonesty, the Complaint fails to  
3 allege facts sufficient to support a claim for bad faith bargaining. Therefore, these claims  
4 must be dismissed with prejudice.

5 C. **The Complaint Fails To Allege Facts Sufficient To State A Claim For**  
6 **Regressive Bargaining In Violation Of NRS §§ 288.270(1)(A) And (E)**  
7 **Or A Claim For Discrimination To Discourage Union Membership**  
8 **In Violation Of NRS § 288.270(1)(C)**

8 The Complaint misconstrues the burden necessary to show bad faith bargaining  
9 through regressive proposals. Item No. 904 describes this standard as follows:

10 A regressive bargaining proposal is defined, logically, as a change  
11 from a prior more favorable proposal. *Mid-Continent Concrete*, 336  
12 NLRB 258, 260 (2001). Such proposals include a party making an initial  
13 contract proposal that is less favorable to employees than the status quo.  
14 Regressive proposals **are not per se unlawful**; they may be justified by  
15 changes in the economy of the industry and the relative strengths of the  
16 participants. *Rescar, Inc.*, 274 NLRB 1, 2 (1985). However, regressive  
17 proposals are indicative of bad faith if left unexplained or if the  
18 explanation appears dubious. *Mid-Continent Concrete* at 260. “What is  
19 important is whether they are ‘so illogical’ as to warrant the conclusion  
20 that the Respondent by offering them demonstrated an intent to frustrate  
21 the bargaining process and thereby preclude the reaching of any  
22 agreement.” *Barry-Wehmiller Co.*, 271 NLRB 471, 473 (1984), quoting  
23 *Hickinbotham Bros. Ltd.*, 254 NLRB 96, 103 (1981). The Board adopts  
24 the paragraph above for the purposes of defining regressive bargaining and  
25 how to apply the doctrine to cases.

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

29 Item No. 904 at \*4 (emphasis added). Simply because a proposal is regressive does not  
30 make it bad faith bargaining where the County provided sufficient justification. *Id.* Here,  
31 the County’s stated reason (as alleged in the Complaint) — *i.e.*, that the County believes  
32 that some benefits should be reserved to MPlan employees — is sufficient justification  
33 for proposing to change the status quo. SAC ¶ 33. Similar to the facts in Item No. 904,

1 the initial proposals were only intended to “reflect[] the relative strength of the parties  
2 and were primarily meant to help establish Respondent’s bargaining position,” and were  
3 not bad faith or intended to “frustrate the bargaining process.” See Item No. 904 at \*4.

4 A regressive proposal is one which offers less to the other side than a prior  
5 proposal without any other offset, concession or justification. What the County cannot  
6 do is to backtrack from an existing offer without offsetting<sup>2</sup> the change in some way. For  
7 example, it would be regressive and illegal to offer a 5% COLA in Session 1 and then  
8 later offer only a 3% COLA in Session 3.<sup>3</sup>

9 Additionally, even if the Board accepts all the facts pled by Complainant in the  
10 SAC as true, the SAC still fails to state a claim for discrimination to discourage union  
11 membership in violation of NRS § 288.270(1)(c). The basis for the claim of  
12 discrimination is solely based on the allegedly expressed preference to reserve certain  
13 benefits to MPlan employees. SAC ¶ 33. The Union argues that “because CCPA, whose  
14 members were formerly MPLAN, decided to form a collective bargaining unit . . .” this  
15 must be evidence of discrimination and interference. SAC ¶ 34. Perhaps if this was a  
16 first contract situation where the employees had just left MPlan this argument might carry  
17 weight, but it is not. The CCPA has been bargaining with the County since 2006. SAC ¶  
18 5. This means that the Prosecutors have not been members of MPlan for almost 20 years,  
19 and the County seeking to remove these grandfathered benefits from the CCPA does not  
20 support an inference of discrimination to discourage union membership. The CCPA has  
21 had 20 years of negotiating for benefits separate and aside from those given to MPlan,  
22 and if the Board were to find this evidence sufficient to support a claim of discrimination,

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26 <sup>2</sup> If the offer is in a package with other changes or it is offset in some way it would not be regressive and  
27 illegal. For example, if the County offered a 5% COLA in Session 1 and then offered a 3% COLA and an  
28 additional 16 hours of paid vacation in Session 3, the later offer would not be regressive.

<sup>3</sup> The same rule applies to the Union in that they cannot increase their request without an offset. For  
example, the Union cannot propose to take a 3% COLA only to later demand a 4% COLA.

1 it would mean that the County could never seek to remove a benefit no matter how much  
2 time has passed.

3 As the allegations of the Complaint belie the existence of bad faith regressive  
4 bargaining and/or discrimination, the Complaint fails to state a claim upon which relief  
5 may be granted and must be dismissed with prejudice.

6 **D. The Board Should Partially Dismiss The Complaint For Failure To**  
7 **State A Claim Upon Which Relief May Be Granted For Any Claims**  
8 **Barred By The Principle Of *Res Judicata***

9 The vast majority of the facts alleged in this Complaint were already addressed  
10 by this Board in Item No. 907. Where claims have already been presented to and ruled  
11 upon by the Board, those claims are barred by the principle of *res judicata*. Any claim  
12 that was the subject of a previous complaint that resulted in the final resolution of a  
13 dismissal with prejudice is barred by the doctrine of *res judicata* and/or collateral estoppel  
14 and cannot be tried for a second time in the present Complaint. *Cf. Clark Cty Public*  
15 *Employees Assoc., SEIU Local 1107 v. Housing Authority of the City of Las Vegas*, Case  
16 No. A1-045478, Item No. 270, at \*9-10 (July 25, 1991). The County should not have to  
17 repeatedly litigate the same matters under the Union’s misguided attempt to achieve a  
18 different result. Only those facts which occurred after March 17, 2025 (the date Item No.  
19 907 was decided) would not be barred.

20 Here, the Union challenges all of the same incidents that were raised in Item No.  
21 907 including the non-retroactive proposals (SAC ¶¶ 24-29, 35), the decision to file a  
22 Petition for Declaratory Order (SAC ¶ 43); the County’s decision to engage in the  
23 statutory option to mediate the matter prior to selecting a fact finder (SAC ¶¶ 44-54); and  
24 the alleged refusal to negotiate on wages while prior the CBA was unsettled and  
25 negotiations were at impasse (SAC ¶¶ 52-54).

26 For example, the Union asserts that the County failed to bargain in good faith by  
27 making proposals that were not retroactive, (SAC ¶ 35), however Item No. 907 expressly  
28 states that the default retroactive language only applies “in the absence of any language  
in the offer that is selected by the arbiter that limits or prohibits retroactivity” — *i.e.*, the

1 County is permitted to make an offer containing limits on retroactivity. *See* Item No. 907  
2 at \*9. As these allegations have already been deemed permissible by the Board, the  
3 principle of *res judicata* bars the Union from alleging otherwise here.

4 Moreover, many of the challenged actions were taken in direct result and  
5 compliance with the Board’s Decision. For example, the Union challenges the recent  
6 County proposals which are based on the assumption that the prior Fact Finding would  
7 lead to a stated result. SAC ¶¶ 54-57. The Union calls this a “non-proposal,” but this is  
8 not true. SAC ¶ 57. The Board in Item No. 907 provided that the parties must continue  
9 to negotiate the terms of a contract even if contingent upon unresolved terms from prior  
10 negotiations. *See* 907 at \*7; *see also* SAC ¶ 39. Because the Fact Finding for the 2023  
11 Reopener was still pending during negotiations over the 2024 Contract, the wage  
12 proposals had to set a starting point before the County could engage in good faith  
13 negotiations over wage increases. Stated differently, in order to negotiate a 3% wage  
14 increase the parties must know “3% of what?” *Id.* at \*7-8. This proposal is exactly what  
15 the Board foresaw occurring in Item No. 907. Therefore, the CCPA’s alleged facts cannot  
16 state a claim for a violation of the Act when the County is just doing what it was told to  
17 do in Item No. 907, and these claims should be dismissed with prejudice on the principle  
18 of *res judicata*.

19 **CONCLUSION**

20 For the reasons set forth above, the Complaint fails to allege facts sufficient to  
21 show a violation of the Act and, therefore, the Complaint should be dismissed with

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prejudice. Additionally, the Board should order that all intervening deadlines (*e.g.*,  
deadline to submit the pre-hearing statement) should be stayed until the Board has ruled  
upon this Motion.

DATED this 28<sup>th</sup> day of October, 2025.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 28th day of October, 2025, I filed and served by electronic means the foregoing **RESPONDENT’S MOTION TO DISMISS COMPLAINANT’S SECOND AMENDED COMPLAINT**, as follows:

Employee-Management Relations Board  
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An employee of Fisher & Phillips LLP

**CCPA (Complainant)**

**Opposition to Motion to Dismiss**

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FILED  
November 26, 2025  
State of Nevada  
E.M.R.B.  
5:11 p.m.

8  
9 Before the State of Nevada  
10 Government Employee-Management  
11 Relations Board

12 CLARK COUNTY PROSECUTORS  
13 ASSOCIATION,

14 Complainant,

15 v.

16 CLARK COUNTY,

17 Respondent.  
18

Case No. 2024-019

**OPPOSITION TO MOTION TO  
DISMISS**

19  
20 **Opposition to Motion to Dismiss**

21 The CLARK COUNTY PROSECUTORS' ASSOCIATION ("CCPA" or "Union") hereby  
22 opposes CLARK COUNTY'S ("Respondent" or "County") Motion to Dismiss the Union's  
23 Second Amended Complaint ("SAC" or "Pl. 2d Amd. Compl.") The Complaint sets forth factual  
24 allegations which when taken as true, constitute bad faith bargaining under NRS 288.270(1)(a-c)  
25 and (e), and discrimination against Union membership. This Opposition is based on the papers  
26

27 OPPOSITION TO MOTION TO DISMISS

1 and pleadings on file herein, the below and included Memorandum of Points and Authorities, and  
2 any oral argument the Board so permits on the Motion and this Opposition.

3 **I.**

4 **INTRODUCTION**

5 Clark County seeks dismissal of CCPA's merited claims for bad faith bargaining by  
6 mischaracterizing the law and the Union's pleaded facts. The County's motion must fail because  
7 the Union has alleged facts which, when taken as true, support a finding of the County's failure  
8 to negotiate in good faith.

9 First, CCPA alleges the County attempted to interfere with the Union's administration and  
10 the Union's rights by purposefully making proposals designed to eliminate the Union's choice in  
11 bargaining. Furthermore, the County admitted making those proposals for that express reason and  
12 purpose. This certainly is not good faith bargaining and constitutes interference under NRS  
13 288.270.

14 Second, the SAC alleges the County engaged in illogical regressive bargaining, again with  
15 the intent of forcing the Union into courses of action which should be voluntary. The County  
16 specifically intended to restrict the Union's use of impasse procedures outlined in NRS 288. The  
17 County further stated it was engaging in this type of bargaining because of perceived disdain for  
18 the Union's decision to bargain collectively away from MPLAN. Whether this was the actual  
19 motive or not, the sentiment is enough to potentially discourage Union participation.

20 Third, the SAC alleges multiple instances of the County manipulating the scheduling  
21 process or not adhering to scheduling rules for negotiations. This includes the County's unilateral  
22 refusal to bargain, its inability to adhere to scheduling rules set under NRS 288 and agreed upon  
23 by the CCPA, and manipulation of the mediation and factfinding process to waste the Union's  
24 and its membership's time, money, and other resources.

25 The County's arguments to the contrary are irrelevant to the claims made. The County  
26 claims some of these arguments are barred by the doctrine of *res judicata* because of the  
27 resolutions reached by the Board in Item No. 907. This argument ignores it is the entire course of

1 the County’s actions that evidence the County’s clear intent to bargain in bad faith. The County  
2 argues that CCPA is attempting to litigate questions such as “can the County propose regressive  
3 policies” and “should the parties continue to negotiate even if there is missing information,”  
4 which is not the case; rather, taking those rulings into account, the CCPA argues the way in which  
5 the County conducted itself throughout the negotiation process demonstrates its willingness to  
6 manipulate the negotiation process and deprive the Union of its rights. In fact, the County did  
7 just that in manipulating the process to the Union’s detriment.

8 At this stage and in consideration of this Motion, the Board must draw all inferences in  
9 favor of the CCPA and accept all alleged facts as true. Doing so, the claims of bad faith bargaining  
10 made by the CCPA are supported and the Motion to Dismiss must be denied.

## 11 II.

### 12 LEGAL STANDARDS

13 Motions to Dismiss are reviewed by the Board using the probable cause standard under  
14 Nevada Administrative Code (“NAC”) 288.375(1). *Nev. Emp. Servs. Union v. Clark Cnty. Water*  
15 *Reclamation Dist.*, Case No. 2024-030, Item No. 905 (Dec. 17, 2024), at 1. NAC 288.375  
16 specifically allows the Board to dismiss a matter if “no probable cause exists for the complaint.”  
17 NAC 288.375(1). As the Board has previously held, “cases involving factual disputes and  
18 credibility determinations require a hearing and cannot be disposed of by a motion to dismiss.”  
19 *See Las Vegas v. Las Vegas Peace Officers Ass’n*, Case No. 2019-016 (2019), Item No. 851; *see*  
20 *also Operating Eng’rs Local Union No. 3 v. Incline Vill. Gen. Improvement Dist.*, Case No. 2020-  
21 012 (2020), Item No. 864. Thus, the EMRB may only dismiss a claim on this basis if, after  
22 accepting the plaintiff’s allegations as true, there is no set of proven facts which would entitle the  
23 plaintiff to recovery. Additionally, The Supreme Court of Nevada has held that it is proper to look  
24 toward the National Labor Relations Board for guidance on issues involving the Employee-  
25 Management Relations Board. *City of Reno v. Reno Police Protective Ass’n*, 118 Nev. 889, 892,  
26 59 P.3d 1212, 1214 (2002). As such, the Nevada Employee-Management Relations Act (EMRA)  
27 “should be interpreted consistently with the National Labor Relations Act (NLRA)”. *Weiner v.*  
28 *Beatty*, 113 P.3d 313, 315 (Nev. 2005).

1 The EMRA makes it a prohibited practice for a local government employer to refuse to  
2 bargain collectively in good faith with the exclusive representative of the bargaining unit. NRS  
3 288.270(1)(e). As such, EMRA imposes a reciprocal duty on employers and bargaining agents to  
4 negotiate in good faith. *Washoe Cnty. Sch. Dist. v. Washoe Sch. Principals' Ass'n*, Case No.'s  
5 2023-024; 2023-031 Item No. 895 (2024); *citing Juvenile Justice Supr. Ass'n v. County of Clark*,  
6 Case No. 2017-20, Item No. 834 (2018); *Nevada Classified Sch. Employees Ass'n Ch. 5, Nevada*  
7 *AFT v. Churchill County Sch. Dist.*, Case No. 2020-008, Item No. 863 (2020). “[A] party’s  
8 conduct at the bargaining table must evidence a sincere desire to come to an agreement.” *Id.* The  
9 determination of whether there has been such sincerity is made by ‘drawing inferences from the  
10 conduct of the parties as a whole.’” *Id.*; *quoting City of Reno v. Int'l Ass'n of Firefighters*, Local  
11 731, Item No. 253-A (1991) (internal quotations omitted). To establish bad faith bargaining, it is  
12 not sufficient to allege foul play; there must be “substantial evidence of fraud, deceitful action, or  
13 dishonest conduct”. *Las Vegas Peace Officers Ass'n v. Las Vegas*, Item No. 821, Case No. 2023-  
14 034, at 4 (2017) (*quoting Boland v. Nev. Serv. Emps. Union*, Item No. 802, at 5 (2015) (internal  
15 citation omitted)) This can be shown in a number of ways:

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

1 *See Washoe County School District v. Washoe School Principals Association*, Case No.'s 2023-  
2 024 and 2023-031, Item No. 895 (2024). Adamant insistence on a bargaining position or “hard  
3 bargaining” is not enough to show bad faith bargaining. *Reno Municipal Employees Ass’n v. City*  
4 *of Reno*, Case No. A1-045326, Item No. 93 (1980).

5 Additionally, it is a prohibited practice under the EMRA for a local government employer  
6 or its designated representative willfully to Interfere, restrain or coerce any employee in the  
7 exercise of any right guaranteed under the EMRA. NRS 288.270(1)(a). A local government  
8 employer or its designated representative may also commit a prohibited practice when it  
9 dominates, interferes with the formation or administration of an employee organization. NRS  
10 288.270(1)(b).

11 The entirety of NRS Chapter 288 makes it clear that time is of the essence in terms of  
12 participating in negotiations, mediation and fact-finding. NRS 288.190, which governs mediation,  
13 is no exception to the rule that time is of the essence. Furthermore, NRS 288.200 makes it clear  
14 that once mediation has been chosen as an option, that process must be concluded prior to  
15 submitting the dispute to fact finding.

16 The CCPA sufficiently alleged that the County failed to bargain in good-faith by: (1)  
17 attempting to interfere with the CCPA’s ability to engage in bargaining by refusing to offer  
18 retroactivity with the explicit purpose of limiting the Union’s ability to object to negotiations; (2)  
19 engaging in unjustified regressive bargaining; and (3) unjustified delays throughout the  
20 bargaining process. These allegations are sufficiently supported by facts such that a Motion to  
21 Dismiss should be denied. Additionally, the CCPA has sufficiently alleged that the County’s  
22 actions constituted the prohibited practice of interfering with, restraining, and coercing employees  
23 in the exercise of their rights under the EMRA by coercing CCPA into foregoing impasse  
24 procedure rights guaranteed under the EMRA. Finally, the CCPA has sufficiently alleged that by  
25 coercing the CCPA into foregoing impasse procedure rights under the EMRA that the County has  
26 committed the act of dominating and interfering with the administration of the CCPA.

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**III.**

**ARGUMENT**

**A. The County Interfered with CCPA’s Bargaining Rights**

Interference claims require a fact-intensive analysis. On February 29<sup>th</sup> 2024 at the 2023 Reopener Fact-Finding hearing, Clark County Chief Financial Officer Jessica Colvin testified it was an executive team decision to not offer retroactivity as an “incentive” to prevent the CCPA from using impasse procedures under NRS 288. She stated, in relevant part, “...the only thing really at stake, especially for a reopener when there's no other article on the table for the County to negotiate with...the only incentive is to apply it effective of when the award is provided, rather than retroactive to July 1.” SAC ¶27 at 7-9. This supports a statement made by Attorney Allison Kheel, in which she explains, “[T]he main incentive for settling contracts on time is the fact that wage increases will not be made retroactive. If the factfinder awards wage increases retroactively, it is essentially telling the Union that they have no incentive to actively participate in negotiations, and that delays caused by insisting to impasse ... is perfectly acceptable behavior.” Pl. 2d Amd. Compl. ¶25. The Union has the absolute statutory right to use impasse procedures outlined in NRS 288.

The CCPA has sufficiently alleged that the County’s conduct not only constituted bad-faith bargaining under the EMRA, but that the County’s conduct independently amounted to the prohibited practices of interfering with, restraining, and coercing employees in the exercise of their statutory rights, as well as dominating the CCPA’s administration. By conditioning retroactivity on the Union’s agreement to forego impasse procedures, the County sought to coerce the CCPA into relinquishing rights expressly guaranteed under NRS 288. This coercive tactic—designed to force the Union down a single bargaining path and eliminate its ability to invoke impasse procedures—goes beyond mere “hard bargaining.” It reflects a deliberate attempt to interfere with the Union’s protected decision-making, restrain its ability to engage in lawful impasse-resolution mechanisms, and dominate its internal administration by dictating which statutory tools it may or may not exercise. These allegations, taken as true, sufficiently plead both bad-faith bargaining and the related unfair labor practices of interference, restraint, coercion, and domination. Accordingly, dismissal is improper.

1 Under this pleaded set of facts, the Board could find there is a viable claim for interference  
2 with the administration of the CCPA.

3 **B. The County Engaged in Regressive Bargaining and Punished the CCPA for**  
4 **Exercising Protected CCPA’s Rights**

5 A regressive bargaining proposal is “a change from a prior more favorable proposal.”  
6 *Clark County Defender’s Union v. Clark County*, Case No. 2024-014, Item No. 904 (2024)  
7 (quoting *Mid-Continent Concrete*, 336 NLRB 258, 260 (2001)) (“Item 904”). This include a party  
8 “making an initial contract proposal that is less favorable to employees than the status quo.” *Id.*  
9 Regressive bargaining on its own is not inherently done in bad faith. If the proposals “are ‘so  
10 illogical’ as to warrant the conclusion that the Respondent by offering them demonstrated an  
11 intent to frustrate the bargaining process and thereby preclude the reaching of any agreement,  
12 then they are made in bad faith” *Id.* (quoting *Hickinbotham Bros. Ltd.*, 254 NLRB 96, 103 (1981)).

12 The County proposed two courses of change to the Agreement during Successor CBA  
13 negotiations: (1) removal of severance pay for certain employees, and (2) removal of accrued  
14 bonus leave. When asked for the reasoning behind these changes, the County stated that they were  
15 made because CCPA went to impasse two prior years, and that “only MPLAN employees deserve  
16 those benefits.” This position distills to the County eliminating certain benefits in retaliation for  
17 CCPA deciding to form a bargaining unit and exercise its statutory right to employ impasse  
18 procedures.

18 The County argues its position is based on the potential for Unions to engage in surface  
19 bargaining by using impasse improperly. While there is no evidence that this kind of surface  
20 bargaining occurred between the Union and County, the mere possibility of surface bargaining  
21 does not permit the County to engage in its own prohibited practice. This reasoning is illogical.  
22 The mere specter of the other bargaining party’s ability to engage in a prohibited practice simply  
23 cannot permit a party to engage in a prohibited practice of its own. The County’s action inherently  
24 frustrated the bargaining process by coercing the CPPA from following a valid statutorily  
25 protected course of action.

1 The County also claims that, because of the distance between the MPLAN-CCPA split  
2 and current negotiations, there can be no possible inference of discrimination against Union  
3 participation. That is a factual dispute and determination inappropriate for decision at this time.  
4 The County's assertion that its regressive proposals were justified, and therefore not evidence of  
5 bad-faith bargaining, *see* Motion to Dismiss 7:24 – 8:3; *see also* 8: 13-15, misses the point and  
6 misstates the allegation. As alleged in SAC ¶ 33, the County's stated justification for its regressive  
7 proposal was not merely its belief that only MPLAN employees deserved the disputed benefits,  
8 but also that the CCPA had exercised its statutory right to impasse procedures under the EMRA  
9 in the prior two years. In other words, the County expressly justified its regressive proposal by  
10 citing the Union's past use of protected impasse procedures. This is a blatant admission of  
11 retaliation against the CCPA for exercising rights guaranteed by statute as well as retaliation for  
12 leaving MPLAN. The County appears to believe that the mere existence of any justification, even  
13 one that is itself a prohibited practice, somehow immunizes regressive bargaining. That position  
14 is untenable. A justification that is itself a prohibited practice on its face cannot legitimize conduct  
15 that would otherwise constitute bad-faith bargaining.

16 Moreover, even if there is no connection between the instant bargaining round and the  
17 CCPA's initial decision to organize, the reasoning that the County must engage in this type of  
18 bargaining because it doesn't like the Union's ability to exercise its statutory options in the  
19 negotiating process is illogical and demonstrates bad faith on the part of the County.

20 Under the pleaded facts, the Board could reasonably find the County engaged in prohibited  
21 regressive bargaining.

22 **C. The County Engaged in Unjustified Delays and Refused to Participate Under the**  
23 **Controlling Law**

24 EMRB has held that delaying negotiations can be a prohibited practice under NRS  
25 288.270. *Clark County Defenders Union v. Clark County*, Case No. 2024-014, Item No. 904  
26 (2024). This is true even if there are unresolved issues or other agreements in an impasse or  
27 negotiation process. *In Re: Clark Cnty. Petition for Declaratory Order*, Case No. 2024-016, Item  
28 No. 907 (2025).



1 The lack of movement on the County's part concerning mediation, after the County moved  
2 for mediation, was in clear violation of CCPA's mandate that time is of the essence, just as it was  
3 in the Board's CCDU case. Lacking information in one proceeding does not in any way reduce  
4 the burden of the parties to expedite negotiations and avoid delays.

5 Finally, the County's decision to withhold their adoptions of the respective Fact Finders'  
6 recommendations for the 2022 and 2023 reopeners until the eleventh hour before interest  
7 arbitration on those issues further demonstrates its intent to delay proceedings and frustrate the  
8 bargaining process. SAC ¶'s 18 and 63. In both instances, the County refused to adopt or rescind  
9 a factfinding until the day before the matter was scheduled. *Id. at* ¶'s 12, 13, 18, 52 and 63. The  
10 County's actions drug out a simple negotiation into a months-long fight, which was, as shown by  
11 the County's ultimate decisions, a waste of all parties' time and resources.

12 The County wants to have it both ways. On one hand, the County claims that under the  
13 mandate of *In Re: Clark Cnty. Petition for Declaratory Order*, Item No. 907, it had to propose  
14 illusory wages in concurrent negotiations because it was required to negotiate promptly; on the  
15 other, the County claims that its decision to delay the negotiations was because it did not have the  
16 information necessary to negotiate. Both cannot be true.

17 Based on the pleaded facts, the Board could reasonably find that there was bad faith  
18 bargaining by the County based on the unjustified delays by the County.

19 **D. Res Judicata Concerns – Not Applicable to CCPA's Claims**

20 The doctrine of res judicata provides that "when there is a final judgment on the merits,  
21 further claims by the parties or their privies based upon the same cause of action are barred."  
22 *Board of Trustees of Carpenters Pension Trust Fund v. Reyes*, 688 F.2d 671, 673 (9th Cir.1982),  
23 cert, denied, 462 U.S. 1120 (1983). Under Nevada law, "[t]he doctrine of res judicata precludes  
24 parties or their privies from re-litigating a cause of action that has been finally determined in a  
25 court of competent jurisdiction." *Paradise Palms Community Ass'n v. Paradise Homes*, 89 Nev.  
26 27, 30, 505 P.2d 596, 598 (1973). This doctrine applies when (1) the issue was decided in a prior  
27 adjudication, (2) there was a final judgment on the merits, and (3) the party against whom the  
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1           **E. The Board’s Interpretation of NRS 288.215(10) in Item No. 907 Warrants**  
2           **Reconsideration**

3           Finally, and raised only because the County relies heavily on the Board’s decision in Item  
4 No. 907, the CCPA respectfully submits that the Board’s interpretation of NRS 288.215(10) in its  
5 response to Question 4 may have inadvertently departed from the statute’s plain language. This  
6 issue is raised with due respect for the Board’s authority and only to clarify that the County’s  
7 reliance on Item No. 907 does not insulate its conduct from scrutiny under NRS 288.270.

8           In Item No. 907, the Board concluded that because NRS 288.215(9) does not expressly  
9 prohibit a party from including a no-retroactivity clause in its final offer, either party may propose  
10 such a limitation, even though NRS 288.215(10) states that an arbitrator’s decision “is retroactive  
11 to the expiration date of the last contract.” *See* Item No. 907 at 8–10. The Board reasoned that  
12 prohibiting parties from including a no-retroactivity term would impose a requirement “not  
13 contemplated under the EMRA.” *Id.*

14           However, NRS 288.215(10) already imposes a mandatory rule that the arbitrator’s  
15 decision must be retroactive. The statute does not condition retroactivity on party agreement and  
16 does not allow either party to nullify that retroactivity by inserting a contrary provision in its final  
17 offer. Because subsection (10) governs the substantive effect of the arbitrator’s decision, and  
18 because it contains explicit mandatory language, it naturally limits what parties may include in  
19 their final offers under subsection (9). Standard principles of statutory construction provide that  
20 a more specific, mandatory provision controls a general procedural one. *See Gibson v. State*, No.  
21 64684, 2015 BL 40311 (Nev. Jan. 21, 2015).

22           Under the Board’s interpretation, a party may propose a no-retroactivity clause, forcing  
23 the arbitrator either to choose an offer inconsistent with NRS 288.215(10) or reject the offer for  
24 containing an unlawful provision. The discomfort expressed by the Board with that result reflects  
25 a structural conflict created not by the statute, but by reading subsection (9) to allow a term that  
26 cannot stand under subsection (10). Properly read, NRS 288.215(10) prohibits the inclusion of  
27 final-offer provisions that bar retroactive application because the statute itself resolves the issue:  
28 the award is retroactive.

1 Clarifying this point is important because the County relies on Item No. 907 to argue that  
2 it was permitted to make retroactivity conditional in a manner that punished the CCPA for  
3 exercising statutory impasse rights. Yet even under Item No. 907, the Board did not address  
4 whether such conduct, motivated by discouraging the exercise of rights protected by Chapter 288,  
5 constitutes bad-faith bargaining or a prohibited practice under NRS 288.270(1)(a)–(b). The Union  
6 raises this issue only to ensure that the County’s interpretation is not mistakenly adopted; nothing  
7 in Item No. 907 authorizes a party to use retroactivity as leverage to interfere with or restrain the  
8 lawful exercise of impasse procedures.

9 For these reasons, to the extent the County argues that Item No. 907 endorses its use of  
10 retroactivity-related proposals for coercive or retaliatory purposes, the CCPA respectfully submits  
11 that such reliance is misplaced. The plain language of NRS 288.215(10) requires retroactivity,  
12 and the statute does not permit parties to undermine that requirement through final-offer terms  
13 inconsistent with legislative direction.

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**IV.**

**CONCLUSION**

At this juncture, the Board need not determine which party might prevail. The only question is whether the CCPA's complaint presents facts which could, if taken as true, support its claims for bad faith bargaining against the County. The facts outlined in the SAC clearly demonstrate a basis for the allegations therein, and as a result, the County's Motion must be denied.

For all of the above reasons, the CCPA respectfully requests that the Board deny the County's Motion to Dismiss in its entirety and allow CCPA's claims to proceed to hearing.

Date: November 26, 2025

Respectfully submitted,

/s/ Nathan R. Ring

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 26, 2025, I have served via electronica mail a true and correct copy of **CLARK COUNTY PROSECUTORS ASSOCIATION’S OPPOSITION TO MOTION TO DISMISS** as addressed below. I also have filed the document with the Nevada Government Employee-Management Relations Board via its email address at [emrb@business.nv.gov](mailto:emrb@business.nv.gov):

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**Clark County (Respondent)**

**Reply in Support of Its Motion to Dismiss  
Complainant's Second Amended Complaint**

FILED  
February 3, 2026  
State of Nevada  
E.M.R.B.  
9:37 p.m.

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13 **STATE OF NEVADA**  
14 **EMPLOYEE-MANAGEMENT RELATIONS BOARD**

15 CLARK COUNTY PROSECUTORS      Case No.: 2024-019  
16 ASSOCIATION,  
17  
18 Complainant,  
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20 vs.  
21  
22 CLARK COUNTY,  
23  
24 Respondent.

25 **RESPONDENT’S REPLY IN SUPPORT OF ITS MOTION TO DISMISS**  
26 **COMPLAINANT’S SECOND AMENDED COMPLAINT**

27 Respondent, Clark County (the “County”), by and through its counsel of record,  
28 Fisher & Phillips LLP, hereby files its Reply in Support of Its Motion to Dismiss  
Complainant’s Second Amended Complaint (“SAC”). This Reply is based on NAC §  
288.240(3), NAC § 288.375, NRS § 288.270, and the pleadings on file with the  
Employee-Management Relations Board (“EMRB or the “Board”) and the following  
Memorandum of Points and Authorities, and any oral argument permitted by the Board.

29 **MEMORANDUM OF POINTS AND AUTHORITIES**

30 **I. INTRODUCTION**

31 The Opposition filed by the Clark County Prosecutors’ Association (“CCPA” or  
32 the “Union”) repeatedly attempts to re-cast lawful activities as having illegal or coercive

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1 intent. The Parties agree that to avoid dismissal, the SAC must allege sufficient facts,  
2 which, after accepting all the factual allegations of the complaint as true and drawing  
3 every reasonable inference in the complainant’s favor, would prove that the complainant  
4 is entitled to recovery. *See Pankopf v. Peterson*, 124 Nev. 43, 45 (2008) (citation  
5 omitted). However, nothing in the Opposition identifies which facts in the SAC, if  
6 accepted as true, would actually support a claim for interference or bad faith bargaining.

7 The CCPA asserts that the SAC contains sufficient facts (which if accepted as  
8 true) would prove its claim of bad faith bargaining: “(1) attempting to interfere with the  
9 CCPA’s ability to engage in bargaining by refusing to offer retroactivity with the explicit  
10 purpose of limiting the Union’s ability to object to negotiations; (2) engaging in  
11 unjustified regressive bargaining; and (3) unjustified delays throughout the bargaining  
12 process.” Opp. at p. 5:14-18. However, when the SAC is actually examined, it only  
13 contains conclusory allegations, devoid of any specific facts which, if true, would prove  
14 any of the above grounds for a claim of bad faith bargaining. Therefore, the SAC is not  
15 supported by probably cause and must be dismissed.

16 **II. ARGUMENT**

17 **A. The CCPA Fails To Allege Facts Sufficient To Demonstrate**  
18 **Interference, Therefore The Interference Claim Should Be Dismissed**

19 The CCPA’s claim for interference fails to allege an impermissible action.  
20 Explaining the economic realities of a non-retroactive proposal does not suggest a  
21 prohibited intent. Absent proof of a prohibited intent, the interference claim fails and  
22 must be dismissed.

23 Here, the Parties do not dispute that the County’s Final Offer in the 2023 Reopener  
24 Negotiations was NOT retroactive. Paragraphs 24 – 27 of the SAC confirm that the  
25 County’s Offer from the beginning of negotiations (*i.e.*, prior to July 1, 2023) has always  
26 been that the wage proposal is “Effective July 1, 2023, or upon approval by the Clark  
27 County Board of Commissioners whichever is later. . .” *See* SAC at ¶¶ 24-27.

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1           This is identical language to the language deemed permissible by this Board in  
2 *Clark County Prosecutors Association v. Clark County*, Case No. 2024-016, EMRB Item  
3 No. 907 (EMRB Mar. 15, 2025) (hereinafter “Item No. 907”). In fact, the briefing in  
4 Item No. 907 (on Questions 3 and 4) centered around the timing and chosen effective  
5 dates of a party acting as an incentive to resolve negotiations quickly and efficiently. It  
6 appears that the CCPA simply does not understand the difference between a lawful  
7 incentive offered to facilitate efficient and timely resolution of the negotiations and illegal  
8 interference or coercion of employees in the exercise of their statutory rights. The  
9 statements as quoted in Paragraphs 24-27, and 35 of the SAC only reiterate the economic  
10 realities of retroactive v. non-retroactive proposals. The CCPA alleges no additional facts  
11 that would transform the making of a legal, permissible, non-retroactive final offer into  
12 an impermissible act of interference.<sup>1</sup>

13           The CCPA’s warped interpretation of these statements is that they somehow  
14 evidence an independent and nefarious motive to “condition[] retroactivity on the Union’s  
15 agreement to forego impasse procedures. . .” Opp. at p. 6:17-20. However, the County’s  
16 language is clear that it is simply choosing the “later” effective date. Agreement of the  
17 Parties to a contract—by definition—ends impasse procedures. The Parties could  
18 hypothetically reach impasse in April and engage in the impasse procedures and/or settle  
19 the contract prior to July 1. Therefore, nothing in the offered language makes forgoing a  
20 statutory right a “condition” of retroactivity.

21           Alternatively, impasse proceedings could extend beyond the CCPA’s proposed  
22 effective date (*i.e.*, July 1, 2023), at which point the CCPA must assess its position and  
23 choose one of three options: (1) decide that engaging in impasse proceedings is worth the  
24 risk of potentially receiving a non-retroactive award, and continue with impasse  
25 proceedings; (2) decide that the July 1 effective date is more important and accept the  
26 County’s offer; or (3) modify its proposal in hopes of ending the impasse and reigniting

27 <sup>1</sup> On Page 10 of the Opposition the CCPA attempts to argue that res judicata does not apply because Item  
28 No. 907 does not fully resolve the relevant allegation due to the County’s “permissible actions” could be  
found to be dishonest or a pretext for discrimination. Opp. p. 10. However, the SAC does not plead any  
facts to support either conclusion.

1 the negotiations. Nothing about articulating this risk-reward analysis makes “foregoing  
2 a statutory right” a condition of the offer,<sup>2</sup> this is simply how the time value of money  
3 works. While the CCPA may not like being in this position, that is the nature of  
4 negotiations and is a function of the Parties’ relative bargaining power.<sup>3</sup>

5 The Board should deny the CCPA’s request to reinterpret NRS § 288.215(10) as  
6 set forth in Item No. 907.<sup>4</sup> Item No. 907 accepted that interpreting the statute as  
7 prohibiting a party from making a non-retroactive proposal would effectively force the  
8 arbitrator to ignore one party’s final offer or alternatively change the terms of the final  
9 offer. *Id.* at \*9. As the statute contemplates a choice between two final offers, as crafted  
10 by the individual parties, the above interpretation would be contrary to the statutory  
11 language. *Id.* at \*9. The Board further found that the only way to reconcile the  
12 discrepancy is to view NRS 288.215(10) as a “gap filler” which is the default application  
13 unless a party provides otherwise in its final offer. *Id.* at \*9.

14 The CCPA is making the same argument in this case that the respondents made in Item  
15 No. 907. That argument didn’t work in Item No. 907 and should not work in this case.<sup>5</sup>  
16 Ultimately, as there are no further facts alleged in the SAC to demonstrate a separate  
17 intent to interfere or coerce, this claim must be dismissed.

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22 <sup>2</sup> The CCPA is essentially arguing that the County should be prohibited from explaining the economic  
23 realities and arguments in favor of a non-retroactive proposal to the fact-finder during impasse proceedings.  
24 This action would interfere with the County’s ability to fully participate in impasse proceedings and  
25 exercise its statutory rights.

26 <sup>3</sup> The CCPA readily admits that it engaged in all the statutory impasse procedures, without impediment.

27 <sup>4</sup> The CCPA argues that its claims are not barred by the doctrine of *res judicata* despite the existence of a  
28 final adjudicated order declaring retroactive conditions on final offers to be legal. *Opp.* p. 11. The purpose  
of *res judicata* is to prevent a party from having to relitigate a legal issue which has already been considered  
and ruled upon. Then, on the very next page of the Opposition, the CCPA requests that the Board reconsider  
its ruling and interpretation set forth in Item No. 907 (a fully adjudicated and final order). *Opp.* p. 12. Such  
a request is the very definition of being forced to relitigate an issue and is exactly the type of request the  
doctrine of *res judicata* is designed to prevent. Therefore, the CCPA’s claims should be barred by the  
doctrine of *res judicata*.

<sup>5</sup> The CCPA was a Respondent in Item No. 907 and did not request the Board reconsider its position in that  
matter, thus it is inappropriate to attempt to relitigate that issue in this case.

1           **B. The Union Fails To Identify Facts Proving Any Of The County's**  
2           **Proposals Were Regressive Or Illogical, Thus The Union's Claims Of**  
3           **Regressive Bargaining And Retaliation Must Be Dismissed**

4           The Union's second claim of regressive bargaining and retaliation are based on  
5           the County's proposals to eliminate two benefits (*i.e.*, severance pay and accrued bonus  
6           leave). However, the Opposition stills fail to explain how either proposal meets the  
7           definition of a "regressive proposal." The Union agrees that *Clark County Defenders*  
8           *Union v. Clark County, et al*, Case No. 2024-014, EMRB Item No. 904, \*4 (EMRB Dec.  
9           12, 2024) (hereinafter "Item No. 904") sets forth the definition of a "regressive proposal"  
10          as "a change from a prior more favorable proposal." *Id.* at \*4. The CCPA does not  
11          allege (because it cannot) that there were any "prior proposals" on these topics, much less  
12          allege facts showing that these nonexistent prior proposals were more favorable.

13          The CCPA then goes on to define a "regressive proposal," as including "making  
14          an initial contract proposal that is less favorable to employees than the status quo." Opp.  
15          at p. 7:6-8 (quoting Item No. 904). However, the CCPA is misreading this language as  
16          applying to the County's first proposal passed in a given round of negotiations, and  
17          interpreting "status quo" as the terms of the prior CBA. Both interpretations are incorrect.  
18          An "initial contract proposal" is one made during the negotiation of an "initial contract"—  
19          *i.e.*, the first contract negotiated following the union being organized/certified.<sup>6</sup> As there  
20          is more than 15 years and several CBAs between the subject round of negotiations and  
21          the original organization of the bargaining unit, these proposals are not "initial contract  
22          proposals." Based on the facts alleged in the SAC, these proposals do not satisfy the  
23          definition of a "regressive proposal," therefore the claim for regressive bargaining should  
24          be dismissed.

25          Moreover, the Board held in Item No. 904 that "regressive proposals are not *per*  
26          *se* unlawful" and in order for the proposal to constitute bad faith, the proposal must be  
27          "so illogical" that the only thing the proposal could possibly indicate is an intent to

28          <sup>6</sup> Under NLRB caselaw, these negotiations are occurring during the one-year period where the union is  
protected from a decertification petition or a rival union attempting to organize the bargaining unit  
employees. "Status quo" in this situation is considered the situation the parties were in prior to the recent  
effort to organize.

1 frustrate the bargaining process. *Id.* at \*4. In Item No. 904, the Board found that despite  
2 being undisputedly regressive, the respondent’s proposals were not intended to “frustrate  
3 the bargaining process. Rather, the Board finds that the proposals reflected the relative  
4 strength of the parties and were primarily meant to help establish Respondent’s  
5 bargaining position.” *Id.* at \*4.

6 The same is true in this case. The only thing that any of the quotes which the  
7 CCPA attributes to the County will show is an intent to establish the County’s bargaining  
8 position and/or articulate the relative strength of the Parties. As no intent to interfere  
9 with, or frustrate the bargaining process can be inferred from such circumstances the  
10 allegations fail to prove regressive bargaining, and the claims must be dismissed.

11 The Union then argues that the “County justified its regressive proposal by citing  
12 the Union’s past use of protected impasse procedures [in prior two years]” as allegations  
13 sufficient to demonstrate retaliation. *Opp.* at p. 8. This is circular logic because it is  
14 based upon the CCPA’s mischaracterization of the proposals as “regressive.” As set forth  
15 above, the proposals do not meet the definition of “regressive proposals,” and thus were  
16 permissible proposals and the County did nothing wrong or prohibited by making these  
17 proposals.

18 To survive a motion to dismiss, the SAC must allege facts that, if accepted as true,  
19 would establish the elements of the claim. However, simply labeling a proposal  
20 “regressive” is insufficient to support a claim where the facts as alleged in the SAC do  
21 not support (and contradict) the conclusion that the proposals are regressive. As the SAC  
22 fails to allege facts sufficient to conclude the proposal was regressive, the derivative claim  
23 of retaliation must also be dismissed.

24 **C. The Bad Faith Bargaining Claims Based On “Unjustified Delays”**  
25 **And “Refusal To Participate” Must Be Dismissed As Unsupported By**  
26 **The Alleged Facts**

27 The third claim identified in the Opposition was bad faith bargaining as evidenced  
28 by a refusal to participate in the bargaining process and unjustified delays. However, the  
Complainant cannot simply allege foul play. *Las Vegas Peace Officers Ass’n v. Las*

1 *Vegas*, Item No. 821, Case No. 2023-034, at 4 (2017) (quoting *Boland v. Nev. Serv. Emps.*  
2 *Union*, Item No. 802, at 5 (2015) (internal citation omitted)). “In order to show ‘bad  
3 faith,’ a complainant must present ‘substantial evidence of **fraud, deceitful action or**  
4 **dishonest conduct.**” *Juvenile Justice Supr. Ass’n v. County of Clark*, p. 5, Case No.  
5 2017-20, Item No. 834 (EMRB, Dec 13, 2018) (citations omitted).

6 The CCPA cites Paragraphs 36 and 37 of the SAC as purportedly supporting its  
7 claim of refusal to participate. SAC at ¶¶ 36-37. These Paragraphs allege that at the May  
8 6, 2024 bargaining session, “the County refused to negotiate claiming the pending Fact-  
9 Finding decision for the 2023 Reopener provides them too much uncertainty to engage in  
10 bargaining on financial articles.” SAC ¶¶ 36-37.

11 Even presuming these allegations are true (which the County denies), the SAC  
12 acknowledges that at that moment in time, the issue was so uncertain that the County had  
13 to file a Petition for Declaratory Order to clarify the issue. SAC at ¶ 37. Thus, even if an  
14 action (*i.e.*, alleged refusal to bargain) is ultimately found to be a prohibited practice, the  
15 significant uncertainty which existed at the time the County acted would negate any  
16 inference that the County acted with fraudulent or dishonest intent. Without more facts  
17 specifically alleging fraud, deceit or dishonesty, there is not sufficient evidence to prove  
18 a claim of bad faith bargaining, and the claim must be dismissed.

19 The CCPA’s remaining examples of the County’s allegedly unjustified delays are  
20 either permissible actions or strict adherence to the statutory impasse procedures.<sup>7</sup> For  
21 example, the Opposition alleges that the County’s failure to immediately agree to and  
22 implement the non-binding Fact Finder’s recommendations is evidence of bad faith  
23 bargaining. Opp. at p. 9; SAC at ¶¶ 12, 13, 18, 52 and 63. However, there is no statutory  
24 requirement on the County to ever offer or accept the non-binding recommendations.  
25 Therefore, the fact that the County allegedly “waited ‘until the eleventh hour before

26 <sup>7</sup> The CCPA asserts that the “the same communications and evidence that led to a bad faith finding in the  
27 CCDU case led to the conclusion that the County bargained in bad faith with the CCPA here.” Opp. p. 9.  
28 However, on November 7, 2025, the Clark County District Court Granted (in relevant part) Clark County’s  
Petition for Judicial Review, reversing the Board’s findings of bad faith arising from claimed delays,  
therefore the CCPA cannot draw inferences of bad faith from the conduct in this case. See Order Granting  
Petitions In Part and Denying In Part, Case No. A-24-908956-J, at \*7 (8<sup>th</sup> Jud. Dist. Ct., November 7, 2025).

1 interest arbitration” to make these settlement offers does not by itself suggest bad faith.  
2 Absent additional allegations that the County affirmatively knew its settlement offer  
3 several months prior to offering it (which are not contained in the SAC), the SAC fails to  
4 state a claim for bad faith bargaining.

5 Other examples of the County’s allegedly bad faith delays offered by the CCPA  
6 are the County’s refusal to prematurely select a fact-finder and the County’s refusal to  
7 skip the mediation step of the statutory impasse procedures. Opp. at p. 9 (citing SAC ¶¶  
8 46-48, 50, and 57-60). The CCPA is again putting the cart before the horse, by asserting  
9 the conclusion that these are impermissible delays, without making any factual  
10 allegations to explain how the County’s decisions to avail itself of procedures deemed  
11 legal and permissible under the Act somehow transforms into an impermissible delay or  
12 otherwise constitutes bad faith bargaining.

13 Additionally, the SAC acknowledges that the Parties were at impasse starting May  
14 6, 2024, and the parties later reached agreements on the reopeners and the successor CBA  
15 without the contract being imposed by a binding fact-finder. SAC at ¶¶ 52, 63 and 65.  
16 Thus, these contracts were reached as the result of confidential settlement negotiations,  
17 which cannot be introduced as evidence of bargaining (good or bad). Therefore, the bad  
18 faith bargaining claims are unsupported by the facts alleged in the SAC and must be  
19 dismissed.

20 **III. CONCLUSION**

21 For the reasons set forth above, as well as those set forth in the County’s Motion  
22 to Dismiss, the SAC fails to allege facts sufficient to show a violation of the Act.  
23 Therefore, the Complaint should be dismissed with prejudice.

24 Additionally, the Board should order that all intervening deadlines (*e.g.*, deadline

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to submit the pre-hearing statement, etc.) should be stayed until the Board has ruled upon the County's Motion.

DATED this 3<sup>rd</sup> day of February, 2026.

FISHER & PHILLIPS LLP

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 3<sup>rd</sup> day of February, 2026, I filed and served by electronic means the foregoing **RESPONDENT’S REPLY IN SUPPORT OF ITS MOTION TO DISMISS COMPLAINANT’S SECOND AMENDED COMPLAINT**, as follows:

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