

BEFORE THE STATE OF NEVADA GOVERNMENT
EMPLOYEE-MANAGEMENT RELATIONS BOARD

LYON COUNTY EDUCATION
ASSOCIATION,

Complainant,

vs.

LYON COUNTY SCHOOL DISTRICT,

Respondent.

Case No. 2024-006

FILED
March 12, 2024
State of Nevada
E.M.R.B.
10:44 a.m.

COMPLAINT

COMES NOW, Complainant LYON COUNTY EDUCATION ASSOCIATION (“Association” or “LCEA”), by and through its attorneys, Dyer Lawrence, LLP, and bring this Complaint as follows:

I. JURISDICTION

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

II. BACKGROUND

2. The Association is, and was at all times mentioned herein, an employee organization, as defined by NRS 288.040, and the exclusive recognized bargaining agent, as defined by NRS 288.027, for the bargaining unit consisting of all licensed staff employed by the Lyon County School District (“District” or “LCSD”), excluding administrators. The mailing address of the Association is P.O. Box 2606, Fernley, NV 89408.

3. Respondent District is a school district created under the authority of NRS 386.010 and a local government employer as defined by NRS 288.060. The address of the District is 25 East Goldfield Avenue, Yerington, NV 89447.

4. The Association and the District engage in collective bargaining pursuant to NRS Chapter 288.

1 5. As a result of the parties’ collective bargaining, the Association and the District are
 2 currently parties to a Professional Negotiated Agreement dated July 1, 2023, through June 30, 2025
 3 (“Agreement”), a copy of which is on file with the Employee-Management Relations Board
 4 (“EMRB”).

5 **III. FACTS**

6 6. In 2023, the parties negotiated the current Agreement, which was ratified and
 7 accepted by the parties in September, 2023.

8 7. On or about March 8, 2023, Senate Bill No. 231 (“SB 231”), which made
 9 appropriations to the Interim Finance Committee (“IFC”) for allocations to school districts that
 10 budget salary increases for certain employees, was introduced, subsequently enrolled and ultimately
 11 signed by Nevada Governor Joe Lombardo on June 15, 2023.

12 8. SB 231 appropriated from the State General Fund to the IFC \$250,000,000 for
 13 allocation to Nevada school districts for the support of public schools after the IFC determines that
 14 each school district submitted sufficient documentation and:

15 The school district has submitted to the [IFC] a statement of the amount and
 16 percentage of the budgeted increase in salary for teachers and education support
 professionals

17 9. In light of SB 231, the parties negotiated changes to Article XXI–Salary Schedule of
 18 the Agreement. Section .3 of Article XXI provides in pertinent part:

19 21-3-1 See attached salary schedules for 2023-2024 and 2024-2025 school years. A
 20 twelve percent (12%) raise for the 2023-2024 school year and a two-and-one-half
 21 percent (2.5%) raise for the 2024-2025 school year will be given, absent any
 unforeseen, significant changes in state funding. This does not include the one and
 22 eight hundred seventy-five thousandths of a percent (1.875%) PERS increase payable
 by the District effective July 1, 2023 through June 30, 2025.

23 21-3-2 Senate Bill 231 (2023 Legislative Session) – Additional Salary

24 For the 2023-2025 biennium, LCSD will pursue funding as made available through
 25 Senate Bill 231 of the 2023 Legislative Session. Any awarded funds will be applied
 to salary and benefits, as permitted by law. Any increase in salary and benefits will
 26 only be for the term of the 2023-25 biennium and will sunset effective July 1, 2025,
 unless extended by the Nevada Legislature.

27 Funds will be reported separately on employee contracts as clarification for all
 28 parties. Funds will be applied, upon receipt, consistent with a successful subgrant
 award.

* * *

1 10. On or about August 24, 2023, the Legislative Counsel Bureau notified the District
2 that the LCSD would be receiving a maximum of \$6,228,213 in SB 231 funds during the 2023-2025
3 biennium.

4 11. On or about October 24, 2023, the LCSD Board of Trustees (“Trustees”) approved
5 a plan to pay a “fixed allocation,” *i.e.*, an equal amount of SB 231 funds, to each qualifying
6 employee of \$6,533.94 and rejected a “percentage allocation” of approximately 5.45% to each
7 qualifying employee without negotiating the salary, wage rates or other form of direct monetary
8 compensation with the Association.

9 12. On or about December 13, 2023, the IFC considered, but took no action regarding the
10 District’s SB 231 plan.

11 13. From December 21 through 28, 2023, various District administrators sent email
12 messages directly to District employees, including LCEA members, asking them to contact IFC
13 members and “encourage them to pass the [SB 231] plan submitted by LCSD.”

14 14. By letter dated December 28, 2023, to the Trustees, LCEA President Loraine De La
15 Torre specifically requested to negotiate the specific method of distribution of the SB 231 funds with
16 the District and objecting to the District’s direct communications with its members regarding
17 mandatory subjects of bargaining.

18 15. By letter dated January 2, 2024, LCSD Superintendent Wayne Workman, who has
19 resigned from District employment effective June 30, 2024, refused to negotiate the means for
20 distributing SB 231 funds with the Association and denied any direct dealing with LCEA members.

21 16. On or about February 8, 2024, the IFC approved the District’s “fixed allocation” plan
22 for distributing SB 231 funds.

23 **FIRST CAUSE OF ACTION**
24 **Interfering, restraining or coercing an employee in the exercise of any right guaranteed**
25 **under NRS Chapter 288 in violation of NRS 288.270(1)(a)**

26 17. Complainant reiterates paragraphs 1 through 16 as though fully set forth herein.

27 18. In or about December, 2023, various District administrators sent email messages
28 directly to District employees, including LCEA members, asking them to contact IFC members and
“encourage them to pass the [SB 231] plan submitted by LCSD.”

1 19. Therefore, the District's conduct constitutes interference, restraint or coercion of an
2 employee in the exercise of any right guaranteed under NRS Chapter 288 and an unfair labor practice
3 in violation of NRS 288.270(1)(a).

4 **SECOND CAUSE OF ACTION**

5 **Dominating, interfering or assisting in the administration of an employee organization in
6 violation of NRS 288.270(1)(b)**

7 20. Complainant reiterates paragraphs 1 through 19 as though fully set forth herein.

8 21. In or about December, 2023, various District administrators sent email messages
9 directly to District employees, including LCEA members, asking them to contact IFC members and
"encourage them to pass the [SB 231] plan submitted by LCSD."

10 22. Therefore, the District's conduct constitutes dominating, interfering or assisting in
11 the administration of an employee organization and an unfair labor practice in violation of
12 NRS 288.270(1)(b).

13 **THIRD CAUSE OF ACTION**

14 **Discharging or otherwise discriminating against an employee because the employee has
15 formed, joined or chosen to be represented by an employee organization in violation of
16 NRS 288.270(1)(d)**

17 23. Complainant reiterates paragraphs 1 through 22 as though fully set forth herein.

18 24. In or about December, 2023, various District administrators sent email messages
19 directly to District employees, including LCEA members, asking them to contact IFC members and
"encourage them to pass the [SB 231] plan submitted by LCSD."

20 25. Therefore, the District's conduct constitutes discharging or otherwise discriminating
21 against an employee because the employee has formed, joined or chosen to be represented by an
22 employee organization and an unfair labor practice in violation of NRS 288.270(1)(d).

23 **FOURTH CAUSE OF ACTION**

24 **Refusing to bargain collectively in good faith in violation of NRS 288.270(1)(e)**

25 26. Complainant reiterates paragraphs 1 through 25 as though fully set forth herein.

26 27. On or about December 28, 2023, LCEA requested to negotiate with the District the
27 specific method of distribution of the SB 231 funds, which constitute salary, wage rates or other form
28 of direct monetary compensation. However, the District refused to negotiate with the Association.

1 28. Therefore, the District's conduct constitutes a refusal to bargain collectively in good
2 faith with the Association, the exclusive labor representative, as required in NRS 288.150 regarding
3 a mandatory subject of bargaining and, hence, bad faith bargaining and an unfair labor practice in
4 violation of NRS 288.270(1)(e).

5 WHEREFORE Complainant prays for relief as follows:

- 6 1. For a hearing by the Board pursuant to NRS 288.110(2) and NRS 288.280;
- 7 2. For a finding in favor of Complainant and against Respondent;
- 8 3. For a determination that the District interfered, restrained or coerced members of the
9 Association in the exercise of any right guaranteed under NRS Chapter 288 in violation of
10 NRS 288.270(1)(a);
- 11 4. For a determination that the District dominated, interfered or assisted in the
12 administration of the Association in violation of NRS 288.270(1)(b);
- 13 5. For a determination that the District discriminated against members of the
14 Association because they have formed, joined or chosen to be represented by the Association in
15 violation of NRS 288.270(1)(d);
- 16 6. For a determination that the District engaged in bad faith bargaining in violation of
17 NRS 288.270(1)(e);
- 18 7. For an Order directing the District to bargain in good faith with the Association
19 regarding the specific method of distribution of the SB 231 funds;
- 20 8. For an Order directing the District to cease and desist from violating
21 NRS Chapter 288;

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9. For an award of attorney’s fees and costs incurred by the Association in bringing this action in accordance with NRS 288.110(6); and,

10. For such other and further relief as the Board deems necessary and proper.

DATED this 12th day of March, 2024.

DYER LAWRENCE, LLP

By: 
Thomas J. Donaldson
Nevada State Bar No. 5283
2805 Mountain Street
Carson District, Nevada 89703
Telephone: (775) 885-1896
Facsimile: (775) 885-8728
Attorneys for Complainant


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

CERTIFICATE OF SERVICE

Pursuant to NAC 288.200(2), I certify that I am an employee of DYER LAWRENCE, LLP, and that on the 12th day of March, 2024, I deposited for mailing, postage prepaid, by **certified U.S. mail**, a true and correct copy of the within COMPLAINT addressed to:

Phil Cowee, President
LCSD Board of Trustees
25 E. Goldfield Avenue
Yerington, NV 89447

Wayne Workman, Superintendent
Lyon County School District
25 E. Goldfield Avenue
Yerington, NV 89447


Kelly Gilbert

Kelly Gilbert

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

1 DONALD A. LATTIN, ESQ., NV Bar # 693
2 MAUPIN, COX & LeGOY
3 4785 Caughlin Parkway
4 P. O. Box 30000
5 Reno, NV 89520
6 (775) 827-2000
7 Attorneys for Respondent
8 *Lyon County School District*

FILED
April 1, 2024
State of Nevada
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4:14 p.m.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

8 LYON COUNTY EDUCATION) Case No.: 2024-006
9 ASSOCIATION,)
10 Complainant,)
11 vs.)
12 LYON COUNTY SCHOOL DISTRICT)
13 Respondent.)

14 ANSWER

15 Respondent LYON COUNTY SCHOOL DISTRICT (the "*District*") hereby responds to
16 the Complaint filed by Complainant LYON COUNTY EDUCATION ASSOCIATION
17 ("LCEA") as follows:

- 18 1. In response to paragraph 1, the District states that the statutes referenced therein
19 speak for themselves. The District denies any remaining allegations contained therein.
- 20 2. In response to paragraphs 2, 3, 4, 5, and 6, the District admits the allegations
21 contained therein.
- 22 3. In response to paragraphs 7, 8, and 9, the District states that the Senate Bill and
23 negotiated agreements referenced therein speak for themselves. The District denies any
24 remaining allegations contained therein.
- 25 4. In response to paragraph 10, the District admits the allegations contained therein.
- 26 5. In response to paragraph 11, the District admits that during the October 2023

1 meeting of the Lyon County School District Board of Trustees, the Trustees took action to
2 approve a plan to disperse monies anticipated to be received by the District under SB 231. The
3 District denies that it failed to negotiate the distribution of SB 231 funds with the LCEA. The
4 District denies any remaining allegations contained therein.

5 6. In response to paragraph 12, the District admits the allegations contained therein.

6 7. In response to paragraph 13, the District is without knowledge and information
7 sufficient to form a belief as to the truth of the allegations contained therein and on that basis
8 denies the same.

9 8. In response to paragraphs 14 and 15, the District states that the correspondence
10 referenced therein speaks for itself. The District denies any remaining allegations contained
11 therein.

12 9. In response to paragraph 16, the District admits the allegations contained therein.

13 **FIRST CAUSE OF ACTION**

14 **(Interfering, restraining or coercing an employee in the exercise of any right guaranteed
15 under NRS Chapter 288 in violation of NRS 288.270(1)(a))**

16 10. In response to paragraph 17, the District refers to and by such reference
17 incorporates herein each, every and all of its answers to the paragraphs above as if the same were
18 fully set forth at this point.

19 11. In response to paragraph 18, the District is without knowledge and information
20 sufficient to form a belief as to the truth of the allegations contained therein and on that basis
21 denies the same.

22 12. In response to paragraph 19, the District denies the allegations contained therein.

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SECOND CAUSE OF ACTION

(Dominating, interfering or assisting in the administration of an employee organization in violation of NRS 288.270(1)(b))

13. In response to paragraph 20, The District refers to and by such reference incorporates herein each, every and all of its answers to the paragraphs above as if the same were fully set forth at this point.

14. In response to paragraph 21, the District is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein and on that basis denies the same.

15. In response to paragraph 22, the District denies the allegations contained therein.

THIRD CAUSE OF ACTION

(Discharging or otherwise discriminating against an employee because the employee has formed, joined or chosen to be represented by an employee organization in violation of NRS 288.270(1)(d))

16. In response to paragraph 23, the District refers to and by such reference incorporates herein each, every and all of its answers to the paragraphs above as if the same were fully set forth at this point.

17. In response to paragraph 24, the District is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein and on that basis denies the same.

18. In response to paragraph 25, the District denies the same.

FOURTH CAUSE OF ACTION

(Refusing the bargain collectively in good faith in violation of NRS 288.270(1)(e))

19. In response to paragraph 26, the District refers to and by such reference incorporates herein each, every and all of its answers to the paragraphs above as if the same were fully set forth at this point.

20. In response to paragraph 27, the District denies that it had an obligation to reopen negotiations on a term already negotiated and agreed upon. The District denies any remaining

1 allegations contained therein.

2 21. In response to paragraph 28, the District denies the same.

3 **AFFIRMATIVE DEFENSES**

4 1. LCEA's Complaint fails to state a claim upon which relief can be granted in favor
5 of LCEA or against the District.

6 2. LCEA has failed to follow the grievance process contained in the negotiated
7 agreement prior to filing this Complaint.

8 3. LCEA cannot demand that the District reopen terms already negotiated and
9 agreed upon.

10 4. The District has been required to retain the law firm of Maupin, Cox & LeGoy to
11 defend and to protect its interests in this litigation, and the District is entitled to recover its court
12 costs and reasonable attorney's fees incurred herein.

13 Based on the foregoing, the District requests the following relief:

14 A. That the LCEA take nothing by virtue of the Complaint, and that the Complaint
15 be dismissed with prejudice;

16 B. For costs incurred in defending this action, together with a reasonable attorney's
17 fees; and

18 C. For such other and further relief as the EMRB deems just and proper.

19 Dated this 13th day of April, 2024.

20 MAUPIN, COX & LEGOY

21
22 By: 

23 Donald A. Latin, NV Bar No. 693
24 4785 Caughlin Parkway
25 Reno, Nevada 89519
26 *Attorneys for Respondent
Lyon County School District*

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of Maupin, Cox & LeGoy, Attorneys at Law, and
3 in that capacity and on the date indicated below, I deposited for mailing from a point within the
4 State of Nevada a sealed envelope which had enclosed within a true and correct copy of the
5 foregoing document, which envelope had postage fully prepaid thereon, addressed as follows:

6 Thomas J. Donaldson, Esq.
7 Dyer Lawrence, LLP
8 2805 Mountain Street
9 Carson City, NV 89703

10 Dated this 1st day of April, 2024.

11 
12 Employee

1 DONALD A. LATTIN, ESQ., NV Bar # 693
2 MAUPIN, COX & LeGOY
3 4785 Caughlin Parkway
4 P. O. Box 30000
5 Reno, NV 89520
6 (775) 827-2000
7 Attorneys for Respondent
8 *Lyon County School District*

FILED
June 24, 2024
State of Nevada
E.M.R.B.
8:37 a.m.

6 STATE OF NEVADA
7 GOVERNMENT EMPLOYEE-MANAGEMENT
8 RELATIONS BOARD


8 LYON COUNTY EDUCATION) Case No.: 2024-006
9 ASSOCIATION,)
10 Complainant,)
11 vs.)
12 LYON COUNTY SCHOOL DISTRICT)
13 Respondent.)

14 **PREHEARING STATEMENT**

15 Respondent LYON COUNTY SCHOOL DISTRICT (the "District") hereby submits its
16 Prehearing Statement pursuant to NAC 288.250 in preparation for the hearing on the Complaint
17 filed by Complainant LYON COUNTY EDUCATION ASSOCIATION ("LCEA").

18 Dated this 24th day of June, 2024.

19 MAUPIN, COX & LEGOY

20
21 By: 
22 Donald A. Lattin, NV Bar No. 693
23 4785 Caughlin Parkway
24 Reno, Nevada 89519
25 Attorneys for Respondent
26 *Lyon County School District*

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. ISSUES OF FACT AND LAW TO BE DETERMINED BY THE BOARD

3 A. Whether the manner in which the Trustees chose to distribute the funds received by
4 the District under SB 231 was subject to additional bargaining. If so, whether there
5 was a violation of NRS 288.270(1)(a), NRS 288.270(1)(b), or NRS 288.270(1)(d).

6 B. Whether the LCSD failed to negotiate with the Association regarding the specific
7 method of distribution of the SB 231 funds, and if so, whether this violated NRS
8 288.270(1)(e).

9 II. STATEMENT OF FACTS

10 The LCEA is the exclusively recognized bargaining agent for the bargaining unit
11 consisting of all licensed staff employed by the District, excluding administrators. *See* Compl. at
12 ¶ 2. The LCEA and the District negotiated and entered into a Professional Negotiated Agreement
13 dated July 1, 2023, through June 30, 2025 (the “Agreement”). *Id.* at ¶5. The Agreement was
14 ratified and accepted by the parties in September 2023. *Id.* at ¶6.

15 At the time the parties negotiated the Agreement, each was aware of the existence and
16 implications of Senate Bill No. 231 (“SB 231”), which was passed on or around March 8, 2023
17 by the Legislature and signed by Governor Lombardo on June 15, 2023. *See* Compl. at ¶ 7. SB
18 231 appropriated monies from the State General Fund to the Interim Finance Committee for
19 allocations to school districts that budgeted salary increases for certain employees. *Id.*

20 Given that SB 231 had already passed the Legislature and been signed by the Governor
21 prior to the parties’ negotiations, SB 231 was a topic of negotiation between the parties. The
22 result of the bargaining related to SB 231 was memorialized in the Agreement. Indeed, LCEA
23 admits that the parties negotiated changes to Article XXI – Salary Schedule of the Agreement
24 **based on SB 231**. *See* Compl. at ¶ 9 (“***In light of*** SB 231, the parties negotiated changes to Article
25 XXI – Salary Schedule of the Agreement.”) (emphasis added). The bargained for agreement
26 related to SB 231 was memorialized in the Agreement as follows:

1 21-3-2 Senate Bill 231 (2023 Legislative Session) – Additional Salary

2 For the 2023-2025 biennium, LCSD will pursue funding as made available
3 through Senate Bill 231 of the 2023 Legislative Session. *Any awarded*
4 *funds will be applied to salary and benefits, as permitted by law. Any*
5 *increase in salary and benefits will only be for the term of 2023-25*
6 *biennium and will sunset effective July 1, 2025, unless extended by the*
7 *Nevada Legislature.*

8 Funds will be reported separately on employee contracts as clarification for
9 all parties. *Funds will be applied, upon receipt, consistent with a*
10 *successful subgrant award.*

11 *See Compl. at ¶ 9 (emphasis added).*

12 Consistent with the Agreement, the District pursued funding available through SB 231.
13 In that regard, the District Superintendent presented two plans in the alternative to the District
14 Board of Trustees (the “Trustees”) for approval in an open, public, and noticed meeting on
15 October 24, 2023. The Trustees approved a “fixed allocation plan” which would provide a fixed
16 amount to all teachers and education support professionals as opposed to the “percent allocation
17 plan” which would provide payment based on a pro rata percentage of compensation. *See Compl.*
18 *at ¶ 11. The Trustees felt it important for the funds to benefit all employees of the District, as*
19 *opposed to just a select few.*

20 As required, the District presented the plan to the Interim Finance Committee at their
21 December 13, 2023 meeting. *See Compl. at ¶ 12. The plan was finally approved by the Interim*
22 *Finance Committee on February 8, 2024, as the plan was permitted by law. See Compl. at ¶ 16.*

23 Following approval of the plan by the Trustees and after the presentation of the plan to
24 the Interim Finance Committee, LCEA President Loraine De La Torre, through correspondence
25 dated December 28, 2023, requested additional negotiations on a subject matter included in the
26 Agreement, namely SB 231. *See Compl. at ¶ 14.*

In correspondence dated January 2, 2024, District Superintendent Wayne Workman
responded to the LCEA correspondence by stating, among other things, that the Agreement does
not require the District to reopen negotiations on a matter included in the Agreement. *See id.* at

¶ 15. Specifically, Article XXIII Terms of Agreement, section 23-1-2 of the Agreement provides as follows:

The parties acknowledge that during the negotiations which resulted in this Agreement, each has had unlimited rights and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the areas of mandatory bargaining and that the understanding and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. *No additional negotiations on this Agreement will be conducted on any item, whether contained herein or not, except by mutual consent.*

(Emphasis added).

III. ARGUMENT

While not binding on the State of Nevada Government Employee-Management Relations Board (“EMRB”), decisions of the National Labor Relations Board (“NLRB”) are instructive. The decisions of the NLRB are clear, “when parties bargain about a subject and memorialize that bargain in a collective bargaining agreement, they create a set of rules governing their future relations and unless the parties agree otherwise, there is no continuous duty to bargain during the term of an agreement with respect to a matter covered by the contract.” *Mv Transportation, Inc.*, 368 NLRB No. 66 (Sept. 10, 2019) (internal citations omitted). This contract coverage analysis “does not require that the agreement mention, refer to, or address the *specific action* the employer has taken.” *Id.* (internal citations omitted) (emphasis added). If an issue is “clearly and unmistakably” covered by the Agreement, “the union has already clearly and unmistakably exercised its statutory right to bargain and has resolved the matter to its satisfaction.” *Id.* (internal citations omitted). In cases in which an employer defends against a unilateral-change allegation by asserting that contractual language privileged it to make the disputed change without further bargaining, the merits of the allegation are evaluated by applying contract coverage analysis. *Id.*

In contract coverage analysis,

“the Board will assess the merits of this defense by undertaking the more limited review necessary to determine whether the parties’ collective-bargaining agreement covers the disputed unilateral change In doing

1 so, the Board will give effect to the plain meaning of the relevant contractual
2 language, applying ordinary principles of contract interpretation; and the
3 Board will find that the agreement covers the challenged unilateral act if the
4 act falls within the compass or scope of contract language that grants the
5 employer the right to act unilaterally. . . . [The Board] will not require that
6 the agreement specifically mention, refer to or address the employer
7 decision at issue. Where contract language covers the act in question, the
8 agreement will have authorized the employer to make the disputed change
9 unilaterally, and the employer will not have violated Section 8(a)(5).”

10 *Mv Transportation, Inc.*, 368 NLRB No. 66 (Sept. 10, 2019) (internal
11 citations omitted).

12 In this case, the LCEA seeks to reopen negotiations on an item which was already
13 bargained for and included in the current, operative Agreement. The parties have already
14 bargained over SB 231 and memorialized the result of those negotiations in the Agreement. It is
15 covered in the Agreement and by including it in negotiations, the LCEA has “clearly and
16 unmistakably exercised its statutory right to bargain and has resolved the matter to its
17 satisfaction.” Further, the plain language of the Agreement provides that “[a]ny awarded [SB
18 231] funds will be applied to salary and benefits, as permitted by law.” The LCEA had unlimited
19 rights and opportunity to make demands and proposals with respect to the SB 231 funds.
20 Negotiations on this topic were completed and the agreement was memorialized. The Agreement
21 clearly provides that the SB 231 funds will be applied to salary and benefits “as permitted by
22 law.” The District followed the law and followed the requirements set forth by the Legislature in
23 pursuing funds under SB 231. As such, the plan for distribution of SB 231 funds as approved by
24 the Trustees was not a topic which required additional bargaining. The LCEA had its full
25 opportunity to bargain on this subject, and the Agreement set forth the understanding between the
26 parties.

27 Further, the Agreement itself states that “the parties acknowledge that during negotiations,
28 each has had unlimited rights and opportunity to make demands and proposals with respect to any
29 subject or matter not removed by law from the areas of mandatory bargaining and that the
30 understanding and agreements arrived at by the parties after the exercise of that right and

1 opportunity are set forth in this Agreement.” The Agreement further expressly provides that “[n]o
2 additional negotiations on this Agreement will be conducted on any item, whether contained
3 herein or not, except by mutual consent.” There has been no violation of NRS 288.270(1)(e).

4 This is not a situation in which the LCEA waived its right to bargain on the issue of SB
5 231. The LCEA had every opportunity to bargain on this issue. A clear and convincing
6 demonstration of waiver of a right to bargain, is only necessary when “the agreement does not
7 cover the employer’s disputed act.” 368 NLRB No. 66 at 2. That is clearly not the case here.
8 The actions of the District were absolutely covered by the agreement, SB 231 was absolutely a
9 topic of negotiation, and the LCEA cannot and has not offered any evidence to dispute the
10 District’s position on this issue. There is no requirement for the District to show clear and
11 convincing waiver, when the topic at issue, i.e. SB 231 was a topic discussed and bargained for
12 during the negotiations of the current Agreement.

13 It follows that because the manner in which the Trustees chose to distribute the funds
14 received by the District under SB 231 was not subject to additional bargaining, there was no
15 violation of NRS 288.270(1)(a), NRS 288.270(1)(b), or NRS 288.270(1)(d) by any alleged
16 email(s) from District administrators to District employees.

17 In accordance with relevant NLRB decisions and the express terms of the Agreement, the
18 District had no obligation to reopen negotiations on a topic already addressed, bargained for and
19 set forth in the Agreement.

20 **IV. WHETHER THERE ARE ANY OTHER PENDING PROCEEDINGS.**

21 None.

22 **V. LIST OF WITNESSES, THEIR QUALIFICATIONS AND EXPECTED**
23 **TESTIMONY**

24 A. Wayne Workman, Lyon County School District Superintendent. Mr. Workman
25 will testify as to the negotiations between the parties, and the process of obtaining
26 approval of the SB231 plan from the IFC.

1 B. Tim Logan, Lyon County School District Assistant Superintendent. Mr. Logan will
2 testify as to the negotiations between the parties, the process of drafting the SB231
3 plan to be submitted to the IFC, and the process of obtaining approval of the SB231
4 plan from the IFC.

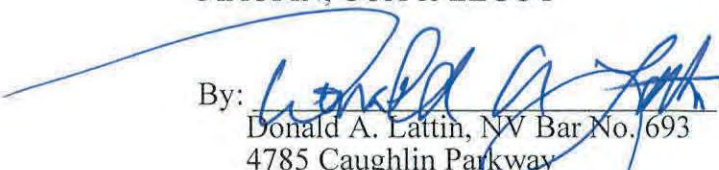
5 C. Dawn Huckaby, Lyon County School District Human Resources Director. Ms.
6 Huckaby will testify as to the process of drafting the SB231 plan to be submitted to
7 the IFC, and the process of obtaining approval of the SB231 plan from the IFC.

8 **VI. AN ESTIMATE OF THE TIME NEEDED FOR THE PRESENTATION OF**
9 **THE LCSD'S POSITION**

10 The LCSD estimates that it will need approximately four (4) hours for presentation of
11 its position.

12 Dated this 24th day of June, 2024.

13 MAUPIN, COX & LEGOY

14
15 By: 
16 Donald A. Lattin, NV Bar No. 693
17 4785 Caughlin Parkway
18 Reno, Nevada 89519
19 *Attorneys for Respondent*
20 *Lyon County School District*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Maupin, Cox & LeGoy, Attorneys at Law, and
3 in that capacity and on the date indicated below, I deposited for mailing from a point within the
4 State of Nevada a sealed envelope which had enclosed within a true and correct copy of the
5 foregoing document, which envelope had postage fully prepaid thereon, addressed as follows:

6 Thomas J. Donaldson, Esq.
7 Dyer Lawrence, LLP
8 2805 Mountain Street
9 Carson City, NV 89703

10 Dated this 24th day of June, 2024.

11 
12 Employee

FILED

JUN 25 2024

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

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LYON COUNTY EDUCATION ASSOCIATION,
Complainant,
vs.
LYON COUNTY SCHOOL DISTRICT,
Respondent.

Case No. 2024-006

COMPLAINANT’S PRE-HEARING STATEMENT

COMES NOW Complainant LYON COUNTY EDUCATION ASSOCIATION (“LCEA” or “Association”), by and through counsel, and pursuant to NAC 288.250 submits the following Pre-Hearing Statement in the above-captioned action before the Nevada Government Employee-Management Relations Board (“Board” or “EMRB”) against Respondent LYON COUNTY SCHOOL DISTRICT (“LCSD” or “District”). LCEA reserves the right to supplement or amend this Statement based upon new or additional information.

I. ISSUES OF FACT

Complainant is under the impression that the facts in this matter are not in dispute and is willing to enter into a stipulation of facts based upon the allegations in the Complaint.

II. ISSUES OF LAW

1. Whether LCSD’s payment of funds allocated pursuant to Senate Bill 231 (“SB 231”) from the 2023 Nevada Legislative Session to District employees in equal amounts, “fixed allocations,” was “permitted by law” as required by Article 21-3-2 of the parties’ 2023-2025 Professional Negotiated Agreement (“Agreement”)?

2. If not, did the District interfere with, restrain or coerce an employee in the exercise of any right guaranteed under NRS Chapter 288 and, hence, commit an unfair labor practice in violation of NRS 288.270(1)(a)?

1 3. If not, did the District dominate, interfere or assist in the administration of LCEA and,
2 hence, commit an unfair labor practice in violation of NRS 288.270(1)(b)?

3 4. If not, did the District discriminate against an employee because the employee has
4 formed, joined or chosen to be represented by LCEA and, hence, commit an unfair labor practice in
5 violation of NRS 288.270(1)(d)?

6 5. If not, did the District refuse to bargain collectively in good faith with LCEA, the
7 exclusive labor representative, as required in NRS 288.150 regarding the terms and conditions of a
8 successor negotiated agreement and, hence, commit bad faith bargaining and an unfair labor practice
9 in violation of NRS 288.270(1)(e)?

10 **III. MEMORANDUM OF POINTS & AUTHORITIES**

11 **A. Facts**

12 The Association is, and was at all times mentioned herein, an employee organization, as
13 defined by NRS 288.040, and the exclusive recognized bargaining agent, as defined by
14 NRS 288.027, for the bargaining unit consisting of all licensed staff employed by the LCSD,
15 excluding administrators. The District is a school district created under the authority of
16 NRS 386.010 and a local government employer as defined by NRS 288.060.

17 The Association and the District engage in collective bargaining pursuant to
18 NRS Chapter 288. As a result of the parties' collective bargaining, the Association and the District
19 are currently parties to the 2023-2025 Agreement, which was ratified and accepted by the parties in
20 September, 2023, and on file with the Board.

21 On or about March 8, 2023, SB 231, which made appropriations to the Interim Finance
22 Committee ("IFC") for allocations to school districts that budget salary increases for certain
23 employees, was introduced, subsequently enrolled and ultimately signed by Nevada Governor Joe
24 Lombardo on June 15, 2023. SB 231 appropriated from the State General Fund to the IFC
25 \$250,000,000 for allocation to Nevada school districts for the support of public schools after the IFC
26 determines that each school district submitted sufficient documentation and:

27 The school district has submitted to the [IFC] a statement of the **amount and**
28 **percentage of the budgeted increase in salary** for teachers and education support
professionals . . . (Emphasis supplied.)

1 In light of SB 231, the parties negotiated changes to Article XXI–Salary Schedule of the
2 Agreement. Section .3 of Article XXI provides in pertinent part:

3 * * *

4 21-3-2 Senate Bill 231 (2023 Legislative Session) – Additional Salary

5 For the 2023-2025 biennium, LCSD will pursue funding as made available through
6 Senate Bill 231 of the 2023 Legislative Session. Any awarded funds will be applied
7 to salary and benefits, as permitted by law. Any increase in salary and benefits will
8 only be for the term of the 2023-25 biennium and will sunset effective July 1, 2025,
9 unless extended by the Nevada Legislature.

10 Funds will be reported separately on employee contracts as clarification for all
11 parties. Funds will be applied, upon receipt, consistent with a successful subgrant
12 award.

13 * * *

14 On or about August 24, 2023, the Legislative Counsel Bureau notified the District that the
15 LCSD would be receiving a maximum of \$6,228,213 in SB 231 funds during the 2023-2025
16 biennium. On or about October 24, 2023, the LCSD Board of Trustees (“Trustees”) approved a plan
17 to pay a “fixed allocation,” *i.e.*, an equal amount of SB 231 funds, to each qualifying employee of
18 \$6,533.94 and rejected a “percentage allocation” of approximately 5.45% to each qualifying
19 employee without negotiating the salary, wage rates or other form of direct monetary compensation
20 with the Association. On or about December 13, 2023, the IFC considered, but took no action
21 regarding the District’s SB 231 plan.

22 From December 21 through 28, 2023, various District administrators sent email messages
23 directly to District employees, including LCEA members, asking them to contact IFC members and
24 “encourage them to pass the [SB 231] plan submitted by LCSD.” By letter dated
25 December 28, 2023, to the Trustees, LCEA President Loraine De La Torre specifically requested to
26 negotiate the specific method of distribution of the SB 231 funds with the District and objected to
27 the District’s direct communications with its members regarding mandatory subjects of bargaining.

28 By letter dated January 2, 2024, LCSD Superintendent Wayne Workman, who has resigned
from District employment effective June 30, 2024, refused to negotiate the means for distributing
SB 231 funds with the Association and denied any direct dealing with LCEA members. On or about
February 8, 2024, the IFC approved the District’s “fixed allocation” plan for distributing SB 231

1 funds. On or about February 20, 2023, the District started making equal payments of \$288.39 to all
2 LCSD employees each pay period.

3 **B. Argument.**

4 Laws granting employees the rights to organize and collectively bargain with their employers,
5 such as NRS Chapter 288, are intended to promote peace in labor relations. *See Truckee Meadows*
6 *Fire Protection Dist. v. International Ass'n of Firefighters, Local 2487*, 109 Nev. 367. 376-77, 849
7 P.2d 343, 350 (1993). The EMRB is concerned with the chilling effect which an employer's actions
8 may have on rights of the employees that are guaranteed under NRS Chapter 288. *Esmeralda Cty.*
9 *Classroom Teachers Ass'n v. Esmeralda Cty. Brd. of School Trustees*, EMRB Case No. A1-045497,
10 Item No. 273 (1991) (*citing* NRS 288.270(1)). In fact, the very first decision of the EMRB
11 concerned whether an employee was improperly discharged from his employment because of union
12 activity. *Laborers' Int'l Union of North America, Local Union No. 169 v. Washoe Medical Center*,
13 Item No. 1, EMRB Case No. 1 (1970). Moreover, through NRS 288.270(1), an employee
14 organization is protected from actions which would undercut its ability to fulfill its statutory role as
15 exclusive bargaining agent and defender of collective bargaining agreements. *Nevada Service*
16 *Employees Union, SEIU Local 1107, AFL-CIO, v. Clark Cty*, EMRB Case No. A1-045759, Item
17 No. 540B (2005). The District's conduct over LCEA's objection and communications by LCSD
18 administrators "violate the spirit, if not the letter, of NRS Chapter 288." *Id.* Thus, in the words of
19 the EMRB, the united and dedicated members of LCEA must "express here our sincere hope that
20 in the future [the District] will scrupulously honor the dictates and goals our Legislature has
21 expressed by enacting [NRS] Chapter 288." *Id.*

22 **1. Respondent violated NRS 288.270(1)(a).**

23 Whenever an employee organization desires to negotiate concerning any matter which is
24 subject to negotiation pursuant to NRS Chapter 288, it shall give written notice of that desire to the
25 local government employer. NRS 288.180(1). Further, it is a prohibited practice for a local
26 government employer or its designated representative willfully to interfere, restrain or coerce any
27 employee in the exercise of any right guaranteed under NRS Chapter 288. NRS 288.270(1)(a). *See*
28 *Carson City Sheriff's Employees Ass'n vs. Sheriff and County of Carson City*, Case No. A1-045319,

1 Items #87, #88 and #89 (1978, 1979) (Sheriff committed prohibited practices of interference,
2 restraint, coercion of employees in the exercise of rights guaranteed under 288 and interfering in
3 internal administration of association).

4 Here, in light of SB 231, LCEA and LCSD negotiated Article 21-3-2 into their 2023-2025
5 Agreement, which provides:

6 * * *

7 21-3-2 Senate Bill 231 (2023 Legislative Session) – Additional Salary

8 For the 2023-2025 biennium, LCSD will pursue funding as made available through
9 Senate Bill 231 of the 2023 Legislative Session. Any awarded funds will be applied
10 to salary and benefits, as permitted by law. Any increase in salary and benefits will
11 only be for the term of the 2023-25 biennium and will sunset effective July 1, 2025,
12 unless extended by the Nevada Legislature.

13 Funds will be reported separately on employee contracts as clarification for all
14 parties. Funds will be applied, upon receipt, consistent with a successful subgrant
15 award.

16 * * *

17 On or about August 24, 2023, the Legislative Counsel Bureau notified the District that the
18 LCSD would be receiving a maximum of \$6,228,213 in SB 231 funds during the 2023-2025
19 biennium. On or about October 24, 2023, the LCSD Board of Trustees (“Trustees”) approved a plan
20 to pay a “fixed allocation,” *i.e.*, an equal amount of SB 231 funds, to each qualifying employee of
21 \$6,533.94 and rejected a “percentage allocation” of approximately 5.45% to each qualifying
22 employee without negotiating the salary, wage rates or other form of direct monetary compensation
23 with the Association. On or about December 13, 2023, the IFC considered, but took no action
24 regarding the District’s SB 231 plan.

25 From December 21 through 28, 2023, various District administrators sent email messages
26 directly to District employees, including LCEA members, asking them to contact IFC members and
27 “encourage them to pass the [SB 231] plan submitted by LCSD.” By letter dated
28 December 28, 2023, to the Trustees, LCEA President Loraine De La Torre specifically requested to
negotiate the specific method of distribution of the SB 231 funds with the District and objected to
the District’s direct communications with its members regarding mandatory subjects of bargaining.

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1 By letter dated January 2, 2024, former LCSD Superintendent Wayne Workman refused to
2 negotiate the means for distributing SB 231 funds with the Association and denied any direct dealing
3 with LCEA members. On or about February 8, 2024, the IFC approved the District's "fixed
4 allocation" plan for distributing SB 231 funds. On or about February 20, 2023, the District started
5 making equal payments of \$288.39 to all LCSD employees each pay period.

6 Thus, the District and its designated representatives willfully interfered, restrained and/or
7 coerced LCEA members in the exercise of their lawful rights under NRS 288.180(1).

8 **2. Respondents violated NRS 288.270(1)(b).**

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

15 Here, the District and its designated representatives willfully and intentionally interfered with
16 LCEA President Loraine De La Torre's administration of LCEA by communicating directly with
17 LCEA members about supporting the District's preferred "fixed allocation" plan when SB 231
18 required a "percentage of the budgeted increase in salary." (Emphasis added.)

19 **3. Respondents violated NRS 288.270(1)(d).**

20 It is a prohibited practice for a local government employer or its designated representative
21 willfully discharge or otherwise discriminate against any employee because the employee has signed
22 or filed an affidavit, petition or complaint or given any information or testimony under Chapter 288,
23 or because the employee has formed, joined or chosen to be represented by any employee
24 organization. NRS 288.270(1)(d). Due to employee's union activities and the personal animus
25 against the employee, employer discriminated against employee for personal reasons and because
26 of employee's union affiliation. *Esmeralda Cty. Classroom Teachers Ass'n vs. Esmeralda County*
27 *School District, et al.*, EMRB Case No. A1-045497, Item #273 (1991).

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1 Here, various District administrators sent email messages directly to LCEA members asking
2 them to contact IFC members and “encourage them to pass the [SB 231] plan submitted by LCSD.”
3 Obviously, the District realized that its preferred “fixed allocation” plan would be less beneficial
4 than the “percentage allocation” plan to LCEA members, *i.e.*, teachers, whose salaries are generally
5 greater than other District employees, and attempted to solicit their support in violation of
6 NRS 288.270(1)(d).

7 **4. The District did not negotiate in good faith.**

8 It is a prohibited practice for a local government employer or its designated representative
9 willfully to refuse to bargain collectively in good faith with the exclusive representative as required
10 in NRS 288.150. NRS 288.270(1)(e). In Nevada, NRS chapter 288 “imposes a reciprocal duty on
11 employers and bargaining agents to negotiate in good faith concerning the mandatory subjects of
12 bargaining listed in NRS 288.150.” *Education Support Employees Assoc. and Police Officer Assoc.*
13 *of the Clark County School Dist.*, EMRB Case No. A1-046113, Item No. 809 (October 20, 2015).
14 “Refusal to bargain in good faith by either party is a prohibited labor practice. NRS 288.270(1)(e)
15 and (2)(b).” *Id.* “The determination of whether there has been such sincerity is made by drawing
16 inferences from conduct of the parties as a whole.” *City of Reno v. International Assoc. of*
17 *Firefighters, Local 731*, Case No. A1-045472, Item 253-A (*quoting NLRB v. Insurance Agent's*
18 *International Union*, 361 U.S. 488 (1970)).

19 Here, the parties specifically agreed in Article 21-3-2 of the Agreement that the District
20 would apply SB 231 funds “to salary and benefits, as permitted by law.” SB 231 required funds to
21 be paid as a “percentage of the budgeted increase in salary” to District employees. However,
22 without good faith, the District concocted and implemented a “fixed allocation” plan rather than a
23 “percentage allocation” plan, which violates NRS 288.270(1)(e).

24 **5. LCEA is entitled to attorney’s fees and costs.**

25 The Board may award reasonable costs, which may include attorney’s fees, to the prevailing
26 party. NRS 288.110(6). When an employer has committed flagrant acts which serve only to frustrate
27 and obstruct the ongoing process of negotiations, it has acted in bad faith and the employee

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1 association is entitled to a judgment in its favor and to attorney's fees and costs. *Reno Police*
2 *Protective Ass'n v. City of Reno*, EMRB Case No. A1-045390, Item Nos. 175A, at p. 5 (1985).

3 In good faith, LCEA negotiated Article 21-3-2 of the parties' 2023-2025 Agreement. Yet,
4 the District deliberately pursued a course of action in violation of the Agreement and NRS
5 Chapter 288. In light of the totality of the District's unlawful conduct, LCEA had no choice other
6 than exercising its rights under NRS Chapter 288 by initiating the instant prohibited practices
7 proceeding. In light of the District's bad faith, obstructive antics and frustrating tactics, LCEA
8 hereby requests an order from the Board determining that the District acted in bad faith in violation
9 of NRS 288.270(1) and awarding attorney's fees and costs incurred by LCEA in bringing this action
10 in accordance with NRS 288.110(6).

11 **IV. PENDING PROCEEDINGS**

12 There are no other pending or anticipated administrative or judicial proceedings related to
13 the subject of the instant hearing and, hence, to reason to stay the hearing in this matter.

14 **V. LIST OF WITNESSES**

15 Complainant anticipates calling the following witnesses at the hearing of this matter,
16 exclusive of rebuttal witnesses:

17 1. Loraine De La Torre, LCEA President, who will testify regarding the parties' contract
18 negotiations, the improper actions of the District's administrators and her efforts to enforce the
19 parties' Agreement and NRS Chapter 288.

20 2. Brian Lee, Nevada State Education Association (NSEA) President, who will testify
21 regarding the parties' contract negotiations, the improper actions of the District's administrators and
22 his efforts to enforce the parties' Agreement and NRS Chapter 288.

23 3. Any witness identified or called by Respondent.

24 LCEA reserves the right to modify its list of witnesses and to call rebuttal witnesses at the hearing
25 in this matter.

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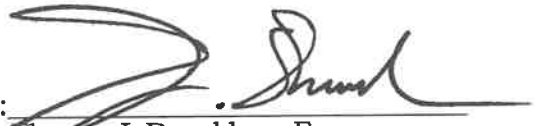
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1 **VI. TIME NEEDED FOR PRESENTATION OF LCEA'S POSITION**

2 LCEA estimates that presentation of its case will require approximately four (4) hours at the
3 hearing.

4 Respectfully submitted this 25th day of June, 2024.

5 DYER LAWRENCE, LLP

6 

7 By: Thomas J. Donaldson, Esq.
8 Nevada State Bar No. 5283
9 Attorneys for LCEA

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Dyer Lawrence, LLP
1817 North Stewart Street, Ste. 35
Carson City, Nevada 89706
(775) 885-1896

CERTIFICATE OF SERVICE

Pursuant to NAC 288.200(2), I certify that I am an employee of DYER LAWRENCE, LLP,
and that on the 25th day of June, 2024, I sent via electronic mail a true and correct copy of the within
COMPLAINANT'S PRE-HEARING STATEMENT addressed to:

Donald Lattin
Maupin, Cox & LeGoy
4785 Caughlin Parkway
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dlattin@mclrenolaw.com



Kelly Gilbert

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